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**FACULTY OF ECONOMIC
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**Corporatist structure without corporatist
policy:**

**Union of Turkish Bar Associations and state
institutions**

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Corporatist Structure Without Corporatist Policy:
Union of Turkish Bar Associations and State Institutions

Korporatist siyasasız korporatist yapı:
Türkiye Barolar ve Birliği ve devlet kurumları

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Abstract

According to corporatist theory, a corporatist interest group structure leads to policy concertation. In this case, the relationship between one of the institutions in the corporatist structure, the Union of Turkish Bar Associations (“TBB”) and the government should be one of policy concertation. However, there are signs that this is not the case. This study therefore explores the relations between TBB and state institutions to understand the true nature of the relationship. Based mainly on interviews conducted with presidents of bar, the study finds that despite the existence of a corporatist structure, the relationship between TBB and the government does not amount to policy concertation given the monist state tradition in Turkey. The study further explores the reasons for conflict between TBB and state institutions. In addition to monism, it finds that socio-economic change that undermines TBB’s homogeneity; its interest group status swinging between a promotional and protective one; and attorneys’ interest in politics are all contributing factors. More importantly, they not only cause conflict but also make it impossible for the interest group to play the role expected from a corporatist partner.

Doğduğum andan bugüne
“yavrusu” için hep çabalamış,
tezimi bitirebilmem için beni
bu yaşımda yanına alarak,
el bebek gül bebek bakmış
annem Fatma Güven Burakreis’e,
minnetle, sevgiyle.

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List of Abbreviations

AKP	Adalet ve Kalkınma Partisi (Justice and Development Party)
CHP	Cumhuriyet Halk Partisi (Republican People's Party)
DDK	Devlet Denetleme Kurulu (State Auditing Authority)
HSYK	Hakim Savcılar Yüksek Kurulu (High Council of Judges and Prosecutors)
KESK	Kamu Emekçileri Sendikaları Konfederasyonu (Confederation of Public Worker Unions)
MHP	Milliyetçi Hareket Partisi (Nationalist Action Party)
MP	Member of Parliament
MÜSIAD	Müstakil İşadamları Derneği (Independent Businessmen Association)
ÖSYM	Ölçme Seçme ve Yerleştirme Merkezi (Center for Measurement, Selection and Replacement)
TBB	Türkiye Barolar Birliği (Union of Turkish Bar Associations)
TESK	Türkiye Esnaf ve Sanatkarları Konfederasyonu (Confederation of Small Traders and Artisans of Turkey)
TOBB	Türkiye Odalar ve Borsalar Birliği (The Union of Chambers and Commodity Exchanges of Turkey)
TUSIAD	Türkiye Sanayici ve İşadamları Derneği (Turkish Industry and Business Association)

Introduction

This will be a study of the Union of Turkish Bar Associations (“TBB”) and its relationship with state institutions at a time when Turkey has been discussing its judiciary and actors as never before¹. Judicial actors at every level² as well as their decisions make it to the headlines on a daily basis, creating or fuming crises situations. Despite all this, not much is known about the actors of the judiciary among which attorneys constitute the largest number. However, their importance stems not only from sheer number but from the fact that they are the most accessible actor of the

¹ Prosecutorial investigations from match fixing (“20 gün sonra tufan!”, *Takvim*, see: <http://www.takvim.com.tr/Spor/2011/10/12/20-gun-sonra-tufan>) to scandals in centrally administered exams (“Şifre dosyasına gizlilik kararı”, *Vatan*, see: <http://haber.gazetevatan.com/sifre-dosyasina-gizlilik-karari/371368/1/Haber>) as well as court decisions in high profile, political cases such as Ergenekon are daily occurrences.

² It is not only the current government that was challenged before the Constitutional Court with a party closure case. The backlog and delay in the appellate courts caused speculations as to the number of cases to be time-barred (“200 Bin Dosya Zamanaşımına Uğrayacak”, *Dunya*, see: http://www.dunya.com/200-bin-dosya-zaman-asimina-ugrayacak_114167_haber.html. Access date: 20 October 2011) or mandatory release of Hizbullah militants held almost ten years in detention (without final conviction) invited public outcry (“Hizbullah tahliyeleri adaleti sarsıyor”, see: <http://www.dha.com.tr/haberdetay.asp?tarih=02.10.2011&Newsid=133797&Categoryid=2>. Access date: 20 October 2011). Differences of opinion about how to remedy the situation turned into accusations exchanged between the Prime Minister (“Erdoğan TUSİAD Genel Kurulu’nda konuştu”, *Hurriyet*, see: <http://www.hurriyet.com.tr/ekonomi/16807837.asp>, Access date: 19 October 2011) and the higher judiciary (“İstinaf mahkemesi ve hakim alimini engelleyen yargı oldu”, *Star*, see: <http://www.stargazete.com/politika/istinaf-mahkemesi-ve-hakim-alimini-engelleyen-yargi-oldu-haber-321997.htm>. Access date: 20 October 2011). Another judiciary filled institution, the Higher Election Board, caused a scandal before the 2011 June elections after it blocked the candidacy of mostly Kurdish MPs (“YSK’dan şok karar”, *Yeni Şafak*, see: <http://yenisafak.com.tr/Gundem/?t=19.04.2011&i=314749>. Access date: 21 October 2011).

judiciary for the public. Indeed, people seek their rights to a legal remedy through attorneys. They translate people's demands to the language of courts and drive the legal system. However, the public hears about them only in high profile cases such as the murder of Hrant Dink or KCK³ trials when they protest actions of the courts⁴.

Meanwhile, research shows that less than 20% of the urban population ever "had an attorney at least once in their lives" (Kalem Jahic & Elveriş 2008: 19). The primary reason (73% of participants) for not benefiting from the services of an attorney was that people "thought they can represent themselves" (Kalem Jahic & Elveriş 2008: 21). This finding suggests that people do not know or understand the value of an attorney. Given this, it can be safely assumed that even less is known about the peak organization of their profession the Union of Turkish Bar Associations (*Türkiye Barolar Birliği* TBB).

³ KCK case is the prosecution of the alleged urban wing of PKK for being members of terror organization. The case has roused criticism for the lining up of hundreds of handcuffed elected local politicians by the police who have then been put in pre-trial detention. It also came to a halt for the criminal defendants insistence on providing their defense in their mother tongue in Kurdish which the court referred as "an unknown language". The defense attorneys recently withdrew from the case in protest of the court's handling of the matter while the court complained to the bar about the actions of the attorneys. ("Defense lawyers withdraw themselves from KCK case in Turkey", *Hurriyet*, see: <http://www.hurriyetdailynews.com/n.php?n=kck-defense-lawyers-withdraw-themselves-from-the-case-2011-04-19>, Access date: 11 October 2011).

⁴ "KCK Davasında Avukatlar Salonu Terk Etti", *Bağımsız İletişim Ağı*, See: <http://bianet.org/bianet/bianet/129382-kck-davasinda-avukatlar-salonu-terk-etti>. "Dink'in Avukatları Salonu Terk Etti", *Bağımsız İletişim Ağı*, See: <http://bianet.org/bianet/toplum/132801-dinkin-avukatlari-salonu-terk-etti>. Access date: 20 October 2011.

At the same time, political scientists' extensive interest in the executive and the legislature has not been matched with research on the judiciary. In fact, their interest in the law and the legal system can at best be called peripheral (Zemans 1983). Although in the last forty years, the "law and society" movement made advances in that regard with sociologists, political scientists, anthropologists and economists studying the law and the legal system as well as their actors, it flourished mostly in the U.S.⁵. Outside, there have been fewer examples.

In Turkey, political scientists' and sociologists' interest in the judiciary has been confined to the Constitutional Court, especially to party closure cases (Shambayati 2008; Shambayati & Kirdiş 2009; Belge 2006; Koğacıoğlu 2004) or the handling of honor crimes (Koğacıoğlu 2007; Ayata Eryılmaz & Kalem 2011), replicating the exclusive orientation of American political scientists toward "law making" as the sole political role of the courts worthy of study (Zemans 1983). Luckily, this is slowly changing too. Research on the mindsets of judges and prosecutors (Sancar & Atılğan 2009) and law professors (Erozan 2005) has been conducted as well as on judicial mechanisms such as criminal legal aid (Elveriş Jahic & Kalem 2007). Trust and confidence in courts have been measured (Kalem Jahic & Elveriş 2008); as well as research on court users and uses (Elveriş Jahic & Kalem 2009) have been recently conducted.

⁵ Depending on the location, the annual meetings of the Law and Society Association bring together over thousand scholars from over forty countries. See the website for numbers: www.lawandsociety.org.

The importance of the role of law in the Turkish modernization project and the media's recent "discovery" of the judiciary notwithstanding, the legal profession or the bar is yet to be studied as an interest organization by political scientists. While there is literature concerning interest groups in general (Topçu 2006; Dülger 1999) and specifically labor unions (Bianchi 1984); business associations such as TUSIAD and MUSIAD (Esmer 1991; Buğra 1998) or trade associations (Okur 2008; Topçu 2006; Dülger 1999), there is only Özman's (Özman 1995) study specifically pertaining to the bar. Meanwhile some small scale "profession" studies on bars in Anatolia (Uzun 2000; Tan 1972) or lawyers (Cirhinlioğlu 1997; Cirhinlioğlu 1996; Türem 2001) have been mostly done by sociologists.

In general, studying the service elites rather than the "productive forces" (McClelland 1991: 12) is new, not only in Turkey but also in Europe. It can be nevertheless considered timely, given the "shift from agricultural and industrial sectors to service" sectors in economies (McClelland 1991: 12). Given this picture, this thesis is about TBB as an interest group included among the ten professional organizations that has been given constitutional status. Their inclusion has been said to give the interest group model in Turkey its corporatist character (Parla 1989; 2009 and Compston 2002) as corporatist theory assumes that inclusion of an interest group in the corporatist structure would lead to corporatist policy making because the two seem to be fused or occur together (Cawson 1988; Lijphart 1999). However, we do not know how policy concertation actually works in

Turkey. The primary goal of this thesis will therefore be to explore the relations between TBB and the state institutions to understand whether and to what extent there is policy concertation.

In theory, the corporatist interest group status endows TBB with easy access and direct communication opportunities with the government as well as other state institutions. However, the opening speeches at the beginning of each judicial year suggest otherwise. In these speeches, presidents of TBB deem it rightful to critically and publicly comment about secularism; separation of powers; the new Turkish foreign policy and the diplomatic procedures to be followed by foreign diplomats such as visiting Anıtkabir; Northern Iraq and terror; relations with the EU and global capitalism; forest fires and similar⁶ before the media and the public. Further, TBB sometimes convenes conferences on these issues, prints books⁷ and issues public statements, criticizing government plans and ideas. All this suggests that the relationship is not based on routine cooperation for implementation of policy as expected in a corporatist interest group system. It also shows that there may be no opportunities for mediation of conflicts between the parties.

⁶ For a glimpse of speeches by the past president of TBB see: <http://eski.barobirlik.org.tr/tbb/baskan/konusmalar/index.aspx>.

⁷ See <http://eski.barobirlik.org.tr/yayinlar/kitaplar/guncel.aspx> for some of the books that concern Atatürk, the presidential system, democracy and the attack in Lebanon.

As will be shown in the coming chapters, TBB seems to not only disagree with the government about political issues but also about issues that concern “the profession” such as the cancellation of the bar exam to become an attorney; opening of new law schools; government reforms in the design of HSYK (High Council of Judges and Prosecutors) and the Constitutional Court; or the establishment of Intermediary Courts. All this suggests that TBB does not solely pursue economic and social interests of its members in partnership with the government but is also promoting certain values. While this thesis will primarily attempt to understand the true nature of the relationship between TBB and state institutions to see whether a corporatist interest structure indeed leads to corporatist policy making, it will further seek to understand what might explain the conflict in the relationship.

The first chapter will provide the theoretical framework of the thesis by using interest group theory. Turkey’s dual (hybrid) interest representation model will be introduced with a focus on its corporatist side while the bar will be constructed as a protective interest group. This chapter will also pose the research question whether a corporatist interest group structure leads to policy concertation.

The second chapter will introduce bar organizations from a comparative perspective. Before doing that, it will first make use of the professionalization literature and discuss the functions of bar organizations.

Then, by comparing the U.S., Germany and Turkey, it will be shown how the model adopted for the regulation of the legal profession and the different role of states shaped the bar organizations in these three countries. At the same time, it will be shown that globalization is driving regulation of the legal professions to convergence.

The third chapter will describe the methodology and how I went about the empirical data collected. As corporatist processes by their very nature are confined to meetings behind closed doors, I based my data on in-depth interviews conducted with presidents of bar or TBB officials. I also made non-participant observations at various meetings of TBB and state officials in Ankara and Kars. Lastly, I conducted interviews with the representatives of bureaucracy as well as the legislature.

In the fourth chapter I present the findings of my interviews in response to the research questions. In the fifth and final chapter, I discuss data obtained from interviews while also introducing other data sources such as the nonparticipant observations and the interviews conducted with Ministry of Justice officials to validate my findings.

Data shows that in Turkey the corporatist policy structure does not lead to corporatist policy making given the monist state tradition that is accustomed

to rule from above and does not share any decision making power. As important, rapid and intense socio-economic change in Turkey seems to undermine TBB's group homogeneity. This is because it imports various cleavages as exists in society into the interest group while breeding role confusion and causing it to swing between being a protective and a promotional interest group. However, when the interest group is divided among many cleavages, this makes it unable to play its part in corporatist policy making. In other words, for corporatist policy making to work not only the state must be willing to share power with interest groups but also the interest group itself must be designed as a protective group and able to represent a homogenous group that shares similar interests and outlook.

Chapter I: Theoretical Framework

This thesis is about the Union of Turkish Bar Associations (Türkiye Barolar Birliği “TBB”) and its relationship with state institutions. The relationship will be reviewed in light of empirical data in order to find out whether there is political concertation in Turkey. It has been said that the interest group representation model in Turkey has a corporatist side to it given that TBB and other professional organizations have constitutional status. It is assumed that the corporatist structure would naturally involve policy concertation between corporatist partners. However, there has been no empirical research to find out whether the relationship between TBB and state institutions indeed amounts to policy concertation. Equally important, if the relationship is one of policy concertation, how does one explain the conflict between TBB and state institutions especially in view of the dictum of corporatist theory stating that relations between corporatist partners are consensual?

The thesis addressed these questions by gathering data through in depth interviews that were conducted with presidents of local bars, administrators at TBB and state officials. In addition, non-participant observations were made in various settings. Data showed that despite the corporatist policy

structure, there was no policy concertation. In other words, in Turkey the corporatist interest representation model did not lead to corporatist policy making.

There appear four main reasons for this. First, given the monist, strong state tradition in Turkey, state institutions are not inclined to share power or cooperate with interest groups to determine policy. Contacts remain ad hoc and involve mostly a deliberative or consultative process rather than a cooperative or concertative relationship. Second, social and economic change in the country is undermining traditional structure of the profession as well as the internal coherency of TBB by making it difficult for it to claim representing *all* interests in an increasingly heterogeneous profession. Third, fuelled by the heterogeneity, TBB swings between a protective and promotional interest group. The latter, however, leads it to adopt challenging positions vis-à-vis the government(s). Fourth, the law's and the profession's historical engagement in Turkish politics further promotes their political involvement, making it difficult to sustain an apolitical (or consensual) relationship between TBB and state institutions. As a result, TBB cannot play the role expected from a protective interest group in corporatist theory.

Given these findings, the thesis' contribution to corporatist theory lies in the recognition that a corporatist representation model and policy concertation

do not necessarily fuse especially when the state tradition is monist. In addition, when the interest group homogeneity is undermined by socio-economic change and traditional political involvement of the profession, the interest group is unable to play its part in a policy concertation role given the fact that it is ridden with internal strife concerning values and priorities. It nevertheless remains an empirical question whether this is a situation specific to Turkey or whether these conclusions are applicable across the board to other interest groups in the corporatist structure.

This chapter will start with an analysis of the interest groups literature. First, I will look at the bar as a protective interest group and review how the relationship between interest groups and the state can be framed in a political system in general by introducing pluralism and corporatism. Second, I will introduce corporatism as policy concertation and the main ideas behind the concertation theory. Third, I will talk about the interest group representation model that reigns in Turkey. Lastly, I will bring TBB into the picture as an interest group and pose my research questions.

1. Interest groups and the Bar

An interest group can be defined as a group or organization whose members perceive to share common interests and which aims to affect the political system without intending to become government (Turan 1986). In that sense, interest groups are autonomous from government and try to influence

public policy while providing the link between the government (or the state) and major sectors of society (Wilson 1990). Their defining characteristic is articulation of demands and needs of society and transmittance thereof into the political process. In that sense, many of their roles are similar to political parties or government: “socializing citizens, organizing consensus, making policy and implementing laws” (Berger 1981: 10). Today, their policy role is ever greater as states carry out many functions that need the expertise of interest groups in areas they know and care about.

Viewed from that perspective, professional organizations such as the bar (or TBB as the peak organization), trade unions and employers’ organizations can be also described as interest groups. At the same time, they are protective interest groups that articulate “the material interests of their members” (Hague & Harrop 2004: 167). In that regard, they seek “selective benefits for their members and insider status with government” (op.cit.). This then translates into frequent consultation by the government and the potential to influence decisions at an early stage. Because of representing clear occupational interests, they are considered as “the most influential of all interest groups” (op. cit.). They have sanctions to achieve their goals such as refusing to comply with a policy they oppose.

Promotional interest groups, on the other hand, “advocate ideas, identities, policies and values” such as environmental groups or ethnicity or gender

based groups (op. cit.). While they have been growing in number and significance, their outsider status means that they are not consulted by governments as often as insider groups. They therefore emphasize public opinion and the media. For protective groups, on the other hand, the media is the last resort, given their more specialized and secretive demands.

It must be pointed out that interest groups raise more passion than other political institutions due to the fear that they are “asserting minority rights or points against those of the majority” (Wilson 1990: 2). In that sense, it has been alleged that they create ungovernability by placing too many demands into the political system, overloading or undermining government authority (Berger 1981). Equally it has been asked whether they wield “power without accountability” (Hague & Harrop 2004: 167). Madison notoriously referred to them as “mischiefs of faction”.

Alexis De Tocqueville, on the other hand, was more hopeful about interest groups as he believed that they provide an alternative to the “tyranny of majority” (De Tocqueville qtd. in Wilson 1990: 3) by moving power away from the center. As he put it, “the science of association” is “the mother of science” (De Tocqueville 1998: 219) and it is through this science people participate in society. This sanguine view of interest groups reached its peak with the pluralist paradigm of democracy by Robert Dahl (Dahl 1961). In *Who governs*, he described how in a small town in Connecticut, power was

dispersed among many interests, all of which had an opportunity to influence policy.

Dahl's thesis, however, was later criticized as it was shown that some values and vested interests were systematically dominant in society while some interests never found representation in the political system (Bachrach & Baratz 1962). Put differently, the system was biased in representing (and mainstreaming) stronger groups' views and opinions. It was therefore clear that interest group organization was about resources and power and some groups' interests remained latent in the political system due to their inability to organize. Indeed, the social events at the end of sixties only proved to serve this point.

While Madison describes states almost as helpless, passive receivers of interest group pressure and pluralists downplay dominant groups' resources and power, in reality, states influence the interest group system in many ways. To do that, they have various means at their disposal. The first is "the constitutional and legal environment" in the country (Wilson 1990: 137). In that regard, political cultures that put a high value on freedom of association tend to regulate associations lightly to allow for spontaneous voluntary activity to form easily while those that are suspicious of it, do the opposite. Further, in centralized states with strong executives, "the ability of

policymakers to restrict access to few favored groups is high” (Wilson 1990: 138).

In addition, “governments can subsidize interest groups that conform to their expectations by tax concessions” (Wilson 1990: 139) or by providing “public resources and power” (Berger 1981: 15) to some interest groups. Of course, other factors such as the strong state tradition and the kind of stateness in the polity (Heper 1991a) also affect interest groups. For instance, in Germany “the executive branch is obliged by law to consult various big interest organizations before drafting legislation”⁸. The same goes for Switzerland in which interest organizations have a “constitutional right to be heard” (Armingeon 1997: 167). The last two examples suggest a more consensual tradition in the polity.

Viewed from this perspective, bar organizations perform many functions attributed to interest groups. They accumulate and mediate the interests of attorneys who through legal education and professional socialization perceive common interests. Attorneys’ proximity to citizens (and business interests) given their representation of them and know-how as to their needs, creates valuable expertise concerning policies to be adopted in the legal arena. As professional organizations, bars also have knowledge about their members and their business practices that helps the state in developing

⁸ “Ex uno, plures”, *The Economist*, see: <http://www.economist.com/node/233442>, access date: 18 September 2011.

policy. They enforce laws that have been delegated to them such as discipline and licensing. They also seek material and other benefits for their members.

While what was said so far seems to suggest the view that a bar organization or TBB may be just another interest group, there are also important differences. First, bars are not completely autonomous from government like a typical interest group. This is because their formation is often by state action (discussed in Chapter Two). To do that, the government passes a law (concerning the legal profession) and sets out the conditions as to how a bar is to be established and how to become an attorney. One of the conditions of the latter is mandatory membership in the bar in order to practice the profession. The law also provides that bars are institutions of self governance for the profession. Self governance means that attorneys are subject to the disciplinary control and professional regulation of bar associations and are independent from the government. This is more or less true for TBB which is regulated by the same law.

In other words, the state not only creates and legitimizes bars but by transferring professional disciplinary and ethical rule making functions; and allowing it to charge members a yearly fee as well as for other services such as licenses, it also provides them with predictable income. This very much effects the dynamic of the relationship between the parties while blurring

the lines of whether bar associations are to be seen as a private association, as a state agency or as a professional union (Smith 1994).

Determination of this status is important since if the bar is like a private association then its voluntary character should determine its relationship with the state. In that sense, it should be autonomous and free from government control (Schneyer 1983). But if the bar is like a state agency, then it should be accountable like a public institution. Indeed, in the U.S., some court decisions have justified (their own) intervention and supervision in the bar's affairs as a matter of accountability given the fact that member dues were being collected through government coercion, therefore justifying the close watch of their expenditure (Schneyer 1983). For similar reasons, the Ministry of Justice in Turkey has monitoring powers over TBB and the bars.

It was said that interest groups are uninterested in becoming government. However, in Turkey there appears a growing tendency for bar administrators to engage in politics "proper" as a member of parliament. I counted 43 bar presidents or former board member of bar associations (or TBB) among the 5625 previous parliamentarians who served between 1920-1996 in the Turkish Grand National Assembly⁹. The number of former bar

⁹ Comparative figures from the U.S provide data as to lawyer politicians rather than bar administrators. For instance, Schlesinger reports that in the period from 1870-1950, among the 995 elected governors, 456 were practising lawyers (Schneyer 1957). Similarly,

administrators among the 2200 parliamentarians elected from 1996 until 2007 was, however, 30. In other words, Turkish bar administrators seem to be getting increasingly interested in becoming “government”.

Given all this, bars or more precisely their umbrella organization TBB appears to be a unique interest group. It is designed as a protective interest group that seeks benefits for its members but is established by state action. Therefore, any theoretical framework that seeks to explain the relationship between the bars and the government cannot solely look at bars as an interest group but must also take into consideration the interest representation model that provides bars their special status within the state.

2. Interest representation models: pluralism and corporatism

The interest group literature divides political systems as either pluralist or corporatist, according to the way interest groups interact with governments. In pluralist systems, voluntarily formed interest groups are multiple. Often they are in competition with each other to influence government policy through various means such as lobbying, campaigning and financially contributing to political parties while the government is of equal distance to all groups. These interest groups raise their own funds for activities they carry out. In other words, no group is privileged by the state by having been

percentage of lawyers holding Public Office as presidents, vice-presidents, cabinet members, supreme court justices and speakers of the House between 1789-1952 was 75% (Cohen 1969).

given a special status in the state structure as well as being provided financial resources. There is also “no continuous and pervasive influence by any single or combined interests over time across all, or a significant majority, of policy areas” (Cox 1988: 303). For the purposes of this thesis, in a pluralist system “the affected interests remain essentially outside the policy process, as consultants or combatants on the issues involved, and the implementation takes place exclusively under the responsibility of public authorities” (Schmitter 1982: 263).

In Lijphart’s famous dichotomy of consociational versus majoritarian democracy, this is usually the interest group representation model in majoritarian democracies such as Britain and the United States (Lijphart 1999). Corporatist systems, on the other hand, “establish a limited number of authoritatively recognized groups that interact with the government in defined and regularized ways” (Malloy 1979: 4). These limited groups are established by governmental approval or action. Membership in them is involuntary. This “coordinated and compromise oriented” (Lijphart 1999: 171) corporatism is typical of the consensus model of democracy.

There is not much literature concerning the interest representation model prevalent in Turkey although commentators such as Parla and Compston describe it as corporatist (Parla 1989; 2009 and Compston 2002) . As far as I can see, no scholar seems to have described Turkey pluralist although

recently, the growth of civil society led to predictions of pluralism in the future. Meanwhile, stating that Turkey does not fit either to corporatism or pluralism, Bianchi said that associational life in Turkey is bifurcated to pluralist and corporatist bits (Bianchi 1984). In this case, voluntary associations form the former while mandatory occupational institutions such as TBB constitute the latter. Bianchi's conceptualization is useful as it does not disregard the presence of the growing and increasingly visible voluntary associations by labeling Turkey simply as corporatist like Parla or Compston. I will therefore use his description.

Semantically, corporatism comes from the Latin word "corpus", meaning the body. Here, what is conceived as the body is society. Just like the body consists of organs that perform certain functions, the society is thought to consist of *groups* (and not individuals) that perform functions. As the emphasis over groups rather than individuals implies, corporatism's rise in the 19th or early 20th century may be seen, in a sense, a reactionary response to the fading away of the ancient regime by those "who lost out" when capitalism and liberalism flourished in the West (Williamson 1989: 25).

Accompanying the response, there was opposition to "disruptive effects of industrialization and the political ideas of both liberalism and socialism" (Cox 1988: 295). Therefore, corporatism was an attempt to re-create a medieval society with a moral and hierarchical order (Williamson 1989).

While corporatism's goal was to prevent the class conflict that arose with the emergence of capitalism, it should also be mentioned that corporatism was adopted by various schools of thought from social Christianity to socialism (Schmitter 1974) and not only by those who were reacting to capitalism.

Schmitter has been the author of the often quoted description of corporatism (Schmitter 1974: 93-94):

“Corporatism can be defined as a system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, noncompetitive, hierarchically ordered and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of their leader and articulation of demands and supports.”

It was also Schmitter to admit that his definition represented an ideal type, elements of which cannot be perfectly reproduced in any system.

Nevertheless, there are “two conceptually distinct meanings” (Lijphart 1999: 171) about corporatism. The first is as an interest group system as explained above, referred by some as a political form (Cox 1988) or as elaborated by Schmitter himself as a structure of interest representation (Schmitter 1982).

The second is the “incorporation of interest groups into the process of policy formation” (Lijphart 1999: 171). Referred as “concertation” it is “a

distinctive mode for making and implementing public policy” (Schmitter 1982: 262). While the interest group structure has been also referred as “corporatism 1” and policy concertation as “corporatism 2” (op. cit.), it is clear from the literature that the second meaning of corporatism is more controversial than the first. For instance, it was claimed that it was “a convenient label for any form of specialized bargaining between the state and societal interests” (Cox 1988: 295) and that it “offered no real distinction between advanced industrial and underdeveloped countries” (Cox 1988: 296). In Cox’s opinion this was why state and societal (authoritarian and liberal) forms of corporatism was later developed by Schmitter. In the former, the legitimacy and functioning of the state is primarily and exclusively dependent on the activity of singular, noncompetitive and hierarchically ordered representative corporations. In the latter, corporatist structures are “created by and kept as auxiliaries and dependent organs of the state which bases its legitimacy and functioning on other bases” (Schmitter 1979: 20).

The distinction seems to be invented to provide a justification for the re-emergence of corporatism in the West because after the Second World War, the advent of Keynesian policies required the state to be involved in managing the advanced capitalist economy. Thus, “trade unions and business organizations” have been integrated “in national economic planning and income policy bodies” (op.cit.) while liberal political freedoms have been maintained along with corporatist structures. The latter

point was emphasized because corporatism as practiced in the 1930s was discredited during the Second World War and the Nuremberg trials (Wiarda 1974) after being favored by fascist political systems such as Italy, Germany and the Iberic-Latin world. While beyond those countries, “a great variety of corporatist agencies and institutions were created. These included wage and price agencies, labor relations boards and tribunals, councils of state, and functionally representative organs of various sorts....” (Wiarda 1974: 5), the fascist experience created a negative bias and pejorative meaning towards corporatism in general.

To avoid negative associations with fascism, policy concertation was therefore called “neo-corporatism” (Lehmbruch 1979) or “quasi” or “liberal” (Panitch 1979: 121) corporatism. Cox claims that these labels added to corporatism created confusion (Cox 1988) and the concept has been characterized by “ambiguity, imprecision, and a liberal, rather undisciplined usage” (Molina & Rhodes 2002: 306).

While seeking conceptual clarity is important, it should not steer one away from the fact that in which ever form (state, societal or neo-corporatism), the two meanings of corporatism as interest representation model *and* policy concertation tend to “occur together because” a corporatist interest representation model is necessary for concertation (Lijphart 1999: 171). In that sense, representation of interests and implementation of policy were

fused because “you cannot have a corporatist system of interest representation uncoupled from corporatist policy formation” (Cawson 1988: 313).

While the two “often blend into one another”, it has been recently argued (by comparing Ireland and Italy) that “structure and process may no longer be closely associated” (Baccaro 2003: 683) or that “a new view of nature and the role of social partners” was emerging (O’Donnell 2001: 313) given that Ireland and Holland do not show structural characteristics of corporatism but policy concertation. In other words, policy concertation did not necessarily require corporatist structures to come about.

It should be mentioned that interest groups are involved in policy formation with the government usually at two levels of bargaining. The first is among corporatist groups and the second, between government and the corporatist groups (Lehmbruch 1979). To explain, organized labor and business (and less frequently agriculture) bargain among each other as “the most important interest groups included” (Lehmbruch 1979: 152) in the corporatist structure. They then bargain with the government. Once an agreement is reached among the so called “social partners”, all sides undertake to carry out the negotiated agreement.

In that regard, economic and income policies seem to be the core domain of corporatist polices or their “heartland” (Schmitter 1982: 262) although these are not the only areas. In fact, corporatist countries can be grouped as wide, medium and narrow concertation countries according to the policy areas covered by the corporatist structure. Further, they can be categorized as frequent or sporadic concertation “according to the intensity of the meetings” (Compston 2002: 313). Looked from this viewpoint, Austria seems to come ahead not only in terms of frequency of concertation but also “with regard to the width of policy areas covered” (op.cit.). These include the following: social policy, fiscal policy, monetary policy, investment policy, industrial policy, social welfare, labor law, job creation and training, employment and EU issues.

On the other hand, today Denmark, the Netherlands, Sweden and Germany, Italy as well as Spain and France seem to be narrow concertation countries. However, in terms of frequency of concertation, Italy is sporadic (Compston 2002: 313) ; Spain and France sporadic in employment law and social security issues while Denmark, the Netherlands, Sweden and Germany are frequent. There are of course various rankings by Schmitter, Lehmbruch and Schmidt (Williamson 1989: 150) but all three rank France and Italy as weak corporatist countries.

Whether a country adopts wide or narrow concertation in an area or sporadic or frequent concertation with the insider groups, the logic of state intervention through these structures is to partly supplement and replace the market. Accordingly, “the market is not allowed to become a source of social conflict among conflicting interests” (Hernes & Selvik 1981: 104). For instance, corporatist structures can effect “free determination of prices” by establishing minimum prices or fees for services (op.cit.). Another example can be regulation or limitation of free access to the market “to prevent overcapacity or price wars” (op. cit.). In that way, free operation of the market is systematically modified by “incorporating into the public decision-making apparatus those groups that are affected by the unhampered operation of the market” (op. cit.). This is probably why in areas such as “agriculture, professional licensing, incomes and labor market policy” one sees a “propensity for being structured this way” than “say monetary policy, environmental protection or urban planning” (Schmitter 1982: 265).

The procedural principles of policy concertation may be defined “as informality, intimacy and introversion” (Gerlich 1992: 136). Informality refers to the social partnership being based on a “gentlemen’s agreement” (Gerlich 1992: 137) unlike the legal bureaucratic formality of the political system. To give an example from Austria, the Joint Committee in which all the negotiations take place has no official statute, building, minutes, etc. This creates an atmosphere of informality where meetings can be held in

convenient places such as recreational facilities and can be changed at partners' will.

Intimacy refers to the fact that “the public is kept in the dark” (op. cit.) as to the workings of the negotiations since there is no recording of negotiations like that of a parliamentary session. This defies the democratic requirement that public matters are kept public. And lastly, introversion refers to the fact that the social partners focus only on positions and alternatives that are “mutually acceptable” (op. cit.) to them, ignoring new developments in society and issues along the way.

While recently the corporatist literature seems to have shifted to a structure-process debate, before that the “to political economy” (Molina & Rhodes 2002: 307) debate seems to have been important. In that regard, neo-corporatism was viewed favorable for some time by pointing out to the better economic performance of corporatist countries. Neo-corporatism was believed to reduce the ungovernability of politics. In the 1990s, however, there were dissenting opinions, even in Austria (Gerlich 1992).

One of the reasons for that was corporatism is undemocratic despite ensuring social peace. Indeed, Gerlich reports that in Austria the two heads of the most important bodies in the corporatist structure, the chamber of

business and the trade union federation, stayed in power for 25 years, outlasting many governments (Gerlich 1992). In Turkey too, “the average years in duty was 10,1 years for the president of a trade chamber” (*Devlet Denetleme Kurulu* 2009: 402).

It was therefore alleged that “the corporatist state has been trapped in complex fiscal prebends, sectoral exemptions and entrenched privileges leading to a stalemated status quo” (Schmitter 1979: 39) and organizational hierarchy while suffocating members in organizations. Not surprisingly, in such a political system those who felt left out of the system voice protest such as the Freedom Party in Austria (Hague & Harrop 2004).

Further, in the 1990s there has been growing recognition that economic globalization and market liberalization limited capacities of governments to handle corporatist models. This was because “to remain competitive in an increasingly global economy” (Hague & Harrop 2004: 180) continuous economic change was needed but change was inhibited by corporatist structures. The introversion of social partners only exacerbated this problem as they were tied to positions dictated by their status. Further, intimacy of these structures was seen by society with growing suspicion as people demanded greater accountability in all walks of life and were less likely to defer to authority, also challenging the informality of the structure.

The decline of corporatist structures may also be a manifestation of less interest in associational life, since social change “is eroding the level of integration of individuals with interest organizations and political parties” (Armingeon 1997: 165). In that sense, insisting on mandatory membership does not serve its intended purposes. In fact, these “social cohesion models has become a reason to defend the privileges and perks of the public sector”¹⁰ rather than to protect the interests of the members. In that regard, professions as a “community” were much less important to people than other communities such as kinship, ethnicity, religion or gender (Abel 1997b: 127).

Despite all that, corporatism seems to have its merits in terms of stability especially in terms of “the élite behavior acquired in a long term process of collective learning and the stabilizing effects of institutions” (Armingeon 1997: 165). While arguably the efficacy of the corporatist structures and the frequency of their use may decrease, it cannot be argued that they will die out. Rather, far from disappearing, corporatism may expand into “new *postindustrial* issues (education, health care, welfare, the environment, others)” although it is fading in the industrial phase of tripartite relationships (Wiarda 1997:174 qtd. in Lijphart 1999). In other words, if due to globalization the market is “untouchable” by corporatist structures, then new corporatist areas may be sought after which are thought to be

¹⁰ “The Cruelty of Compassion”, *The Economist* 30 January 2010, 16.

independent of market mechanisms or where public sector has strong presence such as health and education.

Schmitter also thinks that like all institutions, once established, corporatism will “stick” since this is what institutions do: “generate vested interests even when they are no longer needed” (Schmitter 1989: 61). Nevertheless, he believes that “the most likely pattern” for corporatism is “to come and go at fairly regular intervals” (Schmitter 1989: 67). Baccaro, on the other hand, argued that “while the policy-making process (concertation) is very much alive”, as an interest representation structure corporatism “may possibly be dead” (Baccaro 2003: 684). Arguably, as long as political exchange is possible, concertation would also be, if not in labor and economic issues, then in other matters because the “currency” of “political exchange did not disappear but rather changed” (Molina & Rhodes 2002: 320).

Having now reviewed the corporatist literature and determined that its emphasis shifted to various themes at different times and “corporatism 2” or policy concertation has been at times a loaded and imprecise concept, we can nevertheless ascertain two things that is important for the purposes of this thesis. One, there is no doubt that corporatism is an interest representation model or structure. Two, corporatism also means policy concertation although the scope and policy areas can be different at different points in time even in the same country. Most importantly though, *the two*

corporatisms occur together. Now is therefore time to move on to the interest group model in Turkey in more depth. At this point, it is interesting to note that the concept so much discussed in the literature, did not raise much passion let alone interest in Turkey.

3. Interest group model in Turkey: bifurcation

Talking about the interest group model in Turkey, Bianchi (Bianchi 1984) describes the associational life in the country as “bifurcated” into pluralist and corporatist sectors. He calls the first sector pluralist since there are associations and foundations that have been established voluntarily and are subject to the blanket provisions of the Law on Associations. Calling the second sector corporatist, he describes the various state sanctioned professional organizations that are established by law and have a constitutionally protected status. Given this duality, it makes sense to use his model because it reflects the reality more accurately than blanketly calling the interest group model only one thing. Continuing with Bianchi’s description, I will refer to the former as the pluralist sector and the latter as the corporatist sector.

a.) The “pluralist” sector:

It was explained that this sector consists of associations and foundations that are voluntarily established. However, the political culture and official

attitude in Turkey has not been particularly friendly towards interest representation. The first Ottoman constitution had no guarantee of associational life as there has always been a suspicion and an identification of associations “with foreign-based conspiratorial groups” (Bianchi 1984: 109), finding its earliest form during the reign of Abdulhamit. Indeed, Abdulhamit’s paranoia of informants and spies forced many groups to disguise themselves and seek refuge in foreign countries (Bianchi 1984). When finally recognized, the freedom of association was acknowledged with many caveats subjecting it to various limitations.

Things did not change much with the Republic despite the liberal provisions of the new Civil Code adopted in total from Switzerland. During this time not only political parties but also associations such as the Turkish Hearths were closed down while Masonry and Union of Turkish Women disbanded themselves (Alkan 1998). Bianchi also states that in this period associational life in the country was “virtually nonexistent” (Bianchi 1984: 104). This sweeping statement must be corrected with a reminder that during this time Islamist networks continued to flourish underground.

The first Act on Associations of 1909 has been in effect until 1938 (Yücekök 1998). After 1946, associability increased intensively with the social change in the country. In the same year, the Act on Associations was amended to reflect this change. The 1946 act was a shift in the mindset of

political power that until then tried to keep society under continuous pressure (Yücekök 1998). This act has been in force until 1983 when it was replaced by a restrictive code, consistent with the military's goals of less society in politics.

In the last twenty years, however, voluntary associational life has been transformed in Turkey (Bikmen & Meydanoğlu 2006). Today voluntary organizations are increasingly visible in society and seen legitimate by the people, be they human rights advocacy or women's groups or search and rescue teams that provide rescue services to the vulnerable. In that sense, these may be seen as signs of pluralism. Some groups in fact have been able to mobilize their resources to engage the government to affect change such as women's groups during the drafting of the new Civil Code.

Despite that, when it comes to issues such as Kurdish ethnicity and religion, the state seems to have approached civil society in the "state security paradigm" (Bikmen & Meydanoğlu 2006: 38), undermining its development in these areas. In her excellent analysis, Navaro-Yashin points out that the state of the 1990s demanded a realm of civil society in favor of itself. She therefore cautions against early celebrations of the so called "civil society" in Turkey as it is marked by many scenes that are "more statist than the state", perfect example for which is the public farewell for soldiers that exalts, celebrates and reifies the state (Navaro-Yashin 2002: 119). Other

writers have also pointed out to the “dual” role played by the state at one time accommodating and at the other oppressing (Bikmen & Meydanoğlu 2006: 37).

Social capital and civic activism in Turkey is still scarce (Bikmen & Meydanoğlu 2006). The shortcomings and historically rooted problems notwithstanding, Turkish democracy today is more liberal (Çarkoğlu & Kalaycıoğlu 2009). The earthquakes in 1999 raised people’s “interest and trust towards civil society” (Bikmen & Meydanoğlu 2006: 38), suggesting therefore that civil society’s importance will grow in the future. While liberal legislative changes in the Act on Associations adopted in the EU process has been frustrated by the bureaucracy, the process nevertheless has been helping to the flourishing of the civil society scene, possibly leading to interest group pluralism and reducing the autonomy of the state from society.

While the political culture in Turkey is slowly changing, civil society’s critical problems such as lack of financial and human resources remain. In that regard, the legal framework continues to create problems especially concerning financing by foreign donors or collaboration with international networks. Marginal groups such as gay and lesbian rights defenders are denied existence by prosecutorial attempts to close them on the grounds of immoral activities. All of these developments lets one to conclude that the

“plurality” of the pluralist side of the interest group model is subject to qualifications and Turkey may be still far away from accepting the pluralist model (Esmer 1991: 133).

b.) The corporatist sector:

In Turkey organic views of society have become prevalent with Ziya Gökalp. Gökalp in turn was influenced by Emile Durkheim (Parla 2009). Writing in the capitalist heydays that shattered all of the previous hierarchical values, norms and bonds in society, Durkheim was advocating a moralistic bond based on professions in order to hold the society together (Durkheim 2002). Gökalp failed to see that professions themselves were the by-product of capitalism (Öncü 1996) despite the fact that he was living in an agrarian society on the fringes of capitalism that barely had any professionals.

Nevertheless, he took Durkheim’s idea of division of labor and argued that professionals needed each other. What was novel in his idea was that he “blended” Turkish nationalism (Bianchi 1984: 93) with the organic and hierarchical social organization of the Ottoman society. Hence, he argued that in order to further national solidarity, professional ethics had to be raised (Gökalp 1996). Divisions could be tolerated only if they were based on professional necessities.

In the later period, professional representation was adopted neither in the 1921 nor 1924 constitution. Nevertheless, at the 1923 İzmir Economic Congress, occupational representation was preferred for the eight delegates that were to represent each city. The delegation consisted of one tradesman, one artisan, one laborer, three farmers and a representative from one company and one bank each (Ökçün 1997: 153) representing the “four major economic sectors-agriculture, trade, artisans and craftsmen and labor” (Bianchi 1984: 101). As Bianchi further points out, only two years after the Congress, “labor unions and nearly all other voluntary associations were closed down and the remaining economic sectors were organized around singular and compulsory corporatist structures whose purpose was to increase government regulation and control rather than promote associational consultation” (Bianchi 1984: 101-102).

It was with the advent of multi party politics in Turkey that different (and conflicting) interests were “allowed” to openly diverge. Concomitantly, this was also the time when free professions started to develop independence from the state by establishing their umbrella organizations. The medical doctors did so in 1953, engineers and architects and veterinarians in 1954 and pharmacists in 1956 (Öncü 1996). However, even the limited pluralism of the first ten years of multi party politics was too much for the military. It intervened in a coup in 1960.

In the transitional period from the time of the military coup until the formation of a new parliament, corporatist ideas finally found voice. A Constituent Assembly with legislative powers was established for that purpose. Its membership had to more or less represent the people as well as address concerns of the military. As such, it consisted of members of the Committee of National Unity (military side) and an Assembly of Representatives (civilian side) that according to the military “represented” the people.

The civilian side consisted of representatives that were overwhelmingly affiliated with the CHP. In addition, there were those members chosen with “functional representation” (Bianchi 1984: 93). The latter consisted of the President of the Boards of the following professional organizations: Bars; Trade-Industry and Exchanges; Chambers of Agriculture; Chamber of Doctors; Chamber of Veterinarians; Chamber of Engineer and Architects; Labor Syndicates; Artisan Association, Union and Federations; Teacher Associations; Journalist Association and Syndicates; Credit Cooperatives for Artisans; Association and Union of Pharmacists (Doğru 1998). In the end, 54 of the 278 members of the Constituent Assembly were those coming from professional organizations (op. cit.). Bars had 6 members (all former presidents or board members of bars); media 12; old veterans 2; artisans 6; chambers 10; teachers 6 and agriculture 6 (op. cit.).

Reliance on professional organizations did not remain confined to the transitional period. Professional organizations were given constitutional status in the 1961 constitution as public but autonomous bodies. In fact, the constitution devised many “autonomous” institutions in addition to professional organizations such as universities, the Radio and TV Broadcasting Authority and similar. The military thus divided sovereignty among various institutions to make sure majoritarianism of governments would be balanced by them. Professional organizations retained their status also in the 1980 constitution.

As both constitutions were drafted under the authority of the military, upgrading the status of professional organizations to a constitutional level may be seen as “ally creation” by the military given that most professions in Turkey owe their birth and prevalence to the republic. As a result, their presence in the constitutional structure serves to cool down the misgivings of the military towards parliamentary democracy and elections. Given this picture, Bianchi describes the period in Turkey between 1925-46 as one of “limited state corporatism”, the period between the two constitutions as “emerging societal corporatism” (Bianchi 1984: 142).

On the other hand, Heper says that in the presence of the strong state tradition, “...state-interest group relations in Turkey continued to manifest unmistakable signs of monism” (Heper 1991b: 173) which he describes to

mean as “rule from above, autonomy, keeping civil society elements at bay” and the state not feeling “obliged to be responsive to civil society” (Heper 1991a: 17). He further argues that the degree of stateness is high in Turkey allowing less ground for the development of pluralism or corporatism (Heper 1991a). It is true that the state tradition in Turkey is strong and state institutions are inclined to dominate than to build consensus. Further, Turkish political thought favors ideas that would serve to reduce conflict in society by resorting to a “public interest” as defined by the state. In fact, Atatürk denied that any conflicting interests existed in society.

However, the economic, social and political change in the country since the 1990s have been enormous. These changes very much challenged the state’s role as the sole modernizer. It also made clear that there is not one public interest but many different and conflicting interests. Also, failures of the state in big events such as the 1999 earthquake finished off the idea of an almighty state especially in light of dynamic NGOs. Therefore, one can argue that Heper’s argument holds less true today since social change turned Turkey into a country where the state is more open to cooperate with interest groups. Turam says that Heper’s conclusion is understandable if one looks back at the Republican history and state repression of social actors but according to her, this “oppression prophecy” has been challenged by the victory of AKP (Turam 2007: 7).

Nevertheless, the corporatist side of the interest representation model in Turkey still has various peculiarities. To begin with the first, there are ten professional organizations that have been afforded constitutional and public status. In the order of the highest number of members they consist of the following sectors: agriculture (4.8 million); small traders and artisans (almost 2 million); commerce and industry, maritime trade, trade exchanges (1.3 million); engineers and architects; medical doctors; attorneys; pharmacists; dentists; veterinarians and notary publics. Their continuing presence in corporatist processes since the Izmir Economic Congress notwithstanding, agriculture, artisans and traders are in fact occupations and not professions (discussed in Chapter Two). Among the “real” professions, engineers and architects have the highest number of members with almost 350.000.

Second peculiarity of the corporatist model is the absence of labor in the corporatist arrangements (Parla 2009: 138) just like Japan (Pempel & Tsunekawa 1979). Some scholars have argued, based on the examples of Japan and France both of which cannot be described corporatist, that this means that the system cannot be called corporatist. Others have said that this was not necessarily so (Wilson 1990). Because in both countries there is close partnership between the government and economic interests to promote economic growth. Both countries view interest groups with suspicion while favoring agricultural groups. Both have elite schools which groom best graduates for public service in the bureaucracy who thereupon

move to the top jobs at the private sector and continue to rely on the comradeship of their schoolmates in key positions in terms of credit and favorable policies. Given this elite school-bureaucracy-private sector job triangle, the partnership between the state and employers is as close as in a neo-corporatist country. Therefore, if one focuses “on the integration of the state and interest groups, the tendency will be to include France and Japan in the neo-corporatist group” (Wilson 1990: 132) despite the fact that there is no labor in the corporatist system. Schmitter, however, thinks that Japan is at best a case of “occasional corporatism” (Schmitter 1989: 60).

