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# Islam, Modernity and the Headscarf Debates in Turkey

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Few debates have been more thoroughly rehearsed in addressing the question of Islam and modernity than that of the significance of the headscarf as a manifestation of resurgent religious identity, both in the Middle East and among Muslim minorities in the West.[1] And of the places where this debate has been most heated, few rival Turkey in the centrality of the question of the headscarf as a synecdoche for the renegotiation of religious identity under the intense pressures of modernization and political reform experienced throughout the Muslim world over the last century.

While arguments over the headscarf have ebbed and flowed for decades, from the founding of the Turkish republic forward, the period since the late 1980s has witnessed a clear intensification of political attention and

(1) There are countless examples of treatments of this issue in the scholarly and popular literature. A handful of prominent examples include: Fatima Mernissi, Beyond the Veil (Indiana University Press, 1987); Nilüfer Göle, The Forbidden Modern (University of Michigan Press, 1997); Sherifa Zuhur, Revealing Reveiling (SUNY Press, 1992); and Joan Scott, The Politics of the Veil (Princeton University Press, 2009).

polarization around the symbolic significance of "veiling."[1] The most recent round of the debate in this period was set off by an attempt to amend the Turkish constitution to enable women who wear headscarves to attend university. In this paper, I will describe the constitutional crisis touched off by the headscarf and connect the crisis to underlying debates about Islam, modernity and the role of religious identity in the republican Turkish political system. I also hope to offer (perhaps obliquely) some insights on the possibility of alternative conceptions of modernity and secularism in a Muslim majority country, like Turkey, where Islam is not a source of law (or political order), but may nonetheless inflect its legal and political culture. In the process, the paper will consider the extent to which the Turkish context may illuminate the problems associated with a juxtaposition of Islam and modernity[2].

Given the broader themes of the conference and this paper, the headscarf debate stands as one possible case study of the challenges that arise when Islam and modernity are

(1) The commonly used terminology of "veiling" is deeply imprecise, suggesting a spectrum of practices from a scarf partially covering the hair to a full face covering. The debate in Turkey centers on the headscarf, which covers all of the hair and often neck of the wearer. Even within the category "headscarf" there is significant variation (several different terms in Turkish convey this spectrum including: başörtü, tesettür and turban, to name a few). For the purpose of clarity and simplicity, in this essay I will use the clumsy term "headscarf" and "headscarved women" to capture the variations in uses of hair covering (but not face covering) common in Turkey.

(2) The straightforward usage of both of these terms should be problematized. The idea of "modernity" is a highly contested one, as will be discussed in the Turkish case in some detail below. But the same is true of the pluralirty of traditions, institutions, beliefs, practices, cultures and doctrines that might easily be connoted by the term "Islam." To suggest, as the casual usage of these terms here might imply, that these are monolithic or univocal concepts that are readily identified with a clear meaning is misleading at best and essentialist at worst. While it is beyond the scope of the paper to offer a discussion of the rich traditions, intellectual histories, terrains of debate and so on invoked by these terms, it is important to at least acknowledge the degree to which they are contested.

juxtaposed in particular ways. As such it is a useful heuristic for considering the dimensions of the problem engaged with at this conference and illustrating the dynamics at work in negotiating the relationship between religious identity and particular conceptions of modernity. Thus the core question this paper seeks to engage is not about the headscarf debate per se, but rather the underlying contestations of which the debate is one example.

That being said, let us consider briefly as a starting point the most recent manifestation of conflict over the headscarf to illustrate how acute the contestation between social actors and the state has become on the subject of religious identity in the public sphere in Turkey. In October 2008, the Turkish Constitutional Court delivered its reasoning for two of the most momentous decisions in the constitutional history of the Republic(1). The first of the cases challenged the legality of constitutional amendments passed by the Turkish parliament that would permit religiously observant university students to wear headscarves on campus. The second, and related case, sought the closure of the governing Adalet ve Kalkınma Partisi (the Justice and Development Party, or the "AKP") on the grounds that it had become a

(1) The Turkish Constitutional Court has distinguished itself among peer institutions worldwide with its astonishing activism in the area of party closures. The Court's extensive docket of party dissolution cases has resulted in 24 party closures in the court's history – generally against Kurdish and Islamist parties, along with some socialist, communist and anarchist parties in an earlier period. Eighteen of these party closures have been decided since the adoption of the current Constitution in 1982. But the AKP closure case was the first time that a prosecutor sought to dissolve the governing party, let alone one which had just won a resounding electoral mandate with a large plurality of the vote less than a year earlier.

"focal point" for anti-secular political activities in Turkey.[1] The principal evidence offered by the chief prosecutor in support of his allegations against the AKP were speeches and statements made by party members concerning efforts to lift the headscarf ban.

The twin decisions by the Court to review properly ratified constitutional amendments and to permit a closure case against the sitting government – both for alleged violations of the founding constitutional provision of secularism – were startling for their audacity. To be sure, the Court had a record of prior party closures, but this would be the first time an elected government would be threatened with ouster by judicial action and the first time judicial review would operate to overturn constitutional amendments. Though the two cases were brought independently and relied on different constitutional provisions, together they represented the continuation of an ongoing confrontation over the relationship of the Turkish political and constitutional order to expressions of religious identity. Not without cause, the Court's decision to hear these cases was characterized by

(1) The formulation of the charges is derived from the rules concerning party dissolution set forth in Articles 68 and 69 of the Turkish Constitution. According to Article 69(7) party dissolution requires a determination by the Constitutional Court that the party has become the "focal point" for proscribed activities; the list of proscribed activities, set forth in Article 68(4) includes activities in conflict with the secular character of the republic.

many in Turkey as a form of "judicial coup."(1)

Having offered the disclaimer that this paper is principally interested in conflicts underlying the headscarf issue, rather than the headscarf debate itself, the remainder of this paper will seek to explain how headscarved students at universities came to be seen as such a threat by state actors through an interpretive history of Turkey's struggles with modernization through secularism. To do this, I will first sketch the relationship between religious and state authority since the founding of the republic, complicating the picture of a supposedly strict separation. Second, I will suggest the ways in which the constitutional crisis of 2008 bears the hallmarks of this relationship, particularly in light of the extraordinary symbolic significance of the headscarf to the republican conception of modernity. In the final section, I will develop reflections on the possibilities of transcending the decades-old headscarf impasse in Turkey and with it the tired binaries of secular state versus political Islam.

(1) Turkey has been in the forefront in innovating forms of intervention in the normal workings of the civilian government – always as a Kemalist call to order in response to a perceived deviation from the nation's founding ideology. To avoid the obviously anti-democratic implications of direct military coups to topple elected governments – though in 1960 and in 1980 the military did engage in overt coups – other forms of intervention have been developed. Examples include the "postmodern coup" of 1997, in which the military used a press conference to issue an ultimatum to the governing coalition, forcing the prime minister to step down, again on allegations of Islamism; and the "e-coup" of 2007, in which the military posted a warning to the AKP government on its website, prompting early elections. But these earlier forms of coup – all involving the Turkish armed forces in one way or another – were precluded in 2008 since the army had just attempted to push the AKP out and had been rebuffed at the polls by the Turkish public which resoundingly returned the AKP to office with a strengthened mandate to govern. Because of the party's apparent popularity, the military ceded its role as Kemalist guardian to the judiciary, which stepped in with its own innovation to stem AKP efforts at constitutional reform. The roles of the military and the judiciary in intervening to check the electoral success of pro-Islamic political actors in Turkey will be taken up at some length below.

## I. Islam and Modernity in Turkish Republican History

In this section, I provide an overview of the understanding of the twinned concepts of Islam and modernity in the Turkish state formation period and its aftermath. This history, in turn, provides the context for understanding why the headscarf has remained a central motif of the crisis over the role of religious identity in Turkey. The headscarf debate is emblematic of an ongoing cultural process of contestation over the role of religion in the Turkish social and political order set in motion at the founding.

The account offered below suggests that the Turkish state has been central to setting the parameters for expressions of Islamist politics in Turkey and, in turn, political Islam in Turkey has sought to selectively reverse aspects of the cultural revolution of the state formation period rather than reversing the (complex) secular character of the state itself. In the cycles of resurgence and repression of religion, the production of a particular public culture for the nation has often been the key battleground. The cultural parameters of citizenship and identity in Turkey have been the principal subject of contestation between religious and state actors, rather than the underlying form of the state. As a result, culture wars like those over the headscarf have been the vehicle for challenges to the institutions of state authority in lieu of the more frontal assault on the state experienced in some other parts of the Muslim world.