If corporatism is “close involvement of organized interests with the public bureaucracy and ministers in the formulation of policy” (Williamson 1989: 9), the close relationship between business and bureaucracy in the way described in France or Japan, exists also in Turkey, given the fact that TOBB served as a training ground for ministers responsible for business and trade or energy¹¹. In that sense, after becoming minister, the former head of TOBB can be expected to keep close ties with his former organization. In that sense, he may form policy through informal means rather than in the corporatist sense of peak organization meetings and negotiating with the government as social partners. Therefore, just like in France and Japan, labor’s absence in Turkey should not *per se* disqualify Turkey’s interest group model from being called corporatist.

¹¹ Necmettin Erbakan, Medeni Berk, Yalım Erez, Ali Coşkun, Ersin Faralyalı, Mehmet Yazar are some examples who have served first as head of TOBB and then as minister.

Third, and for the purposes of this thesis, the legal profession's inclusion in the corporatist structure may be considered peculiar on its own. As Halliday suggests, a comparison of organizational prerequisites for neocorporatism among countries such as Australia, Belgium, Brazil, Canada, France, Germany, Italy, Norway, UK, US and Venezuela offers little evidence given the "extraordinary richness and diversity of lawyer and jurist associational forms" (Halliday 1989: 386). Not only that, a conflict as assumed between capital and labor to be included and mediated in a corporatist structure cannot be assumed in law and the legal system (Halliday 1989). As a result, TBB's presence may be "justifiable" given the law's pivotal role in the Turkish modernization. Indeed, their mere 70000 members –as compared with sectors such as agriculture or artisans- indicate not an economic but rather a political reason for their inclusion.

At the same time, the increasing legitimacy of voluntary groups is undermining the status of corporatist organizations, a trend already prevalent in the business sector. While the involuntary TOBB is still strong, the voluntary TUSIAD and MUSIAD are becoming more and more prevalent. Maybe this is why "TOBB was the first association in the corporatist structure to claim that it constitutes the largest "civil society" organization in Turkey. Over time, this view spread to all professional organizations" (*Devlet Denetleme Kurulu* 2009: 250).

Arguably, corporatist groups may be trying to “brand” themselves as civil society in order to increase their legitimacy. As observed by the State Auditing Authority, professional organizations seem to be having “an identity and mission crisis due to their dubious legal status swinging between civil society and public status while forming part of administration” (*Devlet Denetleme Kurulu* 2009: 396). At the same time, customs brokers showed recently an interest in becoming a chamber¹².

More interestingly, professional organizations other than TBB also seem to be having troubled or strained relationships with the state whether it be the doctors¹³, veterinarians¹⁴ or the pharmacists¹⁵. This contradicts corporatist theory if these organizations are social partners of the government. However, not much is known about the actual workings of policy concertation in Turkey despite the presence of a constitutional structure that provides ten sectors the possibility of policy concertation. As described,

¹² “Gümrük müşavirleri oda kurmak istiyor”, see: <http://www.stargazete.com/ekonomi/gumruk-musavirleri-oda-kurmak-istiyor-haber-376179.htm> , *Star*, Access date: 24 September 2011.

¹³ Doctors have been protesting against the full day legislation and many changes introduced by the Ministry of Health. A review of the “news” in the website of their peak organization only confirms this point. See: <http://www.ttb.org.tr/index.php/Haberler/hukuk-2796.html>. Access date: 16 October 2011.

¹⁴ Veterinaries are against importing of meat. See: <http://www.tvhb.org.tr/?p=1537>. Access date: 16 October 2011.

¹⁵ The pharmacists’ chamber decided to take action against the proposed changes by the government to make drugs cheaper and decided that all pharmacies close for one day in protest. This led the government to cancel the contract with the umbrella organization of pharmacists while causing it a loss in fees for all contracts each pharmacy made with the Ministry of Health. The drive behind all this seems to be to further competition and reduce the price of drugs (and thus health costs). “Eczaneler kepenk indirdi”, *Hurriyet*, See: <http://hurarsiv.hurriyet.com.tr/goster/printnews.aspx?DocID=48564>. Access date: 22 October 2011.

even the important and much more visible TOBB's role in policy formation is unclear. My goal is therefore to find out more about the corporatist side of the bifurcated interest representation system in Turkey, especially in terms of policy concertation while focusing on one of the organizations in the corporatist structure, TBB.

I.4. TBB in the interest group structure

In addition to the lack of interest in corporatist theory, there also seem to be not much interest about professional organizations that constitute the corporatist structure in Turkey. Where the subject of interest groups has been given thought, it has focused mostly on the behavior of labor and business/trade interests. Given their heavy weight in the economy and their frequent appearance in corporatist structures all over the world, this may not be surprising. Nevertheless, a total picture should "include an examination of the state in relation to a host of professional associations" (Pempel & Tsunekawa 1979: 242) especially at a time when developed economies are increasingly moving from production to services.

While it may lack the "grand aura or significance of business or labor" (Suleiman 1987: 263) the legal profession as a whole and the bar deserve attention for their far greater influence on government and bureaucracy than other professionals. In fact, lawyers' have an advantage over other professionals "in their privileged access to the extraordinary resources of the

state, most notably its monopoly over legitimate coercion” (Streeck & Schmitter 1984 qtd. in Halliday 1989: 397) .

Further, in many established democracies as well as in Turkey, lawyers form one of the most represented professions in the Parliament. Indeed, the election on 12 June 2011 produced a Parliament in which the highest represented profession was again (out of 550 MPs 107) lawyers¹⁶. As a result, combined with their closeness to state and government functions, lawyers are

“a pivotal institution of civil society: mediating between citizens and state, workers and capital; allowing government to function (since it can act only through law); redressing civil wrongs; creating, dissolving, and managing families and their property; making the economy work (constituting its actors, defining their rights and obligations, facilitating transactions among them); and articulating essential concepts of justice and power. These roles are powerfully shaped by how many lawyers there are, who they are, how they practice, how they are paid, and how they regulate and govern themselves” (Abel 2003: XIII).

Professional organizations have a significant role in determining the nature and incidence of how lawyers will respond to all this in a given country.

These are in turn affected by their interaction with the state at a given time.

As underlined by Rueschemeyer, the bar’s “special character derives from its specific relations to the state, in particular to the administration of justice, and to the private interests that are served by the legal order. Closer

¹⁶ “Yeni Meclis Hukukçu Ağırlıklı”, *Radikal*, 13 June 2011.

relations to one or the other of these poles have profound consequences for the profession” (Rueschemeyer 1986: 445).

In Turkey, the law in general played an important role as supporter and carrier of modernization efforts in the country. The profession was granted autonomy as late as 1969 with the establishment of TBB. This was much later than other professional associations and, in any case, eight years after it was enshrined in the constitution. Despite that, today, the legal profession enjoys many privileges that many other professions do not which will be detailed below.

Bars have been established to develop the profession; to provide honesty and trust in the relationship between the members of the profession and the clients; to protect the order, ethics, respectability of the profession as well as the rule of law; to defend and protect human rights; and to provide for mutual needs of attorneys¹⁷. By law, they are forbidden to act outside the mandates of their establishment.

TBB has the following duties¹⁸: organize joint meetings regarding issues that concern bars; to reach general goals and develop the profession by

¹⁷ See art. 76 of the Act on Attorneys of 1969 numbered 1136. Official Gazette Date: 7 April 1969, No: 13168.

¹⁸ See art. 110 of the Act on Attorneys.

coordinating the work of bars; to protect the interests of the members of the bar and the order, ethics and traditions of the profession; to introduce members of the bar and bars to each other and strengthen their professional ties; to strive for the establishment of bars in every town and promote the use of attorneys by citizens; to prepare views, publications and where necessary drafts for the proper development of laws; to make its views known to the authorities in issues that concern bars; to write reports to the Ministry of Justice and courts when requested; to take every measure for the development of attorneys in the profession; to cooperate with the Ministry of Justice and courts for the collection and publishing of court decisions; to work for the full and ethical carrying out of functions of attorneys; to open libraries, publish journals, convene conferences, produce translated and original works to raise the professional level of members; to convene meetings to discuss remedies and ideas to make the profession popular; to communicate with legal councils and institutions in the country; to join international meetings and communicate with international bars and legal institutions; to determine and recommend obligatory professional rules and to defend, protect and work for the materialization of rule of law and human rights.

As can be seen from the above, TBB has mostly protective interest group functions. It is established with the joining together of all bars. Attorneys must be members of a bar to practice law and pay yearly membership fees

to that bar. In other words, it is local bars but not TBB that function as the involuntary membership institutions of the profession. However, when becoming an attorney, the fees and taxes charged for the issuance of licenses is shared by TBB, the local bar and the state¹⁹. Further, a portion of fees charged by notaries to issue a power of attorney goes to TBB.

There are additional financial protections afforded to the profession, bars and TBB by the state, showing the typical bias of corporatism that incorporates “producer interests to the exclusion of consumer interests” (Cawson 1988: 133). The primary example of this is the fact that in the name of public order, TBB determines a yearly minimum fee tariff that applies between clients and attorneys. By law, no attorney can ask for an amount less than in the tariff for his or her services²⁰. In other words, unlike many other services in the country, the price of legal services is not determined by the market or the people. Through this, the state shields attorneys from competition by making it illegal to render services for cheaper fees to get clients.

¹⁹ As of 2011, fees and taxes collected by the state amounts to TL 454,4; by TBB to TL 330 and by Istanbul Bar to TL 377,44. An applicant must pay the following charges: TL 390, 40 dues; TL 300 license fees; TL 377,44 local bar; TL 30 identity card and TL64 stamp duty. See: <http://www.istanbulbarosu.org.tr/Document.asp?DocumentIndex=/idariisler/stajsicil.htm>. Access date: 16 October 2011.

²⁰ Art. 1 of the 2010-2011 Minimum Legal Fees Tariff (*2010-2011 Avukathk Asgari Ücret Tarifesi*) Official Gazette: 3 December 2010, no: 27774.

Second, this minimum fee tariff is used by courts to also award the winning party attorneys fees²¹. Consequently, when a party loses a case in court, he or she is asked to also cover the other party's attorney's fees that are determined according to this tariff (in addition to his or her attorney's fees). Thus, by law, the winning party's attorney is guaranteed a dual income by the state *in addition to the fees paid by his/her client*, amounting to another government subsidy of the legal profession. Put differently, the state is making attorneys fees part of an enforceable item in the judgment, ready to use the coercive power of the state if the relevant party fails to collect it.

The financial benefits conferred by the state to the profession are not limited to this. The provision of legal aid service in criminal²² and civil matters²³ is also delegated to bar organizations. Put differently, bars provide free legal service to citizens. While citizens do not pay, attorneys that do the work are paid by funds that are set aside by the government for that purpose. Through this scheme, attorneys generate income, especially inexperienced, young and solo practitioners who constitute the bulk of the profession, while local bars and TBB obtain a percentage of income for running the scheme. It should be also mentioned that the state receives about 30% of those fees in taxes as VAT and withholding tax.

²¹ This is done pursuant to art. 164 of Act on Attorneys which provides that in cases pursued with attorneys, the court must decide on its own attorneys fees. Attorneys fees tariff art. 3 (1) sets how the amount to be awarded is to be determined.

²² This is done by various articles of the Code of Criminal Procedure (*Ceza Muhakemesi Kanunu*), Act no: 5271, Official Gazette: 4 December 2004, no: 25673.

²³ The regulation on civil legal aid (*Adli Yardım Yönetmeliği*), Official Gazette: 30 March 2004, No: 25418.

The corporatist theory argues that corporatist relations aim to provide special access for some interest groups to reduce conflict in society. In this type of system, interest groups are inherently designed as protective groups. Put differently, the theory implies that once interest groups are taken into the state structure, it will bring out a harmonious relationship between the government and “insider” interest groups. When looked from this angle, TBB seems to be one and it looks like it benefits as an insider.

However, as will be shown in Chapter Two, bars’ relationship with the governments seems to have been strained from the days of the establishment of the first bar in Istanbul. While this seemed more like an ideological battle than anything else, recently, the profession disagrees with the government on both political and economic issues. For instance, some bars started court action to stop opening of new law schools²⁴, protested against lifting of the bar exam²⁵ arguing that this was leading to crowding in the profession and reduced income for everyone while some bars boycotted late payment of fees for legal aid work by going on strike and organizing public rallies²⁶.

²⁴ “Yeni Hukuk Fakültelerine Karşı Baro Tarafından Dava”, see: <http://www.turkhukuksitesi.com/showthread.php?t=8756>. Access date: 18 October 2011. Interestingly, the Adana Bar got involved in the lawsuit protesting the Ankara Bar.

²⁵ “Barolar Birliği: Avukatlık sınavı şart”, *Radikal*, see: <http://www.radikal.com.tr/haber.php?haberno=205262>. Access date: 18 October 2011.

²⁶ “Bedavaya Çalışacak Avukat yok”, see: <http://www.tumgazeteler.com/?a=5306879>. Access date: 18 October 2011.

Presidents of TBB at every judicial opening year heavily criticized governments²⁷.

These boycotts, strikes and public rallies are manifestations of outsider behavior, not to be expected from a corporatist “partner”. It therefore suggests that despite the fact that TBB is in the corporatist structure, TBB and state institutions may actually not be engaged in policy concertation. It is therefore hypothesized that a corporatist interest group model may not necessarily lead to policy concertation and the two may not be “fused” as alleged by the theory. Whether the relationship between the parties amounts to policy concertation and what the reasons for the conflict are the two main research questions of this thesis that will be attempted to be answered in the next chapters.

This chapter provided the theoretical framework of the thesis by setting out the interest group literature. It explained the two meanings of corporatism as an interest representation model and policy formation. It described the interest group system in Turkey as “bifurcated” and said it would concentrate on the corporatist side of it. It then posed the two research questions, first, whether a corporatist interest group model indeed leads to corporatist policy making. Second, why there was nonconsensual behavior between the so called corporatist partners.

²⁷ For the text of the opening speeches, please refer to the website of TBB, www.barobirlik.org.tr.

To understand the true nature of the relationship between the parties, I will conduct interviews with bar administrators and state officials while making non-participant observations in various meetings. Before I do that, however, a better understanding of bar associations as professional organizations is necessary. This I will be doing in Chapter Two.

Chapter II: Comparative Background to Bars

Chapter One set out the theoretical framework of the thesis by using the interest group literature. I set out to focus on the corporatist side of the interest group structure in Turkey and explore the actual nature of the relationship between TBB and state institutions in order to see the extent of policy concertation and understand the reasons of the conflictual relationship between the parties. Before proceeding further, however, in this chapter the focus will be on bars from a comparative perspective.

I will compare three countries, the U.S, Germany and Turkey while making use of the professionalization literature. This will allow me to show similarities as well as different roles played by states with regard to the legal profession and how bars in three different countries came into existence. As we are to find out in this chapter, being organized around a professional organization like the bar is what makes a profession distinct from other occupations. Further, professional organizations determine roles imputed to a profession as well as produce and maintain privileges of the profession, making it necessary to understand their discourse. The comparison may also help to uncover “profession specific” issues while it allows one to get a full

grasp of the multi-layered and complex relationship between state institutions and TBB.

It should be noted that the professionalization literature is heavily Anglo-American and uses sociological terminology. Nevertheless, its contribution is significant for it shows that socio-economic change effecting countries is very similar, leading to a convergence in professional regulation. This may be one of the factors contributing to the conflict between TBB and state institutions.

I will start this chapter with the concepts of profession and professional organization. I will then explore how bar organizations came about in the U.S and Germany and compare their experience with Turkey. I will then show the convergence of problems in the legal profession of three countries and introduce solutions adopted in the U.S and Germany.

In Chapter One, when talking about corporatism, it was already observed that professions were the product of the Industrial Revolution which brought economic thinking with it: production for profit, growth of expertise and an increased division of labor (Kritzer 1999). “As producers become specialized, consumers necessarily become generalized and thus dependant on others” (Abel 1997b: 117). Further, the Industrial Revolution changed

where people lived. They moved to highly populated areas and urban settings. In such an environment, it was professionals who were needed to deliver the necessities of urban life.

Sociologically, professions are defined as “exclusive occupational groups applying somewhat abstract knowledge to particular cases” (Abbott 1988, qtd. in Kritzer 1999: 717). This definition provides two important ingredients: exclusivity and abstract knowledge. As to the latter, professionals possess knowledge that is “acquired by education and trained expertise”, suggesting a selection based on merit, usually done by “similarly educated experts” (Kritzer 1999: 716) rather than the open market. It is those experts who in a sense “certify” the merits obtained by education. The exclusivity comes from the fact that selection to the profession is a privilege not afforded to everybody.

In that sense, a professional organization has a gatekeeper function that it undertakes through its members who are the “certified experts”. Thus, the occupational organization becomes the means for members of the profession “to exercise a substantial degree of control over the market for their services” (Abel 1986a: 1). Indeed, the third ingredient of professions is they unite their members around a “professional organization” (Hughes 1963, qtd. in Cirhinlioğlu 1996: 10).

In addition, professions claim to be in “pursuit of the learned art in the spirit of a public service” whereby “gaining livelihood is incidental” (Pound 1953: 5) rather than “the only purpose in the purely money-making callings” (Pound 1953: 6). As a result, professions frame themselves as a higher “calling” and “as a service to God and indirectly to mankind” which is “reflected” in the “language of professions” (McClelland 1991: 16). For instance, professionals offer a “public service” rather than “a product”. They receive “fees” in return rather than wages or “salaries” (McClelland 1991: 16). Similarly lawyers “counsel” their clients or “give” but not “sell legal advice” (McClelland 1991: 17).

Put differently, although there is an entrepreneurial side to professions that involves money making like in other occupations, their public character is more pronounced. Over time, professions acquired “regulatory autonomy through peer review processes, and autonomy vis-à-vis the service recipient” (Kritzer 1999: 717). While regulatory autonomy means that it is the professional organization that regulates the profession by internal rules and procedures especially in the disciplinary process, the latter autonomy is the professional’s autonomy vis a vis the client. Indeed, it is the combination of these factors that leads to the assertion of independence of professionals.

Given all this, professionalization “is a *process* and an *ideology* which serves profoundly *political objectives*” (Auerbach 1977: 11). In the last hundred years, “only a few occupations have succeeded in attaining the status of a profession” (Abel 1997a: 19). Indeed, many people of the working population are engaged in public services without the recognition of “professional”. At the same time, not all professionals such as architects or engineers share the same prestigious status of law and medicine (McClelland 1991) since they did not benefit from “their historical association with aristocratic patrons”. For instance, teaching and social work do not due to “their association with low-status clients” (Abel 1989: 27). Nevertheless, “professionalization was in part an attempt to escape this dependence by recourse to collegial standards” (Jarausch 1990: 13).

When taken together, the functions of professional organizations are typical of a protective interest group that promotes the identity, values and material interests of its members under the cover of “independence”. Having thus far provided the theory of professions and its self-conceived difference from other occupations, I can now turn to the functions exercised by professional organizations.

II.1 Functions of professional organizations

II.1.1 Regulation of production of producers

The first thing professional organizations do is to regulate the production of producers. In other words, they control the market by controlling the “supply” (Abel 1986a). In that regard, supply refers to the number of members in the profession and provides professionals “status” as a member by requiring a long and expensive education as well as additional training that only a few can afford. Thanks to this control, a certain status is created and maintained for those that are “in”. Status then is enhanced as membership remains a privilege that few can have. For instance, a longer university education replacing a shorter apprentice requirement is one way of achieving status. As a result, regulation of supply limits the numbers in the profession.

When these mechanisms were introduced in the U.S. around the turn of the twentieth century, “formal legal education rapidly displaced the apprenticeship system” (Abel 1986b: 8-9). Thereafter, law schools extended the periods of study required from one to two, then to three years. Finally, they started to require a pre-legal degree as a prerequisite for obtaining a law degree (Abel 1986b). In that sense, a law degree has been constantly made “elite” by increasing requirements to obtain it. Professional organizations played their part too. The American Bar Association refrained from accrediting part time evening schools, not surprisingly, leading to their

disappearance (Abel 1986b). At the same time, requiring a university degree in law helped the academia to play a gate keeper role along the bar. This made a difference because inherently the academia is more universalistic than bar associations. Thus, it contributed to the elimination of gender as an ascriptive barrier for becoming a lawyer (Abel 1986a).

Another way to regulate supply and limit numbers in the profession is by introduction of a bar exam, failure in which translates for one not being able to practice the profession. This is why "bar exams became universal, written and difficult" over the years (Abel 1986b: 9). Further, there are nationality and character requirements the presence of which are attested by fellow professionals. "Typically, they have sought to limit entry to males, of certain age, with certain kind of education, from a certain social and ethnic background" (Burrage 1988: 227).

Consequently, in the U.S. the profession was closed to African-Americans and women until the 1950s and 60s (Abel 1986b). They were only later admitted to elite positions "in return of their loyalty to dominant professional values" (Auerbach 1977: 6). Put differently, these barriers "serve certain political preferences" of elite lawyers "at a time when social change is threatening their status and values" (Auerbach 1977: 4). In the U.S, this was ethnicity and class when immigration and demographic

patterns affected the country and challenged the status of “white Anglo-Saxon protestants within the legal profession” (Auerbach 1977: 5).

By invoking these entry barriers in a successful fashion, the legal profession in the U.S managed to keep numbers of legal professionals pretty steady over decades. In fact, “the population to lawyer ratio was exactly the same in 1951 as it had been in 1900” (Abel 1986b: 9). Something similar goes for solicitors in the U.K who additionally suffered from the War but nevertheless, their number in 1948 was almost the same as in 1890 (Abel 1986a).

However, “supply control in a capitalist economy can never be more than temporary” (Abel 1986b: 10). Indeed, starting from the 1970s, each element of supply control has been eroded not only in the U.S or U.K but also in other countries. First, “the U.S Supreme Court struck down barriers against entry to the profession by non-citizens, out of state residents and those who deviated from sexual or political mainstream” (Abel 1986b: 11).

Equally important was the increased demand to study law, driven by the attractiveness of incomes earned by lawyers (probably an outcome of the limited supply). At the same time, expansion of the rights discourse with “civil rights, women’s issues, consumer and environmentalist movements”

(Abel 1986b: 10) widened the scope of legal work. As a result, in the U.S, “the number of lawyers more than doubled between 1950 and 1980” and was “likely to do so again by 2000” (Abel 1986b: 7). The increase in lawyer numbers, the change in composition in terms of age and experience and the increase in women²⁸ is not U.S specific but rather is “the norm in the Western industrialized world” (Lewis 1986: 79).

II.1.2 Regulation of production by producers

In addition to regulation of supply as described above, professional organizations also sought to control “production *by* producers” (Abel 1986a: 15). These rules typically involve *how* professionals must deliver their “product”. The first way to control production is by carving out a “monopoly against external competitors” (Abel 1986a: 16). In other words, the profession seeks limitation of practice to its members. For instance, only doctors can provide medical services (which can be widely defined in the medical context from measuring blood pressure; attending to a simple wound; to making operations). Similarly, only doctors can examine a patient and provide medical advice.

²⁸ According to the American Bar Association, in 1980, 92% of attorneys were men and 8% were women, compared to 73% men and 27% women in 2000. When one looks at law student enrollments the gender ratio seems almost half-half. See: http://new.abanet.org/marketresearch/PublicDocuments/Lawyer_Demographics.pdf. Access date: 18 September 2011.

The second way of controlling production is the “establishment of restrictive practices limiting internal competition” (Abel 1986a: 16). One example of this is the determination of minimum fees for the services of the professional. Such minimum fees not only ensure certain life standards for members of the profession but also protect collegiality in the absence of which fellow professionals may engage in a price war to get clients, eventually leading to reduced fees for the profession as a whole. Of course, one of the assumptions of minimum fees is that every member or professional is “producing” the same quality service (Elveriş 2006). Therefore, the logic goes that there is no need for a different price.

To limit internal competition in the profession further, members are banned to advertise their services or their special expertise, actions that have been interpreted as seeking publicity. Again, the logic is that because all members are producing the same quality service, it is unfair for some of them to try to get ahead of others by developing and “advertising” this specialization. An additional way to control producers is the application of disciplinary measures in case members do not act in conformity with these restrictive practices.

Applying all of these control mechanisms to the legal profession, one can see that the monopoly in provision of legal services covers not only provision of legal representation in court, but also provision of legal advice

(out of court) or legal drafting. The monopoly is protected by law²⁹. There are legal provisions in place which make it a punishable crime to engage in unauthorized practice of law by someone who is not registered in a bar association. Similarly, it is a crime to hold oneself out as an attorney³⁰.

Curiously, however, although it has been claimed that the monopoly is in the interest of clients for it makes sure that only those certified by experts provide the service, in the U.S, “all complaints about unauthorized practice have been found to come from lawyers and not from clients” (Abel 1989: 114). This fact alone illustrates that the monopoly serves as a production control mechanism than anything else since the public is possibly unaware or unable to resort to these types of disciplinary measures.

Bar associations also determine minimum fees that need to be charged by professionals. In the U.S., this was done only after they established themselves and their members felt “the effects of the Depression” (Burrage 1988: 253; Abel 1989). Lawyer publicity has been also subject to blanket disciplinary proceedings despite the fact that it is a postwar phenomenon and result of the complexity of the legal knowledge. In fact, more and more lawyers describe themselves as specialists (Abel 1989). Today, there is not

²⁹ It can be assumed that every state in the U.S would have such a provision. In Turkey, the same provision is in Art. 35 of the Act on Attorneys.

³⁰ Art. 63 of the Act on Attorneys.

only specialization as to the areas of law but also “task oriented specialization” such as litigation or consultancy; or “venue oriented specialization” such as appellate courts, administrative bodies (such as the Competition Authority) (Kritzer 1999: 735-6).

It should be noted that the regulation of “production by producers” comes after “production of producers”, “when social closure in the profession is well advanced” (Abel 1989: 123). In that sense, first a status has to be created and maintained for the socially closed members. After making sure that they are adequately protected, the monopoly for the provision of services and similar bans can be introduced.

In addition to the erosion of supply control, mechanisms of production of producers have been also eroded. This started in the 1970s, when the U.S. Supreme Court struck down minimum fee schedules and most restrictions on lawyer advertising. While the decisions were based on legal principles such as freedom of speech (including commercial speech of an attorney), there appears to be various reasons that have paved the way for this. The first is the principles of market economy. Indeed, minimum fees and advertising restrictions were described as cartelized actions. In fact, setting minimum fees is nothing but price fixing (Abel 1989) and it was found that the “price for routine services varied inversely with the amount of advertising” (Abel 1989: 121). In other words, another goal was to protect

consumers. Lately, the trend towards the abolition of these restrictions seems to have grown stronger with the wider availability of on-line legal information and pro bono provision of legal advice.

In addition, self regulating disciplinary measures of bar associations seem to have been increasingly criticized since “formal expulsion or discipline of any sort has been rare” (Freidson 1984: 2). According to Abel, in U.K. only less than 1 percent of lawyers have been punished (Abel 1986a). This is at a time when the public demands more equality and participation and “has less tolerance for professional domination or even paternalistic benevolence” (Barber 1978: 604). As a result, in the U.K., disciplinary boards today consist of representatives of consumers as well.

When traditional mechanisms of professional control over the production of and by producers were eroded, lawyers in many countries turned to stimulating the demand for legal services. In the U.K, one of the ways of doing this has been the introduction of legal aid especially after 1949. In general, after the Second World War, the internationalization of human rights and standards of fair trial especially in criminal cases contributed to an increased demand for legal services. The latter required states to take action to provide legal representation from the public purse if the criminal defendant was unable to afford counsel himself. The rise in crime and

divorce rates in society also seems to have contributed to the perceived need (Abel 1986a) while legal aid in civil matters remained more controversial.

As can be seen, professional organizations have been successful in regulating the supply by limiting the numbers in a profession and then regulating the product delivered by their members up to a point. However, requirements of the market economy seem to increasingly challenge their functions of gate keeping and regulation of production of services, sometimes leading to their disappearance. After this introduction as to the functions of professional organizations, now is the time to see how bar organizations came about as professional organizations in three different countries and exercised these functions.

II.2. Bars' establishment as professional organizations

Bars' establishment has not followed the same path in every country. Organizations have been shaped by different priorities, often "by their beginnings" (Pound 1953: 13). I will begin with the bar association movement in the U.S as it offers an interesting example of a parallel structure: of market based bar associations and state sponsored bar associations. As to the former, in some states of the U.S, there are voluntary bar associations in which membership is not mandatory to practice the profession. As to the latter, there are also those states in which membership

in a state bar association is mandatory for an attorney to be able to practice law.

Another reason that makes the U.S model interesting and worth looking is that the U.S did *not* in the end opt for a state based model. This is contrary to the experience of many countries in which the state sponsored bar association model reigns. At the same time, the U.S. is also the country with serious debate concerning the viability and efficacy of the compulsory bar association model from the very start of the concept. The debate involved judicial orders, judgments from highest courts, referenda in some state bars as well as other political and judicial instruments.

In addition to the uniqueness of its parallel structure, any comparison about bar organizations should include the U.S because the American legal profession is the largest in the world “in absolute numbers as well as in proportion to the population” (Rueschemeyer 1986: 418). The American Bar Association reports that as of 2008, there were 1.180.386 lawyers in the U.S. while each year, 140.000 students are enrolled in law schools³¹. Given these numbers, legal profession in the U.S. is also important for the trends it sets for the rest of the legal world.

³¹ See: http://new.abanet.org/marketresearch/PublicDocuments/Lawyer_Demographics.pdf. Access date: 18 September 2011.

While legal professionals flourished with the rise of capitalism and formation of modern states, it has been argued that the constitutional design in the U.S and the state's role "creates very special conditions and vast opportunities for legal work" (Rueschemeyer 1986: 436), arguably contributing to the prevalence of the legal profession. Indeed, De Tocqueville was famous for asserting that "scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." (De Tocqueville 1998: 110 Griffith (ed.))

II.2.1 Bar associations in the U.S

"The major wave of founding of modern bar associations seems to have begun in the 1870s" (Halliday, Powell & Granfors 1993: 518), "paralleling developments in other occupations" (Schneyer 1983: 7). Although it was the establishment of the American Bar Association in 1878 that gave impetus to the movement of bar associations, the era of modern bar associations must begin with the Association of the Bar of the City of New York (Pound 1953). What makes this event significant is not only that later scholars quoted by Pound and others (Burrage 1988) share his judgment but also in 1870 of the 4000 lawyers in New York City, 235 voluntarily signed an agreement to form this private bar association (Pound 1953).

In the words of its constitution, the Association of the Bar of the City of New York was "established to maintain the honor and dignity of the

profession, to cultivate social intercourse among its members, and to increase its usefulness in promoting the due administration of justice” (Martin 1997: 35). To further its goals, the association established four standing committees: on amendment of laws; on judiciary (charged with the duty of observing the working of the judicial system); “on grievances to hear complaints against the members of the association and complaints as to the administration of justice” (Pound 1953: 257); and on legal education to consider changes in the system of education and of admission to practice (Pound 1953).

What seems to have led to the establishment of the Association appears to have been a scandalous litigation in 1868 and questionable ethical practices of the judiciary as well as the lawyers involved in it. The events surrounding the litigation seems to have caught the attention of the nation “on the methods of doing business in New York” (Martin 1997: 3). Hence, the emphasis in the constitution of the Association, on honor and dignity of the profession and due administration of justice.

Given the prominence of its members, it is probably not surprising that in its first 18 months, “the Association housed itself, founded its library and more than doubled its membership” (Martin 1997: 43). These developments show that a voluntary professional organization, emerging at a time of crisis can provide for its members as well as “awaken lawyers generally to the need of

an effective professional organization” (Pound 1953: 259). Provision of social space and a library for its members notwithstanding, the association’s other goals involving the justice system reform seem to have been less successful.

While the Association marks the start of an era, many voluntary associations that have been established afterwards were not as fortunate. Despite having high aspirations of regulating the market, disciplining members and similar, they had to face the gap between their resources and aspirations. In fact, this gap led to failure: “between 1878-1902, eighteen state bar associations failed and were subsequently re-established” (Halliday, Powell & Granfors 1993: 518).

Given all this, in 1920 a new model was introduced which was called the “unified bar” (Burrage 1988; Halliday, Powell & Granfors 1993). The movement was led by Herbert Harley who as “the executive director of the American Judicature Society” was influenced by what he saw in Canada (Schneyer 1983: 9). Ontario lawyers had to belong to the Law Society of Upper Canada and this Law Society carried out many functions that are today served by self governing bars (Schneyer 1983). Thus, he advocated a state sponsored bar model in the U.S instead of a market dependent model. By the mid 1960s, unification had become the dominant form of state bar association in the U.S.

However, this model was not without its opponents. In fact, contrary to the assumptions of the early advocates of unification, opposition did not “cease once unified bar was established and became the norm” (Smith 1994: 39). It has been continuously argued that voluntary bars could equally do all what was being done by unified bars without coercing people into mandatory membership and fees. Voluntary bar membership depended on “selective incentives” (Schneyer 1983: 10) rather than attainment of common professional goals or socialization. These were usually tangible benefits like “help of services such as insurance broker and travel agency” (Burrage 1988: 255); education programs; “meeting facilities; legislative bulletins, and the like (Schneyer 1983: 11). As these seemed to be the “critical factors in maintaining high membership rates” (Schneyer 1983: 12) went the argument, the use of these incentives could assist a voluntary association of people who were not even like minded, thereby preventing the need for a mandatory bar association.

While the unified bar seemingly guaranteed that there was no sudden loss of membership like in voluntary associations, unified bars still had their “sources of instability” (Schneyer 1983: 13). For instance, when exit is not a possibility, “members will be more vocal and obstructive in resisting actions which displease them” (Schneyer 1983: 13). Therefore, it can be argued that the exit option is a safety valve. What is more, added resources in unified bars in monetary and human terms, do not necessarily translate into these bars doing more for their members. In fact, voluntary bar associations are

not only better in raising money (since they have no guarantee of income) but also are able to maintain high percentages of membership: in rates of 70% or even 90% (Smith 1994). Further, “there is no evidence that financial resources or high member numbers mean added benefits for either the public or for the individual member” (Smith 1994: 61).

The second point of opposition to unified bars was that they did not contribute to the emergence of a professional program. Although law reform and bettering professional standards seem to have been important goals in the establishment of voluntary professional organizations such as the Bar of the City of New York, voluntary bar associations have been said to lack the political clout of unified bars to effect any change. This was based on their low membership rates and has been used to portray them as “unrepresentative cliques” (Schneyer 1983: 26). However, unified bars cannot be assumed to have more legislative respect especially when membership is maintained by coercion and not every member participates “in developing and approving bar positions” (Schneyer 1983: 26). Further, “the percentage of members who are active in occupational associations” seem to be “quite low” (Schneyer 1983: 39). In fact, the later record of unified bars did not confirm the maintenance of a professional program despite some early improvements (Schneyer 1983).

In that regard, disciplinary procedures have a tendency to be used by private groups vested with governmental authority as a way to limit “competition or dissent” (Smith 1994: 63). In terms of the latter, elite lawyers were able to “ostracize dissidents who challenged their political and economic values” (Auerbach 1977: 7). Further, it appears that disciplinary bodies dismiss a vast majority of complaints as outside their jurisdiction or for being unfounded, punishing few and favoring “light” ways of punishment such as “reprimands and warnings over suspension or disbarments” (Abel 1989: 156).

The third point of opposition was that association was not good in itself. In other words, whether “society benefits” (Schneyer 1983: 38) when lawyers join together in an association is debatable because by being required to join an institution, a person does not become a voluntary participant. Further, the unified bar does not contribute to the fact that “the profession speaks with one voice” (Smith 1994: 65) but rather the contrary. Lumping people together solely on the basis of their profession, irrespective of the diversity of their other interests such as ethnicity, gender or class does not on its own create diversity or inclusion. Rather, it is voluntary bars that “reach out to” (Smith 1994: 68) people to include diverse groups as members. Lastly, the vision of the unified bar and the bar’s governance were questionable.

To sum up, in the U.S. the idea of a professional organization for lawyers seems to have started with voluntary efforts of a metropolitan bar association that was established by prominent members of the profession in reaction to the ethical scandals in the profession in late 19th century in New York City. It seems to have set the example for bar associations that were to be established at a later time in other parts of the country. However, due to the difficulties of sustaining membership and having insufficient financial resources to pursue their goals, the profession seems to have adopted a strategy to unify bars with the assistance of state coercion.

At the same time, given the strong suspicion of state coercion and the value imputed to freedom of association in the U.S., this move seems to have been opposed by some from the beginning. Today, the debate continues in light of the continuing erosion of professional control mechanisms. More importantly, unlike in Turkey “the federal government has never designated the American Bar Association (“ABA”) (or any other body) as the official voice of the bar” (Schneyer 1989: 692) although the ABA has special ties with the government. I will now turn from the U.S. to Europe.

II.2.2 Bar associations in Germany

I have set out how bar organizations and universities played successful gatekeeper roles and over time controlled “production of producers” in the U.S. One can see that not much state action was involved in this picture. In

other words, it looks like it was the legal profession that has achieved its autonomy on its own. According to McClelland, however, a conflict has been running between the rising professional organizations and the modern bureaucratic state since mid nineteenth century and the autonomy of professions and noninterference by the state in the Anglo-Saxon world has been “partly myth” (McClelland 1991: 19). Indeed, as I showed above, state action was also used in the U.S. to unify bars at least at the state level if not at the federal level. Later, state action was used over the profession through courts somehow justifying McClelland’s conclusion.

The closer examination of a continental country like Germany paints a little different picture than the Anglo American professionalization process. As a continental country, I could have chosen France but in the end, I opted for Germany because its rules and structures affect the legal system in Turkey very much. While something similar can be said of France that is rather true for the public law tradition whereas Germany affected both civil and public law concepts, traditions and laws in Turkey.

While in western continental Europe, “the legal profession evolved from liberalism to conservatism to corporatism during the nineteenth century” (Jacobson 2009: 7), not only the legal profession but also the evolution of the German professions in general, appears to be a state-sponsored project, sometimes referred as “professionalization from above”(Siegriest 1988, qtd.

in Jarausch 1990: 12). This “refers to the eminent role of the state in the formation of the continental professions” (Siegrist 1990: 63). Because a bureaucratized state “creates the structural context of successful professionalization” (McClelland 1991: 20). Indeed, before a monopoly can be defended by lawyers, that monopoly “must be constructed and legitimated. That process requires investment in state politics” (Dezalay & Garth 2010: 252). Before I go into the differences of state action concerning professions, some reminders as to the distinctions between the systems of Germany and the U.S. are necessary.

First, at the time the U.S existed as a political entity, Germany did not (McClelland 1991). It consisted of German states that had little coherence among them let alone over regulation of professions (McClelland 1991). When Germany unified and the German Empire came into existence in 1871, “Prussia held the hegemony and the Prussian order of the profession strongly influenced the imperial regulations for lawyers” (Schultz 2005: 99). Prussia, however, has been suspicious of lawyers and limited their numbers by the *numerus clausus* principle. It also disciplined them as state officials (Ledford 1996). Therefore, Germany in the early nineteenth century did not experience vigorous growth of professional organizations. In addition, other German states were also hostile to lawyers. They were convinced that lawyers were “inherently a politically subversive group” (Ledford 1996: 45), a point only confirmed by lawyers’ involvement in the revolutionary

movements of 1848-9, justifying in a sense the increase in “state scrutiny of the bar” (Ledford 1996: 46).

Second, in Germany it was the states that controlled university education and what was taught in professional preparatory courses. States “also created and administered state examinations in most of the professional fields” (McClelland 1991: 21). Indeed, “Berlin and all the other universities became not so much hotbeds of intellectual freedom, but seedbeds of disciplined professional behavior” (McClelland 1991: 5). In other words, unlike in the U.S, it was the state that was dominant in the education system. However, this broad statement must be also qualified by the fact that academics had roles in professional organizations (McClelland 1991) as much as former legal practitioners became “high ranking bureaucrats” (Jarausch 1990: 12).

Third, in Germany studying law was considered a distinguished academic discipline. Many sons of noble families and gentry studied it in preparation of public service that was at the time entrusted to nobility. In that sense, being near the state raised the status of the profession although it did not enjoy the autonomy and privileges as in the Anglo-Saxon world (McClelland 1991). While attorneys were regarded as servants of the state or subordinates of courts, they did not receive a salary or pension (Siegrist 1990).

Even today, the legal profession in Germany remains state oriented and a law degree is “particularly advantageous” (Schultz 2005: 96) for a career in the public service. In fact, until well into seventies, a third of law graduates found employment in the public sector. This is the opposite of the U.S and justifies the conclusion that “the German legal culture is thoroughly judge-centered” (Schultz 2005: 96). As part of the global expansion of the legal profession, the number of German attorneys also “doubled in the 20 years between 1950 and 1970, all but trebled in the 30 years between 1950 and 1980 and will have increased tenfold in the 55 years from 1950 to 2005” (Schultz 2005: 94). However, its public character is still in place, constituting the third major difference between the U.S and Germany.

Fourth, it was the state that “dominated the transformation of post medieval society and shaped the systems of legal professions according to its needs” (Rueschemeyer 1986: 437). As a result of this, the role the law plays in Germany is also different than the Anglo-Saxon tradition. In the latter, the law retains its autonomy from the state apparatus given the “capitalist development in the private sector” (Rueschemeyer 1986: 437) and weak bureaucratic rule. In Continental Europe, however, the “law is essentially an emanation of the state” (Rueschemeyer 1986: 437) and was integrated into the modern state apparatus. The contrast between “rule of law” in the Anglo-Saxon world and the German word “*Rechtsstaat*” (meaning “state based on laws”) perfectly captures the different understandings about the law (Rueschemeyer 1986).

Lastly, travel and communication remained expensive in Germany to allow for associational life to flourish (McClelland 1991). Nevertheless, in 1860 the legal profession was able to formulate a sort of national forum in the form of the Congress of German Jurists (*Deutscher Juristentag*) but not by trying to represent the diverse interests of all lawyers (judges, attorneys, law professors) (McClelland 1991). Rather, by preparing the way for reform and codification of German law that a unified nation state would need. Not surprisingly, this endeavor was “heavily subsidized by the Prussian King” (McClelland 1991: 54).

Given all this, the unification in 1871 “created radically new conditions for the German professions” (McClelland 1991: 73) as well as professional organizations in Germany. Now that unification was achieved, there was less suspicion and hostility to professional organizations. Thus, the Association of German Attorneys (*Deutscher Anwaltsverein*) was established on a voluntary basis in 1871, only weeks after the German unification (McClelland 1991). At this time, although not stimulating them, the government protected the right to create associations and in fact enacted an Attorneys Law.

The legal profession also obtained a chamber to deal with intra-professional disputes, supported “by mandatory contributions from all licensed lawyers” (McClelland 1991: 77). In that sense, what seems to have contributed to the

redefinition and standardization of lawyers' roles the most was the structure of the unified state itself: its national parliament, administrative system and supreme court as well as ventures like "codification of German law" (McClelland 1991: 87). By 1900, the Association of German Attorneys had branches in more than forty German cities and towns.

In 1878 a separate law was passed to unify the legal profession. Thanks to it, "German attorneys have become the first and, for a long time, only learned profession to be anchored and defined in a national law specific to themselves" (McClelland 1991: 87). The law unified all legal functions of an attorney from representation to advice (Siegrist 1990). The law also "abolished limits on the number of members, introduced greater freedom of practice, diminished control by the state, and strengthened self-government and autonomous self-discipline" (Siegrist 1990: 46). A bar association ("lawyer chamber") was created within the law, copied from the French although there were small local examples established in other parts of Germany (Siegrist 1990).

Further, in 1879, a national attorneys' fee regulation was passed which "set fees for various kinds of legal operations" (McClelland 1991: 88). Attorneys at provincial courts were forced to join bar associations in 1879. The state tried to obtain loyalty of the profession by giving "medals and titles such as

privy councilor of justice” (Siegrist 1990: 59) to the association’s board of directors.

By the turn of the twentieth century, the Association of German Attorneys had about two thirds of Germany’s attorneys under it. Among all these organizations, the “scholarly Congress of German Jurists soon became popular and were soon superseded by more practically oriented Association of German Attorneys” (Jarausch 1990: 12). However, the chambers, the Association of German Attorneys and Congress of German Jurists all cooperated with each other as there was “overlap in leadership” (McClelland 1991: 89). By the First World War, “four fifths of lawyers” in Germany were organized (Jarausch 1990: 12).

Before the First World War, legal and institutional improvements of the profession led to increased social esteem of the profession as well as support of liberal ideas (Siegrist 1990). However, the crisis of the war led to an emphasis of “closure strategies and sought permanent assistance from the state, thereby challenging the traditional liberal vision that had been shaped during the nineteenth century” (Siegrist 1990: 62). Indeed, in the Weimar Republic, “*professions turned into interest groups* (emphasis supplied) to cope with economic problems like hyperinflation and governmental instability” (Jarausch 1990: 15). Between “1918-33, Germany lacked stable

and effective governments” and the state was “constantly distracted by crises” (McClelland 1991: 175).

In that regard, the state’s failure to simply function led professional organizations to regulate market behavior (advertising bans), a reaction very similar to the U.S that established a minimum fee tariff during the Depression. Afterwards, the Nazis took advantage of the economic problems and brought “authoritarian solutions” while “suppressing the independence of the profession” (Siegrist 1990: 62). Professions offered little resistance, if any, to the Nazi regime during which state control became stricter and Jews and women were barred from the profession.

As can be seen from the above, in Germany at least until the Second World War, the functions of the bar in terms of controlling the production of producers was exercised by the state by limiting the number of lawyers or later by playing a significant role in admitting attorneys to practice. Attorneys nevertheless had their own law passed by the Parliament. It was also the state that conducted examinations and ran schools that provided legal education. As a result, the universalistic role played by the academia in the U.S did not materialize in Germany. Further, in terms of production by producers, the state again played its role but only after unification of Germany, introducing minimum fees and making membership mandatory.

“After the war, it took until 1959 for new federal regulations for lawyers to be passed” (Schultz 2005: 100). Regaining a new kind of “neo-professionalism that restored attorneys’ socioeconomic health, democratized their politics and recovered their prior competence” (Jarausch 1990: 15) was successful only later. According to Schultz, in the 1970s it became clear that the rules concerning the production by producers as set out in the 1959 law, “suit the German internal legal market” but “did not fit those of the emerging Europeanized and internationalized legal market” (Schultz 2005: 103). As in the U.S., in the eighties controversies over lawyer advertisement or rules about establishment of offices found their way to the federal, constitutional courts and even the European Court of Justice.

When Germany re-unified in 1990, this opened a large new market and lawyers’ enthusiasm of the East finally culminated in 1994 in new legislation. The legislation can be seen as adjusting to the demands of the market such as territorial limits on lawyer practice being abolished; hourly fees being permitted; advertising and cross-regional partnerships being allowed (Schultz 2005). In other words, with Europeanization and globalization in full speed in late nineties, the profession realized that defending territories did no longer help. In other words, “the market had finally caught up with the legal profession. One after the other its sacred bulwarks fell” (Schultz 2005: 109). Put in the professionalization jargon, production by producers was being eroded in Germany as well.

Another interesting “adjustment” was with regard to legal education. It was shortened “in order to meet the criticism that German lawyers were at a disadvantage compared to colleagues in other countries who started in the profession several years earlier” (Schultz 2005: 110). The orientation of legal education to civil service and judicial functions was another long criticized subject despite the fact that 75% of the graduates ended up in private legal practice but this was only slightly modified. Compulsory membership in the bar remained intact but seems to be threatened by European legislation and court decisions, leading Schultz to conclude that “the process of liberalization and deregulation of the profession will continue” (Schultz 2005: 111).

The brief comparison of two countries allows one to observe common characteristics such as educational requirements and the notion of public service in the profession but not autonomy given the state’s hold on education in Germany (McClelland 1991). Indeed, talking about bars in the case of Germany seems to involve their apparent absence. Functions served in the U.S. by bars is filled in Germany by the state. The fact that a law degree is still crucial to become a civil servant justifies state involvement in the molding of a reliable and uniform elite by regulating legal education (Blankenburg & Schultz 1995). As a result, in Germany the state and not the bars admit attorneys to practice.

In terms of production by producers, while bars handle disciplinary affairs, compulsory membership seems to be under threat not to mention the erosion of other mechanisms such as minimum fees and advertisement bans. In sum, in the U.S as well as in Germany, market economy and social change seems to have undermined the traditional regulatory mechanisms afforded to bars, bringing with it many questions about the future of professional organization. It is now time to turn to Turkey.

II.2.3 Bar associations in Turkey

Until the 19th century, there was no such thing as an attorney in Ottoman (Shariah) courts which sat with one judge (*kadı*) and the parties. There also was no appeal or defense (İnanıcı 2000). At the same time, there were persons who specialized in drafting petitions and letters (*arzuhalci*) especially at the footsteps of the state (*devlet kapısı*) (İnanıcı 2000) but they did not appear in court.

As a result of modernization efforts in the nineteenth century, however, Western style courts were established in Turkey which functioned alongside shariah courts. Simultaneously, there were consulate courts, established as a result of trade relations with the West and handled foreigners' disputes (Yılmaz 1995) before which foreign lawyers started to appear. It was these foreigners who established the first bar organization in Istanbul in 1870 (Battal & Erdem 1985) roughly about the same time as in the U.S.

With the adoption of Western styled law and courts, a need appeared for people to be defended before them (İnanıcı 2000). Until then, this function was exercised before Shariah courts by the so called legal representatives (*dava vekili*) who were not necessarily lawyers. Rather, they were notorious (*münzevi, kağıt kavafi*) for abusing people's ignorance to make money (Öncü 1996). These representatives established the first Ottoman Bar Association (*Dersaadet Dava Vekilleri Cemiyeti*) in 1878 in Istanbul with 62 members (Battal & Erdem 1985) a huge proportion of which included foreign attorneys, given the fact that Ottoman nationality was not required to become a member (Öncü 1996).

In its centennial celebrations, this date was taken by the Istanbul Bar as landmark although the regulation of the association did not mention the word bar or attorney in it (op. cit.). The goals of the association was the application of its fee tariff for legal services rendered; monitoring the work of attorneys before courts; making membership mandatory to practice; obtaining a license to practice from the Ministry of Justice and having disciplinary powers (op. cit.). These have been the typical goals of professional organizations ever since.

In those days, the profession was confined to certain cities in the Empire. As such, in 1878 the Ottoman state enacted the regulation concerning attorneys in Istanbul (*Dersaadet Dava Vekilleri Nizamnamesi*) in order to supervise

the profession and to require that representatives “register with the Ministry of Justice and be graduate of law schools” (Özman 1995: 54). It apparently took fifty years for the full actualization of these unrealistic goals (Öncü 1996) since at the time, there was no law school in the Empire. During the revolution of 1908, a draft law was prepared to that effect and sent to the Ottoman Parliament but failed to become law. At the same time, one little victory for the profession seems to have been won in 1916 when the profession was reserved for Turks only (Battal & Erdem 1985).

The moment seems to have come for the profession with the establishment of the Republic (Özkent 1948). In 1926, the Law on Attorneys (Mahamat Kanunu) was passed, making it a profession in Turkey for the first time (Yılmaz 1995). This was a direct result of the abolishment of Shariah law and adoption of laws from Western countries in many areas of life. Accordingly, the new laws needed new professionals to apply them.

In 1925, a new law school was established in Ankara. Another goal of this school, however, was to inculcate the ideas of the Republic into the profession which is apparent in the speeches of the then Justice Minister Mahmut Esat Bozkurt as well as Atatürk. Thus, the teaching staff of the Ankara Law School consisted mostly of “members of parliament who were enlightened and young jurists educated mostly in Europe”. They shared the law courses according to the curriculum of the Istanbul University School of

Law (Akzambak 2005: 185). However, this was to be done “with the mentality of Ankara” (Dölen 2010b: 71).

The Republic then turned its attention to the Law School in Istanbul which maintained its traditional line and showed an indifference to the newly established regime (Özman 2000) while Ankara School of Law, under the tight grip of the Ministry of Justice, was developing as an “alternative” (Özman 2000: 171). However, the government soon gave up hopes of reform. In 1933, Darülfünun was closed down and re-opened as the University of Istanbul. 14 of the law school teachers were retired (Dölen 2010a). In other words, the state exercised direct control in the education of the legal professionals just like in Germany. Arguably, this practice continues today through the Higher Education Institute (YÖK).

In order to further inculcate the ideas of the Republic in the profession, a purification was sought by the regime which purged 374 out of 805 members of the Istanbul Bar (Özman 2000: 173) while İnanıcı gives the number as 473 out of 960 (İnanıcı 2000: 138). Considering that the total number of attorneys in Turkey in 1939 was 1631, one can appreciate the size of the purge. According to Özman, these purges constitute the “beginning point” (Özman 2000: 173) of the disputed tutelary powers of the Ministry of Justice over bar associations as well as the creation of a new identity for attorneys that was compatible with the new regime. Indeed, at

that time, praise was poured on judges and prosecutors by the Minister Mahmut Esat while attorneys remained suspect (Özman 2000).

In 1938, by invitation of bar representatives to the Ministry of Justice, a new act on attorneys was prepared. The Justice Minister Şükrü Saraçoğlu explained that the act was prepared with international practices in mind (Güner 2003). He put it in the Parliament as follows: “We tried to support our law with deep steps of republican, nationalist, secular, statist and realist sentiments, with one word the Kemalist regime” (Özman 2000: 17). While the Minister makes clear what is expected from the profession, the discussions in the Parliament also show that there have been disputes between two understandings about the profession: being a free profession while at the same time having a public service side to it (Özman 2000).

In the 1950s, thanks to the relative pluralism following the one party era, professionals started to discuss the need for autonomy and end the tutelage of the Ministry of Justice (Özman 1995). In the period after the coup, associational life and interest group activity increased thanks to the social rights in the new constitution. At this time, bar associations transformed “narrow professional issues” into “broader political ones” (Özman 1995: 163) and started to see “themselves as the indispensable elements and guardians of democracy in Turkey” (Özman 1995: 164). At the same time, despite the corporatist structure of the constitution, it took until 1969 for the

profession to have its peak organization established with a new act on attorneys.

With this act, many of the most important functions previously exercised by the Ministry of Justice was transferred to TBB (Sav 1996), the most important of which was the issuance of licenses to become an attorney. However, many other functions exercised by TBB still required the approval of the Ministry to be effective. In a sense, the act was “a reenactment of the former code under a liberal cover” (Özman 1995: 152). According to other scholars, the persistence of controls over the profession did not change the fact that it was now the profession that handled its own major affairs (Öncü 1983).

The biggest criticism of the act was concerning the prevention of bars from engaging in politics. This was seen as pacification of the profession or the prevention of the emerging of an effective interest group that could challenge policies of the state (Özman 1995). However, some people viewed the formation of politically neutral bar associations was an impossible dream given attorneys’ closeness to social and political issues in practicing their profession and their “increased political role especially during 1950s” (Özman 1995: 155).

Between the two military coups, legal professionals seem to have assumed “an important public duty which is the consolidation of political liberalism, rule of law and democracy in general” (Türem 2001: 38). This was necessary for the fact that state security courts were established in the country leading to great criticism for the rules and practices they employed. This period coincides with the time when bar associations started to employ their fully organized protests and marches to draw attention to violations of law and legal guarantees in the country (Özman 1995). While this oppositional stance is consistent with the experiences of bar organizations in Spain and Brazil and other Latin American countries during military regimes, it is nevertheless ironic in the sense that professions “use legitimacy derived from the state to delegitimize it” (Halliday 1989: 405).

At the same time, the overtly political role of bars of the time may be attributed by the “full closure” of the profession. Indeed, bars had no problem in keeping the number of attorneys limited. Until the establishment of the Dokuz Eylül University School of Law in 1978, Istanbul and Ankara Schools of Law remained the only law schools in the country. This meant that nearly for half a century there were only two law schools (and not enough number of legal professionals in the country) despite the huge population growth. As a result, in such a small community, ensuring control over production by producers was probably not much of a problem. Hence, already fulfilling their pure professional roles and functions, their attention

could turn to politics. Such role was also consistent with the vanguard role they played during the modernization process.

During the military rule between 1980-1983, however, bar associations seem to have been tolerant of human rights violations in the belief that these were temporary to save the country (Özman 1995). They, gradually seem to have become bothered by these policies especially when it came to torture and the preparation of the new constitution. Although they convened meetings, drafted a constitution and “considered themselves as the primary group whose views must be seriously taken into consideration” (Özman 1995: 197), they were ignored. Further, in this period, previous legislative gains that have been criticized for not going enough in terms of professional autonomy, have been reversed.

The 1982 constitution brought a new approach to professional organizations (Ekşioğlu 1996). It demonstrated a distrust towards the pluralist model of politics and sought to sever ties of any organization other than a political party with politics by introducing new provisions such as the prohibition to engage in politics or cooperation between political parties and labor unions or associations. Many of the prohibitions applied equally to bars as well as TBB.

In addition, the Ministry of Justice was given the authority to remove the boards of bars that engaged in this type of activity. In addition, public professional organizations were subjected to the administrative and financial supervision by the state (exercised by the Ministry of Justice). The tutelary powers of the Ministry included granting permission to TBB to attend international meetings. Further, attorneys employed in the public bureaucracy were no longer required to become members of the bar, bringing a parallel track in professional regulation similar to the one in the U.S.

The new regulations were not only restrictive in terms of professional autonomy but also concerning the right to defense. For instance, if an attorney was investigated under crimes committed against the state, he or she had to sever ties with the case(s) he or she handled. If the disciplinary board of the Bar refrained from rendering a decision to that effect, the Ministry could directly do so. Thanks to these provisions, not only attorneys who represented defendants in the Turkish Peace Association case were themselves prosecuted (*Türkiye Barış Derneği Davası 1986*) but also the president of the Istanbul Bar was arrested, removed from his position by the Ministry of Justice in 1983 and died one day after being granted permission to leave the country for his medical treatment in 1986.

While politically, the profession was under pressure and felt ignored, economically, the adoption of market economy in the 1980s meant increased business for lawyers. Indeed, “whenever the state subjects new areas of social life to legal regulation, the demand for lawyers increases” (Abel 1989: 29; Rueschemeyer 1986). Far greater commercial activity in the country meant the rise of a middle class and increased homeownership (Abel 1989) and globalization of human rights issues all of which meant an increase in the need for attorneys (Akbaş 2011). This is also confirmed by the number of attorneys. Their total number grew from 18149 in 1981 (Sav 1996) to 70332 as of 31 December 2010. Similarly, in 1948, there were only 33 bar organizations in the country (Özkent 1948) today there are 78.

According to Rueschemeyer, a much more plausible explanation for the growth in lawyer numbers lies in the expansion of higher education (Rueschemeyer 1986). Clearly, this is also the case in Turkey not only in terms of student numbers³² but also in terms of the number of universities³³.

The growth of attorney numbers was helped by the growth in law school numbers. While Marmara University School of Law and Dicle University

³² According to the Council of Higher Education, in the period between 1994-2005, student numbers multiplied in undergraduate studies by 1,7. See: *Türkiye'nin Yükseköğretim Stratejisi* 2007: 88.

³³ According to the Council of Higher Education, in 1982, there were 27 universities in Turkey while in 2006, the number was 93. See: *Türkiye'nin Yükseköğretim Stratejisi* 2007: 44-49.

School of Law were established in 1982, the growth of law schools was not confined to state universities. Starting in mid-nineties, private universities also opened law schools as law became a lucrative career sought after which contributed to the perception of law as a prestigious area of study. Today there are about 60 law schools in Turkey a big majority of which were established in the last 15 years (Akbaş 2011). However, after the apprenticeship period, the admission process is almost automatic as there is yet no bar exam, eroding bars' role in supply control. One can therefore argue that today the gatekeeper role is exercised jointly by bars and law schools in Turkey, just like in the U.S.

For the purposes of this thesis, significant changes were adopted in the Act on Attorneys in 2001 by which bars and TBB were given the task of “defending and protecting the supremacy of the law and human rights”. Further, bars and TBB have become more independent by the removal of the approval of the Ministry of Justice concerning decisions taken by bars or TBB in twenty different subjects (Güner 2003). Lastly, the regulatory powers of TBB was expanded.

Given all this, the development of the profession in Turkey can be divided to three separate periods. The first is the period between 1926 and 1938 when the first act on attorneys was enacted making it a profession for the first time. At this time, bars were established by state action and the

profession was under the strict control of the state in terms of education and admission. Put differently, the establishment period of the profession and consolidation of the republican regime coincide. The second period starts with the enactment of the second act on attorneys in 1938 and lasts until 1969. This period is significant for adoption of the principle that the profession is one of public service (Güner 2003). This is also the time when demands for professional autonomy start to be heard especially during the relative pluralism of the post 1950s.

The third phase is the enactment of the 1969 act to bring constitutional changes of 1961 concerning professional associations in conformity with the regulation of the profession. By establishing TBB as a national peak organization, the goal seems to have been to end the dominance of local bars in the profession. The act remains in force to date, although until 2003, it has been amended twelve times (Güner 2003). According to Güner, the 2001 amendments can be seen as the fourth period in the profession's history as well as an attempt to raise the standing of the profession while catching up with some market economy necessities such as allowing attorneys to form partnerships (Güner 2003) .

The above goes on to show that although the three countries had different histories in terms of regulation of the profession, the dual forces of globalization and free market drove them to convergence. Germany and

Turkey seem similar for the state's initial distrust towards lawyers. In both countries, the state seems to have exercised tight control and successful mobilization of the profession for its own purposes at least up until a certain point. The professional autonomy battle seems to have lasted longer in Turkey while the 2001 changes may be seen as a step forward in that regard. On the other hand, just like in Germany and the U.S., the number of lawyers in Turkey quadrupled in thirty years. This also means that the profession became younger³⁴.

Sensing loss of market control, bars in Turkey express concern -in an increasingly alarmist tone- about governments' policy of opening new law schools. They have been also arguing for the introduction of a bar exam, to no avail. Bars nevertheless push for new ways of preventing the growth of lawyer numbers, such as filing lawsuits to stop opening of new law schools. Put differently, just like in other countries, the profession in Turkey seems to have lost the battle of market control, despite the continuing prevalence of citizenship, character and other entry barriers³⁵ still being in place and are sometimes used to limit political dissent.

³⁴ The Istanbul Bar says that as of 28 October 2010, of its 25994 members, 14000 are between the ages of 25-40, See: "İstanbul Barosu Üyelerine Ait Sayısal Veriler Baronet'te Sürekli Güncelleniyor", <http://www.istanbulbarosu.org.tr/detail.asp?CatID=1&SubCatID=1&ID=5247>, Access date: 10 October 2011.

³⁵ Until 1969, one of these was not to be older than 23 years of age (Battal & Erdem 1985).

In terms of production by producers, practices such as minimum fee tariffs and advertising bans persist. The regulation³⁶ (*Reklam Yasağı Yönetmeliği*) tightly controls even the size of signboards attorneys can hang outside the buildings of their offices. As a result, when one travels to Anatolian towns, one can see office signs of attorneys in the same color, font and shape, although such regulations are impossible to enforce in Istanbul. Further, the bar is still not very fond of specialist titles. Given the continuing influx of new members, however, other mechanisms of control of production by producers may also not last long given the difficulty of policing an ever increasing number of attorneys. It may therefore be only a matter of time that changes long adopted in the U.S. and Germany relaxing rules of production by producers such as advertisement restrictions and minimum fee tariffs become discussion topics in Turkey.

Lastly, it has been argued that attorneys have become “laborer like” (Akbaş 2011: 137) by starting to work in law firms in return for a salary. Findings of Akbaş conducted with members of Istanbul Bar show that in every one of two law firms there is a salaried lawyer (Akbaş 2011). Abel confirms the phenomenon of the “growth of public and private employment and the expansion in size of law firms” (Abel 1986b: 7-8) as opposed to engaging in solo-private practice.

³⁶ Regulation on the Prohibition of Advertisement, Official Gazette: 21 November 2003, No: 25296.

This can be read as replication of the global trend of “tier formation” in the profession “between corporate attorneys who work for businesses and are graduates of elite schools while the other tier consists of attorneys from ethnic or religious minorities and are graduates of local schools of law and serve less prestigious individual clients” (Akbaş 2011: 191). In that regard, the Istanbul Bar figures confirm this explanation. The bar says that 4964 (among 25000) attorneys take cases from (the low paid) criminal legal aid on a regular basis and this number steadily grows. However, criminal legal aid is unpopular among the graduates of private universities³⁷.

In conclusion, not only in the U.S but also in other countries including Turkey “the experience of the last two decades strongly suggests that we are witnessing the decline of the professional configuration, if not yet its demise” (Abel 1986b: 16). This decline covers “increasing commercialism and competition and decreasing civility and collegiality” and creates anonymity that “diminished the force of informal reputational sanctions” (Rhode 2000: 8). Indeed, a pessimistic argument may be that the professional project is in danger while a more optimistic argument may be the profession is merely affected by social and political change requiring a different strategy and adoption by professional organizations.

³⁷ See: “İstanbul Barosu Üyelerine Ait Sayısal Veriler Baronet’te Sürekli Güncelleniyor”, <http://www.istanbulbarosu.org.tr/detail.asp?CatID=1&SubCatID=1&ID=5247>, Access date: 10 October 2011.

What seems important in terms of bar associations is the recognition that the described changes have serious implications for the self governance of the profession as the growing numbers and diversity makes it very difficult for any association to speak on attorneys' behalf (Abel 1986b). More importantly, the expansion of the profession means that a new breed of lawyers with different values and traditions are entering the legal profession, whose core values were formed until the 1990s by either Ankara or Istanbul law schools. At the same time, given the fact that TBB is part of the corporatist framework in the country, the professional demise of lawyers and the apparent indifference of governments to it has consequences for the relationship between TBB and state institutions.

In this chapter I compared the regulation of the legal profession in three different countries by making use of the professionalization literature. To do that, I have first set out the basic tenets of professions. What distinguished professions from other occupations was the existence of a professional organization that ensured control of “production of producers” and “production by producers”. I then looked at the first bar association established in the U.S. and the parallel structure concerning regulation of the legal profession that prevails until today. While this structure implies a limited involvement of the state, there nevertheless is a lively debate about state coercion and mandatory membership to bar associations in the U.S.

I then focused on Germany which was politically unified at a much later stage than the U.S. and where a different state tradition reigned. This tradition in fact viewed the legal profession with suspicion. As a result, for a while the regulation of the profession was tightly controlled and the professional organization gained autonomy much later than the U.S. Despite that, German state was heavily involved in the regulation of the legal education as well admission of attorneys which holds true even today. In both countries though, the requirements of the market economy and globalization forced change on the profession in terms of relaxation of some of the supply control and production by producer rules.

Lastly, I looked at Turkey, where similar to Germany, a suspicious stand was taken by the government towards the legal profession. While the profession gained autonomy, this took place as late as 1969. The last phase of the independence battle was completed with 2001 amendments. Further, the homogeneity in the profession lasted longer than the U.S and Germany, well until the 1990s because unlike those countries, the number of law schools and attorneys remained lower.

In the post 1980s, with the adoption of market economy and globalization, Turkey inched closer to Germany and the U.S. in the growth and diversification of the profession. At the same time, erosion of supply control has not been matched with the relaxation of production by producer

mechanism although they became increasingly difficult to police in a crowded profession especially in big towns. Nevertheless, one can conclude that in all countries, socio economic change eroded traditional mechanisms of professional control and led to a convergence despite the difference in state traditions. It is now time to find out how data to confirm this was collected.

Chapter III: Methodology

In the previous chapters, I reviewed the interest group and professionalization literatures. The former allowed me to determine the interest group model in Turkey and pose my research question of whether there was policy concertation between state institutions and TBB since the literature says that a corporatist structure is fused with corporatist policy making. The latter literature, on the other hand, allowed a comparison of three different country experiences to see divergences as well as convergences in the regulation of the legal profession. Such focus was helpful to understand the complex relationship between state institutions and TBB since another goal of the thesis is to find out about the reasons of conflict between the parties. It is now time to talk about the methodology of the thesis.

III.1. Interviews

The primary goal of this thesis was to understand the nature of the relationship between the peak organization of the legal profession and the state institutions (especially the three branches) in order to understand the extent of policy concertation, if any. Further, the thesis seeks to explore the

reasons for conflict between TBB and state institutions. Given the intimate and informal nature of policy concertation structures, limited information was available through public channels.

Not only that, even in the legislature, the most public of the three branches, the meetings of the Justice Committee, the usual premise where TBB is expected to play an expert role, is not open to public. Or meetings of bar associations to determine common issues or discuss problems among bar presidents and TBB takes place behind closed doors. Similarly, other professional organizations (other social partners) and TBB hold talks in private meetings and expose to the media only as much as they want to.

In view of this, seeking information as to what transpires in private meetings or conversations between TBB and all these state and non-state actors was sought through interviews as they give “access to the observations of others” (Weiss 1995: 1). Further, there was a need for description in terms of relations, roles and identities. Therefore, interviews were the best means to obtain this information. The interviewees were former or current bar presidents or members of the executive board of the bar. They were selected for their first-hand experience in their local area with the running of a bar organization as well as state institutions. Some also served as board members in TBB.

The thesis is “describing what all interviewees have in common as they experience a phenomenon” which phenomenon is the experience of interacting with TBB and other state institutions as president of bar. While this allows me to call the study a phenomenological one (Creswell 2007: 58), my goal in designing it is to determine what the experience was for the persons who describe the phenomenon which will then allow me to draw the structure of that experience (Moustakas 1994).

While these interviews constitute the main source of data, data collection took place “in the field at the site where participants experience the issue or problem under study” (Creswell 2007: 37). Taken together, these two points make this phenomenological study a qualitative one. A qualitative study seems appropriate for the endeavor undertaken here also because the subject of this thesis needs to be explored in a bottom up fashion and need detailed understanding of the issue (Creswell 2007).

Given all this, thirty former bar presidents or board members have been interviewed in total as the main source of data of this thesis. In addition, the views of the members of three branches were sought. Accordingly, six interviews were made with Ministry of Justice officials, two with the judiciary and two with members of the Parliament. However, the data from these lesser number second interviews were not analyzed. They were rather

thought as a reference point for the thirty interviews as they contradict or confirm points made there.

III. 2. Pilot study

In exploring the relationship between TBB and the state, I decided to first conduct a pilot study before heading out to the field. The institution that I could first start with was the executive: the Ministry of Justice. Through my work at the School of Law and the Human Rights Center at the University, I personally knew many mid to high level bureaucrats at the Ministry of Justice that worked in various divisions. I not only met them at scholarly meetings, work committees convened in Ankara or at Bilgi involving various projects, over time our acquaintance involved doing favors for each other by providing information or experience sharing. For instance, I sometimes introduced them to new methods that they made use afterwards; let them know about conferences that they might be interested in; arranged for their invitation to international conferences in judicial policy. They returned the favors by providing information to me as Ministry insiders. I therefore decided to conduct pilot interviews in Ankara with some of these Ministry of Justice bureaucrats.

I developed my questionnaire with open ended questions to elicit information from my participants. I selected junior level bureaucrats as a matter of convenience sampling, as used in exploratory research where the

researcher is interested in getting an inexpensive approximation of the truth. As the name implies, the sample was selected because they are convenient. In addition to easy access, I also felt that if I had to change my questionnaire after the pilot interviews, I could still call up junior bureaucrats and ask additional questions, something I cannot do with higher ranking bureaucrats.

There was an additional reason why I preferred to start with my acquaintances at the Ministry of Justice. Most of the bureaucrats that serve at the Ministry are judges (or prosecutors) who used to serve at the bench. They have been promoted to service in Ankara at early career (after 5-7 years of bench service) given their success, ambition, political connection or language skills. Although they no longer perform a judicial function, they still use their professional titles of “judge” or “prosecutor”. Even when they pick up the phone and order tea for me in their office they refer to themselves as “judge Ali” or “prosecutor Ahmet”. In other words, despite no longer serving at the bench, the forceful authority of a judge or prosecutor that I have observed in other research is still part of their character, as is the suspicious and distrustful stance towards strangers. Given this, it made sense to start with these men who would not show that kind of attitude to *me*.

In October 2010, I contacted five bureaucrats at the Ministry of Justice from the following general directorates: Penal Affairs; Civil Affairs; Prison and Detention Houses; Laws; and the Department of Strategic Development. My contact at the General Directorate of Laws declined to be interviewed on the grounds of being too busy. The bureaucrat at the Penal Affairs was hesitant whether or not to ask for permission of his General Director when I told him what my research subject was about. He also said he was no longer involved with “attorney” issues and suggested that someone from that unit join us for the interview although he later agreed that we speak alone.

My contact at the Department of Strategic Development, wanted to see the questions and would not want to give a definite date for the interview. He also was curious whether he had to answer the questions in writing. I explained that I was coming to Ankara to talk face to face. Couple of days later, he emailed me saying that he looked at the questions, and given his lack of experience at the Ministry, it would be better for me to speak with his boss.

My contact at the Civil Affairs agreed to see me right away while my contact at the Prison and Detention Houses turned out to be in the United States to improve his English. He nevertheless told me to contact another bureaucrat we both knew. Since I already arranged for three appointments for one and half days of visit, I decided to stick with what I have. At this

time, however, I thought that even the permission process was proving much harder than I thought. If I was getting this hesitant attitude, I wondered what outsiders could do with the Ministry of Justice bureaucrats.

My first contact and I met in one of the Ministry of Justice's newer buildings in Ankara. After learning that the interview could last one hour, he wanted to be first "seen" by his superior in order to prove him that he was actually at work. During the interview, I sensed that because he knew me and my ideas about certain issues from our previous interactions, he was almost too careful to describe the relationship between TBB and the Ministry in a positive way. I felt that knowing a bureaucrat was good in the sense that it gets one through the door but when s(he) knows what you think, the advantage may turn into disadvantage. When we were finished, he asked me who else I was going to speak with at the Ministry. I replied that I could not tell him. He added: "do not mention my name either". I assured him once again about confidentiality.

The next day at another building of the Ministry, I was greeted by my interviewee in the corridor. He was sharing his office with someone who used to work at the General Directorate of Laws. He stressed the importance of me talking to people in that directorate too. This was because this directorate was involved in drafting legislation and this usually meant working in committees in which TBB also participated. Before we started, I

gave him the questionnaire. A couple of times during the interview he turned to his roommate and asked for confirmation about the things he was saying. My next interviewee at the Penal Affairs was located in the same building and after a short hesitation, allowed me to record the interview. My sense of this interview was better than the other two, possibly because this contact was the one I knew the least.

My general feeling about the three pilot interviews I made was that it was hard to interview people I knew. Because we worked together before in other projects, they were familiar with some of my ideas as I was with theirs. I sometimes finished their sentences or summarized things for them, something one should refrain from doing as a researcher. Sometimes I also knew the subject that they were talking about, inside out, like legal aid or disciplinary processes concerning attorneys. This made it hard for me to listen to what they were saying as a neutral third party. It also showed me that bureaucrats were difficult to interview given their tendency for secrecy and suspicion.

Nevertheless, the interviews provided valuable insight as they offered alternative perspectives to explore the issues between TBB and the state. For instance, my pilot questions were designed to understand how policy concertation worked in practice. Thus, questions focused over meetings of bar and Ministry of Justice officials. The pilot study showed, however, that I

perceived the relationship as something confined to formal meetings. This apparently was not the case. Bureaucrats referred to routine contacts given the oversight of the Ministry over TBB as well as sporadic ones involving discussion of various administrative problems and issues as they arose. Most importantly, they mentioned committee meetings at the Parliament where laws were being drafted, ringing the bell for me that the relationship between the state institutions and TBB had to include the legislature and the judiciary. Although concertation takes place between government and various interests, as bureaucrats pointed out, TBB was involved on various levels with state institutions. I therefore changed my questionnaire to reflect that.

Having experienced the limitations of my questionnaire with bureaucrats, I felt a similar exploratory pilot round was needed with presidents of bar since those interviews were to form the basis of my research. I made my first pilot appointment with someone who served at the TBB whom I met through an EU project involving the Ministry of Justice and TBB. In addition, my list (discussed below in III.3) included a former MP and bar president who was residing close to where we decided to meet. To kill two birds with one stone, I decided I should also contact him for an appointment.

My first contact was still practicing law and invited me to a restaurant after his court hearing outside of Istanbul. Although I felt that a restaurant was not the best place for the task, I could see he was trying to be kind by taking me out to lunch. Our acquaintance was not confined to working in an EU project together, it included he sending me articles about the legal profession that I sometimes commented on. He also called me “hocam” despite the fact that age wise he could be my father.

Given all that, I agreed to the location. It turned out that not the cutlery in the background of our conversation and food service interrupting us was the difficult part but rather the small talk we made. While I wanted to converse with him, the conversation distracted us from my role as researcher as he showed interest in my career *as an attorney*. When we were finished, we came to contemporary legal problems in the country and I again felt that it was difficult to keep distance. I tried to not make many comments but was worried that I could come across as cold. I was therefore happy when he called me the next day to say that he wanted to make addition to what he said the day before, suggesting that he considered the exercise valuable enough to think it over and make an additional effort of calling me to say more.

What was interesting about this pilot interview was to find out that he used to serve as an MP in addition to being president of bar. Despite that, he did

not appear in my list. The reason for that was he apparently served as an MP first and *then* as a president of bar. In other words, my assumption of bar work leading to politics was reversed in his case. This point was also confirmed by my second interviewee who has become a member of a political party as soon as he turned 18, long before he was elected president of bar. Their intense political involvement notwithstanding, they still criticized those who used the bar for their political ends, suggesting a theme that I initially did not think of when exploring TBB and state institution relations. Not only that, lasting longer these two pilot interviews with the former bar administrator/MPs provided much detailed information than my interviews with the Ministry of Justice officials and justified my decision to rely on bar administrators as main source of data in the research. After these two interviews, my questionnaire was almost final.

III. 3. Developing my sample

In order to determine who to interview, I compiled a list (hereinafter referred as “the list”) of MPs who served as administrators or presidents at local bars and at TBB *before* getting elected to the Parliament. To be able to cover a period of at least twenty years, the list started from the 18th term MPs (elected after the elections in 1987) and ended with those elected in the general election of 2007. Interviewing them could provide me two perspectives: first, of a bar administrator and second, of a legislature.

In addition, I thought that I should see what bar presidents who did not become MPs were thinking, to understand whether there were any differences between those bar administrators who used bar work as a way for political recruitment and those who did not. As a result, I drove to a town close to Istanbul and interviewed two bar presidents.

I also took advantage of being in Istanbul and interviewed two former presidents of Istanbul Bar. Living in Istanbul was also helpful when travelling to destinations that were an air ride away. I paid attention to include towns in the sample when my list contained more than one MP from that town. After these initial ten interviews, the weakness of my list and the geographical convenience sample I was pursuing became evident. Everyone I spoke was either an MP from CHP or sympathized with CHP.

I therefore started to ask my interviewees whether they could give me names of those bar presidents who had different political color. Thankfully, they could since the “bar world” is small and everyone knows everybody. Sometimes, my interviewees called me within days with the names and telephone numbers of people after having done an “investigation” on my behalf. This was how I was informed of bar presidents who served as a minister in previous governments and of bar presidents who were supporters of different political parties.

In my next round of interviews, I decided to focus on those alternative opinions. I also started to contact non-CHP MPs in the list. Among the towns in my list which sent a disproportionate number of bar administrators as an MP to the Parliament, there appeared a former bar administrator from an Eastern Anatolian town. I went to Ankara and interviewed him. I then went to the Parliament and interviewed an MP from MHP. I also contacted four MPs of AKP in the 23rd term that represented four different towns. I was able to interview one.

To talk to people who had a different perspective than CHP helped me to learn about the internal struggles within TBB. I realized that some bar presidents played an active role in bringing about “regime change” within TBB when the former president of TBB died. This point was already hinted to me in the pilot interviews but at the time, I could not understand what exactly they were talking about. I therefore decided to interview the organizers of the “revolt” in Central Anatolia.

Former or current presidents of five largest bar associations that also happened to be the oldest bar associations in the country were included in my sample: Istanbul, Ankara, İzmir, Bursa and Antalya. Except one, I was able to interview people in these towns. The reason for not including one of them was our failure to find a suitable date after cancellation of one interview due to weather conditions.

Nevertheless, it was important to include Istanbul, Ankara and İzmir in the sample because in these three towns, bar elections take place between groups that distinguish themselves according to political color. In other words, the candidate presidents determine their “team” who will form the board of directors and carefully select people of homogenous political leanings. As a result, the winner of the election comes to the bar administration as a unified and homogenous block. This then affects the elections at TBB given the fact that the election system is based on delegate numbers. The larger the bar association, the more delegates it has.

In smaller towns, on the other hand, candidate presidents must be careful to include members of various political leanings into their list to get elected. At the same time, elections at three big towns not only effect the relationship of the bar with TBB but also with the government as big bars feel free to circumvent TBB and directly engage state institutions to address their problems. In view of all this, a full picture of the relationship between TBB and state institutions required a separate focus than my list.

During my interviews, it also emerged that “Kurdish bars” as well as “conservative bars in Anatolia” as they were referred by some interviewees have been important players in the “revolt” against the old administration. I therefore decided to include them in the sample. I went to South Eastern

Turkey and interviewed the presidents of two bar associations. I then interviewed TBB officials in Ankara. Lastly, when I attended the regional meeting of Eastern and Southeastern bars in Kars, I was also able to interview two additional presidents of bars.

Table 1 below shows the towns of my interviewees and the size of the bar in terms of member numbers. As can be seen, bars that have between 100-250 members and with less than 100 members constitute the largest group of bars in Turkey. Nine out of thirty interviews were held with those. Then comes the group where the number of members are between 501-999 and 251-500. In that group, I interviewed ten bar presidents from six different towns, four of which were from the same town. Lastly, I interviewed three bar presidents from bars with more than 1000 members and eight bar presidents with more than 5000 members, reaching a total of thirty. It will be noted that other than Istanbul, Ankara and Izmir, towns were given dummy names to protect the anonymity of the respondent. Table 2 shows the geographical distribution of bar associations that I interviewed.

Table 1, Size of bars in Turkey in terms of member numbers and the bars in the sample.

Number of	How many	How many	
attorneys	bars in TR	interviews	Name of bar in the sample

>5000	3	8	Ankara (5), İstanbul (2), İzmir
>1000	5	3	Böğürtlenkent, Nektarinkent, Kavunkent
Betw. 501-999	12	5	Elmakent (2), Muzkent, Armutkent (2)
Betw. 251-500	11	5	Üzümkent (2), Mangokent (2), Şeftalitent, Erikkent, Çağlakent, Ananaskent, Mandalinent,
Betw. 100-250	27	6	Portakalkent, Çilekkent
<100	20	3	Karpuzkent, Humuskent, Narkent
Total	78	30	

Table 2, geographical distribution of bar associations in the sample.

Region of bar	Number of interviews
Aegean	2
Black Sea	1
Eastern Anatolia	1
Marmara	9
Mediterranean	5
Central Anatolia	7
Southeastern Anatolia	5
Total	30

After finishing the interviews with former presidents of bar as my main source of data, I then focused on the second group of interviews. As discussed earlier, these interviews were not made for the purposes of analysis but to give the perspective of the other two branches as to the relationship. As I already had pilot interviews initially conducted with the

Ministry of Justice officials, I interviewed few more people (reaching a total of ten) some of which were MPs from the opposition serving in the Justice Committee; additional high bureaucrats from the Ministry of Justice and two persons from the higher judiciary.

III.4. Non-participant observations

In order to increase the validity of data from the interviews, and consistent with qualitative research principles (Creswell 2007), I decided to use another source of information: non-participant observations made in different occasions involving TBB and various state institutions. Thus, the first non participant observation was made in a meeting I attended on 25 December 2010 in Ankara. It was convened by TBB and attended by the representatives of local bar organizations that worked on legal aid issues. The full day event was attended by more than 58 bars of the total 78. It was held to understand the specific positions of the local bars concerning legal aid so that TBB could develop a position on the issue to be then discussed at the Bar Presidents meeting.

Another reason for TBB to convene the meeting was to use the views of the local bars as a basis for later discussions with the Ministry of Justice officials who were thinking of changing the law on legal aid. Because legal aid is something I was already working on at Bilgi, many of the issues the participants were discussing were things I was familiar with. This was

helpful since understanding the substantive issues allowed me to concentrate on the form of the meeting which was a bottom up policy formulation effort by TBB. The meeting also was a good starting point for me to understand the value of triangulation.

The second non-participant observation was a committee meeting that took place on 27 December 2010 in Ankara between the members of TBB and the mid level bureaucrats of the Ministry of Justice. The committee was established by the order of the Minister of Justice for the solution of the problems of the legal profession. As some of my interviewees already told me about the event that led to the establishment of this committee, it made perfect sense to attend it. TBB officials who were hosting the meeting informed me about it. Nevertheless, I had to ask the most senior bureaucrat in attendance for their permission as well. Fortunately, three mid-level bureaucrats who were in attendance turned out to be previous acquaintances of mine.

This meeting allowed me to see first-hand what issues the parties were discussing and most importantly how they were discussing. In particular, I could observe how collegial the Ministry bureaucrats and TBB officials were to each other. This was a half a day event attended by ten persons, two of which were from TBB, one from civil society, one from the Ministry of

Finance and the remaining six from different directorates of the Ministry of Justice.

I made my third non-participant observation also in Ankara at the bar president's meeting on 22 January 2011. This was a significant meeting because it was the first that the presidents of bar were having with the new president of TBB some of whom seemed to have played a big role in getting him elected. I was curious to observe the dynamics of this. The meeting was attended by a large number of bar presidents -some of whom I already interviewed- and lasted the longest among my non-participant observations. It started around 10 AM and except the lunch break and a ceremony, went until after 10 PM. I could no longer wait for the speeches of the remaining two speakers in the end also because I knew the event was being tape recorded to be later published.

The meeting was like a huge plenary and its tone became at times very accusatory. It involved discussion of controversial issues and allowed me to observe the dynamics between and among bars and TBB. During the meeting, one of my interviewees who happened to be my class mate from Law School, said that there was academic interest in TBB, hinting at my research. Although I was embarrassed by this gesture, thanks to this, I was introduced to some bar presidents that I was going to later interview.

Lastly, on 19 February 2011, I attended the regional meeting of the bar presidents of Eastern and South Eastern Anatolian Bars in Kars. This was a regular event of the bar presidents of the region who were meeting bi-monthly in a different city to discuss regional issues as well as events in the country. The agenda of the meeting consisted of the new constitution; the abolishment of courts with special jurisdiction; the mass graves that were found in Mutki; right to defense in mother tongue and development of a common attitude in mass trials (such as KCK).

Notwithstanding these issues, the meeting was interesting for the fact that despite being a regional event, it was attended by many local bar presidents or board members from outside the region such as of Bursa, Artvin, Ankara, Aydın, Afyon, Kütahya, Ankara, Mersin and Tekirdağ (notice that except for Afyon, the political tendencies of these bars are pro-CHP). In addition, there was a social program for the attendees that allowed me to spend social time with bar presidents, make observations and even interview two additional bar presidents in a suit/private premise in the hotel.

III. 5. My role as researcher

As a lawyer, my experience and knowledge of the field both in terms of the structure of the judiciary and the legal profession was crucial in researching the subject. It also made it easy to deal with the professional “codes” of lawyers. Working at Bilgi was also helpful as it ensured accessibility to a

difficult group such as the bureaucrats. At the same time, I was aware that being a lawyer could mean some prejudices on my behalf. While I made every effort to be objective, I might have still brought biases and values given my personal background. Since qualitative research is interpretive (Creswell 2007), I know that these are important variables in interpreting social reality. In fact, they may shape the way I view and understand the data and the way I interpret it.

My perception about bar organizations has been shaped by my personal experiences as an attorney. My first admission to a bar was to the State of New York in 1998, couple of months ahead of my membership of the Istanbul Bar in the same year. I worked in a law firm in New York for two years where I actively practiced law. When I returned home in 2002, I started to work in a law firm. During this time, I did not have to think about bars any more than in mere membership terms. The bar was arranging for my social security, contributions of which were being paid by my employer. My yearly membership fee was also covered by the firm and that was it.

In 2003, I quit legal practice and started to work at Bilgi. While teaching legal clinics which allowed law students to provide free legal information to public, I worked on issues of access to justice, poverty and legal aid. Through my work I concluded that the way the profession was regulated (by the bar) was hindering access to justice for the poor. I wrote articles to that

effect and defended that view. Meanwhile, I established a pro bono network, organizing big law firms in Istanbul to provide free legal advice to NGOs and people of low income. I knew from international experiences, that legal clinic or pro bono networks were not much liked by bars. In fact, some bars tried to block or stop provision of any free legal information.

Meanwhile, my work at the university also meant engaging in research about courts and the legal aid system. Indeed, after releasing our research about the criminal legal aid system in Istanbul courts, I was invited by bars to conferences in Istanbul, Ankara and Adana as speaker. I provided training to attorneys as an expert in an EU project in Antalya, Eskişehir, Trabzon, Nevşehir, Gaziantep, Bursa, Tekirdağ, Ankara and Manisa in legal aid as well as in mediation. In other words, I was working with bars and responding to their criticism and questions about our research and seeing their defensive positions. Bars were viewing legal aid mostly from a money making perspective for their members rather than a public service for the poor. Nevertheless, we worked in a courteous and collegial manner.

Further, since 2008, my students have been teaching in various prisons of Istanbul. In this capacity, I have come in contact with many prisoners and the failures of the criminal legal aid system because I monitor the work of my students in prison. Usually inmates complain that they see their attorneys only during the hearing and that these attorneys often do not visit

them in jail to prepare a defense. For instance, when asked whether they have an attorney, many inmates answer by referring to their legal aid attorney as “*the Bar’s attorney*”. In other words, they do not see legal aid lawyers as “their” attorney.

Given all this, my perception of legal practice has been very different than the bar administrators I have interviewed. When I practiced law, I was purely a commercial lawyer specializing in shipping and transportation law and later on corporate law. I was frustrated with using my skill and knowledge to generate more income for wealthy people. However, many bar presidents I interviewed were criminal lawyers and contrary to my purely technical legal practice, they were involved in social and political issues of their town or of the country. In other words, my experience of legal practice is from a “free market” background while their practice seems criminal law and other social legal issues, thereby justifying a more self righteous view of the profession on their part.

Having now disclosed my personal beliefs, background and differences, I should mention the challenge of being a young woman in the field. Most of my interviewees were male and much older than me. Thus, in a hierarchical society like Turkey, being an attorney was advantageous especially in the beginning when I was less confident of my role as a researcher. It somehow *compensated* my lack of experience as a social scientist.

At the same time, collegiality helped me to build rapport with the interviewees because I often knew where they were coming from. For instance, when they referred to art. 102 of the Code of Criminal Procedure which limits the time period for detention and led to the release of Hizbullah members among others, I knew the article by heart. Or sometimes my being a lawyer signaled to them that they could speak with me in “legalese” if they needed to. Indeed, after confirming that I was a lawyer, they gave me more specific examples from codes involving legal intricacies that would be hard to digest for non-lawyers. For instance, one interviewee explained a provision in the Code of Civil Procedure by saying something like: “since you are a lawyer, you will understand why it is such a harsh penalty when a party in a lawsuit is deemed to have his or her right waived if he or she fails to file a petition”.

At the same time, relying on collegiality had its disadvantages. Given the fact that collegiality creates equality and is a very strong value in the legal profession for this older generation of bar presidents, I observed that it created curiosity about *me*, a fellow attorney disguised as a political scientist, interviewing another attorney. It sometimes distracted us from what we were doing, as they wanted to know about me, why I was doing this, what I thought about the subject I was researching about, etc. Over time, I therefore started to downplay my lawyer side and kept silent when they explained to me what the law was, even if I knew it. However, there

came moments when I felt I should not make things more difficult for them by remaining quiet especially when they were referring to technicalities about the law. At those times, I tried to signal that I knew about the subject by using a legal term or referring to a specific legal amendment without sounding like I was putting the words in their mouth.

Towards the later stages of the study, as I learned more about the issues involving bar organizations and read through their lines as to events that other interviewees already described, I started to feel more and more comfortable in the field as a researcher. This confidence meant that I no longer had to strengthen my position vis a vis my interviewees by “empowering” myself with the law. In fact, when my last interviewee said to me “*you know better than I do* that social events have more than one cause”, I felt victorious for having been viewed by him as a social scientist. In the similar vein, when one bar president from Southeastern Turkey asked me whether it was true that Mahmut Esat Bozkurt said that non Turks could be only servants in Turkey, I felt pride because he was clearly trusting *my knowledge in politics* and not in law.

Being identified as a political scientist also had its disadvantages because it showed an interest in politics. Thus, after we were finished, some of my interviewees (politicians) wanted to chat with me about the political situation in the country and even learn my political views. Some were also

interested in the conceptional framework of the thesis and when I described it in more detail, they gave me their take on corporatism. I tried to keep my political opinion to myself but they were insistent. So I had to tell one of them whom I voted for in the last election.

One interviewee put me in an ethical dilemma. He was helpful to inform me about a meeting where I ended up making my first non-participant observation. Thereafter, however, he called and asked for my views of the meeting. To return his favor of letting me know about the meeting, I gave him my comments on the phone. Liking my observations, and commenting “we cannot see these things”, he asked me whether I could write a report for him. This put me in an awkward position. I told him that there might be some ethical concerns in doing this that I wanted to think about. I then refused saying that I introduced myself to the participants at the meeting as a researcher and not as a spy. If I then wrote a report for someone at TBB, it would be inappropriate.

It should be said that as a group of people to be researched, bar presidents wield enormous authority. This is probably to be expected since they are used to dealing with power and state institutions as well as taking a stand and where necessary, confront authority in general. They usually know well what they would like to say in a formal and polite way. Given the fact that

bar presidency is an elected office, maybe this powerful authority is not something to be surprised about.

Further, they consider themselves “enlightened people of society with a mission”. Indeed, when I was informing them (by reading from the interview protocol) things like the interview being conducted for scientific purposes and everything we spoke would be confidential, I could see that it sounded like a “reminder of rights” to them. In fact, one of them said “you do not have to remind us all that, *we* know it”. Many did not care about their name being kept confidential and made comments such as the following: “you can write my name, I say these things everywhere” or “I write articles about this subject, everyone knows I think like this” or “I say all this at TBB, I say it to their faces”.

Nevertheless, understanding my role as a social scientist, many listened to this part with a smile on their faces. At some point, I decided I should also smile and say something like “now that I have reminded you of your rights, we can begin”. This helped to relax the atmosphere because it served as an acknowledgment on my part of their role as a defense attorney (most of them were). In this capacity, they hear the police, the prosecutor or the judge reminding their clients their rights to silence and an attorney. I often felt that all these reminders were designed for powerless subjects of research whereas all of my participants were very powerful. In fact, two of them were confident to the point of arrogance and questioned the terminology in the interview protocol in a hostile fashion.

One of them (also a professor of law) truly scolded me and said “You are referring to the state all the time, what do you mean by that, do you refer to the institutions of the state? There is no such thing as the state, it is the people who bring about the state. If I was in your jury, I would ask you that”. Similarly, one participant could not really understand the formulation in the interview protocol which referred to my thesis “exploring the relationship of TBB and state institutions”. In a true lawyerly fashion, he got stuck on the word “relation”. He went on: “what do you mean by relation; you cannot make me say those things; I do not understand what is in your head; your analogy is wrong”. He was the only person among the thirty bar presidents and administrators who did not allow tape recording. His aggressive behavior almost made me cry. Later mellowed down and said that it sometimes took people time to break the ice. In the end, he recommended me to be more provocative. Since I knew that as a researcher I should never take control (Weiss 1995), I let both of them rant about it all although it has been very difficult for me to handle these two situations.

Two persons in the second interviewee group also did not allow for tape recording. I explain this by the fact that we were not alone in their offices. Another explanation is that one of them was a prosecutor. I observed in other research that given their suspicious nature by profession, prosecutors are less likely to allow tape recording than judges. Meanwhile, one person in this group allowed for tape recording but did not sign the consent form

saying that *he* was talking to me and “that should be enough”. Meanwhile one interviewee from the higher judiciary when signing the form said, “you cannot make anyone at the Court of Cassation sign such a form”.

In terms of collaboration with my interviewees, I believe that I have been able to establish good rapport with them. I am saying this not only because they have been kind to me behavior wise such as assigning their administrative staff to take me to the toilet or drive me to the bus terminal or fetch my luggage from the bus station (to give me a ride); ordering food (because “I must have been hungry just off the bus”) and recommending me bus companies since I am coming “all the way from Istanbul”. But there have been also instances of giving me the benefit of the doubt: “because I did not know how long an interview would last, I allocated my whole afternoon for you” or showing appreciation: “I have been a bar president for five years, no one asked me these questions.”

Some volunteered to make phone calls to arrange appointments with the persons they suggested that I interview (which I refused). Two phoned me to make additions to the interviews we made or to give me names and phone numbers. On their own initiative, some personally called future interviewees they recommended, to say I was going to call them, giving the prospective interviewee a head-up. Or they let me know of upcoming meetings that could be of interest for my thesis. They made their personal assistant send

me minutes of meetings in the Parliament or copied important archival documents for me.