To trace the specificities of the Turkish case, it is important to return to the period of state-led modernization that set the particular Turkish notion of secularization – and

its attendant reconstruction of the role of Islam and religious identity in the republic – in motion. One implication of the centrality accorded by the Turkish state to controlling and managing Islam is that the commitment to secularism was twinned with deep involvement of the state with religion. Religious identity was instrumentalized as one component of the republican national project and the political parameters for Islam were dictated by the state. As we will see below, the alleged exclusion of religion from the public, political sphere was actually combined with selective accommodation and incorporation of religion whenever a need arose. The relationship between the state, with its conception of modernity, and Islam, was not merely one of coercion but also of negotiation, redefinition and mutual reconstitution. The role of the state in the production of an officially-sanctioned conception of religion for Turkey, in turn, has marked Turkey's Islamist actors.

The elite that was in place during state formation, and its contemporary successors, hold fast to the cultural symbols and markers of the early republican period as the locus of the idea of Turkish modernity with which they identify. For this group, the unveiling of Turkish women in the 1920s and the adoption of Western dress fashions is a central element of the cultural currency of the republic(1). In more recent decades, however, different sectors of Turkish society have come to prominence with their own economic, political and intellectual circles. These groups, particularly the beneficiaries of the economic liberalization and greater

(1) For a fascinating discussion of the cultural attachments of Kemalist elites to photographs and other images from the founding decades of the 1920s and 30s, see Esra Özyürek, Nostalgia for the Modern (Duke University Press, 2006).

public tolerance of religious expression in the 1980s, do not share the strong identification of traditional Turkish elites with the earlier state-led modernization period. As a counter-elite against the traditional republican center has emerged since the 1980s, the cultural markers of the state's conception of modernity has been challenged. For this counter-elite, not Western fashions but indigenous headscarves connote the authenticity of the Turkish national project. These competing elites – often characterized as the Kemalist elite of the Western cities and the Islamist counter-elite of the Anatolian periphery – are engaged in contestation over the identity of the modern Turkish state for which the headscarf debates have become a symbolic battleground.

The emergent Anatolian counter-elite rejects the role of passive recipient of the top-down modernization project of the state and insists on its own voice in developing an alternative conception of modernity (and religious identity) in the Turkish context. Though seen as a threat by contemporary secular elites, such an alternative conceptualization may offer the possibility of an indigenous rearticulation of the modernist project initiated in the early republican period. Rather than casting this possibility as undermining Turkish state-led modernization, it might be understood as its culmination. Having engaged in eight decades of modernization on a western model, the state-led process has produced local variants on its project potentially capable of resolving the false antagonism of Islam and modernity set in place at the founding. The AKP and its political and intellectual circles may yet offer an avenue for transcending some of the anachronistic binaries

of secular-state/Islamic-periphery that have plagued the Turkish political order for nearly a century.

The following survey of Turkish republican history is offered as the core of any analysis of the relationship between the categories "Islam" and "modernity" in Turkey. It is against this historical backdrop that the contemporary headscarf debate in Turkey is best understood as one case study (among many) of how the state-led modernization process set in motion dynamics that today necessitate a cultural renegotiation of the relationship between religion and state.

## A. Islam and state-led modernization

Turkish modernization is in some ways exceptional for not being colonial or post- colonial. Rather, it was a process initiated by the Ottoman Empire's elite reaching its apex under single party rule during the modern republic's state formation period in the 1920s and 30s[1]. The Ottoman reforms had been concerned with centralizing and strengthening the state, rather than reforms designed to liberalize or democratize the political order. The priority given to state institutions in the modernization effort was largely preserved in the transition from Ottoman to republican Turkey[2].

(1) The process began with eighteenth century military reforms following setbacks in confrontations with Europe. The motivation for the reforms was to strengthen the central Ottoman state against external enemies, but also against internal forces that were deemed to be sources of weakness. New models of military organization, education and medicine were adopted from France and subsequent rounds of reform followed the model of borrowing from Europe to strengthen and centralize the state. For a discussion of the late Ottoman conception of modernization through European models, see Selim Deringil, The Well- Protected Domains: Ideology and the Legitimation of Power in the Ottoman Empire 1876-1909 (IB Tauris, 1998).

(2) For a detailed discussion of this transition, see Eric Zürcher, Turkey: A Modern History (IB Tauris, 2004).

This transition, which occurred through the cauldron of post-WWI occupation and a war of liberation, was accomplished largely by the same elites who had governed the late Ottoman military and bureaucracy. The single most important change in the modernization and governance strategy from the Ottoman to the republican period was the elimination of one set of actors from the governing elite: the ulema(1). Otherwise, the new republican ruling elite remained the same military and bureaucratic cadres that had a central role in Ottoman modernization. Notwithstanding the elimination of the religious bureaucracy, however, the republic was also heir to the ambivalent relationship of late Ottoman state authority to Islam.

Following the war of independence, not only European but also the Soviet model of modernization influenced Turkish officials to incorporate radical secularization as a component of modernization(2). The particular model of secularization included transformation of the social and cultural identity of the republic while placing religion under the strict supervision and control of the state. Further, the ideology that animated the founding elites – Kemalism – combined European enlightenment premises, a strong emphasis on scientistic rationalism and legacies of romantic

(1) On the significance of this change, see Amit Bein, Ottoman Uleme, Turkish Republic: Agents of Change and Guardians of Tradition (Stanford University Press, 2011).

(2) For one discussion of the Soviet influence on the Turkish view of the role of secularization in modernization, see Binnaz Toprak, Islam and Political Development in Turkey (Brill, 1981).

nationalism[1].

Particularly following the dismemberment of the Ottoman Empire in part under pressure from minority nationalisms, the consolidation of the rump territory of the empire around a single national and cultural project was deemed central to state formation. The ruling elite believed that in addition to modernization through secularization, sustainable state formation was dependent on the production of a powerful, homogenous national identity that would command social allegiance. Accordingly, the early republican period took the form of a radical cultural revolution, centered on three intertwined projects: Turkification, secularization and Westernization[2]. The production of a homogenous ethno-national identity to consolidate the loyalties of the population built into the concept of "Turkishness" a secularized Sunni (Hanafi) identity[3]. Thus state-building and its goal of modernization required first the production of a nation of Sunni Turks to sustain the state and then the secularization of that identity to conform to the requirements of modernization based on the cultural markers of the West.

(1) The six principles (or "arrows," altı ok) of "Kemalism" – named after the founding statesman of the republic, Mustafa Kemal Atatürk – are nationalism, republicanism, statism, populism, revolutionarism and secularism. For a detailed discussion of Kemalism, see Ferz Ahmed, The making of modern Turkey (Routledge, 1993). Despite these principles, Kemalism has remained a relatively indeterminate ideology, serving many different political purposes over the course of the history of the republic. At a minimum, however, it is associated with a strong commitment to some conception of secularism, through what that means has also varied over the decades, a point to which I will return below.

(2) I have written about this elsewhere in some detail. See Aslı Bâli, "Cultural Revolution as Nation- Building:Turkish state formation and its enduring constitutional pathologies," MELSS Working Paper Series (2009).

(3) On the centrality of Sunni-Hanafi identity to the definition of "Turkishness" adopted by the state, see Ali Çarkoğlu and Barry Rubin, eds., Religion and Politics in Turkey (Routledge, 2006).

This homogenizing model required religion to play a role in securing allegiance to the new national project while insisting that it remain under the careful control of the institutions of the state. The republican elites were invested in according a "modern" role to religion in the new nation-state, one which could be privatized and secularized on a European reformation model. Indeed, the instrumentalization and reconceptualization of religion as part of the state-building process was understood as a crucial prerequisite placing Turkey in the company of western states. This goal, memorably defined as the need to attain the level of çağdaş medeniyet (contemporary civilization)(1), located the production of a new "Islam" at the center of the Turkish state's modernization process.