One of them -an administrator at TBB- asked the hotel of TBB to give me his room due to his early departure. In that weekend, TBB hotel was full with people who came for the bar presidents meeting. Similarly, many asked me at the end of our interview, whether they have been helpful for my study. Some personal connections at the higher judiciary were also very considerate. After failing to arrange a time for us to meet in Ankara, one of them suggested that he meet me in the VIP room of the Atatürk airport when he was on his way back to Ankara. He left my name with the Security at the entrance so that I was allowed to the VIP room where we ended up conducting the interview while he was on personal leave with his sick daughter on his side that he brought to Istanbul for treatment.

Consistent with the principles of qualitative research, I went to my participants' natural surroundings to observe them. Thus, doing the research involved a lot of travelling within the country to places in Central Anatolia; Eastern Anatolia or South Eastern Turkey that I have never been before. In those places it was obvious that I was not from the town given my looks and the fact that as a woman I was carrying a lap top on my shoulder.

Meanwhile, Although I have been to Ankara many times, I never made it to the Parliament. When I went there for the first time to make interviews with MPs, I was a total stranger to the cultural codes of the place. The day I went to the Parliament turned out to be in fact reserved for the people to visit their representatives. As a result, apparently knowing the procedures, people arrived in droves to make requests from MPs while I discovered information desks and the roles of consultants in accessing MPs. It was also interesting to see buildings that I watched in news that were full of MPs who discussed issues with each other and journalists.

Despite the fact that I made appointments with all the MPs I was going to see, I often had to wait because they had unannounced visitors from the MPs' home town. In that sense, I observed politics as patronage in action. In fact, one person did not hesitate to make his request of transfer to Ankara in my presence to which the MP responded that he cannot arrange a place at an independent institution reminding the visitor that his request should be a realistic one. When one of the MPs I was interviewing said that "in Turkey many people were participating in politics but not because of a political interest in terms of how can we live in a better country in five years but because of an economic interest", I knew exactly what he was talking about.

It later became clear that this type of request making was not limited to MPs. The offices of the Ak Party town representative who also happened to

be the president of bar of the town also functioned like a request bureau. Before we started the interview, a visually handicapped man came in with a young girl in his arm who was serving as his walking aide, demanding that my interviewee pay his electricity bill. Another interviewee at TBB also complained that acquaintances wanted privileged treatment in their disciplinary files, showing the prevalence of the same phenomenon at three different sites.

Interviewing MPs of AKP proved tricky sometimes. They often corrected me by referring to the name of their party as “Ak” which I tried to adopt during the interview but then it slipped out of my tongue as AKP again. This sounded almost deliberate and raising questions about my stance towards Ak since opponents of Ak put a special emphasis on referring to the party as AKP while the party leader emphasizes Ak. One incident is remarkable in that regard. After the interview, one of my Ak interviewees gave me a ride to the airport. I told him that I was initially worried about missing my flight but thanks to the ride this was no longer the case. He said our interview would have lasted longer if I were the typical electorate of Ak, implying that he would talk more to influence me rather than just make an interview.

Culturally, I often felt like a stranger in my travels. For instance, when I was interviewing one of the presidents of the Ankara bar, there was a noise

outside. My interviewee paused and asked me whether I knew what that was. I replied that it sounded like the closing of the trunk of a car. It turned out to be canon fire from the Çankaya Palace in honor of Mrs. Kirchner, the Argentinean President who was visiting Ankara. We laughed at my interpretation but it only shows my cultural inaptitude. Indeed, the officialdom in Ankara is truly alienating for someone who works at a work place where even the president of the university queues to get lunch.

Indeed, I received calls from secretaries in Ankara stating that they were calling from “The Offices of Honorary Mr. so and so”. In the same vein, instead of putting me through, they said they were “presenting me to Mr. so and so” which made me almost feel like I was going to soon talk to the President of the Republic. Similarly, when phoning my participants one day in advance to confirm the interview, one of my obviously religious participants said “inşallah”. This worried me as it sounded almost like an uncertainty about tomorrow’s meeting in my secular understanding of the word. When we met the next day without any problems, I understood what he meant was: “greater than me there is god, if god allows it”.

Speaking to people who had strong Anatolian accents or whose mother tongue was not Turkish also turned out to be a challenge. After asking them to repeat what they have said a couple of times or requesting clarification for what they had said, two of them said “this is as much as I can explain it

with my Turkish”. At that point, I felt terrible by my overzealousness. I realized that making sure I understood everything correctly, I inadvertently made them feel uncomfortable.

Visiting Southeastern Turkey helped me to put many things my interviewees were saying into perspective. For instance, when travelling from one town to another, the road ran parallel to the Syrian border and makes one realize how far these places are from the “center” or “mainstream” of the country. This point was emphasized when presidents of bar said that while the practice of law is hard in Turkey in general, it is even harder in the region because rules and regulations that apply in other parts of the country do not apply there. This point was even confirmed by the reception of the mobile phone that switched sometimes to the Syrian network.

When I went to the Court House in one of the Southeastern towns with a private taxi because there were no yellow taxis, I was curious about the type of hearings held in the criminal court to understand the local context. I looked at the hearing list from the previous day that was still hanging at the door. Sure enough, cases concerned smuggling (I was at a border town), public unrest (most of the residents were actively engaged in street protest with the police) and intentional bodily harm. More surprisingly, a notice hanged on the door of the hearing room: “please do not enter into the

hearing room with a gun”. These were little hints for me, the researcher, to understand the reality my interviewee was describing about practicing law in the region and how legal authorities who were not from the region were viewing the local people. It also helped me to understand why he fought hard to bring about change at TBB to make TBB more sensitive about “their” reality.

Going to the site was also helpful to see my interviewees’ offices. For instance, it occurred to me that unlike the business offices of my other participants, the offices of two presidents’ of bar in the Southeast did not have a portrait of Atatürk behind their desk or anywhere nearby I could see. Of course, I did not look specially for Atatürk portraits in the offices of my participants, but in these two cases, I noticed their absence. I found this in conformity with the points they were making such as their “rejection of the monist stance imposed on them by the Kemalist project”.

Among the non-participant observations, the one in Kars was the most intense experience as I spent the whole weekend in the same hotel with presidents of bar. I thought about staying at another hotel to be able to keep my distance as a researcher but then was concerned that this could make me look like a snob from Istanbul that refrained from spending social time with them during tea breaks, lunches, dinners or in the bus while visiting touristic sights in the region. Also, I felt staying in another hotel could deprive me

from the opportunity to make observations and hear anecdotes about my research subject.

The social program was organized by the local bar who greeted every attendee upon arrival at the airport by mobilizing all the attorneys in the city. For instance, when I asked the attorney who was driving me to the hotel about Cemal Kırbayır whose 103 year old mother met prime minister Erdoğan to discuss his whereabouts and other disappearances that have happened in the 80s, he voluntarily took me to where he disappeared from.

Indeed, politics was everywhere in this snow covered city. In a neighborhood of Turkey with clear conservative tendencies, people proudly told me about the city's tolerant attitude as opposed to Erzurum. When we were visiting Ani, politics was again in full sight: we were at the border, looking right across Armenia which country we do not have a border crossing with. Then, we were shown the place where MHP MPs prayed together at the first mosque in Anatolia to commemorate the arrival of Turks in Anatolia. We were taken to Sarıkamış where Ottoman soldiers froze to death and visited the sculpture that was later removed by the order of the Prime Minister because it was a “monster”.

As a result of this loaded atmosphere, it was impossible to avoid politics and the Kurdish issue. Although I preferred to listen and not reveal too much about my own views in order to keep a neutral social scientist stance, some personal stories told, made it very difficult. I was talking to presidents of bar who were scared when somebody merely sneezed behind them when walking down the street; whose cars were stopped and searched in dark-lonely nights by the same civilian police twice in response to their referral to the immunities of defense counsel concerning searches and were then condescendingly told “see, how we can search you” or who were held at gun point on the floor but were only saved in the last minute.

I feel that my attitude to bars have changed thanks to this research. What the interviewees described helped me to separate my own experience with the bar and to view it as a research subject to be understood. Over time, the struggles within TBB and among the local bars, the values, processes and what they stood for as well as their relationship with the state institutions be they the Ministry of Justice or the judiciary have become very interesting for me. I started to read them as small manifestations of a large picture: change effecting the judicial branch including the bars, leading to current tumultuous climate one observes in almost all institutions of the judiciary. As a result, I came to naturalize the events and stances of bars.

Having now described the method and the atmosphere of the interviews as well as non-participant observations made in trying to understand the relationship between TBB and state institutions, I can now turn to the findings.

Chapter Four: Findings

The main goal of this thesis was to empirically test the interest group literature's assumption that a corporatist interest group structure leads to policy concertation. To find out whether the relationship between TBB and state institutions could be described as such, interviews were conducted with presidents of local bars, administrators at TBB and state officials. In addition, non-participant observations were made. I found that there was no policy concertation between the parties given the monist state tradition in Turkey, making state institutions disinclined to cooperate with interest groups or share power.

Equally important, the thesis tried to understand the reasons for conflict between TBB and state institutions especially in view of the dictum of corporatist theory that relations between corporatist partners are consensual. In that regard, I found that social and economic change undermined TBB's group homogeneity. Consequently, TBB swings between a protective and promotional interest group and strays from playing a policy partner role. When the profession's historical engagement in politics is added to this, sustaining an apolitical relationship between TBB and state institutions

becomes all but impossible, thereby contributing to a conflictual relationship between the parties. It can be argued from the above that in Turkey interest group heterogeneity is an equally important factor as the monist state tradition to undermine corporatist policy making.

Before I get into the findings, I should explain my work after data collection. While a time-consuming and arduous task, I undertook transcription of data. This allowed me to read the interviews many times and “hear” the interviewees to get a general sense of what they were saying. Thereafter, I coded the data under subthemes using a qualitative research software called Max QDA. The software produced coded segments that fell under themes and various subthemes that I determined. This then allowed me to write the findings.

Turning now to findings, I will first give some demographic data as to the respondents. Table 1 below shows a breakdown of the demographics of respondents.

Interview Number	Birth year	Party membership	Gender	Years as local bar admin	TBB post	Length of interview (min)
Int. 28	1965	Yes	M	2	No	60
Int. 30	1965	Yes	M	10	No	50
Int. 29	1931	Yes	M	7	Yes	120
Int. 27	1970	No	M	6	No	75
Int. 26	1947	Yes	M	24	Yes	120

Int. 25	1965	Yes	M	12	No	60
Int. 24	1968	Yes	F	6	Yes	40
Int. 22	1950	Yes	M	5	No	45
Int. 21	1952	Yes	M	19	Yes	80
Int. 23	1953	Yes	M	9	Yes	50
Int. 20	1955	Yes	M	15	No	45
Int. 19	1974	Yes	M	3	Yes	60
Int. 18	1946	No	M	12	Yes	80
Int.17	1945	Yes	M	11	Yes	65
Int. 16	1947	Yes	M	11	No	70
Int. 15	1957	Yes	M	21	No	100
Int. 14	1975	Yes	M	4	No	30
Int. 13	1952	Yes	M	17	Yes	90
Int. 12	1968	Yes	M	11	No	100
Int. 11	1972	Yes	M	2	No	80
Int. 10	1944	Yes	M	6	Yes	70
Int. 9	1957	Yes	F	1	No	50
Int. 8	1963	Yes	M	20	Yes	40
Int. 7	1965	Yes	M	7	No	40
Int. 6	1965	Yes	F	7	No	45
Int. 5	1940	Yes	M	6	Yes	120
Int. 4	1949	Yes	M	8	Yes	45
Int.3	1939	?	M	10	?	40
Int. 2	1950	Yes	M	16	Yes	50
Int. 1	1951	Yes	M	4	Yes	65

Table 1, the demographics of each respondent.

To sum up the demographics of respondents:

Gender: 3 female, 27 male.

Party affiliation: 27 said yes (only 7 were in my original MP list); 2 said no, 1 missing data.

Average age: 55 years.

Average length of bar work: 9,7 years.

TBB post: 15 yes, 14 no, 1 missing data.

Average length of interviews: 66 minutes.

As can be seen, the respondents were overwhelmingly male and politically engaged: 27 of the 30 have been a member of a political party. With 55, their age is much above the average age in the country. Further, the average length of their local bar work was almost 10 years, suggesting long involvement with the profession as an administrator. Half of the respondents held a TBB position, which in addition to the time served at the local bar can be quite a long commitment to professional organization. In that sense, as suggested by the professionalization literature, age and gender wise, participants seem to belong to an older generation whose values and ideas of the profession do not necessarily reflect the currently expanding profession. Lastly, the average length of interviews being over an hour suggests that respondents were eager to talk about the subject.

IV.1 : The relationship between TBB and state institutions

In attempting to clarify the relations of TBB with state institutions, my first question to the respondents was about the activities of TBB. While respondents gave many different answers, for ease of reference, I arranged the activities mentioned into categories as to what interest groups usually do such as implementation of laws; making policy and the like.

- a- Implementing laws: check the documents in the file of candidate attorneys³⁸; preparation and signing of licenses to practice law³⁹; ensure the profession's functioning in an honest, trustful way and in accordance with ethical rules⁴⁰; serve as an appellate body concerning disciplinary decisions of local bar organizations⁴¹; respond to questions and requests from courts and other branches⁴²; prepare professional ethics rules⁴³; determine each year minimum fee tariff for legal services and opine on the criminal legal aid fee tariff⁴⁴; approve decisions of local bars that are subject to review⁴⁵.
- b- Material benefits: unify the apprenticeship practices of bar organizations⁴⁶; work on the social security of attorneys⁴⁷ including elderly and health care⁴⁸; build and operate educational, social and accommodation facilities⁴⁹; provide financial assistance to local bars in the training of apprentices⁵⁰;

³⁸ Interviews 1, 10, 15.

³⁹ Interviews 1, 2, 10, 11, 15, 17, 20, 30.

⁴⁰ Interviews 1, 10.

⁴¹ Interviews 10, 11, 17, 18, 20, 30.

⁴² Interview 5.

⁴³ Interviews 2, 17.

⁴⁴ Interview 6, 17, 18.

⁴⁵ Interview 10.

⁴⁶ Interview 1.

⁴⁷ Interviews 2, 6, 10, 15, 29.

⁴⁸ Interview 17, 19.

⁴⁹ Interviews 2, 14, 19.

⁵⁰ Interviews 6, 8.

engage in continuing legal education of attorneys⁵¹; defend legal changes concerning health coverage of legal apprentices; lobby for payment of reduced fees concerning gun licenses or green passports for attorneys⁵².

- c- Making policy: contribute to the drafting of the 1982 constitution when asked by the Council and on its own⁵³; initiate court action to strike down unlawful regulations⁵⁴; draft constitution⁵⁵, act on attorneys⁵⁶ or other laws; provide opinion and recommendations concerning draft legislation⁵⁷; issue reports on legal subjects such as detention⁵⁸ rule of law and the judiciary⁵⁹; publish journals, books and minutes of meetings⁶⁰;
- d- Organizing consensus: convene or co-host symposia, panels, meetings and conferences concerning legal subjects (such as new laws coming into force; violations of rights concerning a trial or issue in the country; professional issues; legal education)⁶¹; convene bar presidents meeting⁶²; ask for the

⁵¹ Interview 10, 18.

⁵² Interview 15.

⁵³ Interview 29.

⁵⁴ Interview 10.

⁵⁵ Interviews 1, 5, 14, 18, 29.

⁵⁶ Interviews 1, 2, 5, 6, 10, 16, 27.

⁵⁷ Interview 10

⁵⁸ Interviews 1, 2.

⁵⁹ Interviews 14, 17.

⁶⁰ Interviews 1, 8, 18.

⁶¹ Interviews 1, 5, 8, 11, 18, 19, 30.

⁶² Interview 1, 13, 18.

opinions of the local bars concerning draft laws or amendments in order to find a consensus among bar organizations (such as victim-offender mediation)⁶³; invite MPs in the Justice Committee to bar presidents meeting⁶⁴; liaise with local bars to solve their problems⁶⁵.

- e- Advocate policies: defend increase of attorneys fees tariff in legal aid payments (and if that fails engage in protest activity)⁶⁶; prepare media declarations concerning various legal subjects such as criminal legal aid payments⁶⁷; hold an official opening speech at the start of the judicial calendar⁶⁸; fight for acceptance of TBB issued IDs as a formal ID⁶⁹; fight for the rightful place of bar presidents in the protocol⁷⁰; lobby for a bar exam⁷¹; engage in politics⁷²; attend various Committee meetings at the Parliament⁷³; contact MPs and engage political parties and Ministers in the legislative process through written and oral submissions⁷⁴.

⁶³ Interview 22.

⁶⁴ Interview 13.

⁶⁵ Interview 2.

⁶⁶ Interview 18.

⁶⁷ Interview 14.

⁶⁸ Interview 1.

⁶⁹ Interview 15.

⁷⁰ Interview 15.

⁷¹ Interview 1.

⁷² Interviews 4, 5.

⁷³ Interviews 4, 11.

⁷⁴ Interview 4.

- f- Advocate values: protect the rule of law and defend supremacy of the law⁷⁵; defend human rights and attacks against it and criticize practices during military rule such as extensive search of attorneys in prisons⁷⁶; provide legal representation before military courts for members⁷⁷.
- g- Other: engage in international relations with other countries' bars⁷⁸; participate in EU projects⁷⁹.

As can be observed, most of the activities mentioned by respondents allows one to classify TBB as a protective interest group.

Meanwhile, it should be noted that to undertake these activities, TBB must be contacting the three branches as well as other state institutions, the media and the public. To find out, I did not ask respondents directly what the relationship between TBB and the judicial or any other branch was. Rather, I formulated the question in a generic fashion and asked "which state institutions TBB was engaged with" when conducting its activities. I also wanted to see whom they mentioned first and the most as well.

Interestingly, I sometimes had to clarify what I meant by the question.

⁷⁵ Interviews 1, 17, 18, 20.

⁷⁶ Interview 29.

⁷⁷ Interview 29.

⁷⁸ Interviews 2, 17, 18.

⁷⁹ Interview 5.

Similarly, when respondents did not mention one of the three branches, I had to specifically ask about the branch they were omitting.

I will start the findings with the relationship of TBB and the judicial branch. I will then move on to the relationship between TBB and the Ministry of Justice and to the relationship with the Legislature. Then, I will look at the relationship between TBB and state institutions in general including the government. Lastly, I will briefly review the relationship between TBB and other professional organizations.

IV.1.1 : The relationship between TBB and the judicial branch

I wanted to start with TBB's relationship with the judiciary because when analyzing the data, it was obvious that respondents -all attorneys- were talking about two different layers in this relationship. First, they were referring to the relationship of an attorney vis-à-vis a judge or a prosecutor. Second, they made reference to the institutional relationship of the bar or TBB with that of the judiciary, be it the local courts, high courts or the High Council of Judges and Prosecutors. Most importantly, it seemed that the perspective and discourse of the first defined the nature of the second relationship. Given that, I am starting below with the first layer as it manifests the institutional attitude of the judiciary –defined in Turkey to include the court as well as the prosecution- towards attorneys.

IV. 1. 1. a: Attorneys versus judges and prosecutors

Respondents said that despite graduating the same school, judges and prosecutors saw attorneys as outsiders and stayed away from them⁸⁰. They used analogies that described themselves as the step child⁸¹ and bride (of the court house)⁸² or referred to themselves as “the other”⁸³ vis-à-vis judges and prosecutors. As a result, even in the offices of the bar that was located inside the court house, one felt like in a shelter⁸⁴.

Respondents described many anecdotal instances demonstrating their “otherness”. For instance, when the president of a High Court recently traveled to a central Anatolian town, he visited the Head Prosecutor⁸⁵ of the town; President of the Justice Committee⁸⁶ but not the local bar. When asked whether he wasn’t going to, he replied that “*their tradition* did not

⁸⁰ Interviews 1, 9, 28.

⁸¹ Interviews 4, 15, 21.

⁸² Interview 4.

⁸³ Interview 9.

⁸⁴ Interview 20.

⁸⁵ In Turkey, the job description of a Head Prosecutor involves a lot of administrative responsibilities including running the logistics of court houses.

⁸⁶ Justice Committee is an administrative unit established in each jurisdiction where there is a felony court (ağır ceza mahkemesi). It determines discipline, transfer, promotion and similar issues of personnel including judges and prosecutors in the geographical boundaries where the felony court is established. The Head Prosecutor and the Justice Committee are considered the most important judicial institutions in a district.

include visiting the bar”. In the respondent’s opinion, there was nothing left to say after this comment from the president of one of the High Courts⁸⁷.

Similarly, one respondent learned that a new prosecutor was appointed to a district in his Aegean town. As president of the bar, he decided to pay a visit to the prosecutor to say “welcome”. He noted that he was in the district for other business and had he heard about the appointment before, and knew he would not be able to make a welcome visit in a timely fashion, he would also send flowers. Nevertheless, he knocked on the door; buttoned up his jacket as a sign of respect for the prosecutor’s post; introduced himself and said why he came. Unfortunately, the newly appointed young prosecutor would shake his hand *without even standing up* from his chair despite the fact that age-wise the respondent could be his father⁸⁸.

Another respondent described how in the court house of the Mediterranean town, he invited a law books publisher to exhibit law books in the corridor of the bar’s floor. There was a genuine need for this because there was no bookstore in the town that sold law books. However, the Head Prosecutor came in and wanted the books to be removed because it was creating *visual pollution*. The president of the bar replied “how so?” since judges and prosecutors as well as attorneys were buying the books that were exhibited

⁸⁷ Interview 4.

⁸⁸ Interview 15.

only once a month. After all, it was not a stand in the street that sold socks⁸⁹. However, the Head Prosecutor was adamant. When the respondent finally gave up, the Head Prosecutor said that they could open the stand for the books once a month but he was going to pretend that he did not know about it⁹⁰.

In a Southeastern town, the Head Prosecutor wanted the respondent to evacuate the offices of the bar that was located in the court house for the simple reason that the bar was making tea in office rooms. As tea service in the court house was already tendered, this was unacceptable. The respondent explained that the bar was not selling tea to third parties for income but was providing it to its members free of charge and that this was none of the business of the Head Prosecutor⁹¹. Similarly, the Tax Office started action to collect funds from the bar for unjustified occupation⁹² because the bar was taking photo copies in its offices. The respondent explained that the bar had to start court action to have this cancelled⁹³.

⁸⁹ The respondent said in Turkish: “işportada bir çorap satmıyoruz”.

⁹⁰ Interview 20.

⁹¹ Interview 25.

⁹² The speaker used the Turkish word “ecrimisil” which is compensation paid for unlawful occupation of a property.

⁹³ Interview 25.

This respondent had more anecdotes. When the court house was undergoing repair work, the Head Prosecutor wanted to take the conference room from the bar. As a result, the bar was asked to remove its furniture because the room was also going to be re-furbished. The respondent wrote to the Ministry of Justice with a threat of staging a protest in the court house by tying himself to the seats in the conference room, upon which the Ministry made the Head Prosecutor to reverse himself by saying the room belonged to the bar while asking the bar to keep this incident confidential and not share with the public⁹⁴.

Lastly, the same respondent explained that in official correspondence when the prosecution writes to the bar, they make a “request”⁹⁵. Thus, the bar equally writes that it “requests” the prosecution to do something. For a while there is no problem corresponding like this. One day, however, the prosecution reminds the bar of the regulation on the proper official correspondence and says that superiors may “make requests” while hierarchical lowers “submit”⁹⁶ their requests. When the bar says that they are in the same hierarchical level and if the prosecution “submits”, they will equally “submit” their requests, the prosecution’s reply is that they are one

⁹⁴ Interview 25.

⁹⁵ In Turkish: rica ederim.

⁹⁶ In Turkish: “Arz ederim”.

step ahead of the bar. Hence, the prosecution will make a request to the bar while the bar will submit a request⁹⁷.

When prompted whether the respondent believed this was an attitude prevalent for bars in the Southeastern region, he said that it was done to all bars in Turkey. He relayed the problem to TBB asking for the adoption of a uniform attitude. The respondent said that he was day in-day out busy with these petty matters and each time he adopted an attitude vis-à-vis the Head Prosecutor, the latter would instruct the policemen at the entry of the court house to cause him trouble with a different arbitrary practice⁹⁸.

In similar vein, another respondent explained how it was a problem for attorneys to review court files without a power of attorney despite the fact that the Act on Attorneys clearly said so. He then described an incident in a Central Anatolian town that happened to his colleague. The colleague wanted to review a file but the prosecutor refused to allow him on the basis of the regulation on court clerks which stated that an attorney could review a court file only if (s)he had a power of attorney. When the colleague challenged this practice by referring to the provisions in the Act on

⁹⁷ Interview 25.

⁹⁸ Interview 25.

Attorneys, the prosecutor replied: “that is *your* code”⁹⁹ suggesting that *he* was not bound by it.

The incident shows a clash between two legal provisions. Legally, a regulation cannot violate a law. But if this is still the case, the act should prevail but as shown in the incident, it does not. As a result, attorneys have for years complained that prosecutors would not let them review files without a power of attorney. The matter is professionally important because an attorney would want to first review a court file before deciding to take the case or not.

Respondents pointed out that the professional socialization of judges and prosecutors emphasized that they kept themselves apart from attorneys. Respondents heard that at the Justice Academy (where judges and prosecutors are trained for the job), candidate judges and prosecutors were being told that they now represented the state and should forget about their friends¹⁰⁰. This discourse not only created a closed caste of judges and prosecutors but also meant separation from social environment¹⁰¹ that led to “professional bigotry”¹⁰² and amounted to the violation of the right to fair

⁹⁹ Interview 28. Turkish version of the prosecutor’s sentence is “O sizin yasanız”.

¹⁰⁰ Interviews 9, 21.

¹⁰¹ Interview 2.

¹⁰² Interview 28. The respondent described this in Turkish as “meslek taassubu”.

trial because judges and prosecutors lived not only apart from attorneys but also from society.

As part of this attitude, prosecutors and judges would not attend panels or conferences organized by the bar or TBB¹⁰³. Since they did not share life with attorneys, they also did not share the law¹⁰⁴. As a result, personal distance translated into professional distance by leaving less time for the defense in criminal proceedings. A manifestation of this attitude was described by one respondent as follows: In the last hearing of a criminal case before the final judgment is announced, the floor must be given to the defense attorney for the *final* words and arguments of the defense. As the attorney starts speaking, however, (s)he sees the judge giving a USB stick to the clerk. Then, as the attorney continues with the defense, the judgment - apparently written before the final defense- appears on the computer screen (designed for showing the hearing record) in front of the attorney¹⁰⁵.

It was also indicated that especially in criminal proceedings, the prosecutor and the attorney were not in the same footing, against the equality of arms principle¹⁰⁶. Likewise, when the court recessed for deliberation before

¹⁰³ Interview 4.

¹⁰⁴ Interview 2.

¹⁰⁵ Interview 21.

¹⁰⁶ Interview 22.

rendering the final judgment, some prosecutors would not leave the hearing room, attending the discussion among judges. One respondent emphasized that the court room architecture which sat prosecutors next to the judge (in an elevated fashion) and the criminal defendant (below) in the middle and the defense attorney on the right, lead to role-confusion for citizens while it also kept the defendant far away from the defense attorney and unable to talk to him/her during the hearing¹⁰⁷.

Attorneys were a part of the trivet that assisted in reaching justice but judges and prosecutors did not view it that way¹⁰⁸ and wanted to exclude the defense¹⁰⁹. This was why when the 2001 amendments were made to the Act on Attorneys, it was specifically stated that attorneys were an integral part of the judiciary in order to discourage a mentality that believed that the criminal process can function in the absence of attorneys¹¹⁰. However, the esprit of the amendments was not internalized by judges¹¹¹ because they did not view attorneys as equals¹¹². Similarly, attorneys were viewed merely as a free profession despite the fact that they represented citizens and their

¹⁰⁷ Interview 30.

¹⁰⁸ Interviews 1, 15.

¹⁰⁹ Interview 23.

¹¹⁰ Interview 23.

¹¹¹ Interview 4.

¹¹² Interview 25.

right to seek legal remedies¹¹³. Or they were viewed as a useless profession that allowed one to make a lot of money in short time¹¹⁴.

Meanwhile in the South East of Turkey, judges and prosecutors did not see attorneys as colleagues because attorneys hailed from the region¹¹⁵. The attitude was also prevalent in the law enforcement personnel: they saw attorneys as saviors of the guilty that they had caught¹¹⁶. Respondents pointed out that the job of the judiciary was to protect the citizens vis-à-vis the state. However, under the influence of a “sacred state” mentality in Turkey, the judiciary has become a mechanism protecting the state against citizens¹¹⁷.

“The president of an administrative court commented to a colleague in (Southeastern town) on the compensation to be awarded to the villagers: ‘you are right, we need to accept this case, but how is the state going to find the money?’. This is the mentality... You are not the Minister of Finance, you are not the defterdar. You issue your judgment, let it go to Council of State for judicial review. The funds are to be thought by someone else, this is not your job. (...)”.

Interview 12.

¹¹³ Interview 7.

¹¹⁴ Interviews 15, 25.

¹¹⁵ Interview 12.

¹¹⁶ Interviews 12, 15.

¹¹⁷ Interviews 12, 14, 15, 25, 27.

As can be seen, the occasionally condescending and disrespectful attitude of judges and prosecutors as described by respondents vis-à-vis attorneys seems to be uniform around the country. It is all the more noteworthy that respondents experienced this attitude as presidents of bar. This suggests that the attitude towards younger and inexperienced attorneys may be even worse, especially considering the fact that their number keeps growing. The prevalence of such a uniform attitude indeed indicates a deep socialization problem on the part of judges and prosecutors. Worryingly, in the criminal law context, this attitude seems to affect the right to fair trial by limiting the rights of defense.

IV.1.1. b: TBB-Judicial branch relationship

The nature of the relationship among the colleagues as described above was no different when it came to the institutional relationship between TBB and the judiciary. It was described as a “one sided love affair”¹¹⁸ or “a necessity due to the protocol but was otherwise limited”¹¹⁹. The bureaucratic structure of the judiciary prevented TBB to establish a natural relationship¹²⁰ but with the constitutional changes to the HSYK this could maybe change¹²¹.

¹¹⁸ Interview 21.

¹¹⁹ Interview 24.

¹²⁰ Interview 2.

¹²¹ Interview 8.

In bureaucratic judicial systems like Turkey, independent institutions like HSYK are designed to ensure that the executive does not interfere in judicial appointments. Accordingly, the HSYK's function is to make the promotions, transfers, discipline and other administrative matters of judges and prosecutors. However, only one respondent said that TBB's most institutional and intense relationship was with HSYK¹²². At the same time, the HSYK was considered important because of its role in the general professional system. Frequently, reference was made to constitutional amendments that were ratified with the referendum in September 2010 involving the HSYK. According to one respondent, attorneys long defended the view that the HSYK should become more pluralist but high courts have been against this. "Because judges do not want us in those structures"¹²³. They wanted to keep attorneys away¹²⁴ consistent with the above described judge-prosecutor block vis-à-vis attorneys.

Meanwhile, the constitutional changes adopted after the referendum seems to have led to two arguments. The first group defended the view that in appearance the HSYK consisted today of 22 persons but in actuality, it consisted of only one and that was the Minister of Justice. Naturally, this situation was undermining judicial independence¹²⁵. Similar view was

¹²² Interview 5.

¹²³ Interview 4.

¹²⁴ Interview 19.

¹²⁵ Interview 1.

defended by one respondent who stated that Division One of the HSYK consisted of people who used to serve at the Ministry of Justice. Further, the Minister, as the President of the HSYK determined the agenda of the HSYK¹²⁶.

In similar vein, the procedures adopted after the 2010 referendum for election of attorneys to the HSYK (as well as to the Constitutional Court) were improper¹²⁷ because they bypassed established structures in TBB. One respondent described in length, why he believed so. His first reason was that the election process was to be organized by the Presidency of TBB but the Presidency had no right to vote. Second, the electorate consisted of presidents of bars. While this appeared democratic, it created inequality under the appearance of equality because some presidents of bar represented 25000 attorneys while some represented only 40 attorneys. In addition, “presidents of bars” was not an officially recognized organ of TBB to constitute an electorate¹²⁸. Instead, the Plenary of TBB could have determined a candidate¹²⁹. As a result, the attorneys elected to these posts by such procedure did not and could not represent the profession¹³⁰. Both of the

¹²⁶ Interview 26.

¹²⁷ Interviews 8, 29, 18.

¹²⁸ Interview 18.

¹²⁹ Interview 29.

¹³⁰ Interview 29.

elected attorneys were pro-government to the extent of militancy¹³¹. In fact, the adoption of this procedure was the outcome of a calculation that an election by presidents of bar would result in someone favoring the government's world view¹³².

The second view did not get into the election procedure at the HSYK. It considered the constitutional changes as an important and positive development because by including an attorney in the HSYK, it signaled the importance and value attributed to the defense¹³³. Further, attorneys' contacts with all segments of society in different roles such as debtor-creditor or guilty-innocent and their involvement with citizens' problems, gave voice to citizens and the profession in the judiciary. Judicial bureaucracy was used to looking at things from one perspective but thanks to attorneys, the HSYK as well as the Constitutional Court, could now look at things from a different perspective¹³⁴. This one sidedness was put as the "blindness of the bench"¹³⁵. One respondent referred to a judge who said that he benefitted from attorneys because by always interacting with judges and prosecutors, one failed to notice his/her mistakes¹³⁶. In fact, it was

¹³¹ Interview 17.

¹³² Interview 1.

¹³³ Interviews 15, 19.

¹³⁴ Interview 15.

¹³⁵ In Turkish referred as "kürsü körlüğü".

¹³⁶ Interview 28.

argued that even the presence of two attorneys (another being an attorney of the Treasury) at the HSYK changed the perspective of judges and prosecutors¹³⁷.

In that regard, three respondents mentioned meetings titled “status analysis at the judiciary” arranged by the HSYK after the constitutional amendments¹³⁸. Presidents of bars were also invited to these meetings. To their surprise, this turned out not an invitation to satisfy the protocol requirements. Actual contribution was sought from presidents of bar while¹³⁹ members of HSYK complimented presidents of bars and said that bars were an inseparable part of the judiciary¹⁴⁰. According to one respondent, hearing these words at the meeting, changed attitudes at the local level. For instance, the head prosecutor who would not let law books to be sold in the corridor a year ago, now allowed a caricature exhibition at the court house. In the opinion of this respondent, the meeting upset “the factory settings of some people” and “let the demon out of the bottle”¹⁴¹. Although presidents of bar did not have much opportunity to say much in

¹³⁷ Interview 20.

¹³⁸ Interviews 7, 9, 20. Interview 7 did not mention this in our interview but later when I went to the bar presidents meeting in Ankara at a private conversation.

¹³⁹ Interviews 9, 20.

¹⁴⁰ Interview 20.

¹⁴¹ Interview 20. The respondent said in Turkish “bazı insanların fabrika ayarları bozuldu”; “cin şişeden çıktı”.

the meetings, the fact that they *shared* the same space and problems with judges and prosecutors -as colleagues- was important on its own¹⁴².

Another institutional issue showing the relationship between the judiciary and TBB was the practice of the speech of the President of TBB at the start of the judicial year. The practice started when TBB was established¹⁴³. In the 1990s, however, TBB made alternative judicial year opening ceremonies in protest of the request of the then President of the Court of Cassation to view the speech to be made by the President of TBB in advance¹⁴⁴. The respondent said that this was viewed as an attack against the freedom of defense. He had no such right. The practice continued for 3-4 years until this person retired.

Two respondents said that the judicial year opening speeches were important because they were being made before a high profile of listeners (high officials of the state). Its contents stated the judiciary's problems and the vision of the judiciary for the future¹⁴⁵. However, one respondent said that the relationship between the parties was limited to this speech¹⁴⁶ while

¹⁴² Interview 28.

¹⁴³ Interview 29.

¹⁴⁴ Interviews 23, 29.

¹⁴⁵ Interviews 10, 17.

¹⁴⁶ Interview 8.

one respondent did not understand why the judicial year opening speech was considered so important¹⁴⁷.

On the other hand, some respondents believed that TBB was engaged intensely with the higher judiciary¹⁴⁸. One referred to the relations of TBB with the Court of Cassation or Council of State in which TBB played a mediator role. TBB was talking to both courts concerning the quarrel between the courts and the government over the release of detainees whose detention period exceeded ten years, reminding the courts that impartiality was important¹⁴⁹. In that regard, TBB was not taking a side in the fight between the parties but felt that it had to intervene if local bars demanded it or to protect the interests of attorneys¹⁵⁰. Sometimes TBB drafted reports concerning legislative subjects or consulted with the higher judiciary¹⁵¹.

According to one respondent, TBB and the high courts visited each other, including YARSAV(Union of Judges and Prosecutors) and tried to act together in legal matters and the issues on the agenda of the country¹⁵². One

¹⁴⁷ Interview 11.

¹⁴⁸ Interviews 6, 17, 12, 18, 25, 13, 14, 17.

¹⁴⁹ Interview 6.

¹⁵⁰ Interview 27.

¹⁵¹ Interviews 17, 18.

¹⁵² Interview 18.

respondent said before the current administration, the relationship of TBB with high courts and the Constitutional Court's Kemalist circles was very intense, and this fact was also relayed to the public¹⁵³. In the opinion of this respondent, this was a political relationship and at some point, the three high courts and TBB were doing the opposition that the CHP could not do¹⁵⁴.

When viewed like this, the institutional relationship between TBB and the state institutions does not seem to be better than the relationship between attorneys and judges and prosecutors. What is more important, given the judge-prosecutor block vis-à-vis attorneys, no institute of the judiciary seems to be viewing the bar as equals. To the contrary, as the anecdotes show, there is a willingness to assert a hierarchy over the bar or take unilateral decisions that affect them without any consultation. This shows that the monist tendency of the state is also shared by the judiciary. As a result, no institution of the judiciary stands out as a partner to form judicial policy together with TBB. Rather, they are willing to dictate policy or practices although some respondents expressed hope that the new design of the HSYK could change things by encouraging sharing of space and information among the three actors.

¹⁵³ Interview 12.

¹⁵⁴ Interview 12.

IV.1. 2.: The relationship between TBB and the Ministry of Justice

About half the respondents said that the primary or the most intense relationship of TBB was with the Ministry of Justice¹⁵⁵. The nature of this relationship was an organic one and involved routine matters such as licensing issues of attorneys, attorney registration to the bar and handling disciplinary files of attorneys¹⁵⁶. Some respondents mentioned that the relationship was based on professional problems of attorneys and financial issues¹⁵⁷. At the same time, no division at the Ministry was responsible for solving the problems of attorneys¹⁵⁸.

The Ministry served as a conduit for civil legal aid payments made by TBB to local bars¹⁵⁹. It was similarly involved in the payment of criminal legal aid¹⁶⁰. One respondent pointed out that the payment of criminal legal aid moneys was one of the main problems of the profession when he was in office but despite meetings with the Minister of Justice of the time, no positive outcome was achieved¹⁶¹. Another respondent confirmed that professional problems were brought to the attention of the Minister and his

¹⁵⁵ Interviews 2, 4, 8, 9, 10, 13, 15, 17, 18, 21, 22, 24, 25, 27, 28.

¹⁵⁶ Interview 26.

¹⁵⁷ Interview 14.

¹⁵⁸ Interview 24.

¹⁵⁹ Interview 25.

¹⁶⁰ Interviews 26, 13.

¹⁶¹ Interview 21.

bureaucrats but there has not been much progress despite the fact that the Minister himself was an attorney¹⁶². As these meetings and requests did not lead to anything, one could say that TBB did not have much clout with the Ministry or the government¹⁶³.

This unresponsiveness was attributed to the attitude of the staff of the Ministry of Justice that consisted of judges and prosecutors who were coming from the bench¹⁶⁴. There were no bureaucrats at the Ministry that practiced as an attorney before becoming a civil servant¹⁶⁵. Given judges' and prosecutors' above described propensity to view attorneys as rivals rather than colleagues, the problems between TBB and the Ministry of Justice were exacerbated¹⁶⁶. This was the main factor that prevented mutual trust and cooperation between the Ministry and TBB¹⁶⁷. These bureaucrats lived in housing given by the government, disconnected from society and viewed things from the perspective of the bench¹⁶⁸. They neither knew the

¹⁶² Interview 24.

¹⁶³ Interview 24.

¹⁶⁴ Interview 5.

¹⁶⁵ Interview 21.

¹⁶⁶ Interview 21.

¹⁶⁷ Interview 21.

¹⁶⁸ Interview 22.

laws of attorney practice nor the problems of attorneys and were in any case prejudiced against attorneys¹⁶⁹.

As to the relationship between the parties, some respondents mentioned the tutelary powers¹⁷⁰ of the Ministry of Justice over TBB. These powers included the administrative and the financial control of TBB by the Ministry of Justice investigators; the ability to question the decisions of TBB concerning licenses¹⁷¹; approval of some regulations and disciplinary decisions¹⁷²; the right to request the dissolution of a bar organization for engaging in activities outside its goals. According to one respondent, the fact that the latter action was not undertaken thus far, did not mean the Ministry was never going to. These provisions had to be removed from the act¹⁷³.

Some respondents emphasized that before the 2001 amendments, the Act on Attorneys put the burden of resorting to legal action on TBB, if it did not agree with the decisions of the Ministry of Justice. Today the burden was

¹⁶⁹ Interview 24.

¹⁷⁰ Interviews 1, 8, 20, 28.

¹⁷¹ Interview 7.

¹⁷² Interview 5.

¹⁷³ Interview 1.

reversed¹⁷⁴. While the Ministry could still send back decisions for reconsideration, if TBB resolved the same decision with a two third majority, the decision of TBB became final. Then, it was the Ministry that had to go to court¹⁷⁵. However, one respondent said that even this was unacceptable¹⁷⁶. In a sense, before the amendments, TBB was like a state institution, its elections took place under the monitoring of the Ministry. It was now made independent¹⁷⁷. Therefore, the relationship between the parties today was less of a tutelary relationship¹⁷⁸.

The relationship between TBB and the Ministry of Justice was not based on mutual consultation or on a routine schedule such as weekly or monthly meetings¹⁷⁹. Some respondents talked about the bureaucracy's role in drafting laws and pointed out that government's legal proposals came from the Ministry of Justice bureaucrats¹⁸⁰. As such, parties came together during legislative work in committees or joint projects¹⁸¹ especially when the draft

¹⁷⁴ Interviews 5, 17, 29.

¹⁷⁵ Interview 26.

¹⁷⁶ Interview 3.

¹⁷⁷ Interview 13.

¹⁷⁸ Interviews 20, 26.

¹⁷⁹ Interview 26.

¹⁸⁰ Interviews 16, 22, 27.

¹⁸¹ Interview 5.

laws involved those that concerned the legal system such as the Act on Attorneys, the Civil Procedure Act and the Act on Obligations¹⁸².

Some respondents pointed out to a new era in the relationship between the parties, beginning of which was marked by the election of the new President at TBB¹⁸³. His election was the outcome of a process that started in 2008 at the bar presidents meeting held in Ankara¹⁸⁴. The ritual of bar presidents meeting was that a final declaration was prepared, contents of which were then declared to the public. The way to go about this was by electing three presidents of bar from Istanbul, Ankara and Izmir. Although the three pretended to draft it, the declaration was almost always prepared in advance. Further, it would not be read out loud. Bar presidents would learn the contents on their way home when it was declared to the public that it was signed by seventy bar associations¹⁸⁵.

At the said meeting in 2008, the respondent relaying the story realized that a declaration was about to come out the usual way that criticized the Ergenekon¹⁸⁶ investigation. Taking the floor and protesting the process of

¹⁸² Interview 10.

¹⁸³ Interview 15.

¹⁸⁴ Interview 12.

¹⁸⁵ Interview 12.

¹⁸⁶ The Ergenekon case started with the finding of 27 hand grenades in a house in Ümraniye district of Istanbul in June 2007. The investigation then expanded with various “waves” to

the drafting of declarations, the respondent let it known that if such a declaration came out, he would make a counter declaration¹⁸⁷. When the meeting broke for lunch, bar presidents from the South East and Eastern regions and “Anatolian bars” –as he put it- came together, reaching a number of 30-40. This showed that although their delegate numbers were low, the number of bars that agreed with his position was high. It was clear that if a counter declaration was issued, those bars would sign it¹⁸⁸.

At the time, TBB elections were looming in one year. Therefore, it was a delicate situation for TBB. Thus, upon the respondent’s proposal, a declaration was prepared by electing five presidents who actually went and wrote a declaration. As the respondent put it, “it was the most democratic declaration in the history of TBB”. When prompted whether this was a concerted action against TBB by 30-40 presidents of bar, the respondent said that although the parties knew each other from previous bar presidents meetings, there was mere collegiality among them. This event, however,

hunt an “Ergenekon terror organization” allegedly connected with the deep state in Turkey. The goal of Ergenekon was allegedly to prepare a turbulent atmosphere by assassinations and bombing to pave the way for a military coup. More than 100 people were taken into custody including journalists and retired commanders. Some observers say that wide spread use of pre trial detention and flimsy evidence and delays have turned the operation into a witch hunt against opponents of the government, (“What is the Ergenekon operation?”, *Hurriyet*, see: <http://www.hurriyet.com.tr/english/domestic/10165767.asp?gid=244&sz=22787>, Access date: 11 October 2011).

¹⁸⁷ Interview 12.

¹⁸⁸ Interview 12.

showed that they shared the same view and sow the seeds of future cooperation¹⁸⁹.

Indeed, in TBB election of 2009, Southeastern-Eastern bars and “Anatolian bars” decided to work together to produce a credible candidate against the then president. To do that, “Anatolian bars” met in Anatolia, Southeastern-Eastern bars met in the Southeast. Then, both groups made a joint meeting with five bars attending from each group. The joint group determined a candidate but at the last stage, this candidate backed down. Undeterred, the joint group decided to nominate someone they had initially eliminated but now had to defer to for lack of other option. In the end, their candidate was not elected¹⁹⁰ but he still got 147 votes while the winning candidate got 220¹⁹¹.

When the former president of TBB died of cancer in April 2010, the idea was one more time to work together with “Anatolian bars” to produce a candidate. Again “Anatolian bars” and Southeastern bars met on the same day in separate towns. This time, they wanted their candidate to win. Therefore, they wanted to support a serious candidate who could also get votes of the other side (the “Kemalist” side as they were referred to). They

¹⁸⁹ Interview 12.

¹⁹⁰ Interview 28.

¹⁹¹ Interview 12.

were aware that a candidate could not win solely with the cooperation of both groups¹⁹². They were further aware that the cooperation between the two groups was disturbing some people. In order to shield their candidate from possible accusations such as getting the support of those that were pro-“religion”, pro-“Kurd”, pro-“separatist”¹⁹³, both groups decided that they should refrain from declaring their support publicly. This would also lessen pressure on “pro-CHP” bars that could vote for their candidate. Sure enough, thanks to the support of some that defected from the “pro-CHP” camp of the three large bars¹⁹⁴, the election was won by their candidate. One respondent put it as “41-42 Anatolian bars coming together and ending the rule of Istanbul-Ankara and Izmir bars at TBB”¹⁹⁵.

Before this “new era”, some respondents tried using their contacts to reach the Ministry of Justice for resolution of professional problems. For instance, one described that after becoming president of the bar, he took an initiative to relay the problems of the profession to the government. As an AKP member, it was easy for him to request an appointment from the Minister of Justice¹⁹⁶ and ask his participation at a meeting to be organized for that

¹⁹² Interview 12.

¹⁹³ In Turkish the terms were “dinci, Kürtçü, ayrılıkçı”.

¹⁹⁴ Interviews 12, 27.

¹⁹⁵ Interview 19.

¹⁹⁶ Interview 19.

purpose. The meeting was hosted by Kayseri Bar and took place in Nevşehir's Kozaklı district in December 2009.

Attended by 58 bar presidents, the meeting lasted until 3 AM in the morning whereby the Minister and almost all his high level staff¹⁹⁷ listened to the problems of the profession and the judiciary¹⁹⁸. One of the demands included a civil constitution while the other was a proposal to change the Regulation on Court Clerks¹⁹⁹. As a result of the meeting, a working group was established that concentrated on the solution of professional problems of attorneys²⁰⁰. In that working group, various directorates of the Ministry were represented such as Laws; Strategic Development; Penal Affairs; Civil Affairs; Personnel; IT and Prisons. The working group decided which problems required legislative change for resolution but according to one respondent, the only thing yet achieved was the change in the Regulation on Court Clerks²⁰¹. Some respondents were more positive saying that although the TBB and the Ministry were of different political colors they still solved the matter²⁰². By working together, bureaucrats and TBB produced something²⁰³.