In the early stages of state formation, the republican elite undertook the rapid disestablishment of religious authority, abolishing the caliphate, the office of Şeyh ül- Islam, and the shari'a courts, while outlawing religious orders. Islam was removed from the constitutional order in 1928 and by 1937 the principle of secularism was incorporated by constitutional amendment. The secularizing reforms were also complemented by other cultural measures, replacing the Arabic alphabet, purging Arabic and Persian vocabulary from the language, banning Islamic dress codes, changing the calendar and public holidays and replacing religious ritual in public life with a new set of civil rites associated with nationalist republicanism(2).

(1) For a discussion of this concept (in Turkish), see Atatürkcü Düşünce (Türk Tarih Kurumu Press, 1992).

(2) On this cultural transformation, see Richard Tapper, ed., Islam in Modern Turkey: Religion, Politics and Literature in a Secular State (IB Tauris, 1991).

The founders of the secular republic were preoccupied with forging a new image for the new nation-state through radical cultural transformation. One means of facilitating the new image was by the construction and display of new gender identities. New fashions for women, a new role for them in public life and employment were all rapidly introduced and immediately publicized, yielding a form of top-down state feminism as another facet of modernization(1). The symbolic significance, for instance, of the many mixed gender state functions – galas and ballroom dances – with women dressed in the latest European fashions photographed surrounding Atatürk was not lost on the state elites who ensured that such images were widely disseminated in Turkey and abroad(2).

Though on the surface the elimination of the old religious establishment and cultural manifestations of Muslim identity in the social order might seem like a clean break with the Ottoman past, in fact, the republican approach was in many ways continuous with the Ottoman state's instrumental relationship to Islam. The new Turkish republic, too, was deeply involved in the production of an officially-sanctioned version of religion. The state's twin projects of homogenization and secularization required that Turkish society be inculcated with a culturally appropriate Islam. A

(1) I will return to the deployment of new gender images by the state as a mechanism for modernization in the next section as I analyze the significance of the headscarf for the republican elite's political project.

(2) Such photographs have more recently become the fetishized objects of countless galleries of Kemalist images displayed by local municipalities, private enterprises and even in family homes to convey the commitments of such individuals, groups and instrumentalities of the state to the particular emancipatory vision of modernity through secularization that they associate with the founding. Özyürek, Nostalgia for the Modern, supra note 8 (see especially Chapter 3).

Directorate of Religious Affairs was established and tasked with producing an official interpretation of an "enlightened" Islam, in contrast to the alleged reactionary orthodoxy of Ottoman Islam[1]. The imams of the nation remained a body of civil servants, now under the Directorate attending state schools to be trained before they were allowed to serve in Directorate-controlled mosques. Islam was integrated into the structures of the state rather than being accorded an autonomous sphere of existence, distinguishing Turkish laiklik from Western secular counterparts premised on separation of religion and state[2].

The early period of republican reform was presided over by the single party authoritarian rule of the Republican People's Party (Cumhuriyet Halk Partisi, or CHP), comprised of political cadres drawn from the traditional elites of Istanbul and Ankara. With the end of the CHP's single-party rule following WWII, a center-right political party emerged claiming to represent the Anatolian periphery against the long-governing secular bureaucratic intelligentsia of the

(1) The collection of public speeches given by Atatürk in this period has numerous examples of references to the "true," "enlightened," and "rationalist" Islam in contrast to retrograde orthodoxies of earlier periods. See generally Atatürk'ün Söylev ve Demeçleri (Atatürk Kültür, Dil ve Tarih Yüksek Kurumu Atatürk Araştırma Merkezi, 1989).

(2) Laiklik, the Turkish word for the conception of secularism incorporated into the constitutional order, derives from the French word laïçité. However, the Turkish conception is different than both the French and American models of secularism. While the Turkish model more closely resembles the French in its disestablishmentarian approach and its emphasis on subordinating religion to the state, the Turkish state involved itself in the production of official religious doctrine to an extent not undertaken in France. Turkish laiklik has even less in common with the American conception of secularism, as neither the separation of religion from the state nor the neutrality of the state with respect to religions is compatible with the Turkish state's emphasis on controlling religion on the one hand and the role of religion as a constitutive element of the ethno-national identity of modern "Turks" on the other. The remainder of this essay picks up on some of these themes, though an adequate analytic definition (or intellectual history) of the Turkish republican conception of secularism is beyond the constraints of this project.

Western cities[1]. This party, the Demokrat Partisi (or DP), came to power in 1950 and remained in power until it was overthrown by a military coup in 1960. Though it shared a commitment to the basic Kemalist model of modernization through secularization, the DP was more adept at employing religious discourse and the language of traditional culture to distinguish itself from the republican state elite in advancing its electoral prospects. Yet, it is worth noting that the DP did not take aim at state institutions nor attempt to revitalize religious authority in the political realm. Rather, it reversed some of the most extreme cultural measures that had been undertaken in the name of socially engineering the preferred state-sanctioned "rationalist" Islam. For instance, the call to prayer was restored to Arabic and voluntary religious courses were reintroduced in primary schools[2]. While these reforms in no way threatened the secular character of the state, they did tap into traditional or popular Muslim sentiment for electoral gain.

When the DP was ousted by military coup in 1960, the interveners believed that changes to the political order were necessary to stave off the dangers they associated with the excesses of the party. The antidote to the danger of populist authoritarianism, in the view of the military and bureaucratic elites, was the introduction of limited forms of political liberalization, particularly through a new constitution more tolerant of political pluralism. This new constitution eventually witnessed the formation in 1969 of the first pro-

(1) On the rise of the DP and its efforts to distinguish itself from the CHP, see Hakan Yavuz, Islamic Political Identity in Turkey (Oxford University Press, 2003) (see especially Chapter 3).

(2) See Yavuz, supra note 22, for a much more detailed discussion of reforms initiated by the DP in this period.

Islamic political party of the republic, the National Order Party[1]. The creation of a political framework that might accommodate a religiously-oriented party was in part a function of the employment of religion by the military elite who sought to reappropriate the political appeal of Islam, earlier demonstrated by the DP, in the service of the state. For instance, the emphasis placed by the military regime of 1960-61 on the consistency between modernization and enlightened Islam led to a period in the 1960s when the state rapidly expanded religious training programs to produce "enlightened" men of religion[2]. Later, as left-right polarization took hold of Turkey in the 1970s, Islam came to be seen by the same groups as a central plank in the anticommunist platform of the state.

The growing importance of anticommunism to state elites and center-right actors in Turkey led to a marked increase in the political salience of Islam to the state in the 1970s[3]. The channeling of discontent through religious platforms, encouraged by the state, in turn, created the conditions of possibility for the later formation of numerous political parties with Islamist leanings, notably the Welfare party

(1) The NOP (or Milli Nizam Partisi) was dissolved following the 1971 military intervention. It was reformed as the National Salvation Party (or Milli Selamet Partisi) in 1972, and was a partner in three coalition governments in the 1970s. The MSP was dissolved together with all other political parties following the 1980 military coup. It was reconstituted as the Welfare Party (Refah Partisi) in 1981. After the closure of Refah by the Turkish Constitutional Court (TCC) in 1998, it regrouped as the Virtue Party (Fazilet Partisi). When Fazilet, too, was closed by the TCC, the movement splintered and formed two separate parties: the conservative Felicity (Saadet) Party and the reformist Adalet ve Kalkınma (Justice and Development) Party, which is currently the governing party in Turkey known by its acronym as the AKP. In this sense, the political framework that created the condition of possibility for the AKP dates back to the constitutional order first introduced following the 1960 military coup.

(2) Yavuz, supra note 22.

(3) Ibid.

(Refah) following the 1980 military coup. The role assigned to Islam in countering political fragmentation would be substantially enhanced following the coup, but the roots of the deployment of religion by the state as a unifying and stabilizing force in Turkish society lay in policies adopted throughout the 1960s and 70s.

## B. Islam and state-led liberalization(?)

The post-1980 military regime period and the subsequent years of civilian rule under ANAP (Anavatan Partisi, or Motherland Party) from 1983 to 1991 ushered in a period of further adaptation and integration in state policies towards Islam. Official discourse accorded an even more central and legitimizing role to religion. Among the notable changes in this period were the relaxing of repressive state policies towards heterodox Islam (especially sufi orders and the Alevi community), the imposition of mandatory religious instruction in primary and secondary school under the 1982 Constitution, and the permissive environment created for unofficial and private religious educational networks and private sector Islamist enterprise(1). While social forces and private actors had a role in these developments, the flourishing of a new Islamist sector was in large part a consequence of changes in the policies of the Turkish state.