¹⁹⁷ Interview 28.

¹⁹⁸ Interview 28.

¹⁹⁹ Interview 19.

²⁰⁰ Interview 26.

²⁰¹ Interview 26.

²⁰² Interview 15.

In the past, the parties were engaged in a battle of words but today serious steps were being taken²⁰⁴. For instance, some changes adopted in the legislative sack (Act no 6111)²⁰⁵ were the outcome of discussions at the HSYK meetings. The Ministry reversed itself in terms of the number of intermediary appellate courts to be established, raising their number from 9 to 19 as demanded by the profession²⁰⁶. This respondent was hopeful that criminal legal aid payments were also going to be raised and a legal insurance was going to be introduced. The Ministry was also working on changing judges' and prosecutors' perception concerning attorneys.

Now, they could reach the Minister any time they wanted and the distance between the parties was being bridged²⁰⁷. It used to be that the Minister would not attend TBB's meetings. Today, he would come or attend breakfasts. It was a different question whether he could get something done by sidelining his bureaucrats²⁰⁸. Nevertheless, the relationship was probably undergoing the best of its times. According to this respondent, incompetence was no longer hidden under the disguise of opposition²⁰⁹.

²⁰³ Interviews 19, 20, 26, 30.

²⁰⁴ Interview 19.

²⁰⁵ Official Gazette No: 27857, Date: 13 February 2011.

²⁰⁶ Interview 28.

²⁰⁷ Interviews 20, 30.

²⁰⁸ Interview 30.

²⁰⁹ Interview 20.

Today, they were given a carte blanche in terms of the drafting of the Act on Attorneys²¹⁰.

In addition to their relations with the Ministry, respondents thought there were other novelties in the “new era”. The new administration did not try to create bars that looked alike by intervening into their activities²¹¹. It undertook new activities such as trial monitoring in the KCK case²¹² in Diyarbakır or the Ergenekon case in Silivri²¹³. According to one respondent, TBB has become more active and its tone moved from “we would not give our draft act on attorneys to this government” to “I put my draft in front of the government”²¹⁴.

²¹⁰ Interview 28.

²¹¹ Interview 20.

²¹² KCK case is the prosecution of the alleged urban wing of PKK for being members of terror organization. The case has roused criticism for the lining up of hundreds of handcuffed elected local politicians by the police who have then been put in pre-trial detention. It also came to a halt for the criminal defendants insistence on providing their defense in their mother tongue in Kurdish which the court referred as “an unknown language”. The defense attorneys recently withdrew from the case in protest of the court’s handling of the matter while the court complained to the bar about the actions of the attorneys. See: <http://www.hurriyetdailynews.com/n.php?n=kck-defense-lawyers-withdraw-themselves-from-the-case-2011-04-19>, Access date: 11 October 2011.

²¹³ Interview 25.

²¹⁴ Interview 30.

Respondents said that the current administration put its political views behind and served the law, the profession and the rule of law²¹⁵. Before, political views were more important but this led to a deteriorated relationship with the legislature and the executive²¹⁶. It caused an undeserved decline in the prestige of the profession and a failure to take advantage of the existing provisions that were advantageous for the profession²¹⁷. This was why bars that were supportive of the current government voted for the current president of TBB: to bridge the distance between the parties²¹⁸.

According to some, the relationship with the current government including the Minister of Justice and Prime Minister has indeed improved²¹⁹. Despite the difference in political views, today the Ministry did not mind TBB because TBB did not react with political reflexes²²⁰. This allowed for the solution of the problems of the profession²²¹, one example of which was the amendment of the Regulation on the Court Clerks²²². The personality and

²¹⁵ Interviews 6, 16, 22, 30.

²¹⁶ Interview 15.

²¹⁷ Interview 28.

²¹⁸ Interview 21.

²¹⁹ Interviews 19, 26, 30.

²²⁰ Interview 4.

²²¹ Interviews 19, 28.

²²² Interview 30.

personal qualities (background, education, academic interest) of the new president contributed to the new era²²³.

On the other hand, one respondent thought that the public relations of TBB could be improved as people now perceived the current TBB administration as pro-government despite statements and declarations that criticized it. This probably also had to do with the unaggressive spirit and non-accusatory tone adopted by the president which helped to warm the relationship between the government and TBB²²⁴.

Some respondents said that the Ministry could indirectly support TBB for instance by distributing research carried out by TBB through its network²²⁵ or by owning what TBB does²²⁶. It was looking at TBB from a distance but it could really make use of its know how: TBB had many knowledgeable members, this could prevent mistakes from being made when drafting laws²²⁷.

²²³ Interviews 14, 15, 20, 24, 22, 30.

²²⁴ Interview 26.

²²⁵ Interview 2.

²²⁶ Interview 13.

²²⁷ Interview 13.

However, not everybody was happy with the “new era”. According to one respondent, TBB was silent despite the existence of controversial issues in the judicial agenda such as the coming into force of the new maximum period of detention or the new structure of the High Council of Judges and Prosecutors²²⁸. Its silence was unhealthy. The previous administration raised its voice in a serious manner despite the fact that some of his views did not suit CHP but at least its statements would appear in newspapers and catch headlines²²⁹. Another respondent said that he was concerned whether TBB could keep its contemporary stance²³⁰.

It was pointed out that most of the communication between the parties was written. But given the coldness of writing, TBB did not leave it there²³¹. In addition to the routine and issue based meetings between the parties, it was emphasized that it did not leave a good image when people visited each other only when they needed something²³². Thus, the parties were also engaged in visits of courtesy²³³.

²²⁸ Interview 23.

²²⁹ Interview 23.

²³⁰ Interview 13.

²³¹ Interview 4.

²³² Interview 4.

²³³ Interview 26.

In view of all this, it appears that the relationship between the Ministry of Justice and TBB is formal. Also, it is not routine but runs on ad-hoc or problem oriented basis. Contact seems to involve mostly issues that concern the tutelary powers of the Ministry over TBB or ad hoc legislative encounters for the drafting of certain laws while there are also courtesy visits. Further, at times, the relationship seems to have deteriorated due to the political engagement of TBB to the extent that the profession felt it was necessary to change this equation by bringing about a desired change at the administration of TBB.

The relationship does not seem to have been helped by the fact that the staff of the Ministry are former judges and prosecutors whose attitudes towards attorneys have been already described above. In the end, whether it is because of the political stance of TBB or the attitudes of staff of the Ministry or whether arguments over the tutelary powers of the Ministry, it does not look like that there is policy concertation or any partnership between the parties.

IV.1.3: The relationship between TBB and the legislative branch

Bar presidents who have served at the Parliament²³⁴ were quick to describe instances from the legislative process that involved TBB. The committees

²³⁴ Interviews 13, 11, 14, 16, 23, 21, 22.

that TBB was the most engaged with was the Justice Committee, the Constitutional Committee and the Planning and Budget Committee. The latter especially for the fact that “80% of everything that came to the Parliament was handled there”²³⁵.

It was the Justice Committee that dealt with subjects that traditionally affected the legal system. Recently these consisted of the acts on civil procedure, commerce, obligations²³⁶ and service²³⁷. Past examples were the code on criminal procedure, penal code and the code of corrections. In these cases, TBB representatives were invited to the Committee²³⁸. As one respondent who used to serve at the Justice Committee said where he felt that the subject was of concern to TBB, such as an amendment to the Act on Attorneys, he would contact TBB²³⁹. In fact, all members of the Justice Committee in his party would ask for the opinion and support of TBB and acted in concert with it²⁴⁰.

²³⁵ Interviews 21, 16.

²³⁶ One respondent said that he did not believe that bars could contribute to the Law on Obligations, Interview 19.

²³⁷ Interviews 14, 10.

²³⁸ Interview 1.

²³⁹ Interview 13.

²⁴⁰ Interview 13.

According to one respondent, TBB's presence in the Justice Committee was merely as a provider of opinion²⁴¹ and remained a formality. For instance, in the first draft of the Code on Civil Procedure, there was mandatory legal representation to file a case in court. If adopted, such provision could have helped to reduce the workload of courts if accompanied by a proper legal aid system. This provision was removed from the draft but TBB did not even utter a word about this. In his opinion, the enactment of such a provision was much more important for attorneys in economic terms than TBB's comments on secularism²⁴². One respondent, however, described intensively how in the Lower Committee this provision was discussed, agreed upon but was later removed by the Office of the Prime Ministry for fear of being accused with attorney protection²⁴³.

Some respondents felt that the malaises of Turkish party politics was also visible in the relationship between TBB and the legislature. For instance, when he went to the Justice Committee to oppose the removal of the requirement to take a bar exam, the participant was informed by his friend in the Committee that he should not bother because the Prime Minister personally called the Committee for the said change²⁴⁴. This event showed that the relationship with the Parliament depended on the development of

²⁴¹ Interview 11.

²⁴² Interview 11.

²⁴³ Interview 26.

²⁴⁴ Interview 21.

democracy²⁴⁵. According to one participant, law making in Turkey has become a fait accompli²⁴⁶.

Another respondent said that if MPs in the Committees did review draft laws that came from the government in a proper manner, it could be possible to change them but usually the government would not let its proposals be touched. Most of the time, the government MPs in the Committee, either because they trust the government or do not wish to appear to be making it difficult for the government, would not say much. They would speak and vote for the draft law. At the Committee, they would look at the eyes of the Minister. In the General Assembly there was a similar situation. A government MP would not vote for a proposal not accepted by the government if he or she did not want to risk his or her political future²⁴⁷.

“(...) The right thing to do is to sit quietly and not cause any trouble. The government knows the best. The Minister knows. And how does he know? The bureaucrats told him so.”

Interview 16.

²⁴⁵ Interview 21.

²⁴⁶ Interview 18.

²⁴⁷ Interview 16.

Participants who did not serve in the Parliament also commented on the intensity or importance of the relationship between the parties²⁴⁸. Some felt that there was not much relationship to talk about²⁴⁹ or that it was not as it should be²⁵⁰ while one emphasized that until recently as an NGO, TBB was not as effective as TBB of Notaries or the Chamber of Trade and Commerce²⁵¹. Respondents said that when contribution was requested from TBB by asking their opinion or inviting TBB to the relevant Committee at the Parliament, this contribution was made or would be made²⁵². In that regard, one respondent suggested that TBB should have a (permanent) representative in the Justice Committee²⁵³.

Some respondents felt that TBB made important contributions to the legislative process because it was in the field²⁵⁴ and was independent²⁵⁵. The views of an organization that represents 60thousand lawyers had to be obtained especially in areas that concerned the rights to defense, fair trial and rule of law since it was attorneys that experienced the problem²⁵⁶. When

²⁴⁸ Interviews 6, 9, 10, 13, 17, 18, 26, 28.

²⁴⁹ Interviews 7, 24.

²⁵⁰ Interviews 21, 28, 18.

²⁵¹ Interview 19.

²⁵² Interviews 1, 5, 7, 8, 13, 25.

²⁵³ Interview 5.

²⁵⁴ Interviews 2, 10, 29.

²⁵⁵ Interview 10.

²⁵⁶ Interview 14.

governments appreciated the importance of all this, then the views of TBB were sought²⁵⁷ but the legislature was not always appreciative²⁵⁸. It was insufficiently cooperating²⁵⁹ with TBB. Similarly, where TBB's contribution was obtained, it was not taken into consideration because by that time, the Committee already formed a view on the issue²⁶⁰. Sometimes, contribution was sought "to save the looks" because the legislature failed to provide enough time for TBB to comment²⁶¹.

On the other hand, it was pointed out that TBB should pursue matters and subjects that are of interest to it, without awaiting invitation from committees. When this was done like in the enactment of the legislative sack concerning amnesty for public debts, TBB saw that it also obtained benefits²⁶². These included the extension of social security rights for apprentice attorneys (premium to be paid by TBB); amending the act on apartment buildings so that attorneys can open offices in them without needing a permission from other property owners in the building; inclusion in the financial amnesty law of unpaid loans given to apprentice attorneys

²⁵⁷ Interview 10.

²⁵⁸ Interviews 7, 27.

²⁵⁹ Interview 2.

²⁶⁰ Interview 8.

²⁶¹ Interviews 2, 18, 21.

²⁶² Interview 4.

and interest accrued for unpaid annual membership fees of attorneys²⁶³. The respondent said that the members of the Planning and Budget Committee relayed this to TBB as a criticism saying that many other institutions and groups were present in the Committee but it was the first time they saw TBB there²⁶⁴.

Respondents also commented on the substance of TBB's contribution. When a representative was sent by TBB to the legislature, the views expressed by the representative was usually his or hers as an individual rather than the institutional opinion of TBB²⁶⁵. One respondent described how he was sent to the Committee because he was considered knowledgeable in the field that was being discussed and was given free hand. However, because his personal opinion was going to be binding on TBB, he felt the need to consult. When he called two persons from TBB, he found them at different places and told them what his opinion was. He then asked whether they agreed with his position, they said "fine". In his view, this was not a healthy way of working²⁶⁶. At the same time, making presentations and speaking convincingly at committees were personal

²⁶³ Interviews 4, 20.

²⁶⁴ Interview 4.

²⁶⁵ Interviews 2, 10.

²⁶⁶ Interview 10.

qualities, not equally possessed by everyone, therefore, undermining the quality of the contribution thus made by TBB²⁶⁷.

Similarly, TBB could make use of universities, scientists and practitioners and produce reports that were much better than those produced by the Ministry of Justice to assist the Parliament, Justice Committee and the Ministry²⁶⁸. As TBB now had the resources, it could provide scientific data and draft projects or laws for committees rather than merely being present in Committees²⁶⁹. It was pointed out that research facilities at the Parliament were very limited and that MPs had only one political consultant. Therefore, they failed to follow what was missing in legislation²⁷⁰. This function could be served by TBB by working on one to one basis with the Justice Committee and the Parliament²⁷¹. In that regard, TBB should have its private office at the Parliament and have itself represented not by one person but by a committee at the Parliament. Further, all draft laws and proposals should come to the Parliament and Committees after obtaining TBB's views²⁷².

²⁶⁷ Interview 10.

²⁶⁸ Interview 16.

²⁶⁹ Interviews 23, 28.

²⁷⁰ Interview 22.

²⁷¹ Interview 22.

²⁷² Interview 28.

In addition to representation in the Committees, respondents also mentioned the ongoing contacts that were established with political parties as well as visits made to deputy president of political party groups in the Parliament or Heads of Committees²⁷³. This was necessary because solving the problems of the profession could not only be done by initiating court action or writing letters²⁷⁴. It had to involve dialogue with the Parliament. In that regard, one respondent described how in his term, lawyer MPs from all political parties were invited to dinner by TBB²⁷⁵. Most of the invitees -numbering around 50- came. As there was no concrete expectation from the MPs, the event created a certain good will and warmth which later seems to have helped in the Committees. The respondent emphasized that this was done as a deliberate policy change on the part of TBB. In the past, there was no such attempt to engage the Parliament²⁷⁶, but today there was recognition that the lack of parliamentary interest in the profession was hurting it. It led to regulations being drafted that were violating laws. In addition, the Act on Attorneys had to change. All of this required (political) preparation²⁷⁷.

²⁷³ Interview 4.

²⁷⁴ Interview 15.

²⁷⁵ Interview 21.

²⁷⁶ Interview 22 also confirmed that when he was an MP, he did not see much contribution from the Union.

²⁷⁷ Interview 21.

Some respondents indicated that attorneys were the profession that was represented in the Parliament with high numbers²⁷⁸ or one of the highest²⁷⁹ or should be the highest²⁸⁰ although one said that the number was going down²⁸¹. Despite that, there was a detachment between TBB and these MPs²⁸². One respondent emphasized that while attorneys as professionals were present in the Parliament, their professional organization was not. While (before June 2011 election), four former presidents of bar in the Parliament were MPs of CHP, there was none that was an MP of AKP. If there was one, the problems of the profession would lend themselves to more solutions²⁸³. However, according to one respondent, attorneys were forgetting about the professional problems when they went to the Parliament²⁸⁴.

“As Nabi said, ten dervish would fit into one kilim but two sultans would not fit into one climate. Attorneys see themselves as the sultan. Because they do not have a hierarchical superior, they always want to act independently and with their free will. They shy away from acting in a collective manner. Unfortunately, this is how it is in the Parliament. (...) The attorneys in a political party do not share a common stand”.

Interview 19.

²⁷⁸ Interviews 1, 7, 15, 22.

²⁷⁹ Interviews 11, 14, 19, 29.

²⁸⁰ Interview 6.

²⁸¹ Interview 17.

²⁸² Interviews 7, 15, 21.

²⁸³ Interview 19.

²⁸⁴ Interviews 15, 19.

Some respondents explained that local bars were also trying to engage the Parliament by contacting parliamentarians in their towns. Also, local bars attempted to reach the Committees directly especially when the legislation concerned a subject that was a prevalent problem in the town of the bar such as the legislation that involved children that were throwing stones at the police.

As such, the respondent -also president of the local bar- contacted the Justice Committee. He was told that the Committee had to consult with TBB and if TBB agreed, the Committee would gladly listen to the local bar. TBB, however, declined saying that other bars may find such practice discriminatory²⁸⁵. In the end, the views of the local bar were submitted to the Committee as well as other political parties, in writing²⁸⁶.

As briefly referred to above, TBB is also involved in the preparation of laws where an expert committee (lower committee) drafts the law before it comes to the Parliament. This procedure was followed when committees drafted the Code of Civil Procedure and the Code of Enforcement and Bankruptcy²⁸⁷. Alternatively, after seeking the opinions of local bars or on

²⁸⁵ Interview 25.

²⁸⁶ Interview 25.

²⁸⁷ Interviews 1, 10.

its own, TBB established a committee and presented its work, for instance in the case of mediation or commercial code to the Parliament²⁸⁸.

Lastly, one respondent mentioned that one of the Committee Presidents in the Parliament requested the assistance of TBB to pass a legislation that has been waiting enactment. This was done because it was felt that if the draft legislation was owned by the government, it would encounter resistance in the Parliament. Therefore, the Committee sought help from TBB to convince other political parties that it was a beneficial law for the whole country. This assistance was provided and the law passed²⁸⁹.

The above findings illustrate that TBB is mostly in a reactionary position vis-à-vis the legislature. It awaits the Committees in the Parliament to invite it to provide its views. In other words, it is merely functioning as a consultative institution that is listened to when considered “necessary” by the relevant committee working on the issue that TBB deals with. It seems that TBB is currently trying to change this paradigm by being more proactive and present in Committees or in the Parliament even when not invited. It is also why it attempts to engage all MPs who are lawyers by dinner or social events. TBB seems to toy with ideas such as doing research

²⁸⁸ Interview 21.

²⁸⁹ Interview 26.

for the Parliament or establishing a continuous representation at the Parliament to make itself more relevant.

On the other hand, the legislature seems to accept TBB as a counterpart at least on paper by inviting it to relevant committees, sending draft laws for comments or to request clearance for the representation of the profession by one local bar in a particular subject. Despite this, however, the invitation to the relevant Committee does not automatically translate or amount to policy making as a partner.

IV.1.4: The relationship between TBB and the state institutions in general

When asked about relations with state institutions, some respondents talked about TBB's relations with the government while some mentioned state institutions -other than the three branches- that TBB was in contact with. Among state institutions, the most frequently mentioned one was the Ministry of Finance²⁹⁰ given its involvement in the provision of funds for criminal and civil legal aid; in tax issues such as VAT for legal services rendered; and tax inspection of attorneys.

²⁹⁰ Interviews 2, 4, 5, 7, 8, 9, 18, 23, 21, 25, 26, 28, 30.

Another institution was the Office of the Prime Ministry²⁹¹ especially when professional problems could not be solved through normal channels. The Census Bureau²⁹²; the Traffic Bureau²⁹³ and the Land Registry²⁹⁴ were also mentioned given the frequent involvement of these institutions in the daily work of attorneys for birth, death and other personal and property issues. The Ministry of the Interior²⁹⁵ came up also often as it is the hierarchical superior of the local police that attorneys have to deal with especially when their clients are detained in the pre-trial process as suspects. As criminal defendants' rights such as the right to counsel (at police stations) are triggered at this stage, the profession comes into contact with the Ministry especially when problems cannot be solved at the local level.

Other state institutions mentioned by respondents included the Ministry of Work and Social Security as it concerned social security issues of attorneys²⁹⁶; Office of Income²⁹⁷ for taxes; Ministry of Foreign Affairs²⁹⁸ to obtain green passport and issues in international relations; municipalities²⁹⁹

²⁹¹ Interviews 4, 6, 18, 21, 26.

²⁹² Interviews 2, 25.

²⁹³ Interview 2.

²⁹⁴ Interviews 2, 25.

²⁹⁵ Interviews 3, 10, 26.

²⁹⁶ Interviews 9, 26.

²⁹⁷ Interview 6.

²⁹⁸ Interviews 17, 25.

²⁹⁹ Interview 22.

to obtain licenses to open law offices; Radio Television High Council³⁰⁰ to initiate programs on law; the Ministry of Transport³⁰¹ for the IT network of courts; Post Office³⁰² for service of legal documents and the Head of State involving courtesy visits³⁰³. Lastly, respondents who answered the question by referring to the relationship between the government and TBB, talked about the current government as well as previous governments.

It was significant, however, that many respondents believed that TBB had political inclinations as apparent from their description of TBB as “backyard” (of CHP). Respondents who used this term said that the prevalent political view in TBB has been until recently a singular world view: nationalist³⁰⁴, social democrat³⁰⁵ or “Kemalist” in the line of CHP³⁰⁶ whereby the official ideology was justified under the pretense of law³⁰⁷.

³⁰⁰ Interview 2.

³⁰¹ Interview 26.

³⁰² Interview 26.

³⁰³ Interview 26.

³⁰⁴ Interview 19.

³⁰⁵ Interview 28.

³⁰⁶ Interviews 3, 12, 14, 16, 25, 27, 30.

³⁰⁷ Interview 12.

As a manifestation of this ideology, various examples were given: the former president of TBB's comments regarding the Prime Minister for being a graduate of a preacher trainee school³⁰⁸; the holding of symposia and conferences in which the main idea was that the shift of politics in Turkey was bad³⁰⁹ or where presenters represented a singular world view³¹⁰; officials of TBB being present at the residence of a suspect during police search in the Ergenekon investigation, thereby implying unlawfulness³¹¹; the current TBB administration not having a single member that represented the world view of the right or anyone east of Sivas (or Ankara)³¹²; financial support given to local bars that were "Kemalist"³¹³ and the office of a former general secretary of TBB being covered with flags, pictures and emblems of CHP³¹⁴.

"(...) We have long understood that this cannot happen with social democrats, with Kemalists. And we believe that without the liquidation of the 1-2% privileged class created by Kemalism, nothing can be done in this country. (...)"

Interview 12.

³⁰⁸ Interview 14.

³⁰⁹ Interview 12.

³¹⁰ Interview 19.

³¹¹ Interview 12.

³¹² Interviews 19, 25, 27.

³¹³ Interview 12.

³¹⁴ Interview 28.

When asked about why TBB was close to CHP, two respondents³¹⁵ said it was the delegate system that caused TBB's affiliation with CHP because the three large bar organizations that had disproportionately high number of delegates in TBB elections were under "Kemalist" administrations and were voting as a block³¹⁶. Another contributing factor was the seniority requirement to become bar president which was unlike other professional organizations³¹⁷. By the time someone became president of bar, he or she was introduced into the system, was moderated by the system and was made a defender of the status quo.

What was important here was that respondents criticized TBB's acting as backyard because it led to parting ways among lawyers³¹⁸ and hurt the institution³¹⁹. TBB was much more successful when it concerned itself with the problems of the courts and attorneys³²⁰. Acting like a "backyard" led TBB to be in bad terms with the legislature as well as the government³²¹ because it was used as a front to attack the government³²².

³¹⁵ Interviews 25, 27.

³¹⁶ Interview 27.

³¹⁷ Interview 25.

³¹⁸ Interviews 4, 16.

³¹⁹ Interviews 4, 12.

³²⁰ Interview 16.

³²¹ Interview 15.

³²² Interview 20.

Nevertheless, some respondents felt that it has been easy for the current government to describe TBB as “backyard of CHP” because some TBB administrators had organic ties with CHP³²³. However, this view was unjustified. On the other hand, one interviewee emphasized that at times there were declarations made by TBB that were also not liked by CHP. In fact, CHP criticized them because TBB was supposed to be on “their” side³²⁴.

Whether it is true or not, the perception that TBB was the backyard of CHP seems to have brought TBB into an ideological or political clash with the current government. Many respondents said that the relations between the parties was not good³²⁵ because TBB was positioning itself politically rather than as a legal partner³²⁶. TBB President was to have said that he would not trust the government with “their act” on attorneys despite a *carte blanche* from the then Minister of Justice³²⁷. On the other hand, one respondent said that a draft Act on Attorneys was prepared but it led nowhere because the government tried to take advantage of the process by revoking the article that gave TBB the duty to protect human rights and freedoms as well as the rule of law because in their opinion, this provision had a political side to

³²³ Interviews 10, 22, 26.

³²⁴ Interview 26.

³²⁵ Interviews 12, 13, 14, 19, 22.

³²⁶ Interviews 14, 15, 21, 22.

³²⁷ Interview 15.

it³²⁸. As a result, despite the need for amendments in the Act on Attorneys, the matter was not pursued with the current government for lack of trust to it³²⁹.

According to some respondents, a media event in which the former President of TBB seems to have said that he has difficulty accepting a graduate of an imam training school as Prime Minister seems to have exacerbated the already tense relationship between the parties³³⁰.

“(...) I am a member of MHP, and I really do not like the Prime Minister but I do believe that this statement about imam and sermon schools was not right.(...) That bar has members or relatives of members that are graduates of those schools. A Union President cannot determine such category. If you accept this, tomorrow someone will say I cannot accept someone from Nevşehir or someone from Diyarbakır”. (...)

Interview 11.

In addition, in the Ergenekon trial, “arguably one of the most important events of the Republic”, bars could not determine a position while some were against it³³¹. This made the relationship even worse and turned it into a thrust of poles³³². One respondent described the relationship as mutual

³²⁸ Interview 17.

³²⁹ Interview 22.

³³⁰ Interviews 11, 14, 26, 30.

³³¹ Interview 14.

³³² Interview 14.

polemic because the government viewed TBB as an institution against it while TBB believed the government would not agree with any of its requests³³³.

“If you position yourself on the side of the status quo, you become an element to be fought off. But if you position yourself on the side of justice, law and the people, then you can force the government with your requests”.

Interview 14.

As a result of all this, TBB was not accepted like the public notaries. None of their events was attended either by the executive or by the legislature³³⁴. For instance, when the respondent served between 2006-10 as president of bar, TBB could not establish a single contact with the government³³⁵. Where there was “incompatibility of blood” between the parties, then things went against the interests of the profession³³⁶. The financial problems of the profession were not helped by all this because the government developed unsympathetic ears to their demands³³⁷. According to one respondent, 3-4 years ago, the government did not send money for criminal legal aid to punish attorneys³³⁸.

³³³ Interview 19.

³³⁴ Interview 19.

³³⁵ Interview 24.

³³⁶ Interviews 24, 30.

³³⁷ Interview 1.

³³⁸ Interview 8.

On the other hand, those who believed that “this government was not our government” found no reason to talk with them. There was in fact fear of contacting the government because of the belief that “if we ask for something, this might lead to something detrimental for us”³³⁹.

“If we code governments, close to us or far away from us, same with us or not same with us, then these duties cannot be carried out. In that case, we will have to wait until a government comes that shares our views and until then, we will not contact them; make requests for anything; do anything to solve our problems and will wait until the government changes. It’s totally irrelevant what the government’s political ideology is, at least for me. This government is a government elected by the people and is a legitimate one. As long as it is legitimate, I do not understand why we should not contact them or reject that contact.”

Interview 4.

One respondent said that the self imposed distance of TBB led to stagnation because when one did not contribute to anything, one did not ask for anything either³⁴⁰. Or where a demand was made, it was made as an oppositional tactic and not really with the intention to do something together. In a way, this was an outcome of the political polarization in Turkey³⁴¹. When TBB showed political reactions, then governments also viewed everything coming from them with prejudice and looked for booby traps³⁴². Consequently, the views of TBB were not taken into consideration

³³⁹ Interview 4.

³⁴⁰ Interview 20.

³⁴¹ Interview 20.

³⁴² Interview 22.

by the government because the former President of TBB criticized it strongly³⁴³.

In that regard, many respondents talked about the government's removal of the requirement to take the bar exam to become an attorney. This was done despite the fact that TBB made preparations for it such as signing protocols with the ÖSYM (*Öğrenci Seçme ve Yerleştirme Merkezi*) to conduct the exam³⁴⁴. When this took place, an ad hoc Committee was established from presidents of bar to speak with the Prime Minister. Although the meeting was attended by 45 bar presidents and took place in the Prime Minister's office in Dolmabahçe, it could not achieve anything³⁴⁵. Efforts in the Committee also went nowhere³⁴⁶. According to one respondent, due to its anger at TBB, the government amended the law in one night and lifted the requirement of a bar exam³⁴⁷.

“(...). They were deciding the opposite. Who was saying that the exam should not be lifted? CHP. We also said so. If CHP said the exam should be lifted, maybe the exam would *not* be lifted. That's how politically tense it was (...).”

Interview 30.

³⁴³ Interview 8.

³⁴⁴ Interviews 1, 15.

³⁴⁵ Interviews 6, 21.

³⁴⁶ Interview 21.

³⁴⁷ Interview 26.

In a subject that really concerned TBB, neither the Justice Committee nor the current government listened to it. Although the bars screamed and shouted, they did not care³⁴⁸. They did not ask for the view of TBB³⁴⁹ despite the fact that judges and prosecutors are selected by an exam and exams existed in many institutions³⁵⁰. Even security guards were selected on the basis of an exam³⁵¹. The only profession that accepted members without an exam was attorneys³⁵². The exam was a must to ensure quality³⁵³. Now, reversing this required effort and pressure³⁵⁴ which was being currently exercised³⁵⁵.

Some respondents attributed this reaction to the current government's desire to streamline all institutions whether they be of civil society, professional organization or government so that they are in harmony with itself, failing this, the government brought these institutions into line³⁵⁶. In a similar vein, the government was trying to devalue these institutions, render them

³⁴⁸ Interview 30.

³⁴⁹ Interview 29.

³⁵⁰ Interview 13.

³⁵¹ Interview 17.

³⁵² Interview 25.

³⁵³ Interview 30.

³⁵⁴ Interview 19.

³⁵⁵ Interview 30.

³⁵⁶ Interview 1.

ineffective or create alternative institutions³⁵⁷. MUSIAD was mentioned as an example of the latter tendency, to replace TUSIAD. Similarly Memur Sen was brought forward instead of Kamu Sen because the latter was perceived as pro MHP. According to this respondent, examples abound in every subject from universities to media³⁵⁸.

As a result, NGOs were under pressure to make statements that only concerned their members and nothing else³⁵⁹. This somehow kept them quiet³⁶⁰. In that regard, the speech of the Prime Minister made at TUSIAD before the 2010 referendum was telling. In the speech, he said that “if someone remained impartial, it also meant disposability³⁶¹”. In the respondent’s opinion, this was not only said to TUSIAD which is considered to be the strongest NGO in Turkey. In a way, it was giving a message to less powerful centers by creating a perception that “if he can pressure TUSIAD like this to take a side in the referendum, who are we to resist”³⁶².

³⁵⁷ Interview 11.

³⁵⁸ Interview 11.

³⁵⁹ Interview 11.

³⁶⁰ Interview 23.

³⁶¹ In Turkish he said: “Bitaraf olan bertaraf olur”.

³⁶² Interview 11.

On the other hand, some respondents said that the relationship between TBB and governments has always been restrained³⁶³. One respondent described a protest during the government of Tansu Çiller whereby attorneys walked to Anıtkabir with their robes³⁶⁴. Before the 1980s, during the National Front governments, the parties could not agree either and governments also did not take TBB's opinions into consideration³⁶⁵.

One respondent said that the relationship between TBB and governments depended on the perspective of governments concerning the judiciary and defense. Because democracy in Turkey was not institutionalized, this was not a proper perspective³⁶⁶. For governments that valued democracy and human rights, TBB was an important resource because it produced knowledge and followed developments in the world³⁶⁷. However, governments did not embrace TBB because the post 1980 coup mentality of guardianship continued. The governments undercut the advance of TBB but should have listened to it more³⁶⁸ failing that could only hurt the law, the republic and the state, the legislature and the executive³⁶⁹.

³⁶³ Interviews 18, 22.

³⁶⁴ Interview 13.

³⁶⁵ Interview 18.

³⁶⁶ Interview 21.

³⁶⁷ Interview 17.

³⁶⁸ Interview 13.

³⁶⁹ Interview 29.

One respondent stressed that it was the inherent differences between the executive and judiciary that led to conflict. According to her, the executive was concerned with getting things done rather than how things were done³⁷⁰. The bars, however, asked questions whether things were done according to the law; whether the outcome was fair and demanded accountability³⁷¹. Bars' duties was to take a stand concerning violations of rights by the executive; make statements; start legal action in court and criticize. All of this led to resistance by the executive.

“There is a tendency to disregard attorneys, bars and everything we do. They do not want us. Attorneys are always seen as troublemakers. Bars are seen as troublemakers. ‘They are arrogant, they think they know everything’...Consequently, there is an effort to prevent the things they do; a great endeavor to stop their entry into the system; not provide information; push them out and make them unable to work.”

Interview 9.

Some respondents disagreed that the relationship between TBB and the governments was always strained. As a sign of good relations in the past, one respondent described the introduction of criminal legal aid in 1992. The then Minister of Justice Seyfi Oktay was a colleague and delegated the job of provision of criminal legal aid to bars³⁷². Or when the amendments to the Act on Attorneys was made in 2001, it was a result of the cooperation

³⁷⁰ Interview 9.

³⁷¹ Interview 9.

³⁷² Interview 29.

between the government whose Minister of Justice was Hikmet Sami Türk and TBB³⁷³.

Nevertheless, governments would want to get along with the professional organization of a profession that had many members in its ranks because in every political party there were many attorneys. Further, attorneys were connected with society³⁷⁴. One respondent disagreed, however, stressing that it should not be about parties having a harmonious relationship and getting along so that legal aid payments of attorneys were made in a timely fashion³⁷⁵. In his opinion, in order to achieve justice and for rule of law to rein, TBB was to obtain results where necessary by challenging the government (not just for the sake of it) and not back down³⁷⁶.

Lastly, respondents also commented on the relationship between state institutions in general and TBB. Some respondents pointed out that the relationship was problem/issue driven despite the fact that there were courtesy visits between the parties³⁷⁷. The relationship was pushed by TBB in the sense that it was TBB that knocked on the door of the government for

³⁷³ Interview 29.

³⁷⁴ Interview 27.

³⁷⁵ Interview 23.

³⁷⁶ Interview 23.

³⁷⁷ Interviews 4, 26.

its problems to be solved³⁷⁸ rather than other way round. The relations were official³⁷⁹, ceremonial and at times distant³⁸⁰. Even when the parties came together as a matter of protocol and said nice things to each other, everyone knew that behind those nice words, there were other things³⁸¹. Two respondents said the relationship was a very complicated one, defying definition³⁸² and had to be evaluated differently at each situation³⁸³.

One respondent said that state institutions did not know the constitutional design and status of TBB³⁸⁴. When compared with the past (before 1992) the bars now had their rightful place in the protocol but they still did not have much role³⁸⁵. In that sense, TBB or the bars' place in the protocol was emphasized. It was next to the Head Prosecutor but recently, the presidents of universities got in between the Head Prosecutor and the President of the Bar. While in small towns, this did not create a problem, in big cities where there were plenty of universities, the place of the bars has become much further away from the Head Prosecutor.

³⁷⁸ Interviews 4, 17, 27.

³⁷⁹ Interviews 4, 21.

³⁸⁰ Interview 4.

³⁸¹ Interview 22.

³⁸² Interviews 20, 21.

³⁸³ Interview 20.

³⁸⁴ Interviews 19, 24.

³⁸⁵ Interview 13.

As a result, TBB started legal action at the Council of State to stop this practice but the judgment stated that “equal does not necessarily mean next to, as long as bars were not put down a row”³⁸⁶. Similarly, despite being next to the Head prosecutor in the protocol, the President of TBB would not be accepted to VIP rooms. Or attorneys IDs were not accepted as valid ID³⁸⁷. These practices showed that state institutions did not see TBB according to its constitutional status³⁸⁸. Because of that, until 19 May 2006 the President of TBB did not attend ceremonies, at which time his rightful place in the protocol was restored³⁸⁹.

If the President of the Bar was in his rightful place, state institutions would also take TBB seriously given the fact that the state ran over form³⁹⁰. As a result, a governor would take an institution that is in the fourth row in the protocol more seriously than the one in the eighteenth row. Indeed, when the government valued a relationship and kept good relations with an institution, then other state institutions also did so. The perfect example of this was TOBB, despite its lower status in the protocol³⁹¹. Some respondents

³⁸⁶ Interview 21.

³⁸⁷ Interview 21.

³⁸⁸ Interviews 5, 7.

³⁸⁹ Interview 21.

³⁹⁰ Interview 14.

³⁹¹ Interview 19.

believed that TBB was being ignored by state institutions³⁹². A manifestation of that was the fact that when the Head of State invited institutions of the higher judiciary to discuss problems in the judiciary, he did not think of inviting TBB as one of the institutions³⁹³.

The state had to take TBB seriously and value its views. The relationship should be friendly and objective and observe the interests of justice, courts and attorneys because this was mutually advantageous³⁹⁴. If politics was not involved, it could be a perfect, harmonious relationship³⁹⁵. It had to be a cooperation without accepting a hierarchy given Molierac's words: "Attorneys did not use slaves, they also did not have a master"³⁹⁶. However, it was difficult to call it a warm and positive relationship given the problems attorneys were having in land registry offices, frictions with the Police, in courts concerning review of files, obtaining copies and information from court files³⁹⁷.

³⁹² Interviews 21, 24, 29.

³⁹³ Interview 21.

³⁹⁴ Interview 16.

³⁹⁵ Interview 26.

³⁹⁶ Interview 12. This famous saying was used by three respondents in different contexts.

³⁹⁷ Interview 15.

According to one respondent, the state was viewing TBB as an association³⁹⁸ although TBB was a different, constitutional institution that represented the defense. A manifestation of this lack of perspective was that case assignments from criminal legal aid were paid much less fees (by the government) than the mandatory minimum fee tariff that applied in private client relationships. The lesser payment was justified on the grounds that criminal legal aid was a form of public service. However, attorneys were then required to pay 18% VAT up front. In addition, their transportation costs were covered only in amounts applicable for public transportation³⁹⁹. All this showed that the government did not see the judiciary as an equal power to be treated equally but as an association that it could charge VAT for rendering a public service⁴⁰⁰. Indeed, there was economic dependency between TBB and the state⁴⁰¹. Lastly, one respondent described the relationship between the state and TBB as cooperation on the basis of the sacred state which has become hostile with AKP due to change of status quo⁴⁰² while another described the relationship as a useless fallacy⁴⁰³.

³⁹⁸ Interview 2.

³⁹⁹ Interview 2.

⁴⁰⁰ Interview 2.

⁴⁰¹ Interviews 8, 25.

⁴⁰² Interview 14.

⁴⁰³ Interview 11.

While there were various state institutions discussed by respondents under this heading, they overwhelmingly referred to the government. The findings illustrate that the political involvement of TBB as “backyard of CHP” and its challenging attitude towards governments seems to have led to a distant if not hostile relationship between state institutions in general and TBB. As a result there is agreement that TBB is not treated like favored groups like TOBB.

The relationship between the parties seems to have deteriorated especially when the current government came to power with public declarations made before the media regarding the Prime Minister. Later, the relationship apparently stagnated with both parties refraining from contact feeding even more lack of trust and resentment. While this seems to have led to the accumulation of professional problems and the status of the profession to decrease, the last drop appears to have been the lifting of the bar exam. This seems to have been the most important professional issue for TBB. In their opinion, the reversal was possibly done “to punish” TBB in one night. Given all this, findings show that there was hardly any contact between the government and TBB let alone policy concertation.

At the same time, the findings shed light why there is conflict between the parties. Despite the fact that in the corporatist interest group structure TBB was designed as a protective interest group, by staying close to CHP which

has spent decades in opposition, TBB seems to have not only identified itself with CHP but also seems to have adopted CHP lines under the pretense of defending human rights vis-à-vis right wing governments, moving it from a protective interest group to a promotional interest group.

IV.1. 5 : TBB vis-à-vis other professional organizations

In trying to understand the relationship between TBB and state institutions from a corporatist perspective, I specifically asked in the interviews about TBB's relationship with other professional organizations that were also given a constitutional status. The goal of the question was to see whether and to what extent corporatist "partners" were coming together, if at all, to discuss and determine policies among each other or with the government.

Respondents mentioned joint meetings and press statements⁴⁰⁴ issued with various professional organizations and unions⁴⁰⁵ depending on the political agenda of the country⁴⁰⁶ such as human rights and legal issues⁴⁰⁷. While in attendance, however, TBB acted with the *sensitivity* of being an institution of the judiciary⁴⁰⁸. In a similar vein, bars' place in the official protocol and

⁴⁰⁴ Interviews 13, 15.

⁴⁰⁵ Interviews 1, 3.

⁴⁰⁶ Interviews 21, 13, 15.

⁴⁰⁷ Interview 26.

⁴⁰⁸ Interview 1.

their public status *distinguished* TBB from other professional organizations as they lacked those qualities⁴⁰⁹.

Nevertheless, TBB provided legal assistance to fellow professional organizations as well as regulatory support⁴¹⁰, for instance in the case of financial consultants. This was done during the enactment of a law that required every firm with a certain capital to retain a financial consultant. When consulted, TBB approved the adoption of this law by saying that it was in compliance with the law⁴¹¹. It was indicated that cooperation with other professional organizations was issue-based because a continuous engagement would undermine the independence of bars⁴¹². Similarly, it was indicated that where TBB was not involved in the drafting of a joint declaration, then it refrained from signing it⁴¹³. In fact, as an institution of law, TBB did not sign “*their*” statements⁴¹⁴.

Further, some respondents underlined that given its different status, the other professional organizations and TBB should not even be regulated by

⁴⁰⁹ Interviews 2, 24, 25.

⁴¹⁰ Interview 22 disagreed with this point.

⁴¹¹ Interview 13.

⁴¹² Interview 3.

⁴¹³ Interview 5.

⁴¹⁴ Interview 29.

the same article in the constitution. Rather, TBB should be regulated in the same article as the judiciary⁴¹⁵. Further, TBB was performing a much more important task than other professional organizations given its much wider jurisdiction⁴¹⁶. Unlike other professional organizations, TBB was not stuck in its professional sphere and was much more important than them⁴¹⁷. Even the election procedure of bars was different than other professional organizations. For instance, in bars the president was not a *primus inter pares vis-à-vis* other board members but separately elected by the general assembly which made him/her stronger⁴¹⁸.

Some interviewees stated that there was a certain distance between these organizations and TBB. Other than showing the courtesy of attending meetings they were invited, there was not much contact⁴¹⁹. It was also indicated that there could be conflict of interest between some professional organizations and TBB, notably the Union of Public Notaries⁴²⁰. However, TBB should have a leading role among the professional organizations because it was much more suited to play this role than say the Chamber of Medical Doctors, most of whom were civil servants or the Chamber of

⁴¹⁵ Interviews 5, 10, 29.

⁴¹⁶ Interview 10.

⁴¹⁷ Interview 16.

⁴¹⁸ Interviews 8, 25.

⁴¹⁹ Interviews 4, 22.

⁴²⁰ Interview 4.

Traders (TOBB) for whom the protection of property was more important than their lives. Therefore, they would not want to incur the wrath of the government⁴²¹.

On the other hand, some respondents said that TBB could be as effective as the Chamber of Traders⁴²² or much more known than other professional organizations⁴²³. The opposite view was also aired on the grounds that the proximity of bars to the state and its institutions was preventing them from being as critical as other professional organizations⁴²⁴. Similarly, TBB was not taking as serious risk as other professional organizations for instance in the “Kurdish problem”⁴²⁵.

When prompted with which professional organizations TBB cooperated, various answers were given: Chamber of Medical Doctors⁴²⁶; Chambers for Architects and Engineers⁴²⁷ and Chambers of Financial Consultants⁴²⁸. More specifically, when it came to the health conditions in prisons, work

⁴²¹ Interview 12.

⁴²² Interview 16.

⁴²³ Interview 19.

⁴²⁴ Interview 25.

⁴²⁵ Interview 27.

⁴²⁶ Interviews 2, 3, 10.

⁴²⁷ Interviews 2, 3, 13.

⁴²⁸ Interview 13.

was done with the Chamber of Medical Doctors which apparently led to a protocol among the Ministries of Health and Justice, the Chamber and the bars⁴²⁹. Similarly, when new regulations were intended for doctors, again cooperation was made with the Chamber of Medical Doctors⁴³⁰. When it came to environmental issues, cooperation was made with the Chamber of Forest Engineers and Agricultural Engineers. When it came to legally challenging building of hydro thermal plants, work was done with the Chambers for Architects and Engineers⁴³¹. Or when the issue was zoning, then the partner was the Chamber of Architects⁴³². When there were tax issues, the cooperating partner was the Financial Consultants or in labor issues the unions⁴³³. The Financial Consultants Chamber was important because they and lawyers worked in two service sectors where regulations were intertwined⁴³⁴. However, when there was no issue based cooperation, then political views of these organizations became important. When these views did not fit TBB's, the relationship did not go further than one of courtesy⁴³⁵.

⁴²⁹ Interview 2.

⁴³⁰ Interview 18.

⁴³¹ Interview 2.

⁴³² Interview 10.

⁴³³ Interview 17.

⁴³⁴ Interview 28.

⁴³⁵ Interview 23.

To sum up, TBB seems to be engaged with other professional institutions on an ad hoc and courtesy basis. The cooperation seems to be triggered when invited or consulted by the institutions. While TBB does not like to be consulted only when needed when it comes to state institutions, when it comes to other professional institutions, this almost seems like an issue to be proud of. This is because TBB attributes itself a different and superior role than other professional institutions. Nevertheless, in terms of corporatist relations, one does not see any policy concertation among professional organizations.

IV. 1. 6. Summary of findings as to relations between TBB and state institutions

Data shows that when it comes to the relationship with the judiciary, the structural roles in the court system determine parties' relationship than anything else. In that regard, respondents shared many anecdotes that showed the superior tone and attitude adopted by prosecutors and judges towards attorneys, reminiscent of an authoritarian political system where the court is an extension of prosecution and there is not much room for defense. As a result, when it came to TBB-judiciary relationship, this attitude was replicated on an institutional level. In terms of the relationship between TBB and the legislature, this appeared to mostly take place in expert committees to which TBB awaited invitation while lately there also seem to be attempts by TBB to engage all political parties, MPs and the various

committees at the Parliament more pro-actively (without waiting for an official invitation).

The relationship between the Ministry of Justice and TBB, on the other hand, ran on multiple layers. First layer was about the routine oversight exercised by the Ministry over TBB concerning approvals of licensing and disciplinary decisions; financial issues; and permissions given for criminal investigation of attorneys. The second layer involved the Ministry as the instigator of justice policy in the government. In that capacity, it was responsible for the daily running of the justice system such as courts and prisons as well as for preparation of laws that are drafted by bureaucrats mostly in Committees. This latter layer in the relationship is where functions may be expected to overlap with TBB since policy decisions are considered by TBB as its professional turf where it also claims interest.

While this may be an area where the parties may be expected to be engaged in policy concertation, it seems that the Ministry is content with ad hoc contacts it has with TBB that are run in an official manner. It also appears that when there is contact, this is done mostly to save the looks and not really to share power in policy making. In fact, even the oversight functions of the Ministry that may be considered routine are run without established mechanisms between the parties. Data shows that not only there is lack of will or platform for joint policy making but also the staff of the Ministry

demonstrate the attitudes of the bench towards attorneys and are nevertheless disinterested in the latter's problems.

Having said that, data also showed that TBB's critical stance towards the government effected its relations with the Ministry of Justice. Two attitudes were described one of which rejected contact with the Ministry because the government was seen as the "other" while the second attitude wanted contact and dialogue with the government and the Ministry for the resolution of professional problems. Nevertheless, data showed that a new beginning was made in the relations between the parties with the election of the new President at TBB.

Overall, data shows that none of the three branches seems to be ready and willing to share power with TBB in any corporatist policy making and content themselves with merely consulting, indicating a strong monist tendency on the part of state institutions.