Chief among the changes of the 1980s was a decision by the military leadership of the coup period to introduce a form

(1) For a discussion of the permissive environment for religion following the 1980 military coup, see Şerif Mardin, Religion, society and modernity in Turkey (Syracuse University Press, 2006).

of state-led Islamization from above[1]. The term Turkish-Islamic Synthesis (Türk-Islam Sentezi) was borrowed from an intellectual nationalist movement – Aydınlar Ocağı – as the ideal vehicle for the state's new orientation towards Islam. Synthesizing conservative elements of Turkish nationalism with Islam, a new state-led religious approach, particularly to education, was developed in the hopes of countering the processes of social and political fragmentation that preceded the polarization and political violence of the 1970s.

The Kemalist establishment was reconciled to according a greater role to a state-managed Islam in this period out of conviction that the unifying authority of religion was the best way to stem the tide of political radicalization. By returning to a homogenizing and nationalist model of Islam reminiscent of the early republican period's instrumentalization of religion, these elites felt they might also furnish and popularize a "moderate" form of Islam to contain the influence of non-Turkish Islamist modes of thinking following the Iranian revolution and the resurgence of political Islam in the Arab world. Further, the relaxation of repressive secularism offered the possibility of a new moral (religious) underpinning for the market-oriented social order they were then seeking to introduce. In this vein, the military-regime era president, Kenan Evren, harnessed the language of Islam to defend the massive economic restructuring program the government had undertaken[2].

Perhaps even more influential in the subsequent

(1) For the most thorough discussion (in Turkish) of this development, see Etienne Copeaux, Türk Tarih Tezinden Türk-Islam Sentezine (From the Turkish History Thesis to the Turkish-Islamic Synthesis) (Tarih Vakfı Yurt Yayınları, 1998).

(2) Ibid.

trajectory of political Islam in Turkey than the new state orientation towards religion was the massive structural adjustment program undertaken by the state in the 1980s. The process of socioeconomic transformation and liberalization was designed not only to open markets but also to massively scale back the welfare benefits paid by the state. These new economic policies radically altered the balance of privileges that traditionally favored the Kemalist state cadres (successors to the early republic's bureaucratic elite) through substantial financial support from the state. Under the guidance of the IMF, the Turkish government launched a massive economic liberalization program that shifted its priorities from subsidizing the state bureaucracy to support for the export-oriented private sector through reduced tariffs and tax incentives(1). The dislocations created by this process during the 1980s – ranging from the creation of new urban underclasses (through the mass migration of rural Anatolian populations) to the displacement of civil servants from their traditional upper middle-class status to lower middle-class discontent – were the most far-reaching since the state formation period.

Following the transition back to civilian governance in 1983, the economic liberalization program was further accelerated. The opening of markets led to increased influx of capital, including from the Muslim world. In the same period, the increased promotion of small and mid-sized companies in place of large state-owned enterprises led to a flourishing of new export-oriented enterprises in the

(1) For a broad history (and critique) of these policies, see Mehmet Odekon, The costs of economic liberalization in Turkey (Rosemont Publishing, 2005).

provincial Anatolian cities that had never been dominated by earlier state-led industrialization. The flourishing of these enterprises gave rise to a new middle class by the 1990s, sometimes referred to as the "Anatolian tigers" or the Anatolian bourgeoisie, comprised largely of Muslim entrepreneurs, intellectuals and family-owned businesses(1). Eventually, the combination of state-led revalorization of Islam and the effects of economic liberalization led to new momentum for pro-Islamic actors.

The 1990s added to the transformations and dislocations of the 1980s an emphasis on political liberalization as part of a more serious bid for accession to the European Union. Under the combined influence of the IMF and the EU, political and economic liberalization shrank the space for state-employed civil servants and the corresponding authority exercised by Kemalist elites(2). As the traditional elites' influence waned, the emergence of alternative actors and voices in Turkish society became increasingly visible. Interest groups and movements of the Anatolian provinces traveled from the social and political periphery of the country to its (Western) center, both figuratively and literally (as a result of mass urbanization). These forces began to wield their newfound economic clout to argue for a social consensus based on the underlying cultural commitments of the majority of the Turkish population, rather than the state-

(1) For a discussion of the emergence of this Anatolian bourgeoisie and its association with a new pro- market, pro-Islam sector, see "Islamic Calvinists: Change and Conservatism in Central Anatolia," (European Stabilization Initiative, 2005), available at http://www.esiweb.org/pdf/esi_document_id_69.pdf.

(2) For a discussion of the relationship between the EU and political liberalization in Turkey during the 1990s, see Ioannis Grigoriadis, Trials of Europeanization: Turkish political culture and the European Union (Macmillan, 2009) (see especially the discussion in Chapter 2 on civil society in Turkey in the 1990s).

centric modernization formula of the old elite.

When the ban on political activity by actors and parties from the 1970s was lifted in 1987, Necmettin Erbakan, the leader of the earlier Islamist-oriented political parties of the 1970s, reentered politics[1]. Emerging as the leader of the new pro-Islamic Refah Party, Erbakan was able to tap into the changes in the Anatolian cities to build a new constituent base that gave the party surprisingly large shares of the electorate in the 1994 municipal elections and the 1995 legislative elections. With over 21 percent of the vote, Refah held the largest share of seats in parliament – 158 of 550 – following the 1995 elections and became a significant force in the political system.

Much of the Refah constituency were not voting specifically for an Islamist platform. Refah enjoyed the support of the Anatolian bourgeoisie and the new underclasses of Turkey's Western cities as much for its platforms of reconciliation with Kurds, social justice and its mobilization of a special get-out-the-vote drive among women voters as for its stance towards Islam. By 1996, as coalition governments formed by the other parties in parliament lost popular support, Erbakan was elected prime minister at the head of a coalition with the True Path Party (Doğru Yol Partisi, or DYP). The combination of electoral success and then the election of Erbakan to the premiership emboldened the party to pursue some of the cultural agendas associated with its religious platform. Chief among the issues on the agenda was the ban on headscarved women in public

(1) For a discussion of Erbakan's role in the rise and demise of Refah, see Yavuz, Islamic political identity in Turkey, supra note 22 (see especially Chapters 9 and 10).

places. The headscarf debate would prove an important touchstone of the political decline of Refah over the next year and a half and an ongoing source of contestation and conflict thereafter.

The liberalization initiatives of the state during the 1980s and 90s played a formative role in the particular trajectory taken by the emerging Turkish versions of political Islam. In the 1990s, the reemergence of civil society centered on arguments for pluralism, human rights, minority rights and women's rights, in part as an EU-inspired backlash against the political authoritarianism of the coup era. The voices of political Islam that grew stronger in the 1990s also drew on these vocabularies of individual liberties and pluralism, eschewing alternative, antidemocratic political models. The demand that headscarved women be allowed to attend university, for instance, was cast as a matter of individual liberty rather than one of religious observance or duty. Indeed, an important feature of Islamic political platforms in Turkey during the 1990s was their adoption of a primarily cultural stance, rather than calls to replace the political order. This is one reason why polarization around the question of secularism took the form of culture wars rather than debates about the role of shari'a or the secular character of the state's institutions.

Though the ascendance of Refah was a reflection of processes set in motion by the state, within months of Erbakan's assumption of the premiership the party came under intense pressure from the state. In the fall of 1996, Erbakan introduced a bill to parliament that would

have allowed headscarves to be worn in enclosed public places, as well as allowing religiously observant soldiers to have access to careers in the military officer corps(1). In response, the military began a public campaign in support of secularism, organizing an extra-parliamentary political opposition movement through weekly demonstrations. Allies from the secular business community and civil society groups like labor unions and women's organizations lent their support to the military-initiated demonstrations and as their support grew the military was emboldened to take more direct measures.

On February 28, 1997, the military's general staff issued a memorandum that identified Islamism as the greatest threat to domestic security(2). To counter this threat, the military leadership issued an 18-point list of demands including the closure of any private religious schools, a civil service hiring freeze for members of the Refah party and the enforcement of a mandatory ban on headscarves in public institutions, particularly universities. Erbakan was forced to sign an endorsement of the eighteen resolutions of February 28th, but even that concession was deemed insufficient and he was forced to resign after the military gave press conferences alleging ties between Refah and militant groups purportedly planning terrorist attacks.

The extraordinary measures taken by the military leadership reestablished tight constraints on public expressions of religious identity and resulted in the toppling

(1) On the attempted headscarf bill of 1996, see Merve Kavakçı, Headscarf Politics in Turkey: A Postcolonial Reading (Palgrave, 2010), at 64-71.
(2) Ibid.

of a civilian government and the eventual closure of the Refah party by the Turkish Constitutional Court in 1998. Among the core issues that animated the military's confrontational stance towards the Refah party was the increasing visibility of headscarved women in the country's Western cities and particularly on university campuses. This same issue would reemerge a decade later in the new round of confrontation with which this essay began. As with Refah, when the AKP – a substantially different, but still pro-Islamic political party – sought to relax restrictions on headscarved women on university campuses it found itself in a confrontation with secularist civil society groups, the military elite, state bureaucracy and judiciary. Again in 2007-2008, as happened with Refah in 1997-1998, these statist forces sought to coerce the AKP to relinquish its political mandate earned through electoral success and subsequently moved to have the party closed by the constitutional court. But where these tactics had prevailed in the previous decade, the Kemalist elite's strategy foundered in the most recent round of confrontation.

Having provided an overview of the historical context from which these debates emerged, in the next section I will turn to the particulars of the headscarf debate as a case study of the current impasse in the relations between Islam and the state in contemporary Turkey. As noted above, these debates represent one manifestation of a process of cultural renegotiation that is the culmination of eight decades of repression and compromise. I will argue that this renegotiation signals progress towards a locally produced reconciliation of Kemalist modernism with Islam.

Such a reconciliation, in turn, is one facet of a process of transformation for both statist and Islamist political elites towards a convergent new conceptualization of the governance requirements of the modern Turkish state.

## II. The Headscarf Crucible: Negotiating Identity in Modern Turkey

The origins of the current iteration of controversy over the headscarf in Turkey lie, unsurprisingly, in the 1980s. As discussed above, following the 1980 military coup, the Turkish state made recourse to Islam as a source of unity and stabilization of civil society following the radicalization of the 1970s. This change in state policy created new spaces for the expression of religious identity. The flourishing of official Imam-Hatip schools that offered a public curriculum of religious training, the newfound tolerance for private Quranic schools, the relaxation of strict controls on heterodox forms of Islam, and a host of other policies suggested a new era of public tolerance for religious expression. As more religious and conservative sectors of the country also benefited from policies of economic liberalization, religiously observant men and women began to appear more frequently in the commercial centers, university campuses and public spaces of the provincial cities and, eventually, the western cities of the country. While the increased presence of religiously-observant men might go unmarked, as headscarved women became increasingly visible, their presence became a source of intensifying friction.

The place where the presence of headscarved women

became most galling to Kemalist state elites was university campuses. The idea that educated women would resist the secularizing pressures of the Turkish state's pedagogy was a particular affront. In one of its rulings on the question of headscarves on university campuses, the Council of State (Danıştay) made this objection explicit:

> *…girls with insufficient education were wearing headscarves under the influence of the environment and traditions without having any particular thought in mind. However, the girls who have sufficient education not to surrender to the public pressure and traditions are known to cover their heads while opposing the secular republican principles….For these people, the headscarf, beyond an innocent habit, is a symbol of a world ideology that is antithetical to women's liberation and our republic's main principles*[1].

The clear message of the Danıştay decision was that women who would wear headscarves on university campuses were doing so with the deliberate intention of undermining the republican principle of secularism and not as an "innocent" expression of religious identity based on their traditionalism or lack of education. Whereas headscarved women in provincial and rural areas of Turkey might represent a form of benign traditionalism, women who chose to wear headscarves despite being educated and

(1) Council of State Decision No. 1984/330 (Danıştay kararı, E. 1983/207, K. 1984/330), cited in Kavakçı, Headscarf Politics in Turkey, supra note 24, at 55-56, n. 72.

exposed to urban Kemalist culture represented a malign threat to the redemptive mission of the state.

As discussed above, the significance of the unveiling of women in the early republican period and the appearance of "modern" Turkish women in western dress was a very important (and widely disseminated) symbol of the success of the Kemalist state-led modernization project. The state elites were keenly aware of the significance of the cultural and educational reforms in creating the social prerequisites to sustain the Kemalist modernization model (with attendant secularization and westernization). One important marker of the internalization of those reforms were the generations of educated and westernized women that had been "liberated" by the state. The appearance of headscarved women in large numbers at universities challenged the Kemalist premise that education would ineluctably lead to the enlightenment and secularization required to sustain the state's preferred model of modernization. Accordingly, the battle over headscarves was the first place where the backlash against the relaxation of state controls on religion in the 1980s took shape.

Beginning with the transition from military rule to civilian government with the orchestrated elections of 1983, the headscarf controversy produced two camps in the pitched battle over university campuses. The newly elected Anavatan Partisi (ANAP, or the Motherland Party) government under prime minister Turgut Özal, sought to lift the ban on headscarves in universities that dated to earlier skirmishes over the place for religious expression on campuses during the 1970s. In 1984, the Higher Education

Council (known by its Turkish acronym, YÖK) modified its headscarf ban, under pressure from ANAP, allowing certain forms of "modern" headscarves (which covered the hair but not the neck and shoulders) to be worn on campuses. This led to a period of arbitrary decisions by different university administrators, to tolerate or to ban various kinds of head coverings, sometimes leading to the same university reversing itself multiple times and requiring students to remove coverings one day that had been tolerated the day before. The perverse effect of the increasing repression by public institutions of higher learning in this period was to bar women from attending university in the name of the state's mission to "liberate" these same women from the strictures of religion. In light of the absence of any injunction against the attire or personal appearance of religiously-observant men, the irony of these policies was redoubled.

Throughout the 1980s, university administrators took it upon themselves at regular intervals to bar girls in headscarves from entering their campuses, supported by a series of rulings by the Danıştay in defense of such bans. Yet, the banning of headscarved women from campuses had no clear legal grounding apart from decrees issued by YÖK. Before abandoning this issue under mounting pressure, ANAP, still the majority party in parliament, attempted a further step in support of these young women. ANAP passed Law No. 3511 in 1988 to allow female university students to enter university dressed in accordance with their religious convictions. The initial bill was vetoed by the former head of the military junta, Kenan Evren, now serving as the civilian president. The popular and parliamentary outrage

expressed over President Evren's veto led him to claim that he opposed the wording of the bill rather than the lifting of the ban. A revised bill was then passed by parliament and sent to President Evren for a second time. Though he signed the bill into law on the second attempt, he immediately brought a challenge to the law before the Turkish Constitutional Court (TCC). The TCC found the law unconstitutional in a controversial ruling on March 7, 1989.

The Court's argument in that decision was that the law violated the constitutional requirement that legislation not be based on religious injunctions. Yet, the law had been drafted generically in support of freedom of dress rather than in reference to particular religious practice. Despite the neutrality of the law, however, the TCC read it as an instance in which the state was undermining the secularizing accomplishments of the earlier decades of the republic by providing too wide a berth for the expression of religious identities. In its reasoning, the Court defended a version of secularism that required exclusion of religious expression from the public sphere by noting the centrality of secularization to the state's core identity and projects. According to the Court, secularism:

> *…sped up the [Turkish] march toward civilization. In fact, secularism cannot be narrowed down to the separation of religion and state affairs. It is a milieu of civilization, freedom and modernity, whose dimensions are broader and whose scope is larger. It is Turkey's philosophy of modernization, its method of*

> *living humanly. It is the ideal of humanity…. The dominant and effective power in the state is reason and science, not religious rules and injunctions"*[1].