V.1: Reasons for conflict between TBB and state institutions

After summarizing the responses to the first research question as above, now the second research question can be answered. To find out what may be the reasons for conflict between TBB and state institutions, I did not directly ask a question to that effect. Rather when answering other questions,

respondents often provided explanations concerning the subject. One obvious explanation for conflict came out of the relationship between TBB and state institutions. This will be discussed in Chapter Four in length. Therefore, for the moment suffice it to say that the continuing monism on the part of state institutions is the primary cause of the conflict. Nevertheless, I identified below three additional themes that seem to contribute to conflict between the parties.

V. 2: Socio-economic change

In Chapter Two, I stated that social and economic change was eroding the professional project as well as the legitimacy of involuntary membership institutions like TBB. One of the reasons for that was the increase in the number of people studying law thanks to the increase in law school numbers.

Indeed, respondents pointed out to the wider availability of education. According to some, for a long time, people in Anatolia could not have higher education because few people had the means to send their kids to Ankara or Istanbul for university⁴³⁶. But today they understood the value of education⁴³⁷. As a consequence, it was no longer kids with better economic

⁴³⁶ Interviews 16, 28.

⁴³⁷ Interview 28.

conditions or from higher bureaucratic families that studied. In the last 20-30 years, it all changed⁴³⁸. Becoming an attorney has also become popular with the people in Anatolia. Before, it was preferred by an aristocratic elite especially when this respondent looked back as someone who became an attorney in the early 1980s in his Aegean town⁴³⁹. This was not surprising given the fact that the initial years of practice required support from the family, something that could be done only by those who had that type of economic means. It also kept the number of attorneys small.

The small numbers meant for some respondents⁴⁴⁰ that -with the initiative of elder colleagues- they have become member of the bar's board as soon as they were admitted to the practice. At the time, there was also no seniority requirement to serve at the board. Consequently, as the most junior member, some spent a lot of time in their first years, serving cologne and candy to guests⁴⁴¹. Another anecdote of low attorney numbers in one of the three big cities indicates that when an attorney died, social solidarity was something organized by the clerk at the court house whereby everyone contributed on the basis of voluntarism so a funeral could be organized for their colleague⁴⁴².

⁴³⁸ Interviews 16, 28.

⁴³⁹ Interview 15.

⁴⁴⁰ Interviews 15, 13, 21.

⁴⁴¹ Interview 13.

⁴⁴² Interview 29.

Today, the number of law schools meant that each year there were 5000 graduates from law schools, most of whom became attorneys. They initially worked in law firms for a salary until they felt competent to open their own firms⁴⁴³. However, some felt that the increase in the number of attorneys and the fact that there was no filter to become an attorney, led to economic hardship for all attorneys⁴⁴⁴ as well as diminishing respect for the profession.

Further, legal education was getting worse given the fact that the number of law teachers in the country was limited and old schools were losing their cadres to newly established private schools⁴⁴⁵. Loss of quality in legal education was the concern of other respondents as well⁴⁴⁶. The fast increase in attorney numbers went hand in hand with the fast decrease in overall quality in the profession and loss of social status⁴⁴⁷. Indeed, it brought unfair competition among colleagues and led to abuse. One started to hear attorneys being beaten if he or she went to seizure of property (for unpaid debts) or attorneys getting killed if he or she could not get their client

⁴⁴³ Interview 15.

⁴⁴⁴ Interview 1.

⁴⁴⁵ Interview 1.

⁴⁴⁶ Interviews 23, 29, 10.

⁴⁴⁷ Interview 21.

released⁴⁴⁸. Under the circumstances, being an attorney has become something for those who could not become anything else⁴⁴⁹.

One respondent said that the increase in the number of attorneys, was an attempt to reverse the “contemporary political stand” of the profession. Even if this was not done consciously, socially this was the case. It was making itself felt⁴⁵⁰. The new generation was coming from a different world of thought. This worried some for it could change TBB in the future⁴⁵¹. Indeed, one respondent said that there was a change in the member profile⁴⁵² while one said that he defined himself as an attorney of the republic and most of the members were conscious about the fact that their profession was a product of the republic and legal revolutions⁴⁵³.

On the other hand, the increase in attorney numbers meant that it was no longer easy to disregard the mass of attorneys as there was recognition that it was no longer possible to raise quality in the justice sector or meet the demand for justice without attorneys. In other words, all of this was the

⁴⁴⁸ Interview 13.

⁴⁴⁹ Interview 15.

⁴⁵⁰ Interview 13.

⁴⁵¹ Interview 13.

⁴⁵² Interview 28.

⁴⁵³ Interview 29.

outcome of change in society. Needs and new relationships could no longer be addressed through old structures⁴⁵⁴.

In addition to socio-economic change in the country and in the profession, respondents referred to incidents that took place in their dealing with TBB during their presidency. In that regard, the first issue pointed out was TBB's "guardian" role in the legal meaning of the word⁴⁵⁵. The fact that thirty five⁴⁵⁶ decisions of local bars was subject to the approval of TBB, (e.g. in disciplinary matters) was an illustration of this guardian authority⁴⁵⁷. These interventions violated bars' independence⁴⁵⁸ and led to uniformity⁴⁵⁹. To illustrate, in a Southeastern city of Turkey, courts filed complaints with the bar even if attorneys arrived to the hearing for five minutes late. The local bar viewed these complaints as an attack on the defense and dismissed them as not requiring disciplinary action. However, TBB lifted the dismissals⁴⁶⁰.

⁴⁵⁴ Interview 20.

⁴⁵⁵ Interviews 7, 8, 25. Legally, a guardian "is a person lawfully invested with power and charged with the duty of taking care of the person and managing the property and rights of another person, who for defect of age, understanding or self control is considered incapable of administering his own affairs", Black's Law Dictionary 1983: 361.

⁴⁵⁶ Interview 21.

⁴⁵⁷ Interview 3.

⁴⁵⁸ Interview 3.

⁴⁵⁹ Interview 25.

⁴⁶⁰ Interview 25.

Or local bars provide criminal legal aid service to the public which requires an office and personnel. While the expenditures of the office are covered, the proper carrying out of the function also requires on the job training of criminal legal aid lawyers. However, TBB objects to the use of funds thus allocated saying that training cannot be counted as an expenditure⁴⁶¹. The respondent conceded that this strictness came from previous abuse by bars by convening trainings in five star hotels or hiring too many office staff and paying them high salaries. While he agreed that some order was necessary, these actions were tying the hands of bars and made bars dependent on TBB⁴⁶².

Further illustrations of intervention by TBB included the rejection of the picture of an attorney on his license because he had a “religious beard”. However, the then bar president of town, being a former MP, personally intervened, talked to TBB and resolved the issue⁴⁶³. An extension of this was the requirement of a tie for men and the ban on jeans for women even under the attorney costume. While the profession should be performed in a neat and clean fashion, forcing one attire on the profession as a whole was inappropriate given the profession’s independence⁴⁶⁴. Other interventions included regulations concerning the location of a law office and how to

⁴⁶¹ Interview 25.

⁴⁶² Interview 25.

⁴⁶³ Interview 16.

⁴⁶⁴ Interview 25.

decorate it⁴⁶⁵; issuance of ID cards for attorneys although attorneys were not TBB's member; and signing of their licenses by TBB⁴⁶⁶.

Similarly, in the past attorneys have been convicted before the then State Security Courts. As a result of that, the attorney had to be removed from the profession. However, due to the presence of a military judge on the court, - found to be a violation of the right to fair trial by the European Court of Human Rights-, the local bar refrained from removing the attorney. TBB, however, reversed this decision⁴⁶⁷.

In addition to these interventions, TBB had a tendency to expand its authority⁴⁶⁸. For instance, transfer of a member from one bar to another bar was not subject to the approval of TBB. TBB would, however, consider this in its jurisdiction and intervene especially when the attorney who was sworn in before an Anatolian bar wore a headscarf⁴⁶⁹.

In sum, socio-economic change seems to be leading to much wider availability of education and growth in the number of attorneys. This also

⁴⁶⁵ Interview 25.

⁴⁶⁶ Interview 3.

⁴⁶⁷ Interview 3.

⁴⁶⁸ Interview 3.

⁴⁶⁹ Interview 3.

means growing diversity in the profession while creating apathy towards uniform solutions. In other words, socio-economic change makes it difficult for one organization to represent an increasingly diverse profession with diverse needs and priorities.

In addition, respondents felt that some bars were in competition with TBB⁴⁷⁰. This was observed during the amendment of the Code of Criminal Procedure. Larger bars often wanted to directly engage with the Committee drafting the code, the party groups in the Parliament or the Ministry of Justice. They justified this course of action on the ground that TBB lacked an audience⁴⁷¹. Further, their human and economic resources allowed them to solve their problems on their own while smaller bars⁴⁷² with less member numbers needed more support from TBB⁴⁷³.

In the past, there was no competition between TBB and the bars because TBB did not have the resources to compete⁴⁷⁴. To illustrate the absence of resources, TBB could invite bar presidents in their two year presidency to its building in Karanfil Street in Kızılay only once. Its then conference room

⁴⁷⁰ Interviews 4, 9.

⁴⁷¹ Interview 9.

⁴⁷² Interview 17.

⁴⁷³ Interviews 3, 9.

⁴⁷⁴ Interview 26.

was designed like a classroom and the lunch served consisted of sandwiches. The lack of resources also meant that international professional organizations took Istanbul or Ankara bars as their counterpart but after 2001, the new counter party was TBB, contributing to the perception of competition⁴⁷⁵.

As result of the 2001 amendments that automatically provided a portion of the fee for every power of attorney issued in the country as income to TBB, today, TBB had serious amounts of funds⁴⁷⁶. These funds were used to better the conditions of local bars and TBB⁴⁷⁷; to provide credit for apprentice attorneys or for health services; to build a hotel and a administrative building⁴⁷⁸; to better the social welfare (health and retirement) conditions of attorneys⁴⁷⁹. TBB's work today was no longer confined to the routine that finished when convened once a month for half a day⁴⁸⁰.

⁴⁷⁵ Interview 26.

⁴⁷⁶ Interviews 12, 19, 22, 26, 23, 25, 29.

⁴⁷⁷ Interview 19.

⁴⁷⁸ Interview 23.

⁴⁷⁹ Interview 26.

⁴⁸⁰ Interview 26.

Whereas in 2001, TBB had eight staff members, today it had 80. Its building was beyond comparison to any other similarly situated professional organization in Europe or Middle East. Even members of the higher judiciary brought their counter parts to TBB's building. State officials including the Head of State or Ministers who due to security reasons could not visit the former building have visited the new building⁴⁸¹. Not only income coming from power of attorneys but also funds transferred for criminal and civil legal aid provision made a difference for bars⁴⁸².

However, not everyone agreed that the resourcefulness of TBB was a good thing. One respondent suggested that the funds available to TBB was sometimes used to discipline local bars by withholding or releasing them when needed⁴⁸³. Further, despite lacking funds, TBB was initially dynamic and involved in legal problems, affecting politics⁴⁸⁴. Equally, it was publishing serious legal books, distributing them and was much more vocal concerning problems while its approach to law was more humane⁴⁸⁵. To the dislike of this respondent, when TBB became too powerful, local bars were crushed under it. In his opinion, TBB was just a coordinator, the main actor was the local bar. When too much money was involved, the problems of

⁴⁸¹ Interview 26.

⁴⁸² Interviews 26, 29.

⁴⁸³ Interview 25.

⁴⁸⁴ Interview 23.

⁴⁸⁵ Interview 12.

local bars or legal problems were less of a concern. Therefore, TBB should have less money but be more active and coordinate more⁴⁸⁶. Another respondent was equally critical. In his opinion, it was a better idea to become a president of the Trade Exchanges than a Minister given their huge buildings, 30-40 consultants, cars and amazing budgets⁴⁸⁷.

Some respondents indicated that larger bars wanted TBB to follow their stances⁴⁸⁸ or wanted to be the center⁴⁸⁹. When they took the microphone, they shared their views including political ones with the public and believed that TBB should also do the same⁴⁹⁰.

“(…) For example, President of Bar goes on TV and talks about politics all the time but not about the law. I want my colleague, my friend from the bar to talk about the law. Instead of saying ‘Dear Government, we are preparing the Act on Attorneys, we are bringing this to you, are you going to pass it as is from the Parliament?’, it is Ergenekon up, Ergenekon down...What do we care about Ergenekon?”

Interview 30.

Some believed that the delegate system of TBB contributed to this state of affairs because delegate numbers were determined according to the number of members in a bar. Today, TBB had over 400 delegates and the highest

⁴⁸⁶ Interview 12.

⁴⁸⁷ Interview 11.

⁴⁸⁸ Interview 30.

⁴⁸⁹ Interview 19.

⁴⁹⁰ Interview 30.

number of delegates were from Istanbul (86-87 delegates); Ankara (40-50 delegates) and İzmir (15-20 delegates)⁴⁹¹. When these three bars came together, they determined the outcome of elections at TBB⁴⁹² because smaller bars that had 30-40 members were represented with just 3 delegates one of which was the President of the bar (as a natural delegate)⁴⁹³.

Further, elections in the three large bars was different than the elections at other bars because in the former, elections were between lists⁴⁹⁴. Each group, consisting of members with a homogenous world view, produced a block list. In other bars, there was no list. Thus, in order to get the maximum number of votes, presidents had to include people of different world views⁴⁹⁵. In addition, the electoral system was majoritarian. Thus, in a bar with 25000 members, if the highest number of votes was 5500, that list got to represent the whole bar and produced all the delegates⁴⁹⁶. Therefore, in large towns, political criteria became important to get elected⁴⁹⁷. For the last 30-40 years, except a brief period, Istanbul, Ankara and Izmir all have

⁴⁹¹ Interview 26.

⁴⁹² Interview 27.

⁴⁹³ Interview 26.

⁴⁹⁴ Interview 3.

⁴⁹⁵ Interview 3.

⁴⁹⁶ Interview 19.

⁴⁹⁷ Interview 8.

been ruled by “Kemalists”⁴⁹⁸. According to one respondent, while Istanbul and Ankara still were strongholds of “Kemalists”, “Anatolian bars” were today being taken over by the AKP-MHP line⁴⁹⁹.

According to some, the competition between TBB and the large bars was undermining the unity in the profession⁵⁰⁰. The principle should be to act together in order not to give such appearance⁵⁰¹. Indeed, recent declarations by bars concerning the plans of the government for establishment of intermediary court of appeals and opening new chambers at the court of cassation in order to reduce delays on appeal, divided bars: 24 of them were against the measures while 37 of them supported the proposed changes. The numbers are known because both camps issued press statements giving their reasons for approval or rejection⁵⁰².

While bar presidents meeting was designed as a venue for problems to be aired by bars and solutions sought to common problems⁵⁰³, the Eastern bars and Central Anatolia’s conservative democrat bars appeared as “the other”

⁴⁹⁸ Interview 12.

⁴⁹⁹ Interview 16.

⁵⁰⁰ Interviews 30, 21.

⁵⁰¹ Interview 26.

⁵⁰² Interviews 26, 25.

⁵⁰³ Interviews 6, 24.

in those meetings⁵⁰⁴. When prompted how this was done, one respondent described that bar presidents meetings consisted of sessions, open and closed to the media. While in the closed session, the opinion of bars were sought, these would not be shared with the public and the view of TBB would be declared as if it was the opinion of all bars⁵⁰⁵.

The parting of ways in that regard has been the use of names of bars without consulting them in a newspaper ad by one large bar organization.

Consequently, the bars in the ad made a counter declaration in a Central Anatolian town which was portrayed as the “revolt of Anatolian bars” by the media. One respondent said that the largest three bars have been ahead of “Anatolian bars” in terms of human and economic resources and political awareness but lately the latter also acquired an identity and could declare their opinions independent of the largest three⁵⁰⁶.

In sum, socio-economic change in terms of education, mobility and wealth not only increased the demand and numbers in the profession, more importantly, it also made the profession more heterogeneous. The importing of social cleavages to the profession, not only undermined the professional project in terms of supply (and market) control but it also demonstrated that

⁵⁰⁴ Interview 19.

⁵⁰⁵ Interview 19.

⁵⁰⁶ Interview 28.

the existing structures and habits of TBB were increasingly unfit for the profession. At the same time, socio-economic change also meant that local bars were becoming more confident in asserting their independence and resisting uniformity. If one outcome of this was seen in the relationship between local bars vis-à-vis TBB; it was also seen in the relationship of local bars and the big three. When the latter attempted to dictate policies to local bars (independent of TBB) as they used to, this was increasingly resented by local bars.

V.3: Conflict of interest in terms of the functions of TBB

I argued in the theoretical framework that in a corporatist interest group structure, professional organizations such as TBB are designed as protective interest groups. In a corporatist system, having the ear of the government, they function as insiders that deliver protection to their members. Therefore, they do not need to exert pressure on the government through the public or the media. It was also indicated that a promotional interest group did not function like that.

During the interviews, it became clear that TBB was swinging between a protective interest group and promotional interest group. One of the reasons for this situation seems to be the role confusion as to what TBB is and what it stands for. This was clear from respondents' description of TBB which varied according to their understanding of it: an NGO, a public body, an

interest group, performed political functions, etc. Respondents used various adjectives and definitions for TBB and sometimes criticized it for acting the way it did or failing to act in the way it was supposed to because in their understanding this was how an NGO or a public body should have acted. Equally, they sometimes justified the actions of TBB on the grounds of being a public body or an interest group.

According to some respondents, TBB was a coordinator⁵⁰⁷. This coordination was needed in order to ensure that bars formed common positions on common issues. In other words, it was necessary for solidarist purposes⁵⁰⁸. One respondent justified TBB's existence on the basis of importance of institutions in a democracy⁵⁰⁹. Meanwhile some respondents said that TBB was a peak organization⁵¹⁰ representing bars⁵¹¹. Some respondents denied that on various reasons: One said that the goal in establishing TBB was not the creation of an upper body but standardization and better voicing of problems⁵¹². Another said that TBB did not have such representative authority; there was no similar organization in the world and

⁵⁰⁷ Interviews 4, 8, 9, 12.

⁵⁰⁸ Interview 9.

⁵⁰⁹ Interview 9.

⁵¹⁰ Interviews 1, 2, 4, 5, 7, 9, 24. The Turkish word used was "üst kuruluş".

⁵¹¹ Interview 4.

⁵¹² Interview 10.

such a structure would violate bars' independence and although in the old act it was designed as such, it no longer was the upper body of local bars⁵¹³.

At the same time, despite having a public character⁵¹⁴ and being a professional organization⁵¹⁵, TBB was non-governmental⁵¹⁶. As one respondent put it, just like an NGO, TBB was always in opposition⁵¹⁷. One interviewee said that being an NGO was the only redress TBB had⁵¹⁸.

Where something went wrong, it was TBB's duty to criticize but not for the sake of criticizing but to show how it was supposed to be⁵¹⁹. Some said that TBB was independent⁵²⁰ -the character of the legal profession-; as well as a democratic mass organization; a pressure group⁵²¹. TBB also constituted part of civil society⁵²².

⁵¹³ Interview 21.

⁵¹⁴ Interview 4.

⁵¹⁵ Interviews 4, 10, 13, 25, 28.

⁵¹⁶ Interviews 4, 10, 27.

⁵¹⁷ Interview 18.

⁵¹⁸ Interview 27.

⁵¹⁹ Interview 18.

⁵²⁰ Interviews 1, 5, 29.

⁵²¹ Interviews 27, 29.

⁵²² Interview 5.

The conceptual differences in these descriptions notwithstanding, even when it was said that TBB was an NGO, it was pointed out that it was a *different* kind of NGO. To illustrate the point, one interviewee explained how he responded to a letter by the Council of Europe directed at all NGOs including TBB. The letter invited NGOs to a meeting where each NGO would have three minutes to speak. The respondent answered the invitation by saying that TBB was *not that kind of an NGO* and would not say anything in three minutes. Thereupon, TBB was given a *special appointment* where the meeting lasted an hour⁵²³.

This “difference” was also stressed to distinguish TBB from other professional organizations. Although TBB was a professional organization, it was not the Chamber of Doctors or Dentists or Drivers or Hairdressers⁵²⁴. What distinguished it from those was the word “public” in its title. It was carrying out a public duty in adjudication, the activity where the state’s authority was the most apparent. Consequently, any attack against an attorney was punished like it was made against a public servant, in an aggravated fashion⁵²⁵. As a result of this public function, bars were in the state protocol, served in the court house and acquired an official status.

⁵²³ Interview 5.

⁵²⁴ Interview 18.

⁵²⁵ Interview 18.

However, according to one respondent, this structure was clashing with the principles of being a free profession⁵²⁶.

On the other hand, some respondents used negations to describe TBB's functions. To begin with, they emphasized that TBB was not the superior or director of local bars⁵²⁷. TBB could not be an organization that formed policies that suited the government to obtain benefits because that would undermine its independence⁵²⁸. It was to defend rule of law and judicial independence *at any price*. Another respondent said that TBB should not be seen as a professional organization only, it was an institution of the judiciary, an institution of the defense⁵²⁹. It was a legal institution⁵³⁰. A respondent sharing this view stated that the judiciary consisted of a trivet of prosecution-defense and judgment, participation in which by the people was through attorneys because the judiciary was adjudicating on behalf of the people⁵³¹. She further said that among the three branches, it was the job of the judiciary to criticize; to be the bad boy in the system as an *insider*; to be the trouble maker; to act like a safety valve in the system⁵³². Consistent with

⁵²⁶ Interview 25.

⁵²⁷ Interviews 22, 24.

⁵²⁸ Interview 1.

⁵²⁹ Interviews 3, 21, 29.

⁵³⁰ Interview 29.

⁵³¹ Interview 9.

⁵³² Interview 9.

this role, TBB should be objecting to violations of rights by the executive by initiating court action; promoting fair trial and justice and contributing to the legislative process⁵³³.

Some respondents believed that TBB was the representative of the people⁵³⁴. This was so because the law symbolized the people. In this respondent's opinion, when attorneys articulated the needs of bars, and TBB acted on it, in a way it also acted on behalf of the people. Thus, TBB was an institution that was responsive to society's demands⁵³⁵. Further, TBB sided with the law, liberties and democracy. In that sense, it was not objective. The law, as defended by TBB, should apply everybody equally. However, TBB failed on both counts. It was siding with one ideology⁵³⁶ and was pretending that it was the ideology of all attorneys. In addition, it was also acting discriminatory⁵³⁷. Another respondent said that TBB was not a loyalist⁵³⁸ institution but viewed the law from a legal perspective and showed the right way⁵³⁹.

⁵³³ Interview 9.

⁵³⁴ Interviews 5, 6.

⁵³⁵ Interview 6.

⁵³⁶ Interviews 3, 28.

⁵³⁷ Interview 3.

⁵³⁸ The term used was "yandaş" as used for AKP supporters.

⁵³⁹ Interview 6.

One respondent said that TBB's views in areas where it has expertise should be binding⁵⁴⁰. Just like TUSIAD's opinions on the economy was considered important, TBB's opinions on the law should be even more so. TBB could comment in every subject relevant for the future of the country because it formed part of the country's administrative structure which allowed it to use administrative power.

On the other hand, one respondent underlined that as an institution, bars and in particular TBB were institutions inclined to political reflexes. The question was, however, whether there should be any limit to this and if yes, what that limit should be⁵⁴¹. Real persons could advocate their world views, gather support but it was inappropriate for the bar as a non-real person to defend a particular world view as if all attorneys shared it, because TBB was an organization that was not based on common ideology but on common profession⁵⁴². It was a common platform for attorneys⁵⁴³. In that sense, there was no common ideology to be represented by TBB because bar members were a heterogeneous group. Only when there were issues that most of the attorneys could agree on (except marginal ones) those could and should be defended by TBB⁵⁴⁴.

⁵⁴⁰ Interview 10.

⁵⁴¹ Interview 11.

⁵⁴² Interview 11.

⁵⁴³ Interview 28.

⁵⁴⁴ Interview 11.

According to this respondent, in today's world, there should be no room for institutions such as the Union of Trade Chambers, Artisans Chambers or similar that have been established by law. Further, if these institutions were to remain as public bodies then they were not or could not be NGOs. While recognizing that there was a need for an institution to keep a registry of attorneys, attorneys' contribution to political life should take place through civil organizations because real pressure groups exist on the basis of voluntary financial contributions and on common ideas. When a bar president is expected to take political sides, each member would expect it according to his/her world view. This also meant political immobility on the part of the organization: whichever view is adopted, there would be those left disappointed. Meanwhile, the attachment of professional organizations to the state not only reduced their democratic reflexes but also the chances of civilian initiatives to develop because it was presumed that the existing structures already represented those interests⁵⁴⁵.

"It says that professional organizations should not engage in politics. Who is going to? Only MPs?"

Interview 29.

This MP further believed that there was a general NGO problem in Turkey and justified his views by the example of labor unions in the country. According to him, KESK, KAMUSEN and Memur Sen were all established

⁵⁴⁵ Interview 11.

with political reflexes, the latter being connected with AKP. Thus, instead of defending the rights of civil servants, it was justifying the mistakes of the current government from the viewpoint of civil servants. In his opinion, this was a typical example of yellow unionism, a phenomenon generally found in professional organizations because a person that is deemed a public servant is at the same time expected to challenge public authority. Not surprisingly, they did not and these challenges were then made by marginal groups. In that sense, what was expected from bars was to fill the lack of social reaction in society which contributed to the development of political reflexes by these organizations⁵⁴⁶. This point was confirmed by one respondent who said that the intention with the establishment of TBB and similar institutions was to balance the three classic powers and prevent that the legal, economic, social and cultural development of society was monopolized by political parties⁵⁴⁷.

Lastly, the MP questioned if membership was voluntary, how many people would continue to be a member of their professional organization. In his opinion, mandatory membership did not make an institution strong. One respondent commented on the same point and somehow confirmed the suspicion of the MP: the removal of the requirement for public sector

⁵⁴⁶ Interview 11.

⁵⁴⁷ Interview 29.

attorneys to be members of bar organizations after the military coup led many to delete their membership, weakening the bar⁵⁴⁸.

In sum, TBB seems to not only have protective interest group functions but also promotional interest group functions as apparent by respondents' comments. Further, it seems to view itself as part of the state or administrative structure with a public role while having functions attributable to civil society groups. It is therefore only apt to call this as a role confusion which seems to be fuelling TBB's conflict with the government. This is because in a corporatist system, interest groups are designed as protective groups. However, when a protective group also has promotional functions, it inevitably leads it to criticize and challenge the government by resorting to public opinion.

V.4: Attorneys' interest in politics

Unlike the previous themes that emerged from the data and were found to be contributing to conflict between the parties, this issue was explored with respondents directly because of my own interest in the subject. At the time I was designing the study, it was clear that the profession was interested in politics as evinced by the number of lawyer politicians. So seemed their professional organization, at least judging by the number of bar presidents who became MPs. Given this, I wanted to understand how this political

⁵⁴⁸ Interview 10.

involvement came about also to see whether there were any country specific reasons for it. I also asked respondents what they thought about bar presidents who have later become MPs. While the question was asked initially to satisfy my curiosity, when I analyzed the data, it became clear that the profession's interest in politics was contributing to the conflict between the parties.

In fact, data analysis made me realize that the theme developed well beyond this question. Even during the interview process it became clear that people have not *accidentally* become interested in politics *after* becoming president of the bar. Rather, 27 of the 30 interviewees were affiliated with a party but only 7 were in my original list. In other words, 20 of the 30 interviewees were members of a political party *before* becoming president of the bar, clearly showing interest in politics at the local level. Aside from that, I also discovered that bar presidents that have not become MPs were nevertheless involved in politics, as member or administrator of political parties at the local level. I therefore decided to add another question about politics to my questionnaire asking whether my interviewee had become a member of any political party in her/his life time.

Of course, many respondents did not simply address these questions but talked about many issues relating to politics. One of this was the closeness

of the profession to politics⁵⁴⁹. As one respondent put it, just like soldiers registered at the military academy and dreamt of becoming general of staff, lawyers thought of becoming an MP when they registered at the law school⁵⁵⁰. The phenomenon was explained primarily by the fact that the profession was a free profession⁵⁵¹ although some disagreed that this was a plus⁵⁵². Being a free profession meant that one was not dependent on the state for income and obtained economic liberty easily⁵⁵³. One got room to maneuver⁵⁵⁴. Second, there was no legal prohibition for attorneys to engage in politics as it exists for civil servants⁵⁵⁵.

Third, the Parliament was engaged in making laws. Therefore, there was a professional predisposition⁵⁵⁶ or an educational disposition⁵⁵⁷. In politics, an attorney represented many people instead of just one (the client)⁵⁵⁸. Politics was focused on public relations and solving problems, needs met by

⁵⁴⁹ Interviews 1, 2, 7, 16, 28.

⁵⁵⁰ Interview 12.

⁵⁵¹ Interviews 4, 5, 12, 15, 16, 25.

⁵⁵² Interview 11.

⁵⁵³ Interview 14.

⁵⁵⁴ Interview 11.

⁵⁵⁵ Interviews 2, 5, 7, 14, 15, 16.

⁵⁵⁶ Interviews 4, 11, 24, 30.

⁵⁵⁷ Interviews 4, 20.

⁵⁵⁸ Interviews 9, 27.

the functions of the profession⁵⁵⁹ because an attorney's job was human relations engineering⁵⁶⁰ or engaging in social architecture⁵⁶¹. Further, it was a profession that could say and write things. In Turkish politics, it mattered how one said things rather than what was said⁵⁶².

More importantly, attorneys were in touch with citizens⁵⁶³ especially with those perceived as dangerous or excluded⁵⁶⁴. That meant they lived their problems⁵⁶⁵ because all social and economic events ended up in attorneys' hands which were addressed and attempted to be solved through politics⁵⁶⁶. This was not the case for a teacher, a doctor or an engineer⁵⁶⁷. As a result, attorneys held the pulse of society⁵⁶⁸ and stood between state and society⁵⁶⁹.

“In (Blacksea town) at some point, all parties' presidents were attorneys. We worked together in the same bar. (...) We were party presidents of the province and have then become MPs from AKP, CHP and from MHP”.

Interview 11.

⁵⁵⁹ Interviews 14, 23.

⁵⁶⁰ Interview 20.

⁵⁶¹ Interview 10.

⁵⁶² Interviews 9, 11.

⁵⁶³ Interviews 1, 4, 7, 11, 14, 15, 25, 27.

⁵⁶⁴ Interview 14.

⁵⁶⁵ Interviews 9, 11, 16, 23, 28.

⁵⁶⁶ Interview 14.

⁵⁶⁷ Interview 28.

⁵⁶⁸ Interviews 8, 28.

⁵⁶⁹ Interview 28.

Some respondents also stressed that attorneys carried a leadership role in society⁵⁷⁰. No one would ask a teacher in the street about an incident but they would ask it to an attorney and expect explanation⁵⁷¹. For people who were not well educated, attorneys were considered as people who knew things. Attorneys could understand what they have read and explain it to others⁵⁷². Therefore, they were listened to⁵⁷³. Just as bars were seen as an institution of law, attorneys counted among legal intellectuals⁵⁷⁴.

On the other hand, attorneys had this idealism and mission to save the country⁵⁷⁵. It was not all about a good house and car and a better life standard. Being part of an important mechanism, attorneys had historical, ethical and social responsibility towards the society⁵⁷⁶. And the society also expected it from a successful attorney to either work for a political party or an association⁵⁷⁷. In elections, attorneys carried functions such as filing objections to the electoral process. Therefore, the professional position of

⁵⁷⁰ Interview 19.

⁵⁷¹ Interview 28.

⁵⁷² Interview 19.

⁵⁷³ Interview 12.

⁵⁷⁴ Interview 17.

⁵⁷⁵ Interview 11.

⁵⁷⁶ Interview 28.

⁵⁷⁷ Interview 16.

attorneys in small towns led to politics especially if one was politically interested⁵⁷⁸.

In fact, two respondents explained that their enjoyment of respect from elders at a very young age was owed to their being an attorney⁵⁷⁹. One respondent described how he defended cases of fellow political party members for free (when they were prosecuted under the notorious art. 169 of the former Turkish Penal Code)⁵⁸⁰. The assistance he rendered has been important for his climb up in the political ladder. At the same time, his mere presence in one of the first political Islamist parties in Turkey was extremely important as other elder attorneys were linked with AP and CHP⁵⁸¹.

While respondents justified the political involvement of attorneys on these grounds, some respondents also thought that bar work lead to politics⁵⁸². According to one respondent, at one point, anyone who wanted to become someone in CHP had to become either a president of bar or delegate or

⁵⁷⁸ Interview 11.

⁵⁷⁹ Interviews 13, 16.

⁵⁸⁰ Interview 16.

⁵⁸¹ Interview 16.

⁵⁸² Interviews 1, 5.

otherwise catch the attention of a former general secretary of CHP⁵⁸³. This lasted until TBB election in 2009 at which time his supporters were purged by the deceased President of TBB when he blocked the latter's candidacy to become an MP in CHP⁵⁸⁴.

Another reason for bar presidents to get involved in politics was that becoming president of bar allowed one to be known⁵⁸⁵ especially in small towns given the fact that it increased one's contacts with the people⁵⁸⁶. The president was among the 5-7 persons in protocol A⁵⁸⁷, and as a non-civil servant, he or she could make statements before the public⁵⁸⁸ that would also empower him/her politically⁵⁸⁹. This, coupled with their closeness to social and political events kept attorneys close to political parties⁵⁹⁰. Therefore, attorneys were followed by political parties (or caught their attention). Where there was similarity of thought, then the political party and the president got to know each other⁵⁹¹.

⁵⁸³ Interview 20.

⁵⁸⁴ Interview 20.

⁵⁸⁵ Interviews 2, 7, 17, 18.

⁵⁸⁶ Interview 18.

⁵⁸⁷ Interviews 2, 11.

⁵⁸⁸ Interviews 2, 25.

⁵⁸⁹ Interview 2.

⁵⁹⁰ Interview 28.

⁵⁹¹ Interview 17.

Attorneys were target candidates for political parties because there were couple of hundreds of attorneys in the town but only one president of bar or tens of thousands of workers but twenty union leaders⁵⁹². For large cities, however, the same could not be said. In Istanbul, the only president of bar who was engaged with the bar and got later involved in politics was Orhan Apaydın and that was in the 1970s. Even in his case, he has become an MP first and then president of the bar⁵⁹³.

It was pointed out that in Turkey it was extremely difficult for political parties to create cadres from their own resources. Therefore, it made sense to become the president of the 107 member “shuttle bus federation” by getting the vote of 75 and get noticed⁵⁹⁴. On the other hand, one respondent disagreed, stating that if he was not the president of the bar, his future in politics would be brighter because trying to do his job properly, he was criticizing people of all political colors⁵⁹⁵.

As a more recent phenomenon, there were also those who were carrying two functions simultaneously⁵⁹⁶. They were the president of the bar as well as

⁵⁹² Interviews 7, 20.

⁵⁹³ Interview 17.

⁵⁹⁴ Interview 20.

⁵⁹⁵ Interview 12.

⁵⁹⁶ Interviews 6, 7, 11, 15, 19.

the president of the political party in their town. When one respondent learned (from me) that this was the case, he said he found it extremely wrong because both jobs would get mixed up with each other. The presidency of the bar would always be used in politics⁵⁹⁷. If the person had intentions to engage in politics, he or she should leave the bar one year before the election⁵⁹⁸.

One respondent said that she knew someone in this situation and observed that he had to put reservations to statements at TBB from time to time when those statements would be contradictory to the party line⁵⁹⁹. Other respondents also emphasized the independence they enjoyed for not being connected to the hierarchy of any political party⁶⁰⁰.

“On one day, I can say for Erdoğan’s *Davos* burst that he has done very well, on the other day I can issue a statement saying that the actions at *Habur* border crossing were against the law. This is the freedom I get from not being connected with a political party. The fact that I act without being concerned about my political future lets me praise the right and criticize the wrong.”

Interview 6.

One respondent said that he has been very much criticized for running both functions at the same time but he felt his political connection assisted that of

⁵⁹⁷ Interview 16.

⁵⁹⁸ Interview 19.

⁵⁹⁹ Interview 6.

⁶⁰⁰ Interviews 12, 27.

the bar presidency⁶⁰¹ by allowing problems of the congested court house to be resolved by getting extra rooms in the government building; by hosting legal dignitaries in the province; and by getting timely payments for legal aid attorneys⁶⁰². In other words, it served to solve problems with the government and legislature faster. Another respondent said that both functions sometimes ran parallel but without intertwining with each other or the professional organization becoming a backyard or pillar for politics. When prompted why he was saying this, he said that political parties viewed it that way or wanted to see it that way⁶⁰³.

“Political parties think some professional organizations should come and provide support during election time and afterwards, fine, the mission is accomplished. However, if a professional organization is dependent on a political party, whether you want it or not, in the end, professional problems will have to be discussed parallel to the party line. But this is a solidarity structure based on profession not on politics.”

Interview 23.

This point was confirmed by another respondent who said that political parties try and are nevertheless inclined to dominate professional organizations as subsidiaries because this allowed them to have (union) power in addition to the power of the political party⁶⁰⁴. In fact, all political parties that he served in the past, tried to establish a subsidiary or an

⁶⁰¹ Interview 19.

⁶⁰² Interview 19.

⁶⁰³ Interview 23.

⁶⁰⁴ Interview 16.

association in every profession whether it was lawyers, contractors or accountants or tried to pull those established, to their side⁶⁰⁵.

Two further respondents said that at some point they also performed both tasks simultaneously but later quit, giving different reasons for doing so. One said he quit the party job because he thought it was inappropriate in public ceremonies to put a wreath first on behalf of the bar and 5-6 rows later, on behalf of the party. He felt that it led the bar to be defined with his political view. This wore down the profession and the bar⁶⁰⁶. The other respondent, on the other hand, said that when he became the president of the party in the province, he quit the job at the bar for political reasons, not for professional reasons⁶⁰⁷. In his opinion, this was a matter of political elegance, as in their school, being president of the party in a province was considered an important job. If he was a president in a charity, he could have carried on holding both titles but the bar job meant being under the discipline of another organization than the party⁶⁰⁸.

As briefly mentioned above, respondents pointed out that political affiliation also led to the bar. Drawing from their own experience, they explained that

⁶⁰⁵ Interview 16.

⁶⁰⁶ Interview 15.

⁶⁰⁷ Interview 11.

⁶⁰⁸ Interview 11.

they were engaged in local politics to the extent that they have become member, administrator or president of the party in their province and then became president (administrator) in the bar⁶⁰⁹. Two respondents even said that they were grateful to their colleagues for electing them as president of bar, more than once, despite the fact that they had such an intense political identity. Both respondents believed they enjoyed the trust of their colleagues who voted for them in the confidence that the party function would not be mixed with the bar function⁶¹⁰.

One respondent said, however, that she turned down the offer to join the bar during the time she was engaged in politics, as she considered that wrong. When prompted whether both functions could not be separated, she said she has seen people who could not⁶¹¹. One respondent said that these lines had to be drawn by the person in question rather than by regulation externally⁶¹². Another respondent said that it was difficult not to mix both functions but it could still be reduced to a minimum⁶¹³.

⁶⁰⁹ Interviews 1, 13, 23, 21.

⁶¹⁰ Interviews 1, 21.

⁶¹¹ Interview 6.

⁶¹² Interview 9.

⁶¹³ Interview 15.

Given respondents' belief in the propensity of attorneys to engage in politics and the fact that being the president of a professional organization allows one to be known in society, many respondents considered it positive⁶¹⁴ or natural⁶¹⁵ that persons with bar experience later got into politics. They gave various reasons for this view. One reason was the fact that someone who has held a position in the bar knew the problems of the profession. When in Parliament, (s)he could put this knowledge to use by solving them⁶¹⁶. However, expecting solely professional benefit would render the exercise fruitless. If the attorney was a good observer, and analyzed social events well, this could be an additional advantage⁶¹⁷.

“I have been an administrator in the local party organization of (...) between 2004-6. Local organizations do not consist of good names. As you know, civil servants are prohibited from engaging in politics. Unions and political parties may not establish contact. Many professions are by default out. We attorneys can get into it a little. In local politics, the unemployed are interested in political organizations in order to get a job in a municipality or a government institution. Contractors or the small businessmen in the local area are interested in order to sell their goods. When the party organization is left to these people, politics does not come out of that.(...)”.

Interview 7.

Another reason was that experience gained through these posts would bring quality to politics⁶¹⁸. The experience came from developing contacts with

⁶¹⁴ Interviews 1, 2, 4, 5, 8, 9, 10, 19, 23, 29, 30.

⁶¹⁵ Interviews 22, 24, 25, 28.

⁶¹⁶ Interviews 2, 15.

⁶¹⁷ Interview 2.

⁶¹⁸ Interviews 4, 5, 7, 30.

colleagues, the judiciary and the press, as well as from managing a cadre⁶¹⁹.

In bar presidents meetings, one further developed contacts and heard the views of all bar leaders in Turkey who held the pulse in their respective towns in Anatolia⁶²⁰. Politics was not only about talking in rallies but included working in parliamentary committees; expert committees and the general assembly⁶²¹. Therefore, this experience could be reflected in those places.

Also, getting elected as president of bar was not an easy job because attorneys thought of themselves as equals which was not the case say in trade chambers. One could be an industrialist but graduate of elementary school whereas in bars everyone was a graduate of law school⁶²². In addition, while in large cities political criteria was important to get elected, in small towns, criteria such as professional respectability and influence was more important. In other words, the election as president of bar served already running through a filter, showing that the candidate was qualified⁶²³.

⁶¹⁹ Interviews 8, 23.

⁶²⁰ Interview 8.

⁶²¹ Interview 23.

⁶²² Interview 8.

⁶²³ Interview 8, 23.

While saying that they found it positive that people got involved in politics after their bar post, respondents also drew a line to political engagement by pointing out “as long as these posts were not used as jumping stones for politics”⁶²⁴ or as long as two functions were not mixed up⁶²⁵. If not, the bar would be serving the political ambitions of the person⁶²⁶. This was disrespectful for the choice of colleagues (who by law had to become a member of the organization⁶²⁷) because the political view of the president was not shared by all members. The president was elected to work for the professional problems and the bar⁶²⁸. The independence of the bar would be compromised if someone followed the party line as it would lead to bad governance at the bar⁶²⁹. It would also lead to loss of credibility and trust⁶³⁰.

“(…) A statement I make as president of bar to become an MP or something else would not be liked by them. What happens then? These friends would wear their robes and make a statement in front of the stairs of the court house and say ‘we disagree with such and such statement of the president’. The public then perceives that there are different opinions at the bar. Attorneys are divided, attorneys cannot get together. We shouldn’t do that. (…)”

Interview 7.

⁶²⁴ Interviews 4, 5, 12, 19, 26.

⁶²⁵ Interviews 10, 15.

⁶²⁶ Interviews 7, 9, 10.

⁶²⁷ Interview 16.

⁶²⁸ Interview 7.

⁶²⁹ Interview 12.

⁶³⁰ Interview 7.

Interestingly, one respondent said in order to emphasize that this was a professional not a political project, he paid attention to having people in his board of directors that came from different political colors. This was how he stressed that his priority was the profession⁶³¹. There were also respondents who worked in the boards of their local bar with people from different party affiliations and this never constituted a problem⁶³². Another respondent said although she got elected on a political color, after the election, she acted with the responsibility of representing the whole bar association. Because membership in a bar was required by law and members had different political opinions than her⁶³³.

In that regard, what should be done was the politics of the profession⁶³⁴ or politics of law⁶³⁵. Lawyers' politics was the supremacy of law, to work for the development of the rule of law and democracy. If these were the issues in one's *political* agenda, no one could say anything to that⁶³⁶. Attorneys had to put forward their "lawyer identity"⁶³⁷. One respondent who was elected president of the bar after serving in the Parliament said he was proud

⁶³¹ Interview 15.

⁶³² Interviews 21, 19, 20.

⁶³³ Interview 9.

⁶³⁴ Interview 21.

⁶³⁵ Interview 5.

⁶³⁶ Interview 7.

⁶³⁷ Interviews 12, 13, 30.

that his colleagues judged him on the basis of his identity as an attorney rather than his political identity⁶³⁸. The new president of TBB also put forward his identity as an attorney⁶³⁹.

Only three respondents expressed negative views about presidents of bar who later got into politics⁶⁴⁰. Their concern was that the impartiality needed for the bar would be compromised by political involvement. One emphasized that especially in Istanbul, a president of bar was frequently on TV given the fact that the print and visual media were based there⁶⁴¹. This meant increased public visibility. It was therefore not right to turn this into political benefit as it would make the bar unreliable. In that case, actions and positions taken by the bar would be questioned retroactively to see whether there was any political interest to adopt that position⁶⁴², no matter how impartial the president had acted at the time⁶⁴³. One respondent in fact argued that when someone's goal was becoming an MP, he or she would no longer act with his/her free will but would use the position in the bar for political ends⁶⁴⁴.

⁶³⁸ Interview 21.

⁶³⁹ Interview 15.

⁶⁴⁰ Interviews 3, 16, 26.

⁶⁴¹ Interview 3.

⁶⁴² Interview 3.

⁶⁴³ Interview 16.

⁶⁴⁴ Interview 26.

In sum, attorneys in Turkey seem politically engaged just like their peers in other countries by virtue of the fact that they are a member of a free profession and have the skills needed in politics. At the same time, there are also country specific reasons for their engagement. For instance, the fact that bars have an official status and are part of the city protocol seems to raise their profile in terms of visibility in their town and getting them noticed by political parties. Further, the failure of political parties to create their own cadres seems to further contribute to their involvement. While viewing political engagement overwhelmingly positive, respondents still recognized that politics was an activity that could be easily used for personal gain and hurt the profession.

V. 5. Summary of findings as to the reasons of conflict between TBB and state institutions

This study set out to find out whether the interest group model in Turkey could be described corporatist by reviewing the relationship of TBB with state institutions. It was observed that the monist state tradition that did not wish to share power meant that the corporatist structure did not lead to a corporatist policy making.

In addition, the study also tried to understand the reasons for conflict between TBB and state institutions. It appears that there are several reasons for this. First, socio-economic change is increasing the numbers in the

profession and eroding its homogeneity as well as causing internal conflict. While financial strength of TBB allows it to position itself as a leader over all bars, it also causes clashes with the big three bars who until recently been able to not only dominate local bars but also TBB. When the growing assertiveness of local bars vis-à-vis both is added to this, it seems to become difficult for one organization to represent a heterogeneous profession.

Second, there appears an incredible role confusion concerning what TBB was and what it stood for. Respondents mentioned many activities of TBB that could be described routine activities of a typical protective interest group. At the same time, respondents also demonstrated that they expected TBB to take a stand in various issues just like a promotional interest group. Not surprisingly, when the latter function was emphasized, this led to conflict with governments.

Third, many respondents believed that as a profession attorneys were interested in politics. In addition to their professional disposition, respondents emphasized country specific reasons such as the visibility gained through being the president of bar especially in small towns or the prohibitions to engage in politics that disqualified many professions from politics. All of this contributed to their interest in politics and because politics is all about conflict, it also meant that high political engagement in the profession meant also friction with state institutions.

Chapter V: Discussion

It was shown in Chapter One that by taking interest organizations into the corporatist structure, corporatist theory assumes that professional organizations become social partners and insiders in the system. This study therefore explored the nature of the relationship between one professional organization in the corporatist structure -TBB- and state institutions in order to see whether the relationship indeed amounted to policy concertation. Its second goal was to understand the reasons for conflict in this relationship since contrary to the assumptions of the theory, the relationship between state institutions and TBB was not consensual.

To find the answers, I conducted thirty interviews with past and current presidents or administrators of bars from various parts of the country. Some of these interviewees were current or former MPs. The findings from these interviews were provided in Chapter Four. In this final Chapter, I will discuss these findings as they pertain to my research questions. While doing that, I will also bring in data from non-participant observations as well as

from a second set of interviews conducted with Ministry of Justice officials. Both data will be used to confirm or confront findings from the interviews with the presidents of bar.

V. 1. Is there policy concertation between TBB and state institutions?

Interest group literature provides that a corporatist interest group structure leads to corporatist policy making or what is called as policy concertation (Lijphart 1999; Cawson 1988; Schmitter 1982). In other words, the two tend to occur together. While policy concertation usually takes place between the government and representative organizations I, nevertheless, analyzed the data in terms of TBB's relationship with *all* state institutions in order to get a grasp of the full picture. Findings of the thesis shows, there is no policy concertation involving any governmental branch despite the existence of a corporatist interest representation structure. Indeed, in all branches of the government monism reigns which precludes cooperation with non-state actors. In other words, in Turkey corporatist theory's prediction that a corporatist structure leads to corporatist policy making is unconfirmed.