That such a conception of secularism as a set of substantive commitments, rather than separation of religion from state, would not tolerate public expressions of religious identity is hardly surprising. The ANAP majority undertook a second attempt to bypass the Court's decision with Law No. 3670 on October 25, 1990[2]. This time the law sought to lift the ban on headscarves by stipulating freedom of attire at institutions of higher education so long as no law in force specifically forbade such attire. The absence of a legal grounding for the ban was thus the basis on which ANAP now sought to prevent universities from barring headscarves. This time the main opposition party brought a challenge before the TCC, which ruled that the law was not unconstitutional but had to be read in line with its earlier decision[3]. In other words, the TCC argued that the term "laws in force" included the Constitution as authoritatively interpreted by the Court. On this interpretation, since the 1989 decision of the TCC had found that permitting headscarves on university campuses would violate the constitutional principle of secularism, headscarves would

(1) TCC decision, E. 1989/1, K. 1989/12, 7 March 1989, AMKD (Constitutional Court Reports), No. 25, 133-65, cited in Ergun Özbudun and Ömer Faruk Gençkaya. Democratization and the Politics of Constitution-Making in Turkey (CEU Press, 2009) at 147.

(2) For a detailed discussion of the law, see Kavakçı, Headscarf Politics in Turkey, supra note 34, at 59.

(3) This second decision is discussed in some detail in Özbudun and Gençkaya, supra note 37.

fall under the category of attire specifically prohibited by law.

After the failure of these efforts of the late 1980s and early 90s, the issue was next taken up by the Refah Party in the events that precipitated the party's downfall, described in the previous section. As discussed, the Refah Party was formed in 1983 when the multiparty system was reintroduced, as the successor to earlier pro-Islamic parties of the late 1960s and 1970s. It gained its first major national electoral success in the 1995 legislative elections, when it earned the highest proportion of the votes. As the lead party in a coalition government formed in 1996, the leader of the party, Necmettin Erbakan, became the first prime minister from a pro-Islamic party in Turkey's republican history. Once in office, Refah quickly alienated the traditional state elites by reorienting Turkish foreign policy towards the Muslim world, while some Refah-governed municipalities introduced religiously-inflected local initiatives such as the banning of alcohol sales at state-run restaurants or the introduction of new "public decency" measures relating to crackdowns on prostitution.

The hostility towards the direction taken by Refah, perceived as creeping Islamization of the public sphere, came to a head over Refah's introduction of a bill to allow headscarves to be worn in public institutions such as public universities and municipal buildings. As discussed above, the military, joined by secularist civil society organizations, initiated a public campaign "in defense of Kemalism and secularism" that rapidly gained popularity. Regular

demonstrations and a sustained media campaign against Refah paved the way to the direct confrontation between the Erbakan government and the military on February 28, 1997. What subsequently came to be known in Turkish political history as the "February 28th process" involved the issuance of 18 directives from the military to the civilian government, described above. Among other things, the Turkish National Security Council declared as part of the February 28th process that the increasing prevalence of headscarved women in public places was one of the main indicators of what they called the "Islamic threat" (irtica), which was identified by the military as the single most important domestic threat to the well-being and security of the country. In accordance with this view, one of the 18 directives called for the strict enforcement of a ban on the headscarf in all public places, including universities and public offices(1).

Confronted directly by the military leadership and the National Security Council, Erbakan signed the resolutions, though their provisions were ultimately implemented by a successor government as further military pressure forced Erbakan to resign the premiership just one year after taking office, in June 1997. In the decade following Refah's ill-fated attempt to reverse the headscarf ban the issue lay dormant. This dormancy was despite enormous societal pressure to lift the ban, with some surveys reporting that over 60% of all Turkish women wear some version of head covering and consistent surveys throughout the 2000s showing that over

(1) Alev Çınar, "Subversion and Subjugation in the Public Sphere: Secularism and the Headscarf," Signs 33(4) (2008), 891.

70% of Turks supported lifting the ban at universities[1].

With the closure of Refah, parliamentarians and party members formed a new party, Fazilet (Virtue), which was also subjected to constitutional closure for anti-secular activities in 2001. This second party closure led to a reorganization in the pro-Islamic camp, with liberals forming the AKP and a more conservative faction, led by Erbakan, forming the Saadet (Felicity) party. The formation of the AKP brought a younger generation of the pro-Islamic camp of the 1980s into the political mainstream. Within one year of its formation, the AKP won a resounding plurality in the 2002 legislative elections, giving it the majority of seats in the parliament and putting the party leader, Recep Tayyip Erdoğan, in office as prime minister by 2003. In its first term in office, the AKP did not attempt to address the headscarf issue, despite the oft-stated observation by Prime Minister Erdoğan that a clear social consensus existed for lifting the ban, not only among AKP constituents but across the Turkish political spectrum. The difficulty, from the AKP's perspective, was not a matter of social consensus but the absence of an institutional consensus for an end to the ban. The ongoing resolute refusal of the main opposition party, the CHP, to countenance a change of policy, and the support of the military and the judiciary to the CHP's stance, was too formidable an obstacle to legislative reform. In the absence of institutional consensus, the AKP did not move on this plank of its political platform, despite widespread

(1) For reports on such survey data, see for example, Özgür Öğret, "Uncovering a real headscarf debate in Turkey," Hürriyet, October 20, 2010; Ali Çarkoğlu and Binnaz Toprak, Religion, Society and Politics in Changing Turkey (TESEV (Turkish Economic and Social Studies Foundation), 2006).

electoral support for lifting the ban.

The events of 2007 – a full decade after the closure of the Refah party in connection to the headscarf issue – altered the AKP's calculation on this question. The attempt of the military and the judiciary to resist the appointment as president of the AKP's preferred candidate, Abdullah Gül, was a watershed moment. Gül, who served as foreign minister, was not a divisive figure (unlike, for instance, Erdoğan) and might have been well enough liked to emerge as a consensus candidate for president but for the fact that his wife wore a headscarf. The idea of a Turkish first lady in headscarf attending state functions was anathema to the military leadership and the Kemalist state elites(1). The military sought to block Gül's candidacy directly by issuing a statement on its website opposing his candidacy, while the CHP brought a constitutional challenge before the TCC on a procedural matter concerning the parliamentary vote by which Gül had won appointment.

The TCC entertained the challenge to Gül's appointment and overturned the parliamentary vote on a far-fetched interpretation of procedural requirements. The AKP responded to this double challenge from the military and the judiciary by calling early elections. In the elections that ensued in the summer of 2007, the AKP won a landslide victory, substantially increasing its share of the electorate

(1) Discomfort with Gül's wife, Hayrünnisa, has been a permanent theme of his presidency, as it was of the run-up to his appointment. "Abdullah Gül's presidential ambitions have long alarmed Turkey's secular establishment, BBC, August 28, 2007 (noting that "secularists dislike the fact that Mr. Gul's wife wears the Islamic headscarf"). More recently, see "Headscarf row mars Turkey's anniversary celebration," BBC, October 29, 2010 (noting that Turkey's main opposition leader and military officials boycotted the president's Republic Day reception because his wife attended the event in her headscarf).

and was returned to office with a clear electoral mandate. The Turkish electorate voiced its displeasure at the military's intervention in civilian government in July 2007 in contrast to the widespread acceptance of military intervention during the February 28th process a decade earlier. Chastised by the results of the election, the CHP, military and judiciary drew back from their opposition to Gül's candidacy and he duly assumed his position as president. With this reversal of fortunes, Turkey emerged from a crisis in 2007 with a headscarved woman occupying the role of first lady. The tide seemingly was turning on the headscarf issue and yet what followed was another iteration of repressive crackdown.

Emboldened by its electoral victory and holding both the premiership and the presidency, the AKP embarked on a bold new constitutional initiative, seeking to replace the constitution written under the military regime in 1982 with a new civilian constitution. As this process was getting underway in the fall of 2007, with a draft constitution written by a group of liberal constitutional law professors circulating as an initial proposal in parliamentary committees, the headscarf issue erupted anew. In a surprise move, Erdoğan returned the stand-alone issue of the headscarf to salience by proposing a separate amendment to the 1982 constitution, to precede the broader new draft constitution project. Through minor amendments to two constitutional provisions – Article 10 (equality in access to public services) and Article 42 (right to education – in coalition with a center-right party, the AKP sought to lift the headscarf ban directly.