I will start this discussion with the relationship of TBB and the judiciary. Data showed that the criminal justice system's established roles that prioritizes prosecutors vis-à-vis attorneys and merge prosecutors with judges, determined the institutional relationship between the judiciary and TBB more than anything else. The exclusion of attorneys from the system

was a consistent theme throughout. This exclusion was manifested in derogatory terms used by attorneys to self-describe themselves in the judicial system such as “bride”; “step child”; “refugee” and even as a “figurant”. Not surprisingly, in cases where criminal legal aid was needed for the accused, the court asked the bar for the appointment of an attorney just like it ordered “a cup of tea from the office boy”⁶⁴⁵.

Given the negative connotations of these statements and the adjectives used to self-describe the profession, there is not much left to say to the researcher. At the same time, disrespect towards bar presidents seemed an established professional conduct as shown by anecdotes from various parts of the country such as one prosecutor not getting up when shaking hands with the president of bar. Some instances in fact bordered on harassment by head prosecutors such as initiation of arbitrary search practices at entry into court house or dictating correspondence procedures to bars.

The mentality that did “neither share life nor the profession” with attorneys was very worrying in the criminal context in terms of defense rights since it meant that the defense was given less time and opportunity in the proceedings. Indeed, respondents described chilling practices such as final judgments being drafted before final defense was made or judges

⁶⁴⁵ Notes taken during the meeting between TBB and legal aid representatives of local bars that took place on 25 December 2010.

deliberating with prosecutors to reach a judgment. This point was also confirmed by bureaucrats when one of them said that the “prosecution is too strong in Turkey to the point of sometimes being scary”⁶⁴⁶ and another who said that the defense was weak⁶⁴⁷. Further, the former confessed that when he was a judge, “he also decided cases with prosecutors just like everyone else”. This is admitting that the functions of accusation (prosecution) and judging (court/judge) are merged to the detriment of defense. Over time, however, especially with international relations and the (EU process), the Ministry officials came to the view that the functions of prosecution and adjudication had to be separated⁶⁴⁸.

Given this state of affairs, interviewees explained that there was no established or routine contact between the parties. Where there was contact, it appeared on an ad-hoc basis or as a “crisis containment” tool to mediate the controversy between the higher judiciary and the government. Depending on the issue, it also involved uniting with the higher judiciary against government plans concerning justice policy. In sum, none of this amounted to policy concertation between the parties.

⁶⁴⁶ Interview P5.

⁶⁴⁷ Interview P6.

⁶⁴⁸ Interview P5.

The higher judiciary appears to not only have a tradition of refraining from contact with the bar or attorneys but also rejecting any engagement with the bar. Further, the attitude seems to pervade the whole profession through professional socialization. Typical examples of this behavior was manifested with the visit of the President of one Higher Court who told the audience that “their tradition did not include visiting the bar”; or the once Head of Court of Cassation trying to censor the speech of the then president of TBB at the judicial year opening or Head Prosecutors dictating terms to bars in the use of court house while judges and prosecutors jointly resist attorneys’ participation in the HSYK.

The weak position of attorneys seems to be addressed only recently with the changes in the structure of the HSYK. In that regard, some respondents and bureaucrats have stressed that a new beginning was made in the relations between the parties with the re-design of the HSYK after the 2010 referendum. According to one bureaucrat, the presence of an attorney within the ranks of the HSYK opened the door for the invitation of presidents of bar to HSYK convened meetings of judges and prosecutors. In fact, hosted by the HSYK and called “status analysis at the judiciary”⁶⁴⁹, these meetings took place in sixteen different regions in which problems of the judiciary and their solutions were determined in a bottom up, participatory fashion with the attendance of judges, prosecutors *and* attorneys.

⁶⁴⁹ Interview P5.

Some attendees of these meetings were present in the bar presidents meeting and made positive comments saying they were hopeful about and supported this process⁶⁵⁰. In fact, one president of bar mentioned that for the first time he felt that that the HSYK was also “his HSYK” because its previously closed structure was now torn down. One bureaucrat also confirmed that the reaction they got from presidents of bar to the new design was positive⁶⁵¹. Nevertheless, stamping out an entrenched tradition of exclusion may take a very long time. The fact that touches from “above” are needed such as the amendment of the constitution concerning the participation of a president of bar in the HSYK or the Minister of Justice himself getting involved in the establishment of a committee to work on the regulation of court clerks only confirms this point. In sum, when it comes to the judiciary-TBB relations, not only there is no policy concertation, there is barely any relation.

Continuing with TBB’s relationship with the Ministry of Justice, it was clear from the interviews that although the most intense relationship among state institutions was with the Ministry of Justice, there was no established and routine mechanisms between the parties to discuss policy or any other matter. This was a point confirmed by bureaucrats⁶⁵². Indeed, one low level bureaucrat said in his two and a half years at the Ministry, he did not come

⁶⁵⁰ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara.

⁶⁵¹ Interview P5.

⁶⁵² Interviews P1, P4, P5, P6.

into any contact with TBB because the procedure of criminal investigation of attorneys (where he worked) was “straightforward”⁶⁵³.

On the other hand, one higher level bureaucrat explained that given his acquaintance with the president of a local bar, he made presentations to the members of that bar regarding the number of criminal investigations initiated against attorneys. These presentations in fact showed that the Ministry of Justice as an institution was not after all giving permission in every investigation for an attorney to be criminally charged. The listeners at the presentation were pleasantly surprised about the data and thanked him⁶⁵⁴. Equally, when pressured to make a public statement about the prison conditions, one president of bar contacted the bureaucrat who arranged for him to tour the newly built prisons. The president of bar later thanked the bureaucrat because he was saved from signing a materially wrong public statement⁶⁵⁵. This goes on to show that where relations are personal, parties make an effort to share information and act cordially but institutionally, this is not the case.

Meanwhile, in issues surrounding legal aid, the Ministry seems to sometimes ask TBB’s opinion. Their request is then relayed by TBB to local

⁶⁵³ Interview P4.

⁶⁵⁴ Interview P8.

⁶⁵⁵ Interview P8.

bars. After filtering their responses, TBB responds back to the Ministry. In that sense, TBB functions like a conduit of communication and serves the purpose of a peak organization by facilitating coordination. Equally, the Ministry routinely responds to similar written requests made by TBB. For instance, if TBB writes a letter concerning the entry problem of an attorney into any prison to see his/her client, the relevant investigation is made and the matter is responded to⁶⁵⁶.

Another possibility of cooperation comes about when new laws are prepared. TBB is invited to the committee working on the draft law as a contributor. In addition, thanks to its recently increased international relations, the Ministry seems to be in contact with TBB to develop projects with UNDP and other international partners. Other matters, such as licensing and disciplinary issues or criminal investigations also seem to flow “according to the law”. Where respondents refer to the process being straightforward or things going according to the law, they seem to mean that legal-rational relations which require no human contact. One can therefore infer that there is no *routine* cooperation between the parties to formulate policies in a corporatist sense. Rather, it is a contact on an ad hoc basis as the situation requires. As a result, meetings or contact between the parties remains sporadic.

⁶⁵⁶ Interview P8.

At the same time, data show that the relationship between the parties has not been good to the extent that they sometimes communicated over the media due to the political positions taken by TBB and the challenging role it played vis-à-vis the Ministry of Justice officials⁶⁵⁷. In addition, the tone of the judicial year speeches made by the President of TBB also made relations between the parties tense⁶⁵⁸.

Given this nature of the relationship and ad hoc basis of meetings, the fact that one bureaucrat described the Ministry of Justice “heard” some problems of the profession, for the first time in the Kozaklı meeting hosted by the Kayseri Bar⁶⁵⁹ is not that surprising. In fact, one bureaucrat told me that he heard about the practice of USB being given by the judge to the clerk before final defense is made for the first time in the HSYK’s status meetings⁶⁶⁰, demonstrating that the Ministry is indeed unaware of the problems of attorneys and defense.

At the same time, data showed that following the Kozaklı meeting, a committee was established with the order of the Minister to solve the problems of the profession. This committee worked on amending the

⁶⁵⁷ Interview P8.

⁶⁵⁸ Interview P6.

⁶⁵⁹ Interview P6.

⁶⁶⁰ Interview P6.

regulation on court clerks, among other things. Many attendees of the presidents of bar meeting seemed thankful for the amendment although some remained critical⁶⁶¹. In the other meeting attended by the criminal legal aid representatives, one TBB official replied to the criticism of the wording of the amendment that the original draft was formulated differently. However, it was amended in the last minute with the insistence of the Ministry of Justice bureaucracy⁶⁶².

While this shows the unilateral decision making at the Ministry of Justice it also demonstrates the attitude of judges-prosecutors towards attorneys. Indeed, one bureaucrat agreed that the staff of the Ministry being former judges and prosecutors constituted a problem especially when attorneys expected solutions to their professional problems because it was those bureaucrats who viewed these requests with the usual suspicions of the bench⁶⁶³. The fact that as bureaucrats they performed a different function did not change their outlook. Indeed, I was able to observe in the committee meeting taking place between TBB and Ministry of Justice officials, the Ministry staff making references to past posts in the bench as former judges and prosecutors. Although they were now bureaucrats, these experiences formed the basis of their understanding of legal issues and practices.

⁶⁶¹ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara.

⁶⁶² Notes taken during the meeting between TBB and legal aid representatives of local bars that took place on 25 December 2010.

⁶⁶³ Interview P6.

For instance, one bureaucrat said he heard of a (questionable) practice for the first time at the Ministry because *when he was a judge, he never practiced law like that*⁶⁶⁴. Similarly, another bureaucrat said that *as a judge* he heard many expropriation cases in which the state tried to pay less for the value of the property but it usually ended up paying more. Similarly, one bureaucrat relayed a conversation of his when he was apparently trying to justify the Ministry's method of legal aid payments to a TBB official. He said that *when he was a judge*, he was also getting paid with the signature of the Head Prosecutor, given the fact the Head Prosecutor is disburser of public funds in districts⁶⁶⁵.

It can therefore be argued that the bureaucrats at the Ministry of Justice may well be constrained by their previous experience in the bench vis-à-vis attorneys and their professional problems. On the other hand, bureaucrats indicated that when they worked in small districts, their relations with attorneys were friendly but due to volume of work in large cities this was not the case⁶⁶⁶. In other words, there seem to be more humane relations in smaller communities but it is unclear whether this translates into more sympathy for attorneys' demands.

⁶⁶⁴ Notes taken during the meeting between TBB and the Ministry of Justice officials that took place on 27 December 2010.

⁶⁶⁵ Interview P8.

⁶⁶⁶ Interviews P5, P8.

In terms of the logistics of the meetings between the parties, where there is higher level courtesy visits by the Minister or his Deputy after elections at TBB, this is made by going to TBB, to congratulate the President. Other meetings usually took place at the Ministry⁶⁶⁷. In terms of middle or higher ranking officials, where there is a personal relationship between the parties, as some bureaucrats claimed there was, the parties agree on the phone where to meet. If one of them feels that the latest meetings have been taking place at the place of the other, then the latest visitor hosts the meeting⁶⁶⁸.

One junior bureaucrat⁶⁶⁹ said that when they made a visit to TBB, they always went with one of the Head of Divisions⁶⁷⁰ who is in hierarchy much above than junior bureaucrats because people wanted to talk to their counterpart. Indeed, the Ministry of Justice-TBB meeting I attended which was taking place at TBB facilities, started with the addressing of this issue. TBB officials protested the “decreasing seniority of Ministry of Justice bureaucrats who attended the committee despite members of the board of TBB being always present”⁶⁷¹.

⁶⁶⁷ Interview P6.

⁶⁶⁸ Interview P8.

⁶⁶⁹ Interview P9.

⁶⁷⁰ In Turkish: Daire başkanı.

⁶⁷¹ Notes taken during the meeting between TBB and the Ministry of Justice officials that took place on 27 December 2010.

Respondents' description of established practices between the parties in terms of meetings and meeting rituals shows a formality unlike the informality described in policy concertation (Gerlich 1992). This is exactly why seniority of officials in attendance is attributed a symbolic importance by TBB or why junior level bureaucrats visit TBB with a hierarchical superior.

Bureaucrats described the atmosphere in meetings between the parties to be cordial⁶⁷², “without any problems”⁶⁷³ involving “coffee and tea”⁶⁷⁴ or “cookies and pastries”⁶⁷⁵ while one bureaucrat said that there can be intense debate but this was desirable in order to find the right solution because “everything TBB asks for, cannot be done”⁶⁷⁶. Even this statement suggests that TBB is in the position of making a request while the Ministry is in the position of approval, thereby precluding a partnership between the parties. In terms of how meetings progressed, one bureaucrat said that the legal texts that the parties worked on were shown on the screen and records were kept to reflect the issues discussed⁶⁷⁷. The latter is a manifestation of lack of intimacy between the parties (Gerlich 1992) and shows that another

⁶⁷² Interviews P4, P6, P10.

⁶⁷³ Interviews P9, P10.

⁶⁷⁴ Interview P9.

⁶⁷⁵ Interview P4.

⁶⁷⁶ Interview P7.

⁶⁷⁷ Interview P10.

characteristic of corporatism is lacking and that parties make an effort to keep relations in a legal-bureaucratic formality.

While parties said that the relations were cordial, the committee meeting I attended started quiet tense when one TBB official started it with his protest against the decreasing seniority of Ministry officials and then complained about the slow pace of development in the committee's work⁶⁷⁸.

Bureaucrats responded to this with defensive explanations. After resolving this issue, the parties went on to discuss substantive matters but differences of opinion have been addressed head on, sometimes with cynical comments from bureaucrats such as these: "Am I not allowed to say what I think now?"; "If I am looking at things from one side, you are too"; "I am not taking a stand, I am just telling you what the three options are"⁶⁷⁹.

Similarly, TBB officials replied with the same cynicism: "Do not worry, your dear state will not face more proceedings because of this"; "Your perspective is always about how to protect the state and not the individual"; "You do not have to have bad dreams"; "What else are we going to see?"; "This may be your way of doing things but the practice is not like that"; "I

⁶⁷⁸ Notes taken during the meeting between TBB and the Ministry of Justice officials that took place on 27 December 2010.

⁶⁷⁹ Notes taken during the meeting between TBB and the Ministry of Justice officials that took place on 27 December 2010.

hope you become an attorney one day and see what I'm talking about”⁶⁸⁰. If one remembers that these conversations took place in a committee that was established to resolve the problems of the profession, the conflictual nature of the relationship between the Ministry of Justice and TBB should be clear. The tone of this conversation does not suggest a partnership between the parties, social or not.

While lack of routine contact is a problem especially if one is to talk about policy concertation, one high level bureaucrat said that he felt that bars as well as public notaries -as an institution- were worried that if they established contact with the Ministry, this could be seen as a compromise on their independence⁶⁸¹. As such, at some point, his law school friends who have become notary public or presidents of bar contacted him directly to request his assistance to arrange for a meeting with the Minister or Deputy Minister. In his opinion these type of requests had to be made by the professional organization and engaging in criticism of the government, where necessary, should not prevent professional organizations from establishing contact with the Ministry⁶⁸². However, where local bars were in friendly terms with the Ministry, it was used against them in bar elections as a propaganda tool by implying that the local bar was under the control and

⁶⁸⁰ Notes taken during the meeting between TBB and the Ministry of Justice officials that took place on 27 December 2010.

⁶⁸¹ Interview P6.

⁶⁸² Interview P6.

influence of the Ministry. This was why his friends contacted him directly to arrange unofficial meetings. This anecdote suggests that the Ministry is viewed not as a partner but as a superior (at least by some in the profession) whose intrusion and control is feared.

On the other hand, there was also recognition that relationships were personal⁶⁸³ and not enough institutional⁶⁸⁴. Today, owing to the character of the new President of TBB, it was good. But if it was not for him, there would have been a fight every day⁶⁸⁵. Indeed, many respondents as well as bureaucrats said that the current President of TBB was a “luck”, indicating the personal trait of an individual than an institution.

Given all this, it seems that there are various layers that determine the relationship between TBB and the Ministry of Justice. First of all, the Ministry has tutelary powers over TBB. These tutelary powers involves monitoring of expenditure (in legal aid); sometimes contesting decisions of TBB by going to court; sometimes exercising authority over the profession by giving permission for an attorney to be criminally investigated. In one sense, this tutelary relationship points out to the impossibility of policy

⁶⁸³ Interview P2.

⁶⁸⁴ Interview P8.

⁶⁸⁵ Interview P8.

concertation between the parties because when one of the “partners” is exercising oversight over the other, there can be no cooperation.

The relationship is further complicated by the fact that the staff of the Ministry are former judges and prosecutors whose attitudes toward attorneys has been already described. At the same time, the historical battle of the profession to gain independence from the Ministry seems to put the relationship in a further awkward position. While the conditions of a cordial and routine relationship does not exist between the parties, TBB’s challenging stance does not contribute to the forming of such relationship either since being a policy partner requires moderation of demands to obtain benefits (Schmitter 1974).

In terms of the relationship between TBB and the legislature, this appears to mostly take place in expert committees when TBB is invited. Lately, however, there also seem to be attempts by TBB to engage all political parties, MPs and the various committees at the Parliament without waiting for an official invitation. This was confirmed by a former bureaucrat and current MP⁶⁸⁶. Nevertheless, the contribution of TBB to the legislative process was like a formality⁶⁸⁷ because of its reactive nature. It was also

⁶⁸⁶ Interview P3.

⁶⁸⁷ A former bureaucrat and current MP also confirmed that the current government was not taking institutions with different political views into consideration. Therefore, this practice did not go beyond asking for TBB’s opinion as a matter of formality, Interview P3.

argued that bureaucrats or MPs did not consider TBB's input in a serious manner. In that regard, some respondents seemed to expect that the views of TBB should be taken before a law was brought into the Parliament or that their views should be binding on legal issues, clearly suggesting a corporatist expectation.

On the other hand, the president of one committee in the Parliament said that what was important was the fact that TBB was given *an opportunity to be heard* in a pluralist way and its views were in the records, rather than the fact that the committee accepted their position⁶⁸⁸. He justified this on the grounds that committees were established for expertise and decided technical issues rather than political issues which were reserved for the General Assembly⁶⁸⁹. In that regard, it is clear that he envisions a consultative role for TBB to be played in the Parliament rather than a corporatist one.

In sum, the least amount of contact of TBB among state institutions seems to be with the legislature. Further, it is based on a reactive structure. In other words, when TBB is invited, it participates in committees as a relevant party to be heard but not to form policy with. It seems that lately, TBB envisions a different role for itself by more proactively participating in committees as

⁶⁸⁸ Interview P2.

⁶⁸⁹ Interview P2.

well as being more politically engaged with all political parties.

Nevertheless, this new structure also does not seem to amount to policy concertation.

In terms of the relationship between TBB and other state institutions, the relationship appears to be again based on an ad hoc visits. The government is the most likely partner with whom TBB can expect to be engaged with in policy concertation. However, the ideological stance it took vis-à-vis the government seems to have not helped their relationship. There were multiple ways which showed TBB's confrontational stance vis-à-vis the government. They ranged from walking with robes in protest; to publishing bitter media declarations about policies it did not like; from acting like a "backyard" as imputed to it by respondents; to publicly stating to have difficulty accepting a Prime Minister from an imam training school; or having judicial opening year speeches that heavily criticized the government "in the presence of the Head of State while directly looking at the eyes of the government"⁶⁹⁰. These acts on their own show that unlike a social partner that makes requests and relays criticism behind closed doors, TBB tries to embarrass the government via the media.

Given all this, the fact that the bar exam requirement was lifted by the government -as a punishment for their stance- and at the blink of an eye

⁶⁹⁰ Interview P6.

seems to have been the decisive moment for the profession to realize that this confrontational relationship was costing them too much. Respondents described how important they considered the exam for the standing of the profession and how prepared they were to conduct it after having signed protocols with ÖSYM and how they were not listened to by the government in a subject that was of really concern to them. As a result of this, many bars seem to have come together to elect an administration at TBB that would have a less confrontational relationship with the government.

It is undeniable that currently, there is a change of heart on both sides to make the relationship work. Thanks to its new President, TBB appears to be making good with the government and state institutions by changing its previous politically stand-offish attitude and adopting a less controversial tone in order to establish dialogue for the resolution of accumulated problems of the profession. In addition, they seem to take a pro-active role in developing relations and do not shy away from contact. The government, on the other hand, having gotten rid of a relentless critic, seems ready to make concessions.

This was apparent in the Minister of Justice ordering the establishment of a committee to solve the problems of the profession. In that regard, the change of the regulation on court clerks seems important as an issue that was emphasized by respondents. Similarly, the inclusion in the financial

amnesty law of debts owed by attorneys or the change of payment time of VAT or the revoking of the consent requirement from other property owners to open a new law office seem to have been achieved with this constructive tone and by working with the government as well as the Parliament. One bureaucrat said that these developments gave TBB hope⁶⁹¹.

Similarly, TBB seems to have played a mediator role in the Parliament during the adoption of the Code of Civil Procedure. Fortunately for TBB, the new era coincides with increasing recognition at the Ministry of Justice that structural change is needed in the institutions of the judiciary, requiring allies like TBB to push change. The signs of this include opening up HSYK to attorneys by including one person coming from the profession and working on the improvement of relations among actors.

While the new era seems to have borne fruit in the short run for the profession, whether it can be maintained or whether by consensual relations *alone* problems of the profession can be solved remains to be seen. One point of concern is the perception that change in the attitude of TBB is owed to the President of TBB. Another is the delegate and the majoritarian election system at TBB especially in light of the attitudes of the “big three” vis-à-vis TBB.

⁶⁹¹ Interview P1.

As important, the very same government while keeping attorneys happy, needs to balance the interests of a much larger number of people who make use of the services of attorneys. Indeed, the governments' conflictual relations with other professional organizations are partly caused by its policies to make services cheaper and easier to reach for "consumers" as opposed to determine policies that benefit professionals (such as doctors, pharmacists and veterinaries). Further, currently the relationship between the parties does not seem to involve political exchange for the government (Molina & Rhodes 2002). In other words, it is unclear what the government "gets" from the corporatist structure. As a result, the government does not seem to have much reason to shy away from shaking the boat if need be.

More importantly, better relations still does not amount to the establishment of a corporatist relationship between the parties, given the existence of structural problems such as tutelary powers of the Ministry of Justice over TBB. Nevertheless, the primary reason for lack of corporatist policy making seems to be monism. Indeed, whether it is the relationship with the judiciary, the legislature or the executive as represented by the Ministry of Justice or the government, state institutions appear to have a strong tendency towards monism in Turkey. In other words, they do not wish to share but retain decision making power. This was apparent in the interviews made with the representatives of legislature and the executive. In terms of the former, the words of the President of one Committee who said "what was important was the fact that TBB was given an opportunity to be heard

rather than the Committee accepted their position” is telling. Similarly, one Ministry of Justice official said “not everything TBB wanted could be done”. In the same vein, countless examples from the judiciary where prosecutors as well as judges did not bother with the views of TBB points out to a hierarchical and independent decision making power on the part of state institutions.

In such a monist (even rejectionist) setting, no wonder that respondents stress that TBB’s views, recommendations and suggestions were not being taken into consideration; that they were not listened to and were being disregarded. It is maybe understandable that a politically accountable politician would want maximum room to maneuver and not want to bind or restrain him/herself with the positions of an unaccountable institution like TBB while merely consulting with them is politically safe. However, the picture that emerges out of the relationship between the parties is not one of corporatist policy making but one where under the cover of a corporatist structure, the affected interest remains outside the policy process as a mere consultant or combatant (Schmitter 1982).

On the other hand, the corporatist structure is not without benefits for TBB and attorneys in terms of material benefits as well as enjoyment of semi-official status. In fact, TBB has its cake and eats it too, given its willingness to also play the outsider. The state, on the other hand, “appears to be

consulting with” with the professional organization of attorneys and portrays that an “independent profession” takes care of its own affairs while materially, it may be called a “partner” in the business of attorneys by collecting fees, withholding tax and VAT.

Given all this, one wonders why then there is a need for a corporatist structure in the constitution. Indeed, the case of Turkey is significant because a corporatist structure did not lead to policy concertation. Whether this holds true for all other professional organizations and if yes, to what extent is an empirical question that needs further research. Nevertheless, the findings of this research may be read as a manifestation of strong monism on the part of the state institutions in general, thereby suggesting that relations may not be so different in other sectors either.

Having concluded that the corporatist interest group structure did not lead to policy concertation, it is still worthy of note that the structure nevertheless led to the establishment of various patterns of behavior. For the profession, one outcome seems to be that it conditioned it towards statist solutions given the “advantage of being able to call on the state to come to their aid” (Suleiman 1987: 274). In other words, even when there is no policy concertation, there nevertheless is “proximity and interdependence” (Schmitter 1982: 268).

Indeed, respondents mentioned the free character of the profession *only* when they described that it gave them time to engage in politics. Very few interpreted it as a way to earn income independently. On the contrary, respondents had an expectation that *the state should generate income for the profession* by for instance passing a law that made it mandatory that people were represented by attorneys or by increasing fees that were paid to criminal legal aid attorneys or by bringing a mandatory legal insurance scheme.

Not even one respondent said that attorneys should generate income from the market or engage the people, to be able to do so. Surprisingly, this was stressed by a bureaucrat who emphasized that attorneys had to make themselves indispensable for the public and earn income through this, instead of holding on to what they already had or viewing legal aid as a moneymaker⁶⁹². As a result of this conditioning, instead of turning to the public and stimulating their demand for legal services and thereby expanding the legal pie, most respondents turned to the state and defended gate keeper mechanisms such as the introduction of a bar exam. Similarly, they advocated a halt to opening of new law schools by the government in order to fight the growing competition in the profession and the economic problems caused thereby. As discussed in Chapter Two, however, these mechanisms have been long abandoned in other countries.

⁶⁹² Interview P1.

Ironically, on the one hand the profession is concerned with its independence, on the other, it advocates more state action that makes it then even more dependent on the state. Worse, this dependency is recognized by only few respondents. As a consequence, the activities of TBB are also geared towards state institutions and few, if any, are directed at the public. Where they are so, they remain sporadic at best such as the organization of seminars and conferences.

I observed another manifestation of this gravitation towards state centric solutions in the Ministry of Justice-TBB meeting, when the discussion came to cases involving wrongfully detained persons who are entitled to file a compensation claim against the state⁶⁹³. As a matter of law, if a party loses a case, that party pays the attorneys fees of the prevailing one. In wrongful detention cases, the losing party is the state. Therefore, it is the state that pays the attorneys' fees of the wrongfully detained person. This seemingly straightforward matter suddenly flamed up by a provision in the attorneys fees tariff. This provision calculates the amount of attorneys fees in these cases pro rata (%). This rate is then applied to the compensation amount to determine attorneys fees⁶⁹⁴.

⁶⁹³ For instance, if a person is detained during trial and is then acquitted, then he or she is entitled to collect compensation for wrongful detention.

⁶⁹⁴ It should be noted here that when someone retains an attorney, he or she undertakes to pay that attorney according to an amount that cannot be below the minimum fee tariff. In addition, when the matter goes to court, the winning attorney is also awarded attorneys fees by the court in the final judgment. Therefore, a winning attorney may get paid twice: first by his/her client and then by the court who awards the losing party to pay the fees of the winning party.

It emerged in the meeting that the Ministry of Justice challenged this provision before the Council of State and the matter was still pending. Parties discussed that a final decision on the matter could take two years. Until then, a solution was needed since attorneys initiated execution proceedings against the state to collect their fees under this provision. As fees were calculated pro rata, they had the potential to reach high amounts because compensation is awarded by courts according to the applicant's socio-economic status.

One of the bureaucrats said that the Ministry worked on the issue and explained the three different opinions that emerged. The first view was that attorneys fees could be awarded as demanded. The second view was that this should not be allowed as it was a burden on the Treasury. The third view was that attorneys fees should be awarded to the applicant (not to the attorney) but there should be a certain cap on it to avoid unlimited liability of the state. The last two views were fiercely resisted by TBB officials at the meeting.

One official said that the biggest problem of attorneys was not being able to collect their fees. For instance, *he* could have bought a building with the total uncollected fees in his professional life. The bureaucrat replied that if people were entitled to a compensation for unlawful detention, attorneys fees should be awarded *to applicants* for incurring legal costs instead of

attorneys. He justified this on the ground that the annual rise made by TBB in the fee tariff was being made in disregard of economic indicators.

By trying to justify the yearly rise in the minimum fee tariff, TBB officials replied that the tariff *guaranteed the state tax income* because the state charged 18% as VAT and 20% as withholding tax. When TBB increased the minimum fee tariff, this also raised tax revenue for the state. The argument went that the state was almost “50-50 partner” in “their” business. Further, these amounts meant reduced tax evasion for the state.

This discussion was very illustrative of TBB’s statist inclinations. First, TBB was trying to justify itself by resorting to income generation for the state. Second, TBB did not question the ethics of collecting income by grabbing a compensation -in its source- awarded to an applicant who has been subject to unlawful detention by the state. Third, it showed the lack of an economic perspective by not taking indicators such as inflation which affects the purchasing power of the public (their clients) into consideration. Lastly, these issues were discussed with equally state centric bureaucrats creating the danger that the cooperation of these partners could result in “solutions” that possibly go against the interests of the people.

Sure enough, after the meeting, TBB and the Ministry of Justice officials had lunch together during which legal insurance was discussed as one solution to generate secure income for attorneys. When discussing whether to adopt this scheme, one bureaucrat remarked that “well, citizens will pay for this insurance, but they would object to that, so we should put this in the law in an inconspicuous way”.

This only goes on to show that while failing to collect fees is a problem for many people in Turkey from wage laborers to businessmen, instead of trying to become better businessmen/women, attorneys try to address the problem with state coercion, such as the introduction of a mandatory legal insurance scheme, premiums of which are going to be paid by the people. This “solution” carries no costs for either the bureaucrats or the profession but citizens, perfectly illustrating the introverted nature of corporatism which discusses alternatives that are mutually acceptable (Gerlich 1992).

At the same time, this anecdote illustrates well that the interest group structure provides TBB access to drafters of law (bureaucrats) and the ability to convince them for the adoption of measures that involve no cost for the government. This is why it is important to recognize that even if the current structure does not mean policy concertation, it nevertheless serves the profession. In fact, this is also in line with the profession literature set out in Chapter Two that points out to the economic side of the relations and

the flow of resources “from the state to the profession rather than vice versa”. (Halliday 1989: 378). As a result, the profession is conditioned even more to state centric solutions and corporatism’s moral and hierarchical order may look safe (Williamson 1989) in the face of rapid social and economic change.

Another consequence of the close association of the profession with the state is that TBB or the profession exalts or reifies the state (Navaro-Yashin 2002). For instance, when attorneys try to legitimize themselves, this is done by saying that their profession constitutes part of the judiciary (while they nag about not being treated so). At times, their wish for inclusion amounts to emulating the judiciary which finds its manifestation in the language used by presidents of bar to address each other as “my president⁶⁹⁵”. This is directly adopted from judges and prosecutors who call each other “my prosecutor⁶⁹⁶” or “my judge⁶⁹⁷” even if they are friends with each other.

Similarly, when TBB officials brag about the profile of their visitors to the new building, it is by “high” state officials or higher judges who bring their foreign colleagues. Equally, when they feel disregarded, this is for being

⁶⁹⁵ In Turkish: “başkanım”.

⁶⁹⁶ In Turkish: “savcım”.

⁶⁹⁷ In Turkish: “hakimim”.

treated so by the “Head of State” when he for instance fails to extend an invitation that is sent to the members of the higher judiciary but not to TBB. Equally, the importance attributed to their function is measured by their proximity to the Head Prosecutor in the protocol and whether the president of TBB is admitted to the same VIP room just like the Head Prosecutor. It is therefore no surprise that they feel entitled to the same privileges as high civil servants such as green passport or lesser payment of fees for gun licenses.

While in many countries attorneys designation as “officer of the court” affirms their quasi public standing (Halliday 1989), performing a public duty does not necessarily mean public status. However, the profession seems to have chosen to generate legitimacy through the state with the expectation that being near the state raises the status of the profession (McClelland 1991). While it may be comfortable for the profession to do so, it is also problematical since many respondents recognize the profession’s social relevance is in representing people and furthering their right to seek legal remedies. They, nevertheless, do not act on this premise. Further, the legitimacy of the judiciary in Turkey has been highly controversial since the beginning of the Republic. Indeed, some respondents as well as presidents of bar in the bar presidents meeting made remarks showing that they perceived the judiciary as an entity that protects the state and the regime rather than individuals.

This state-centric approach is exacerbated by additional factors such as the age and defense work orientation of presidents of bar. To explain the former, the average age of respondents was 55. In other words, the early experience of the presidents of bar with the profession is of a more statist time in the profession. Concerning the latter, their understanding (probably practice also) of the functions of an attorney is mostly in a criminal context, contributing to their statelike orientation. This defense work orientation shows itself even in the name of the hotel at the prestigious new building of TBB which carries the name “Litai”. As the website of the hotel proudly explains, Litais performed defense work in mythology⁶⁹⁸.

The overemphasis on defense work not only fails to represent many attorneys who perform other functions in the profession but may be read as the prevalence of a closed, local (criminal law being one of the most national areas of law) and solo practitioner understanding of the profession among the respondents. What is more important, by defining an attorney as a defense lawyer *only* or as a subject in the criminal process, one “locks the attorney into the state” (İnanıcı 2000: 140).

In view of the above, it is shown that the relationship between state institutions and TBB is based on a corporatist structure but this did not lead to corporatist policy making given the monist state tradition in Turkey.

Nevertheless, the corporatist structure seems to have created benefits and

⁶⁹⁸ <http://www.litaihotel.com/HtmlPage.aspx?PageID=1003>. Access date: 30 March 2011.

conditioning on the part of the legal profession by establishing a pattern of close association with the state to legitimize itself and use state coercion to satisfy parochial professional demands. While parties seem to have entered into a new phase in their relationship involving more consensus and less conflict, it is still unclear what the government gains from this structure. Another question is whether this structure will be maintained or expanded in the new constitution.

The finding of this thesis that in Turkey the corporatist structure did not lead to policy concertation points out to the opposite direction than the recent literature on corporatism which seems to be occupied with policy concertation that comes about as a result of non-corporatist interest representation structures (O'Donnell 2001, Baccaro 2003). The question therefore is whether we can still say that a corporatist interest group structure and corporatist policy are “fused”? This will be for later researchers to find out.

V. 2. What are the reasons for conflict in the relationship?

As far as I can see, there are four reasons that cause conflict between the parties. The first is, as described above, the monist state tradition that does not want to share any power and therefore does not let professional organizations in the corporatist interest representation model play a policy

concertation role. As this issue was already discussed, I will move to other reasons.

V.2.1 Socio-economic change

It seems that the big socio-economic change engulfing Turkey since the 1980s had major effects on the profession. As will be remembered, the expansion of higher education and opening of new law schools meant led the profession to grow. However, bars have been against the opening of more law schools because growth of the profession increases competition. Nevertheless, instead of admitting to that, bars used “declining standards of professionalism” as a reason for their objection. Hence, their insistence on a bar exam to re-establish control over the supply since they currently feel like a rubber stamp institution for those who complete their apprenticeship period.

In other words, being used to state granted protection and privileges, bars expect the government to take measures to stop or slow down the effects of socio-economic change on the profession. When this request is not granted or in fact taken back by the government by the abolishment of the bar exam requirement, it leads to conflict between the parties. In terms of market control, especially in big towns the profession is unable to enforce its rules on such large number of people.

At the same time, growth in the profession also increases heterogeneity of the profession and leads to resistance to top down imposition of uniformity. Indeed, some respondents argued that TBB has been intervening in issues such as pictures in attorney licenses or appearance and outfit of attorneys, similar to character and nationality requirements in the U.S (Burrage 1988). As discussed in Chapter Two, in the U.S., these requirements served to preserve the status of white, Anglo-Saxon, Protestant attorneys when immigration and demographic patterns challenged it. Similarly, it can be said that these requirements aim to keep out professionals who value “religion” or “ethnicity” at a time they are perceived to threaten the status of elder generation attorneys’ “republican” values.

In order to withstand the imposed uniformity, local bars seem to have started to form alliances to defend their views as opposed to being dominated by the “big three” or TBB. There are many recent examples of this: the joining forces of “Anatolian bars” and “Kurdish bars” to determine a candidate in 2009 TBB elections against the then President; one bar president’s open declaration that he would make a counter declaration if TBB made a declaration expressing support for Ergenekon trial; the organization and hosting by Kayseri Bar of a meeting in Kozaklı between the Ministry of Justice and bars; the recent media declarations of pro and opposing bars concerning the government proposal to increase the number of chambers at the Court of Cassation; election of former presidents of Afyon and Kayseri Bars to HSYK and the Constitutional Court respectively;

regional meetings of Eastern and Southeastern bars concerning the “Kurdish issue”⁶⁹⁹.

In one sense, this new found confidence and assertiveness of local bars may be connected with the rise of AKP that propels the periphery to the center. It can also be read as member obstruction in resisting actions that they are displeased with especially in structures where exit is not possible (Schneyer 1983). While currently this is not contributing to a conflict between TBB and the state institutions on its own, in the future, local bars may choose to cut off TBB and complain directly to the government.

In addition to the conflict between TBB and the bars, there also appears conflict between local bars and the “big three” since priorities and problems of large and smaller bars are different⁷⁰⁰. Therefore, the former needs TBB much more than the latter. This was apparent in the speeches of their presidents or representatives in TBB-local bar association meetings that I attended. For instance, smaller bar associations used language such as “we demand that TBB work on the elimination of two different fee tariffs” or

⁶⁹⁹ For media announcements of two of the meetings see http://www.diyarbakirbarosu.org.tr/i/basina_ve_kamuoyuna321, Access date: 17 May 2011; <http://www.elazigbarosu.org.tr/Detay.aspx?ID=9199&Tip=Haber>, Access date: 19 June 2011.

⁷⁰⁰ Interview P5.

“we ask for an amendment of the regulation” (on criminal legal aid)⁷⁰¹.

Similar requests were made as follows: “we expect TBB to contribute to the education we are providing” or “TBB should stop these type of practices” or “TBB should make sure that one software program is developed to be used by all bars”⁷⁰². These statements express need while constituting input for TBB in formulating its policies. Sometimes, local bars also made suggestions as to how TBB should go about it: “contact MPs in the Parliament and lobby them”⁷⁰³.

Nevertheless, local bars did not sit idle either and also contacted MPs in their locales for the resolution of their problems. However, they are not able like the “big three” to engage the Minister or the Deputy Minister directly. In fact, one bureaucrat indicated that while it is important what TBB thought on a given issue, the Ministry also had to take the views of especially one bar (among the “big three”) into account given its propensity to engage in protest behavior⁷⁰⁴ (like walking with their attorney robes and saying that rights and liberties were being undermined)⁷⁰⁵.

⁷⁰¹ Notes taken during the meeting between TBB and representatives of legal aid of local bars that took place on 25 December 2010 in Ankara.

⁷⁰² Notes taken during the meeting between TBB and representatives of legal aid of local bars that took place on 25 December 2010 in Ankara.

⁷⁰³ Notes taken during the meeting between TBB and representatives of legal aid of local bars that took place on 25 December 2010 in Ankara.

⁷⁰⁴ Interviews P7, P8, P9.

⁷⁰⁵ Interview P7.

In that sense, the “big three” were criticized for competing with TBB and thereby undermining the unity in the profession with demands and positions that were different than the one adopted by TBB. They were also criticized for attempting to dominate TBB according to their political agenda. For instance, when I attended the regional bars meeting of Southeastern and Eastern bars, I was surprised by the number of bars that came from outside the region. The president of one of the “big three” was also present and proposed to sign a declaration that demanded that courts of special jurisdiction⁷⁰⁶ are abolished. He wanted this declaration then be put in front of TBB.

The proposal concerning abolishment of these courts was defeated by Southeastern and Eastern bars. Not because these bars believed this was not an important issue. To the contrary, they suffered from the practices of those courts. The issue was also in their agenda but they thought this was not *the only issue* that deserved to be singled out in a declaration. Indeed, the meeting was convened to discuss the new constitution; how to help the victims of the mass grave found in Mutki (Bitlis) as it was observed that evidence was being lost by digging the grave in a crude way with caterpillars; defense in mother tongue; how to join important cases that were being tried in mass and prevent courts from rejecting these requests.

⁷⁰⁶ Courts of special jurisdiction -as they are referred- are established on the basis of art. 250 of the Code of Criminal Procedure that gives courts “special jurisdiction” to hear certain cases. These usually concern organized crime cases as well as crimes against the security of the state, overturn of the constitutional order and national defense. For instance, the Ergenekon trials in Silivri or KCK cases are being heard by these courts.

It was pointed out that the platform for these type of declarations was TBB, clearly rejecting the leadership role attempted to be played by one of the “big three”. Indeed, the issue was also discussed in the bar presidents meeting. Presidents of bar argued that these courts were a continuation of the Courts of Independence or State Security Courts. Many said that they had to be abolished as they were protecting the regime. It was these courts which referred to Kurdish as an “unknown language”⁷⁰⁷.

At the same time, in meetings I attended, the “big three” were among those who spoke the longest while people were very attentive to what they said. The tone and language employed by two of the “big three” has been also combative. For instance, presidents of two of the “big three” used sentences like the following: “They say that resources are limited and it could be taken away from us. Well, don’t let them! Is it that easy? If it’s that easy, what are we doing in those chairs? If you *resist*, they cannot take it, if you don’t, they take it just like this⁷⁰⁸”; “we have to *resist*, they are trying to control us today with this, tomorrow with something else, this is totally unacceptable”; “.....we are totally against it and we will *do everything necessary* concerning this, let me tell you that”; “*we are at the back of their necks and we will make them realize that*⁷⁰⁹”; “....if there is a worry, they will take legal aid away from us, let me ask who is going to take it from us despite

⁷⁰⁷ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara

⁷⁰⁸ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara.

⁷⁰⁹ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara.

you, *who is going to dare this, who is going to have enough power, let them try. I challenge them....*”; “in the same speech, this person who is accusing us of taking bribes gives good news and says it will be the bars’ turn. How is it going to be our turn, who is going to make it our turn and what is going to be done? Is it our turn? We are here, *we are waiting for our turn*⁷¹⁰”.

Similar language was used during interviews when some respondents who served as presidents of the “big three” referred to *hostage taking (by the government)*; *sitting in the chair of criminal defendant*; *resistance and fight* when they described their relationship with governments or state institutions.

Meanwhile, some bars were not happy with this combative tone. In fact, they congratulated TBB and thanked it for adopting a consensual language, expressly stating that nothing can be solved by challenging counterparts. In that regard, they pointed out to the success thus obtained in amending laws in favor of the profession by for instance changing the payment time for VAT in legal services and the regulation of court clerks. They applauded the new tone and TBB’s emphasis of professional issues as well as the new transparent administrative style⁷¹¹.

⁷¹⁰ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara.

⁷¹¹ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara.

One of the reasons for competition of the “big three” with TBB seems to be because of the delegate system. Indeed, data indicates that it gives too much weight to the “big three” in disregard of other bar associations. Put differently, so far, if the big three came together, they have been able to determine the administration and thus the direction of TBB, without caring about what the remaining bar associations thought. The description of one respondent in Chapter Four as to how media declarations were prepared at TBB, only attests to this. However, socio-economic change seems to fuel local bars’ demand for voice while raising their confidence, making them less likely to tolerate being dictated either by the big three or TBB. In fact, these bars may even request the government for a change in the delegate or electoral system to reflect a more egalitarian design, creating another possible conflict between TBB and the government. In fact, the electoral system was blamed by two bureaucrats⁷¹² for TBB’s ills, suggesting that the issue may have been already discussed at the Ministry.

Another contributing factor to the conflict between local bars and the big three may be that elections in the latter are conducted in a much more political way than the rest of the bars since they have political groups that are competing with each other. Candidates produce homogeneous lists based on political ideology that the members choose among. The majoritarian electoral system then reinforces the winner’s domination by

⁷¹² Interviews P8, P2.

producing administrations that constitute one block and defend one world. Thus far, these have been described as “Kemalist”. As a result, no matter how small the margin of the winning block, they represented the whole bar as if everybody agrees with their political stand. Only one respondent among the “big three” said they acted with the responsibility of representing the whole bar, suggesting that they played down their political identity after election.

Given all this, growth in the profession led by socio economic change seems to have created increased competition in the profession and undermined market control by TBB. This causes conflict between TBB and government because TBB as a protective group needs to exercise a check on the number of attorneys. More importantly, socio-economic change is also transforming a hereto homogenous community into a heterogeneous one. As a consequence, its interests are also diverging, signs of which are everywhere from ethnicity (Kurdish-Turkish); values (conservative Anatolian-Kemalist); age (young salaried -old solo practitioner); type of practice (criminal defense -other legal).

Therefore, it is only natural that TBB is faced with conflicting demands reflecting these diverging interests. This not only brings to mind the question discussed in Chapter Two whether society benefits when lawyers join together in one association (Schneyer 1983) but also shows that

keeping interests unified on the basis of a weak link like professional community when other identities are clearly paramount is difficult (Armingeon 1997). This is especially so with a delegate system that is majoritarian and gives too much weight to the “big three” who until now seem to have dominated TBB with one world view in disregard of others.

V.2.2 Promotional-protective group functions of TBB

In a corporatist interest group structure, representative groups such as TBB are designed as protective interest groups. In that regard, when one looks at the activities of TBB and its law, one can see that it has protective interest group functions. Respondents mentioned many activities of TBB that can be described so, such as signing licenses to practice, preparing fee tariffs, acting as appellate body in disciplinary matters, ensure functioning of the profession according to ethical rules, etc. Other routine activities include taking care of social security issues of attorneys, building accommodation facilities or providing financial assistance.

Activities such as issuing reports, organizing seminars-conferences, publishing journals, lobbying, on the other hand, seem to be made on an ad-hoc basis rather than as part of a routine program with clearly defined policy goals. Nevertheless, viewed from the perspective of its activities, TBB typically has protective interest group functions. Over time, however, TBB seems to have developed promotional interest group functions such as

defending human rights, liberty and democracy (Özman 1995) which were added to its law after an amendment in 2001.

These functions are clearly promotional interest group functions. Far from pacifying the profession by preventing bars' engagement in politics (Özman 1995), they seem to have brought politics right back into TBB. It should be recognized that human rights, liberty and democracy are not only legal but also political concepts. As much as they help bars to organize protests and marches and draw attention to violations of law, they also prove that it is an "impossible dream" to have apolitical bars given attorneys' closeness to social and political issues (Özman 1995).

This was also obvious in various descriptions provided by respondents as to what TBB was. In that regard, they described TBB as an NGO, as part of civil society, as a public institution; a professional organization; a peak organization and an upper body. They said its job was to criticize, be in opposition and emphasized its public character. It was itself telling that respondents whose average bar work amounted to almost ten (9,7) years could hold such contradictory views about TBB.

For those who believed that TBB was an NGO or part of civil society or was in opposition, it can be inferred that they would expect TBB to display

promotional interest group functions such as criticism and confrontation with the government. However, even those who thought of TBB primarily as a professional organization or a peak organization did not solely view it as a protective interest group.

At the same time, whether they conceived of TBB as an NGO; a professional organization or a public institution, respondents were careful to point out to their “difference” from other NGOs, professional organizations or public institutions. For instance, as an NGO, TBB was “not that kind of an NGO” that would speak in two minutes. As a professional organization, they were “not like that of the doctors or hairdressers”. As a public institution, they were “sensitive” about the fact that TBB was an institution of the judiciary. For some, this difference amounted to a desire to be regulated in a different article in the constitution: not with other professional organizations but in the same article with the judiciary.

Data further showed that an overwhelming number of respondents believed that until recently TBB was a “backyard” for one political party. What is important here is not whether the belief has merit but rather that it constitutes an important axis of friction among bar associations. For those who thought TBB was a backyard, it functioned as a promotional interest group. In their opinion, this role hurt the profession because first, it led to

confrontation with the government and second, it caused internal disagreement because not all bars agreed with TBB's views.

Here one can see that the promotional-protective interest group function of TBB leading to internal conflict. As a result, those who thought that TBB should perform less of a promotional and more of a protective interest group function seem to have eventually searched for a different administration at TBB. In fact, the alliance brought together by local bars to bring about regime change (described in Chapter Four) seem to have also wanted policies of TBB vis-à-vis governments to change so that TBB played less of a political but more of a professional role. In other words, this was an attempt by its constituents to move TBB from a promotional interest group towards a protective group.