The proposed constitutional amendments were cast as a

matter of legal equality and educational freedom, rather than as a matter of religious freedom, but the effect would be to enable legislation to lift the headscarf ban. The proposal garnered enough votes to win parliamentary passage under the same procedures that had been used for countless earlier amendments on different substantive provisions. Yet, the move prompted an immediate challenge before the TCC brought by the CHP arguing that the new amendments violated unamendable provisions of the Constitution on secularism and were therefore null and void as a procedural matter since the Court did not have substantive powers of judicial review. In another highly controversial decision, on June 5, 2008 the TCC annulled the amendments based on their alleged incompatibility with the principle of secularism(1). Nor did the Court limit itself to this decision. It also entertained a party closure case, brought against the AKP despite its having earned a clear electoral mandate only months earlier in national elections. The challenge against the AKP, as described at the beginning of this essay, was based on allegations that the party had become a focal point for anti- secular activities largely as a result of its support for the headscarf amendments. While the party narrowly escaped closure in the decision issued by the TCC in the closure case, the Court censured the party and issued a clear warning that further activity in this vein would likely result

(1) One source of the controversy on this occasion was the fact that the TCC is not actually empowered under the 1982 constitution to undertake substantive review of procedurally proper constitutional amendments. Article 148 of the 1982 constitution explicitly limits judicial review of constitutional amendments to specific procedural defects related to voting quorums, none of which were raised in this case. Since the challenge to the amendments was not procedural but substantive, most Turkish constitutional law scholars believed that the Court's actions were ultra vires.

in closure[1].

The Constitutional Court's decision in the headscarf case was destabilizing both because it entailed a massive unilateral expansion of the Court's powers of review and because the logic of its reasoning suggested that no constitutional adaptation of the state's interpretation of secularism could originate from within the bounds of ordinary politics. In its reasoning, the Court drew a distinction between the "primary" (or "founding" – asli) and "secondary" (or "subsequent" – tali) powers of the legislature in the constitutional arena. The Court argued that the primary power to draft a constitution, or alter the constitutional interpretation of core, "unamendable" provisions, such as those on secularism, arises exclusively in extraordinary constitutional circumstances. Such powers reside, on the TCC's reasoning, with the founding legislature, which is either the original constituent assembly or the first elected body to assume legislative functions following an extra-legal "interruption in the country's political regime." At all other times, parliament cannot draft a new constitution or introduce new interpretations of core principles based on its ordinary legislative powers, notwithstanding clear provisions of the written constitution that provide procedures precisely for amendments.

This definition suggests that the Turkish Republic would

(1) In fact, a majority of judges – 6 out of 11 – voted in favor of closing the AKP, but the dissolution of a party required the support of two-thirds of the Court, or 7 judges. Further, 10 of the 11 judges (all but Chief Justice Haşim Kılıç) found the AKP guilty of involvement in anti-secular activities, but opted for the lesser penalty of reducing the party's support from the Treasury, as provided for under Article 69(8). The determination by 10 judges that AKP activities represented a threat to secularism was widely seen as a "yellow card" – that is, a very serious warning – to the AKP that it must alter course or face a second challenge that would likely see its closure.

only be able to adopt a new constitution or constitutional orientation towards the question of secularism in the event of an extra-legal interruption, which in Turkish political experience has historically taken the form of a military coup. Several analysts noted that Turkey's own constitutional history is in tension with the Court's claim – the Turkish constitution of 1924 was drafted not by the original constituent assembly, but by the parliament elected in 1923 using its ordinary legislative powers(1). By contrast, the 1982 constitution was promulgated by the military following a coup and contains draconian human rights restrictions that have been a persistent stumbling block to political liberalization in Turkey. Against this historical context, the Court's decision suggested an attempt to close democratic channels for constitutional reform in Turkey.

To the elite accustomed to governing Turkey, the headscarf symbolically represents the intolerable threat of backsliding on the redemptive mission to secularize and modernize the nation(2). Even this extreme form of judicial interventionism was apparently deemed preferable to such a threat. This most recent iteration of the headscarf debate in Turkey poses even more starkly than earlier periods

(1) For an incisive, critical analysis of the Court's reasoning, see Ergun Özbudun, "New constitution is now a must," Today's Zaman, October 26, 2008.

(2) There is an extensive literature on the emblematic significance of the headscarf debate in the Turkish political context, particularly in light of the developments in 2008. Some of the best recent treatments of the issue were contributions to a blog on secularism hosted by the Social Science Research Council. See, e.g., Ayşe Kadıoğlu, "The headscarf and citizenship in Turkey," Immanent Frame, April 23, 2008, http://www.ssrc.org/blogs/immanent_frame/2008/04/23/the-headscarf-and-citizenship-in-turkey/; Nilüfer Göle, "A headscarf affair, a women's affair?," Immanent Frame, February 21, 2008, http://www.ssrc.org/blogs/immanent_frame/2008/02/21/a-headscarf-affair-a-womens-affair/; and Şeyla Benhabib, "What is that on your head? Turkey's new legislation concerning the 'headscarf'," Dialogues on Civilization, March 5, 2008, http://www.resetdoc.org/EN/Benhabib-Headscarf.php.

the basic question: why do those who control the most powerful institutions of the Turkish state feel so threatened by headscarved young women attending universities that they would repeatedly resort to such extreme measures? In the final section of this paper, I will draw on the history presented herein to offer an answer while also suggesting one possible path forward in overcoming the current impasse in the Turkish struggle to renegotiate the relationship between its conception of modernity and Islam.

## III. The Islam-Modernity Binary in Contemporary Turkey

The roots of the seemingly insoluble headscarf crises lie in the Turkish conception of the relationship between Islam and modernity that has been the subject of the interpretive history of the republic offered in this essay. For the militantly secularist sectors of Turkish society, the headscarf amendments would not represent a minor symbolic victory. Rather, a reversal of the ban on headscarves in public institutions would amount to a reversal of the achievements of the Turkish state not only with respect to secularization, but also the particular Kemalist conception of modernization. The headscarf represents no less of a threat than backsliding away from the accomplishments of Turkish "modernity," understood in this light.

The specificities of the modernizationist ideology that emerged out of the late Ottoman experience entailed a particular conception of Turkish identity, which has since placed the state on a collision course with its own religiously-observant society. Modernity was endowed with

specific connotations, ones dependent on the production of a particular public culture best exemplified by emancipated "modern" Turkish women whose very presence in the public sphere bore eloquent and visible testimony to the accomplishments of the Kemalist project. From the early decades of the republic, women's public visibility was used as a strategic means of displaying the modern secular identity being forged by the new Turkish state. As suggested above, women's participation in athletic competitions, in public professions like law and medicine, their position as parliamentarians and their strides in the sciences were all touted as evidence of the state's emancipatory project and modernist vision. From the founding, the state's role as a political agent that unveiled the Turkish woman and liberated her in accordance with secular ideals was central to the new political culture and public identity forged by Kemalist modernization.

The modern, western-dressed woman of the center marked this new identity, while the provincial or rural woman, wearing her traditional headscarf, marked the periphery where the state's modernizing reforms had not (yet) penetrated. Such traditional, rural uses of the headscarf in Turkey have never met state resistance. The threat of the headscarf does not emanate from its traditional usage. With the model of state secularism centered on a narrative of the state's emancipation of women from religious subordination, the threat of the headscarf arises when modern Turkish women express a personal identity that restores religious markers where previously those markers had been removed by the state. Ultimately, the repression to which state actors

have resorted to suppress this threat has gone so far as to deny the right to an education to the very women they allegedly emancipated.

Despite efforts to describe headscarved women as representing a retrograde form of anti- secular fundamentalism, however, their presence in the malls, cafes, restaurants and university campuses of Turkey's westernized cities represents, instead, a modern vision of entitlement to express private religious identities in the carefully crafted secular public sphere of the republic. Headscarved women are no longer consigned to the provinces as rural laborers of agrarian Turkey but constitute educated and politically active opposition forces to be reckoned with in the modern bastions of official secularism. The resistance of headscarved women to official policies of exclusion from universities and public sector positions is manifestly not an attempt to reclaim "traditional" identities, but rather an assertion of a new and non-traditional role for women from a broader cross-section of Turkish society through higher education and professional employment(1). Ironically, in this sense, it is precisely the empowerment of Muslim women – as opposed to their alleged subjugation by religion or tradition – that has transformed the headscarf into a symbolic challenge to the state's gendered model of secular emancipation.