However, the new situation was not to the liking of everybody. First, those who believed that TBB should be more vocal and confrontational vis-à-vis the government were unsatisfied with its focus on protective interest group functions. Second, the downplaying of promotional interest group functions seems to be based on the expectation that by refraining from criticizing the government, the profession will obtain benefits. While there is danger that the relationship can be reversed if these expectations are not satisfied, there is an additional danger. The new no-criticism is not a result of a change that believes that promotional functions of TBB should be abandoned. In other

words, those functions are down-played but still kept as a useful arsenal to launch an attack against the government-where necessary.

This is possible because for the profession, TBB's promotional functions such as protection of human rights and defense of law are apolitical subjects. Attorneys as well as bureaucrats⁷¹³ continue to subscribe to liberalism's view of the law as a "neutral" arbiter as their frequent reference to "acting with their lawyer identity" shows. This identity implies a person stripped from all beliefs, views and political ideologies. This is probably not surprising since movements such as critical legal theory and legal realism of the last century are yet to reach law school curricula in Turkey. However, through research these movements very much undermined the generic and impartial understanding of the law that applies to everyone equally as well as of the super human being that is the neutral and impartial lawyer. In sum, the new situation at TBB is not based on an understanding that a professional organization should only engage in protective functions. Where necessary, under the pretense of objectivity of the law, the professional organization can still wear its promotional functions hat.

Similarly, many respondents have a broad understanding of politics as an activity, not only confined to the Parliament and political parties. As a result, respondents as well as many presidents of bar see a role for TBB and

⁷¹³ Interviews P6, P8.

bars to be played “in healthy democracies”. The presidents of bar meeting saw intense discussion of the issue. The burning problem of the country, the Kurdish issue was brought up, with Southeastern bars asking TBB to abandon its silence and take a position. Likewise, KCK and Ergenekon trials were also brought up with participants demanding that TBB take a position⁷¹⁴.

This means that depending on the political agenda in the country which currently includes the making of a new constitution with controversial issues such as rights for minorities, secularism, military-civilian relations, TBB will continue to face these demands also because TBB and lawyers feel that constitution making is their terrain. Already, the latest declaration of Southeastern and Eastern Bars includes a provision that wants a role for professional organizations in the constitution making⁷¹⁵.

In view of the above, it will not be that easy to solve the promotional-protective interest group division at TBB. Especially if TBB fails to develop the expected positions of its constituents or deliver material benefits improving the standing of the profession, a “coalition of the willing”, last examples of which were seen in the declaration wars involving the

⁷¹⁴ Notes taken at the bar presidents meeting that took place on 21 January 2011 in Ankara.

⁷¹⁵ See for the declaration: <http://www.tuncelibarosu.org.tr/Detay.aspx?ID=9231&Tip=Bildiri>. Access date: 9 October 2011.

establishment of the intermediary appeal courts, may take action. More importantly, it is a question mark whether the problems of the profession can be resolved by getting along with government alone especially when socio-economic change is forcing more and more change. Nevertheless, it is clear that the contradictory functions of TBB is one of the factors that contributes to the conflict between the government and TBB.

V.2.3 Attorneys' engagement with politics

Data showed that the attorney-politician was also a phenomenon in Turkey just like it was in other countries. One of the explanations for the profession's closeness to politics was the recognition that it dealt with social problems, solutions of which were provided by politics. The profession's independence also allowed attorneys to earn income separately without depending on the state say like a civil servant. In addition, there were country specific reasons such as the wide prohibition to engage in politics for many people including civil servants.

Data further showed that while I conceived the bar as a recruitment path to politics, the reverse was also true. In other words, the majority of respondents became presidents of bar because they were politically engaged. Nevertheless, being the president of bar raised the profile of the person in the town by increasing his/her visibility and thus assisted in getting the attention of political parties. It looks like this is easier to do in

smaller towns in Anatolia than the “big three”, given the protocol status of bars. This may explain why respondents impute so much importance to being high up in the protocol. On the other hand, the “big three” seem to have the advantage of accessing the printed media and TV channels in general circulation easier than their peers elsewhere.

In the meantime, respondents thought where the person had political ambitions, it was difficult to keep bars as a separate entity from a political party. This was because political parties were inclined to create institutions that were dependent on them to be then used in addition to their political weight. Another worry was that political ambitions could compromise the independence of bars.

On the other hand, respondents viewed political engagement after having served as president of bar positively. But they carefully underlined to keep the two functions separate because the bar was a structure based on professional solidarity not on an ideology. What was significant here was the distinction respondents made between “politics of profession” or “politics of law” and “politics proper”. I interpret the former to engage in professional issues and trying to pressure the government about these issues than ideological ones. At the same time, the two are often intertwined with each other. For instance, providing criminal defense in the mother tongue is a legal issue as well as a political one. So is “proper attire” of an attorney

especially if properness forces uniformity on the profession under a state sanctioned ideology like Kemalism.

What should be recognized is no matter how much one attributes them legal meanings, there is politics behind these “trivial” issues. As a result, because politics is all about conflict, there also is conflict. Therefore, it is impossible to evade divisive issues by labeling the discussion as “politics of profession”. In that regard, it is interesting that respondents who have such intensive involvement in politics manifest this anti-politics attitude. They seem to believe that if politics proper is left out of the bar, professional unity can be achieved no matter how different other interests and identities of attorneys are. Put differently, in the name of depoliticizing the profession, they are politicizing professional interests they deem uniform (which are not given the import of cleavages in society due to growth in numbers) and in fact alleviate professional solidarity to an ideology. In that way, less politics also amounts to politics.

In view of this, given the intense political engagement of the profession in all political colors, no matter one labels it as “politics of the profession” or “politics of law”, this involvement is bound to cause conflict within the organization itself as well as between TBB and state institutions. This is probably why some respondents tend to prefer a corporatist relationship between the parties because corporatism’s moral and hierarchical order suits

a profession that sees itself above others. Further, corporatism shields attorneys from market forces, a benefit they certainly like.

V.2.3: Conclusion

This thesis showed that a corporatist structure is in place in Turkey given the existence of various professional organizations in it such as TBB.

However, empirical data demonstrated that unlike the assumptions of the corporatist theory, this structure did not lead to policy concertation, at least in the legal sector. The primary reason for its absence seems to be that the state tradition in Turkey is monist, resulting in state behavior that is autonomous from society and unwilling to share power.

Equally important, rapid and intense socio-economic change in Turkey seems to undermine TBB's homogeneity as an interest group. In that sense, growth in the profession continues to bring existing cleavages in society into the ranks of TBB. As a result, it is becoming increasingly difficult for one association to speak on the profession's behalf. In fact, Halliday points out to Belgium where fundamental ethnic, linguistic and religious divisions may inhibit the unification of interest associations or Italy and France where greater political polarization leads to greater fragmentation of professional interest representation (Halliday 1989).

In Turkey, although cleavages in society existed, they did not initially inhibit unification or led to fragmentation because the interest group was able to keep itself homogeneous. Socio-economic development, however, sharpened these cleavages and undermined market control of the interest group. As a result, these cleavages were imported into TBB, causing heterogeneity as well as divergence of interests among members which seems to have then led to internal battles. Further, they bred role confusion in TBB causing it to swing between a protective and a promotional interest group depending on the demands made from state institutions. Attorneys' interest in politics and their inherent skills as well as readiness to use political tactics (and organization) contributed to further politicization of these interests and thereby to conflict.

While all this may be viewed as reasons to explain conflict between TBB and state institutions, its implication for corporatist policy making is more important. Corporatist theory seems to assume a protective interest group that is homogeneous in membership profile or at least similar in interests, values and outlook so that it can play its part and bargain with government. Where cleavages in society on the basis of values, ethnicity, age and type of practice are imported to the interest group like in the case of TBB, this presents a serious challenge to that role, leading to battles within the group as well as with the "partner" of the group, in the end undermining corporatist policy making altogether. One can therefore conclude that for corporatism to work the mere existence of a corporatist structure is

insufficient. State tradition of the country and the homogeneity of the interest group play also huge roles. Given all this, it will be up to future researchers to tell whether this finding is country specific or whether it merits a re-shaping of corporatist theory.

Bibliography

Books

Abel R. L. 1989, *American Lawyers*, Oxford University Press, New York

Abel R. L. 1997(a), Chapter Two An Overview of the American Legal Profession ‘Transformation of the American Legal Profession’ in *Lawyers: A Critical Reader*, ed Abel R. L., the New Press, New York

Abel R. L. 1997(b), Chapter Nine Theories of the Legal Profession ‘American Lawyers’ in *Lawyers: A Critical Reader*, ed Abel R. L., the New Press, New York

Abel R. L. 2003, *English Lawyers Between Market and State*, Oxford University Press, Oxford, New York

Akbaş K. 2011, *Avukatlık Mesleğinin Ekonomi Politikği* , Nota Bene, Ankara

Akzambak M. 2005, *Atatürk'ün Devrimci Adalet Bakanı Mahmut Esat Bozkurt*, Zafer, İstanbul

Alkan M. Ö. 1998, 'Sivil Toplum Kurumlarının Hukuksal Çerçevesi 1839-1945' in *Tanzimattan Günümüze İstanbul'da Sivil Toplum Kuruluşları*, eds. Yücekök A. N., Turan İ. & Alkan M. Ö. Türkiye Ekonomik ve Toplumsal Tarih Vakfı, İstanbul

Auerbach J. S. 1977, *Unequal Justice: Lawyers and Social Change in Modern America*, Oxford University Press, Cary, NC.

Ayata G. Eryılmaz S. & Kalem S. 2011, *Ailenin Korunmasına Dair Kanun Kimi ve Neyi Koruyor?*, İstanbul Bilgi Üniversitesi Yayınları, İstanbul.

Berger S. 1981, 'Introduction', in *Organizing Interests in Western Europe*, ed Berger S., Cambridge University Press, Cambridge

Bianchi R. 1984, *Interest Groups and Political Development in Turkey*, Princeton University Press, Princeton

Bikmen F. & Meydanoğlu Z. 2006, *Türkiye 'de Sivil Toplum: Bir Değişim Süreci*, TÜSEV Yayınları, İstanbul

Blankenburg E. & Schultz U. 1995, 'German Advocates: A Highly Regulated Profession' in *Lawyers in Society*, Abel R. L. & Lewis P. S.C. eds, University of California Press, Berkeley, Los Angeles, London

Cirhinlioğlu Z. 1996, *Meslekler ve Sosyoloji*, Gündoğan, Ankara

Cirhinlioğlu Z. 1997, *Türkiye 'de Hukuk Mesleği*, Gündoğan, Ankara

Compston H. 2002, 'The Politics of Policy Concertation in the 1990s: the Role of Ideas', in *Policy Concertation and Social Partnership in Western Europe*, Berger S. & Compston H. eds, Berghahn Books, New York, Oxford

Creswell J. W. 2007, *Qualitative Inquiry & Research Design: Choosing among five approaches*, 2nd ed. Sage Publications, Thousand Oaks, London, New Delhi

Çarkoğlu A.& Kalaycıoğlu E. 2009, *The Rising Tide of Conservatism in Turkey*, Palgrave MacMillan, New York

Dahl R. 1961, *Who Governs?*, Yale University Press, New Haven

De Tocqueville A. 1998, *Democracy in America*, Griffith T. ed, Chatham, Wordsworth

Dezalay Y. & Garth B. G. 2010, *Asian Legal Revivals*, University of Chicago Press, Chicago & London

Doğru O. 1998, *27 Mayıs Rejimi Bir Darbenin Hukuki Anatomisi*, İmge, Ankara

Dölen E. 2010a, *Türkiye Üniversite Tarihi 3, Darülfünun'dan Üniversiteye Geçiş Tasfiye ve Yeni Kadrolar*, İstanbul Bilgi Üniversitesi Yayınları, İstanbul

Dölen E. 2010b, *Türkiye Üniversite Tarihi 4, İstanbul Üniversitesi 1933-1946*, İstanbul Bilgi Üniversitesi Yayınları, İstanbul

Durkheim E. 2002, 'Division of Labor in Society' in *Classical Sociological Theory*, eds Calhoun C. Gerteis J. Moody J. Pfaff S. Schmidt K. Virk I., Blackwell Publishers, Malden, MA

Ekşioğlu K. 1996, ‘Avukatlık Yasası’nda Son Değişiklikler’, in *Cumhuriyet Dönemi Türkiye Ansiklopedisi*, Vol. 6 İletişim, İstanbul

Elveriş İ. 2006 ‘Avukatlığa İlişkin Mevcut Düzenlemeler ve Yarattığı Adalete Erişim Sorunları’, in *Özer Seliçi’ye Armağan*, Seçkin, Ankara

Elveriş İ., Jahic G. & Kalem S. 2007, *Mahkemede Tek Başına*, İstanbul Bilgi Üniversitesi Yayınları, İstanbul

Elveriş İ. Jahic G. & Kalem S. 2009, *İstanbul Asliye Hukuk Mahkemelerinde Yargılama Süreci*, İstanbul Bilgi Üniversitesi Yayınları, İstanbul

Esmer Y. 1991, ‘Manufacturing Industries: Giants with Hesitant Voices’, in *Strong State and Economic Interest Groups: The Post-1980 Turkish Experience*, ed Heper M., Walter de Gruyter, Berlin

Gökalp Z. 1996, *Türkçülüğün Esasları*, Kamer, İstanbul

Göle N. 2008 (4th Ed), *Mühendisler ve İdeoloji*, Metis, İstanbul

Güner S. 2003, *Avukatlık Hukuku*, Ankara Barosu Yayınları, Ankara

Hague R. & Harrop M. 2004 (6th Ed), *Comparative Government and Politics*, Palgrave Macmillan, London

Halliday T. C. 1989, 'Legal Professions and the State: Neocorporatist Variations on the Pluralist Theme of Liberal Democracies', in *Lawyers in Society: Comparative Theories*, eds Abel R. L. & Lewis P. S. C. , University of California Press, Berkeley

Heper M. 1991a, 'The State and Interest Groups with Special Reference to Turkey', in *Strong State and Economic Interest Groups*, ed Heper M., De Gruyter, Berlin-New York

Heper M. 1991b, 'Interest-Group Politics in post-1980 Turkey Lingering Monism', in *Strong State and Economic Interest Groups*, ed Heper M., De Gruyter, Berlin-New York

Hernes G. & Selvik A. 1981, 'Local Corporatism', in *Organizing Interests in Western Europe*, ed Berger S., Cambridge University Press, Cambridge

Jacobson S. 2009, *Catalonia's Advocates*, The University of North Carolina Press, Chapel Hill

Jarausch K. H. 1990, 'The History and Theory' in *German Professions 1800-1950*, eds Cocks G. & Jarausch K. H., Oxford University Press, Cary, NC

Kalem, S., Jahic, G., & Elveriş İ. 2008, *Justice Barometer: Public Opinion on courts in Turkey*, İstanbul Bilgi Üniversitesi Yayınları, İstanbul

Ledford K. F. 1996, *From General Estate to Special Interest, German Lawyers 1878-1933*, Cambridge University Press, New York

Lehmbruch G. 1979, 'Liberal Corporatism and Party Government', in *Trends Toward Corporatist Intermediation*, eds Schmitter P. & Lehmbruch G., Sage Publications, Beverly Hills, London

Lijphart A. 1999, *Patterns of Democracy*, Yale University Press, New Haven, London

Malloy J. M. 1979, 'Authoritarianism and Corporatism in Latin America: The Modal Pattern', in *Authoritarianism and Corporatism in Latin America*, ed Malloy, J. M., University of Pittsburg, London

Martin G. 1997, *Causes and Conflicts, The Centennial History of the Association of the Bar of the City of New York 1870-1970*, Fordham University Press, New York

McClelland C. E. 1991, *The German Experience of Professionalization*, Cambridge University Press, Cambridge

Moustakas C. 1994, *Phenomenological Research Methods*, Sage Publications, Thousand Oaks, London, New Delhi

Navaro-Yashin Y. 2002, *Faces of the State, Secularism and Public Life in Turkey*, Princeton University Press, Princeton, Oxford

O'Donnell R. 2001, 'Towards Post-corporatist Concertation in Europe?', in *Interlocking Dimensions of European integration* ed Wallace H. Palgrave, Houndmills New York

Ökçün G. A. (1997), *Türkiye İktisat Kongresi*, Sermaye Piyasası Kurulu Yayın No: 59, Ankara

Öncü A. 1996, 'Cumhuriyet Döneminde Odalar', in *Cumhuriyet Dönemi Türkiye Ansiklopedisi* Vol.6 İletişim, İstanbul

Panitch L. 1979, 'The Development of Corporatism in Liberal Democracies' in *Trends Toward Corporatist Intermediation*, eds Schmitter P. & Lehmbruch G., Sage Publications, Beverly Hills London

Parla T. 2009 (6th Ed), *Ziya Gökalp, Kemalizm ve Türkiye'de Korporatizm*, Deniz Yayınları, İstanbul

Pempel T. J. & Tsunekawa K. 1979, 'Corporatism without Labor? The Japanese Anomaly', in *Trends Toward Corporatist Intermediation*, eds Schmitter P. & Lehmbruch G., Sage Publications, Beverly Hills, London

Pound R. 1953, *The Lawyer From Antiquity to Modern Times*, West Publishing, St. Paul

Rhode D. 2000, *In the interests of justice, Reforming the legal profession*, Oxford University Press, Oxford New York

Sancar M. & Atılgan E. U. 2009, *Adalet biraz es geçiliyor, Demokratikleşme Sürecinde Hakim ve Savcılar*, Bilnet, İstanbul

Sav A. 1996, 'Barolar ve Türkiye Barolar Birliği', in *Cumhuriyet Dönemi Türkiye Ansiklopedisi* Vol. 6 İletişim, İstanbul

Schmitter P. 1979, 'Still the Century of Corporatism?' in *Trends Toward Corporatist Intermediation*, eds Schmitter P. & Lehmbruch G., Sage Publications, Beverly Hills, London

Schmitter P. 1982, 'Reflections on Where the Theory of Neo-Corporatism Has Gone and Where the Praxis of Neo-Corporatism May Be Going', in *Patterns of Corporatist Policy-Making*, eds Lehmbruch G. & Schmitter P.C., Sage Modern Politics Series Volume 7, London Beverly Hills

Schultz U. 2005, 'Regulated Deregulation: The Case of the German Legal Profession', in *Reorganisation and Resistance, Legal Professions Confront A Changing World*, ed Felstiner W. L. F, Hartford Publishing, Oxford and Portland, Oregon

Shambayati H. 2008, 'The Guardian of the State: The Turkish Constitutional Court in comparative perspective' in *Constitutional reconstruction in Turkey, Iran, Iraq and Afghanistan*, ed. Arjomand S.A., Hart Publishing, Oxford

Siegrist H. 1990, 'Public Office or Free Profession? German Attorneys in the Nineteenth and Early Twentieth Centuries', in *German Professions 1800-1950*, eds Cocks G. & Jarausch K. H., Oxford University Press, Cary, NC

Tan M. 1972, *Meslek Olarak Hukuk ve Siyasette Hukukçu*, Türkiye ve Orta Doğu Amme İdaresi Enstitüsü Yayınları, Ankara

Turam B. 2007, *Between Islam and the State*, Stanford University Press, Stanford

Turan İ. 1986 (3. Baskı), *Siyasal Sistem ve Siyasal Davranış*, Der Yayınları, Istanbul

Türkiye Barış Derneği Davası Sorgular Savunmalar Cilt 1 1986, Bilim ve Sanat, Istanbul

Weiss R. S. 1995, *Learning from Strangers*, The Free Press, New York.

Wiarda H. J. 1974 'Corporatism in the Iberic-Latin world' in *The New Corporatism Social-Political Structures in the Iberian World* , eds Pike F. B. & Stritch T., University of Notre Dame Press, Notre Dame and London

Williamson P. J. 1989, *Corporatism in Perspective An Introductory Guide to Corporatist Theory*, Sage Publications, London-Newbury Park-New Delhi

Wilson G. K. 1990, *Interest Groups*, Basil Blackwell, Oxford and Cambridge

Yücekök A. N. 1998, 'Türk Hukukunda Tüzel Kişilik' in *Tanzimattan Günümüze İstanbul'da Sivil Toplum Kuruluşları*, eds Yücekök A. N., Turan İ. & Alkan M. Ö., Türkiye Ekonomik ve Toplumsal Tarih Vakfı, Istanbul

Periodicals

Abel 1986a, 'The Decline of Professionalism?', *The Modern Law Rev.* vol. 49, no. 1, pp. 1-41.

Abel 1986b, 'The Transformation of the American Legal Profession', *Law & Soc. Rev.* vol. 20 no. 1, pp. 7-17.

Armingeon K. 1997, 'Swiss Corporatism in Comparative Perspective', *West European Politics*, vol. 20, no. 4, pp. 164-179.

Barber B. 1978, 'Control and Responsibility in the Powerful Professions', *Political Science Quarterly*, vol. 93, no. 4, pp. 599-615.

Baccaro L. 2003, 'What is Alive and What is Dead in the Theory of Corporatism', *British Journal of Industrial Relations*, vol. 41, no. 4, pp. 683-706.

Bacrach P. & Baratz M. S. 1962, 'Two Faces of Power', *The American Political Science Review*, vol. 56, no. 4, pp. 947-952.

Battal S. & Erdem N. 1985, 'Avukatlık Mesleğinin Türkiye'deki Tarihçesi', *Ankara Barosu Dergisi*, no. 5-6, pp. 675-685.

Belge C. 2006, 'Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey', *Law & Soc. Rev.* vol. 40 no. 3, pp. 653-91

Buğra A. 1998, 'Class, Culture and State: An Analysis of Interest Representation By Two Turkish Business Associations', *Int. J. Middle East Stud.*, 30, pp. 521-539

Burrage M. 1988, 'Revolution and the Collective Action of the French, American, and English Legal Professions', *Law and Social Inquiry*, vol. 13 No 2 Spring, pp. 225-277.

Cawson A. 1988, 'In Defence of the New Testament: A Reply to Andres Cox, 'The Old and New Testaments of Corporatism'', *Political Studies*, vol. XXXVI, pp. 309-315.

Cohen M. 1969, 'Lawyers and Political Careers', *Law & Society Rev.*, vol. 3, No. 4, pp. 563-574.

Cox A. 1988 'The Old and New Testaments of Corporatism: Is It a Political Form or a Method of Policy-making?', *Political Studies*, vol. XXXVI, pp. 294-308

Freidson E. 1984, 'The Changing Nature of Professional Control', *Ann. Rev. Soc.*, vol. 10, pp.1-20

Gerlich P. 1992, 'A Farewell to Corporatism', *West European Politics* vol. 15, no. 1, pp. 132-46.

Halliday T.C., Powell M. J. & Granfors M. W. 1993, 'After Minimalism: Transformations of State Bar Associations From Market Dependence to

State Reliance, 1918 to 1950', *American Sociological Review*, vol. 58, no. 8, pp. 515-535.

İnanıcı, H. 2000, 'Türkiye'de Avukatlık İdeolojisi', *Toplum ve Bilim* 87, p.135-163.

Koğacıoğlu D. 2004, 'Progress, Unity and Democracy: Dissolving Political Parties in Turkey', *Law & Soc. Rev.* vol. 38, no. 3, pp. 433-462.

Kritzer H. M. 1999, 'The Professions are Dead, Long Live the Professions: Legal Practice in a Postprofessional World', *Law & Soc. Rev.* vol. 33 no. 3, pp: 713-759.

Lewis P.S.C. 1986, 'A Comparative Perspective On Legal Professions in the 1980s', *Law & Soc. Rev.* vol. 20 no. 1, pp. 79-91.

Molina O. & Rhodes M. 2002, 'CORPORATISM: The Past, Present and Future of a Concept', *Annu. Rev. Polit. Sci.* vol: 5 pp. 305-331.

Özman A. 2000, 'Siyaset, hukuk, ideoloji ekseninde hukukçu kimliğinin yeniden tanımlanması: Erken Cumhuriyet dönemi üzerine bir inceleme', *Toplum ve Bilim*, 87, p. 164-177.

Özkent A. H. 1948, 'Dünün ve Bugünün Türk Avukatlığına ve Barolarına Kısa Bir Bakış', *İstanbul Barosu Dergisi*, vol: 22, no: 10, pp. 643-651.

Rueschemeyer D. 1986, 'Comparing Legal Professions Cross-Nationally: From a Professions-centered to a State-centered Approach', *Law & Social Inquiry, Journal of the American Bar Foundation*, no. 3, pp. 415-446.

Schmitter P. C. 1974, 'Still the century of corporatism?', *Review of Politics*, vol. 36, no.1, pp. 85-131

Schmitter P. C. 1989, 'Corporatism is Dead! Long Live Corporatism!', *Government and Opposition*, vol: 24, no: 1, pp. 54-73.

Schneyer T. J. 1957, 'Lawyers and American Politics: A Clarified View', *Midwest Journal of Political Science*, vol.1, no. 1, p. 26-39.

Schneyer T. J. 1983, 'The Incoherence of the Unified Bar Concept: Generalizing from the Wisconsin Case', *American Bar Foundation Research Journal*, p. 1-108.

Schneyer T. J. 1989, 'Professionalism as Bar Politics: The Making of the Model Rules of Professional Conduct', *Law and Social Inquiry*, pp. 677-737.

Shambayati H. & Kirdiş E. 2009, 'In Pursuit of "Contemporary Civilization": Judicial Empowerment in Turkey', *Political Research Quarterlyly*, vol. 62 , no. 4, pp. 767-780.

Smith A. S. 1994, 'The Limits of Compulsory Professionalism: How the Unified Bar Harms the Legal Profession', *Florida State University Law Review*, vol. 22, no. 35, pp. 1-18.

Suleiman E. N. 1987, 'State Structures and Clientelism: The French State Versus the Notaires', *British Journal of Political Science*, vol. 17, no: 3, pp. 257-279.

Yılmaz E. 1995, 'Bir Meslek Olarak Dünden Yarına Avukatlık', *Ankara Hukuk Fakültesi Dergisi*, no. 1-4, pp. 193-208.

Zemans F. K. 1983, 'Legal Mobilization:The Neglected Role of the Law in the Political System', *The American Political Science Review*, vol. 77, p. 690-703.

Thesis

Dayır Y. S. 2007, Meslekler Sosyolojisi Açısından Doktorluk Mesleği ve Doktorlar, Elazığ:Unpublished Master Thesis

Dülger C. 1999, Bütçe Sürecinde Baskı Grupları,Unpublished Master Thesis, Eskişehir.

Erozan H. B. 2005, Producing Obedience: Law professors and the Turkish State, Unpublished PHD Thesis, Minnesota.

Okur Y. 2008, Meslek Kuruluşlarının Görevleri ve Kamu Düzeninin Korunmasına Katkıları (Ankara Ticaret Odası ve Hakkari Ticaret ve Sanayi Odası Örneği),Unpublished Master Thesis, Gaziantep.

Öncü A. 1981, Toplumsal Değişme Sürecinde Meslek Grupları, Türkiye’de İnşaat Mühendisleri Örneği 1945-1975, Unpublished Thesis, Istanbul

Özman A. 1995, The State and Bar Associations in Turkey: A Study in interest group politics, Unpublsihed PHD Thesis, Ankara

Topçu A. 2006, Siyasal Karar Alma Organları Üzerinde Çıkar ve Baskı Gruplarının Etkileri, Unpublished Master Thesis, Afyonkarahisar

Türem U. 2001, Globalization of Law and the Legal Profession in Turkey, Unpublished MA Thesis, Istanbul

Uzun H. 2000, Meslekler Sosyolojisi Açısından Avukatlar ve Avukatlık Mesleği, Elazığ Barosu üzerine sosyolojik bir araştırma, Unpublished Master Thesis, Elazığ

Yenilmez M. 2007, Türkiye’de Mühendisler ve Siyaset, Unpublished Master Thesis, Ankara

Reports & Dictionaries

Türkiye Büyük Millet Meclisi Albümü (23 Nisan 1920-20 Ekim 1991), 1994, TBMM Genel Sekreterliği Yayınları No: 1, Ankara

T.C. Cumhurbaşkanlığı Devlet Denetleme Kurulu, 2009, No: 6, Araştırma ve İnceleme Raporu

Türkiye'nin Yükseköğretim Stratejisi 2007, T.C. Yükseköğretim Kurulu,
Ankara.

Black's Law Dictionary (1983), 5th Ed, St. Paul, Minn, West Publishing
Co., p. 361.

Web

Koğacıoğlu D. 2007, 'Gelenek Söylemleri ve İktidarın Doğallaşması:
Namus Cinayetleri Örneği', www.feministyaklasimlar.org.

Appendix 1

“It says that professional organizations should not engage in politics. Who is going to? Only MPs?” Interview 29.	Meslek kuruluşları siyasetle uğraşmasın diyor. Siyasetle kim uğraşacak? Yalnız milletvekilleri mi uğraşacak?
“(…) For example, President of Bar goes on TV and talks about politics all the time but not about the law. I want my colleague, my friend from the bar to talk about the law. Instead of saying ‘Dear Government, we are preparing the Act on Attorneys, we are bringing this to you, are you going to pass it as is from the Parliament?’, it is Ergenekon up, Ergenekon down...What do we care about Ergenekon?” Interview 30.	Örnek, (...) baro başkanımız çıkıyor televizyonlarda hep siyaset konuşuluyor, hukuk konuşmuyor. Ben istiyorum ki, benim meslektaşım, benim baro arkadaşım hukuk konuşsun. “Ey hükümet biz avukatlık yasasını hazırlıyoruz, getiriyoruz sen bunu adam gibi meclisten geçirecek misin” diyeceğine, Ergenekon aşağı, Ergenekon yukarı. Bize ne Ergenekon’dan?
“(…) We have long understood that this cannot happen with social democrats, with Kemalists. And we believe that without the liquidation of the 1-2% privileged class created by Kemalizm, nothing can be done in this country (...)”. Interview 12.	Biz bunun sosyal demokrat, Kemalistlerle olamayacağını yıllar önce bunu kavramışız. Ve Türkiye’de de o Kemalizm’in yarattığı %1-2’lik imtiyaz sahibinin hükümrânlığı kırılmadan da bu ülkede hiçbir şey yapılamayacağına da inanıyoruz.
“The president of an administrative court commented to a colleague in (Southeastern town) on the compensation to be awarded to the villagers: ‘you are right, we need to accept this case, but how is the state	Bir ara bir’de arkadaş anlattı. Oradaki idare mahkemesi başkanı bu 5233ler var, köylülerin tazminatı ile ilgili. Dedi, sordu falan valla işte avukat bey haklısın, davayı kabul etmemiz gerekiyor

going to find the money?’. This is the mentality... You are not the Minister of Finance, you are not the defterdar. You issue your judgment, let it go to Danıştay for judicial review. The funds are to be thought by someone else, this is not your job. (...)”. Interview 12.	ama devlet o parayı nereden bulacak? Böyle anlayış...sen maliye bakanı değilsin defterdar da değilsin. Sen o kararı ver, Danıştay’a gitsin. Hukuki süzgeçten geçsin, doğruysa doğrudur, o para işini başkası düşünecek, senin işin değil.
“(...) The right thing to do is to sit quietly and not cause any trouble. The government knows the best. The Minister knows. And how does he know? The bureaucrats told him so.” Interview 16.	Problem çıkarmayacaksın. Uslu duracaksın, hükümet en iyisini bilir. Bakan bey bilir, bakan nereden bilir, bakana da bürokratlar öyle şey yapmışlardır, inandırmışlardır.
“As Nabi said, ten dervish would fit into one kilim but two sultans would not fit into one climate. Attorneys see themselves as the sultan. Because they do not have a hierarchical superior, they always want to act independently and with their free will. They shy away from acting in a collective manner. Unfortunately, this is how it is in the Parliament. (...) The attorneys in a political party do not share a common stand”. Interview 19.	On derviş bir kilime sığarmış da iki padişah bir iklimde sığmazmış, Nabi’nin sözü. Avukatlar hep kendisini padişah olarak görürler çünkü hiçbir hiyerarşik üstleri olmadığı için, hep bağımsız ve kendi hür düşünceleriyle hareket etmeyi isterler. Kolektif bir şuur içinde hareket etmekten de her zaman geri dururlar. Maalesef Meclisteki yapılanmanın da bu şekilde olduğunu ben görüyorum. (...) Parti içindeki avukatların kolektif bir duruşu yok.
“(...) I am a member of MHP, and I really do not like the Prime Minister but I do believe that this statement about imam training schools was not right.(...) That bar has members or relatives of members that are graduates of those schools. A TBB President cannot determine such category. If you accept this, tomorrow someone will say I cannot accept someone from Nevşehir or someone	Ben MHPliyim, sayın başbakandan da hiç hazzetmiyorum ama bu sözün doğru olmadığı kanaatindeydim. Şimdi o baronun imam hatip mezunu üyeleri de var ya da imam hatip mezunu yakınları olan üyeleri var. Bir BB başkanının böyle bir kategori belirleme hakkının olmadığı kanaatindeyim.

from Diyarbakır”. (...) Interview 11.	Siz eğer bunu kabul ederseniz yarın birisi çıkıp ben Nevşehirli bir baro başkanını içime sindiremiyorum diyebilir veya birisi çıkıp ben Diyarbakırlı birisini içime sindiremiyorum der.
“If you position yourself on the side of the status quo, you become an element to be fought off. But if you position yourself on the side of justice, law and the people, then you can force the government with your requests”. Interview 14.	Eğer siz pozisyonunuzu statükodan yana belirlerseniz siz mücadele edilmesi gereken bir unsura dönüşürsünüz. Ama pozisyonunuzu adaletten, hukuktan, haktan, milletten yana belirlerseniz, siz taleplerinizle hükümeti de zorlayabilirsiniz.
“If we code governments, close to us or far away from us, same with us or not same with us, then these duties cannot be carried out. In that case, we will have to wait until a government comes that shares our views and until then, we will not contact them; make requests for anything; do anything to solve our problems and will wait until the government changes. It’s totally irrelevant what the government’s political ideology is, at least for me. This government is a government elected by the people and is a legitimate one. As long as it is legitimate, I do not understand why we should not contact them or reject that contact.” Interview 4.	(...)Eğer iktidarları böyle bize yakın, bize uzak, siyasi görüşleri bizimle aynı, bizimle aynı değil diye kodlayacak olursanız, o zaman bu görevler yürütülmez. Yani o zaman diyelim ki biz kendi düşüncemize uygun bir iktidar gelinceye kadar, bizim düşüncemizde olmayan iktidarla hiçbir şekilde temas halinde olmayacağız, hiçbir şey de talep etmeyeceğiz, sorunlarımızın çözümü konusunda da bir çaba içinde olmayacağız, o zaman o iktidar değişinceye kadar bekleyeceğiz. Kaldı ki iktidarın siyasi düşüncesinin öyle veya böyle olması hiç önemli değil. Yani benim yaklaşımım açısından önemli değil. Bu iktidar halkın oyuyla seçilip gelmiş, meşru bir iktidardır. Dolayısıyla meşru olduktan sonra, o iktidarla temas içinde olmamayı veya o teması reddetmeyi ben anlayamıyorum. (...)

“(…). They were deciding the opposite. Who was saying that the exam should not be lifted? CHP. We also said so. If CHP said the exam should be lifted, maybe the exam would not be lifted. That’s how politically tense it was (…).” Interview 30.	(…)“siz burada particilik yapıyor” diyip sizin tersinize karar veriyordu. Şöyle söyleyeyim, şimdi sınav kalkmamalı diye kim söylüyordu, CHP diyelim ki “avukatlık sınavı kalkmamalı”. Biz barolar da kalkmamalı diyorduk ama CHP sınav kalkmalı deseşdi belki de kalkmazdı yani o kadar siyasi olarak gerilmişlerdi.
“There is a tendency to disregard attorneys, bars and everything we do. They do not want us. Attorneys are always seen as troublemakers. Bars are seen as troublemakers. ‘They are arrogant, they think they know everything’...Consequently, there is an effort to prevent the things they do; a great endeavor to stop their entry into the system; not provide information; push them out and make them unable to work.” Interview 9.	Bizim her yaptığımız işi, avukatları ve baroları yok saymaya yatkın bir eğilim var, istemiyorlar, avukatlar hep baş belası olarak görülür. Barolar bir baş belası olarak görülür. Kendilerini çok beğenmişler, her şeyi bilirler aman onlar.... Dolayısıyla onların yapmaları gereken işleri engelleme çabası vardır. Onları sistemin içine sokmama, bilgi vermeme, onları zorlayarak dışarıya itme, iş yapamaz hale getirme konusunda büyük bir gayret var.
“In (Blacksea town) at some point, all parties’ presidents were attorneys. We worked together in the same bar. (...) We were party presidents of the province and have then become MPs from AKP, CHP and from MHP”. Interview 11.	Hatta’da bir dönem neredeyse bütün partilerin tamamının il başkanları avukattı. Biz aynı baroda beraber çalışıyorduk. Şu anda da hem AKP hem CHP’de üç avukat arkadaşımız burada birlikte milletvekilliği yapıyoruz.
“On one day, I can say for Erdoğan’s Davos burst that he has done very well, on the other day I can issue a statement saying that the actions at Habur border crossing were against the law. This is the freedom I get from not being connected with a political party. The fact that I act without being	Ben de bir gün diyelim ki Erdoğan’ın Davos’una “çok iyi yapmış” diyebilirken diğer gün Habur sınır kapısında hukuka aykırı işlemler yapıldığını çok rahatlıkla beyanını verebiliyorum. Bu rahatlığı veriyor bize bu herhangi bir siyasi partiye bağlı

concerned about my political future lets me praise the right and criticize the wrong.” Interview 6.	olmamak. Siyasi gelecek rantı içerisinde, düşünce yapısıyla hareket etmemem doğru olanı övmek yanlış olanı ise dövmeyi çok rahatlıkla yaptırabiliyor.
“Political parties think some professional organizations should come and provide support during election time and afterwards, fine, the mission is accomplished. However, if a professional organization is dependant on a political party, whether you want it or not, in the end, professional problems will have to be discussed paralel to the party line. But this is a solidarity structure based on profession not on politics.” Interview 23.	Siyasi partiler kimi meslek kuruluşları gelsinler, bizim seçim dönemimizde siyasi faaliyetlerimize aktif katkı versin ondan sonra, tamam görevi tamamladı diye düşünürler. Oysa bir siyasi partiye bağımlı bir meslek odası olması halinde, ister istemez o siyasi partinin paralelinde mesleki sorunları ortaya koymak ve tartışmak noktasındadır. Oysa bu bir mesleki dayanışma yapısıdır, bir siyasi dayanışma yapısı değildir.
“I have been an administrator in the local party organization of (...) between 2004-6. Local organizations do not consist of good names. As you know, civil servants are prohibited from engaging in politics. Unions and political parties may not establish contact. Many professions are by default out. We attorneys can get into it a little. In local politics, the unemployed are interested in political organizations in order to get a job in a municipality or a government institution. Contractors or the small businessmen in the local area are interested in order to sell their goods. When the party organization is left to these people, politics does not come out of that.(...)”. Interview 7.	de, 2004’te örgüt yöneticiliği yaptım, iki sene biliyorum. Örgütler çok iyi isimlerden oluşmuyor. Biliyorsunuz devlet memurlarında yasak var, siyaset yasağı var. Sendikalarla siyasi partilerin ilişki kurması yasaklanmış. Yani bir çok meslek grubu zaten dışarıda kalıyor. Biz avukatlar biraz girebiliyoruz işin içine. Onun dışında yerel yerlerde özellikle belediyelerden veya kamu kurumlarından iktidara yakın olan kamu kurumlarından işe girebilmek için işsizler yani bir şey bulmak için siyasi partilere ilgi gösterir, müteahhitler ve o yörenin esnafları, onlar da mal satmak için. Şimdi bunlara kaldığı zaman örgütler işte oradan bir siyaset çıkmaz.

“(…) A statement I make as president of bar to become an MP or something else would not be liked by them. What happens then? These friends would wear their robes and make a statement in front of the stairs of the court house and say ‘we disagree with such and such statement of the president’. The public then perceives that there are different opinions at the bar. Attorneys are divided, attorneys cannot get together. We shouldn’t do that. (…)” Interview 7.	Benim yaptığım bir açıklama baro başkanı olarak işte bu milletvekili olmak için veya başka bir görev için bunların hepsini kapsamayabilir. O zaman ne çıkar bu arkadaşlar onu kapsamadığı vakit çıkarlar cübbelerini giyerler bir açıklama yaparlar adliyenin şu basamaklarının önünde. “Biz başkanın bu görüşüne katılmıyoruz” derler. O zaman kamuoyu da şöyle algılar. Baroda farklı görüşler de var. Avukatlar bölünmüş, avukatlar bir araya bile gelemiyorlar. Gibi şeye gelir. Buna şey yapmamak lazım.

Appendix 2

Görüşme tarihi:

Görüşme başlangıç saati:

Görüşme bitiş saati:

Görüşülen kişinin adı:

Görüşülen kişinin kurumu ve pozisyonu:

Tanıtım:

Bu mülakatı, İstanbul Bilgi Üniversitesi Siyaset Bilimi bölümünde yapmakta olduğum doktora tez araştırması kapsamında yapıyorum. Tezimde, bazı mesleki kuruluşların anayasal statü ile devlet içinde yer alması şeklindeki düzenlemenin, TBB-devlet ilişkisinde nasıl işlediğini inceliyorum.

Bu nedenle, TBB-devlet ilişkisinin nasıl yürüdüğüne ilişkin ilk elden tecrübesi ve gözlemi olan kişilerin görüşlerine başvurmak, konu hakkında daha net bilgi edinmek açısından gereklidir. Aşağıdaki soruları özellikle bu bakımdan cevaplamanızı rica ediyorum.

Bu görüşmelerde verdiğiniz bilgiler tamamen saklıdır ve bilimsel olmayan hiçbir sebep için kesinlikle kullanılamaz. Adınız hiç kimseye verilmeyecek ve yazılı veya sözlü olarak hiçbir şekilde kullanılmayacaktır. Vereceğiniz bilgiler gizli adlarla aktarılacaktır. Hiçbir soruya cevap verme zorunluluğunuz yoktur, ama verdiğiniz takdirde hiçbir etki altında kalmadan kendi düşüncenizi belirtmeniz rica olunur.

Sormak istediğiniz herhangi bir soru varsa lütfen sorunuz.

Yardımlarınız için şimdiden teşekkür ederim.

Görüşmeye başlamadan önce söylediklerinizi daha sonra eksiksiz hatırlayabilmek için teybe kaydetmek için izninizi almak istiyorum.

Teyp kullanılmasına izin vermiyorum ☐ izin veriyorum ☐

_____ imza

1. Doğum Tarihi:

2. Cinsiyet: 1> Kadın 2> Erkek

3. TBB’de/Baro’da ne kadar görev yaptınız ve görevleriniz nelerdi?

4. TBB’nin faaliyetleri nelerdir? /TBB’nin Barolarla ilgili faaliyetleri nelerdir?

5. TBB’nin faaliyetleri sırasında hangi devlet kurumları ile ilişkisi oluyor? (yasama-yürütme-yargı)

6. TBB’nin devlet kurumlarıyla ilişkisine dair kamuoyuyla veya meslektaşlarla iletişim? (basın açıklaması, yürüyüş, dergi)

7. Sizce TBB ile devlet kurumları arasındaki ilişki nasıl tanımlanabilir? (siyasi konjonktürün veya görüşün etkisi, liderliğin tavrı ve üslubu)

8. TBB’nin diğer anayasal meslek kuruluşlarıyla ilişkilerini anlatabilir misiniz?

9. Baro başkanlığından/TBB görevinden milletvekililiğine geçmenizle/geçilmesiyle ilgili ne söyleyebilirsiniz?

10. Eklemek istediğiniz herhangi bir şey var mı?

11. Başka kimle görüşmemi önerirsiniz?

Appendix 3

Görüşme tarihi:

Görüşme başlangıç saati:

Görüşme bitiş saati:

Görüşülen kişinin adı:

Görüşülen kişinin kurumu ve pozisyonu:

Tanıtım:

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Bu nedenle, TBB-devlet ilişkisinin nasıl yürüdüğüne ilişkin ilk elden tecrübesi ve gözlemi olan kişilerin görüşlerine başvurmak, konu hakkında daha net bilgi edinmek açısından gereklidir. Aşağıdaki soruları özellikle bu bakımdan cevaplamanızı rica ediyorum.

Bu görüşmelerde verdiğiniz bilgiler tamamen saklıdır ve bilimsel olmayan hiçbir sebep için kesinlikle kullanılamaz. Adınız hiç kimseye verilmeyecek ve yazılı veya sözlü olarak hiçbir şekilde kullanılmayacaktır. Vereceğiniz bilgiler gizli adlarla aktarılacaktır. Hiçbir soruya cevap verme zorunluluğunuz yoktur, ama verdiğiniz takdirde hiçbir etki altında kalmadan kendi düşüncenizi belirtmeniz rica olunur.

Sormak istediğiniz herhangi bir soru varsa lütfen sorunuz.

Yardımlarınız için şimdiden teşekkür ederim.

Görüşmeye başlamadan önce söylediklerinizi daha sonra eksiksiz hatırlayabilmek için teybe kaydetmek için izninizi almak istiyorum.
(İmzalat).

Teyp kullanılmasına izin vermiyorum ☐ izin veriyorum ☐

İmza

1. Doğum Tarihi:
2. Cinsiyet: 1> Kadın 2> Erkek
3. Ne kadar zamandır (kaç yıldır) Bakanlık'ta görevlisiniz ve görevleriniz neler?
4. Bakanlıktan önce ne gibi görevleriniz oldu?
5. Şimdiye değin TBB ile yapılmış toplantılara katıldınız mı? Kaç tane? Hangi konularda?
6. Bakanlık, TBB yetkilileri ile ortalama ne sıklıkta görüşür?
7. TBB yetkilileri ile yapılacak olan görüşmelere nasıl karar veriliyor? (mevzuata mı bağlı, duruma mı bağlı, Bakan/Genel Müdür mü istiyor?)
8. Görüşmeye ilişkin prosedür nedir? (Kim arıyor, nerede buluşuluyor, gündem nasıl belirleniyor?)
9. Toplantılarda neler oluyor? (Kimler katılıyor? Ne kadar sürüyor? Tutanak tutuluyor mu?)
10. Toplantılarda nasıl karar alınıyor ve kararların yerine getirilmesi nasıl gerçekleşiyor? (anlaşma, protesto)

11. Alınan kararların kamuoyuyla paylaşılması nasıl oluyor? (basın açıklaması, yürüyüş)

12. Toplantılardaki ortama ilişkin neler söyleyebilirsiniz?

13. Sizce TBB ile devlet arasındaki ilişki nasıl tanımlanabilir?

Zaman ayırdığınız için teşekkür ederim.

12. Herhangi bir siyasi partiye üye misiniz?

Zaman ayırdığınız için teşekkür ederim.

Appendix 4

Görüşme tarihi:

Görüşme başlangıç saati:

Görüşme bitiş saati:

Görüşülen kişinin adı:

Görüşülen kişinin kurumu ve pozisyonu:

Tanıtım:

Bu mülakatı, İstanbul Bilgi Üniversitesi Siyaset Bilimi bölümünde yapmakta olduğum doktora tez araştırması kapsamında yapıyorum. Tezimde, bazı mesleki kuruluşların anayasal statü ile devlet içinde yer alması şeklindeki düzenlemenin, TBB-devlet ilişkisinde nasıl işlediğini inceliyorum.

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Sormak istediğiniz herhangi bir soru varsa lütfen sorunuz.

Yardımlarınız için şimdiden teşekkür ederim.

Görüşmeye başlamadan önce söylediklerinizi daha sonra eksiksiz hatırlayabilmek için teybe kaydetmek için izninizi almak istiyorum.
(İmzalat).

Teyp kullanılmasına izin vermiyorum ☐ izin veriyorum ☐

imza

1. Doğum Tarihi:

2. Cinsiyet: 1> Kadın 2> Erkek

3. Şu anki göreviniz nedir? (bakanlıkta veya mecliste)

4. Bundan önce ne gibi görevleriniz oldu?

5. Göreviniz kapsamında TBB ile bir araya gelmeniz veya karşılaşmalarınızdan bahsedebilir misiniz?

6. Bu görüşmelere dair prosedür nedir? (Kim arıyor, nerede buluşuluyor, gündem nasıl belirleniyor?)

7. Bu karşılaşmalarda neler oluyor? (Kimler katılıyor? Ne kadar sürüyor? Tutanak tutuluyor mu?)

8. Karşılaşmalardaki ortama ilişkin neler söyleyebilirsiniz?

9. Sizce TBB ile devlet kurumları arasındaki ilişki nasıl tanımlanabilir?

Zaman ayırdığınız için teşekkür ederim.