The highly charged symbolism of the headscarf for Turkey's renegotiation of the relationship between Islam and modernity is clear. The newfound visibility of the headscarf at the center of the republican project,

(1) In this respect, lifting the headscarf ban may be less about equality between women and men as it is about equality between women of different social classes.

rather than its periphery, is experienced as a threat to the achievements of the founding cultural revolution. With the prime minister and the president's wives in headscarves, the core institutions of the republic are being colonized by an alternative conception of modernity that the traditional state elites find profoundly destabilizing.

This challenge is, however, more opportunity than threat. The Turkish republic is being called upon to imagine a conception of modernity that is inclusive of a heterogeneous Turkish society, comprised of both religiously observant and secular social groups. The national institutions that were designed to produce a homogenous public of modern, western, secular Turks must now grapple with a more complex process of identity formation. The founding view that the state could only attain modernity by suppressing or privatizing religion is no longer viable. This represents not the undoing but potentially the culmination of the Kemalist project, which is now confronted with robust and local alternative moderls of its own founding project of modernization. The emergence of pro- Islamic political actors in Turkey that embrace the republic's basic framework – modernization, popular sovereignty, political pluralism – and offer reinterpretations of the core tenet of secularism, rather than seeking to supplant it, is a testimony to the deep internalization by Turkish society of the most significant and far-reaching reforms undertaken by the state.

As we have seen, the emergence of religiously observant subjectivities, and the increasing visibility of headscarved women was sufficiently challenging to the commanding

authority of the country's founding secularist ideology that it was deemed a national security threat in 1997. A decade later, no amount of military interventionism has been able to reverse that challenge. Moreover, the most recent iteration of confrontation over the headscarf in 2007-2008 took a different course than it had a decade earlier. This time, despite the backlash from the state, the AKP was able to more or less hold its position as an interlocutor rather than a subordinate of Kemalist elites. The fact that the contestation over the definition of secularism and the identity of the Turkish republic is now taking place between two competing elites, rather than through the repression of one set of social forces at the hands of the other, sets the stage for a new chapter in the uneasy tension between Islam and modernity in the Turkish context.

The change over the decade since the 1997 headscarf crisis is a consequence of the demographic transformation of Turkey underway since the 1980s coupled with the success of the AKP in representing newly mobilized constituencies and navigating an alternative path in parliament. In the eight years since the AKP first came into office, it has engaged in a process of reforming the state from within. This has been accomplished in part through the appointment to the lower cadres of the state bureaucracy new civil servants drawn from a broader swathe of Turkish society than has previously been the case. By virtue of holding office and presiding over a period of relative political stability in Turkey, the AKP has, in fact, begun to subtly shift the positions adopted by key state institutions. For instance, the identity of the bureaucratic cadres in the Directorate of Religious Affairs

has witnessed some turnover in this period[1]. With this change, the distance between official state-led production of a "moderate" "enlightened" and "modern" Islam on the one hand, and the approaches to Islam taken by religiously-observant private social actors on the other, has some prospect of being bridged. More generally, the AKP's approach has helped overcome the state-society divide that had grown into a gaping chasm by the end of the 1990s. Whereas in previous periods, contestation over questions of religion and identity played out between state actors on the one side and religiously-observant social actors on the other, the sharp line dividing those two camps has begun to blur in the last decade. The secular Kemalist elites no longer have exclusive access to the levers of state power and the religiously-observant social groups are no longer exclusively supplicants seeking to be tolerated, but never integrated, by the state.

One dramatic illustration of this shift was apparent in the constitutional referendum that took place in Turkey in September 2010[2]. The AKP government introduced a package of constitutional amendments in the spring of 2010 that were approved by parliament and then submitted to a nationwide referendum on the 30th anniversary of the 1980 military coup. The package included provisions to redress some of the illiberal excesses of the 1982 constitution, including in the areas of judicial reform, individual rights

(1) For instance, in a fascinating recent article, Fatma Tütüncü has studied the introduction of female preachers wearing headscarves as civil servants in the Directorate of Religious Affairs by the AKP since 2004. She also discusses a variety of changes at the Directorate under AKP leadership. Fatma Tütüncü, "The Women Preachers of the Secular State," Middle Eastern Studies 46(4) (2010): 595-614.

(2) I have written in detail about this referendum elsewhere. See Aslı Ü. Bâli, "Unpacking Turkey's 'Court- Packing' Referendum," Middle East Report, November 5, 2010.

and political party freedoms. Reductions in the powers of military courts and a reorganization of the civilian judiciary, including the constitutional court and the governing board of judges and prosecutors were among the key controversial provisions in the amendments. While the traditional elites accused the AKP of having undertaken these reforms to pack Turkey's courts with Islamists, the actual effect of the amendments was to democratize the judiciary. In particular, the judicial appointments procedure was reformed to remove an ideological litmus test that had long been imposed on judicial promotions. By opening membership of the Supreme Board of Judges and Prosecutors to a more representative segment of the judiciary, the reforms broke the monopoly long exercised by a self- appointing clique in control of the Board, which had demanded of all senior judicial candidates a record of strict conformity to a repressive conception of secularism and deference to the authority of the military. With provisions that limited the jurisdiction of military courts, enhanced the powers of the civilian judiciary and reformed the appointments procedure, the passage of the constitutional amendments package has significantly altered the playing field for future contestation over core principles of the Turkish political order.

This essay began with the story of the military and the Turkish Constitutional Court acting in tandem to block any attempt by popularly elected civilian governments to renegotiate the constitutional concept of secularism. Regardless of the electoral success that pro-Islamic parties like the AKP might enjoy through democratic political channels, for decades they were stymied in any attempt to

forge a new compromise in the relationship between the state and religion because extra-political forces – particularly from within the unelected branches of the state – blocked all attempts to strike a new balance. The traditional Kemalist elites had entrenched within the institutions of the state the mechanisms for their own hegemonic preservation through capture of key state organs, particularly the military and the judiciary(1).

Through a series of confrontations in the last decade, the AKP has succeeded in weakening this hegemonic preservation strategy, curbing the military's discretion to intervene in civilian politics and breaking the Kemalist monopoly on judicial appointments. As we have seen, the attempted military intervention to block the Gül presidency yielded an enhanced electoral mandate for the AKP, vividly illustrating the loss of appetite in Turkish civil society for the military's role in civilian governance.

Together with a series of court cases investigating alleged coup plots involving retired military officers(2), the 2007 election tipped the balance in the Turkish political order away from military authority in favor of the civilian government. The retreat of the military from regular interventions in civilian governance combined with a shift away from Kemalist ideological conformity in the judiciary signals a new landscape in which to play out the decades-

(1) Ran Hirschl has studied the institutionalization of judicial review as precisely such a hegemonic preservation device by embattled political elites in transitions of power. See Ran Hirschl, Towards Juristocracy: The Origins and Consequences of the New Constitutionalism (Harvard University Press, 2007).

(2) On the Ergenekon trials and the weakening of the Turkish military's authority as a result of these high- profile prosecutions, see H. Akin Ünver, "Turkey's 'Deep State' and the Ergenekon Conundrum," Middle East Institute Policy Brief (No. 23, April 2009).

old contestations that have plagued the Turkish political order.

The leveling of the political playing field means that the two competing political elites in Turkey no longer have an alternative strategy to negotiating a new consensus over the deep cleavages that mark the Turkish political order. As described in this essay, in the early decades of the republic Kemalist elites had recourse to the full power of the state to repress challenges to their preferred conception of secularism and modernity. Beginning in the late 1960s and 1970s, pro-Islamic actors began to organize politically to challenge that elite's monopoly on the state, but these efforts were marked by key setbacks, in the form of military or judicial intervention that interrupted the ordinary course of political bargaining whenever pro-Islamic forces gained electoral strength. But with each new round of confrontation, the state resorted to increasingly repressive measures and the array of social forces in favor of renegotiating the core principles of the state's ideology grew. In the face of the growing democratic pedigree and electoral mandate of successive pro-Islamic parties, strategies to contain the alleged threat of Islamism were increasingly anti-democratic. With the changes ushered in by the AKP, the privileged access of the traditional Kemalist elites to the unelected branches of government (and to antidemocratic strategies when all else fails) has eroded.

What is left, then, are the ordinary political channels of negotiation, bargaining and contingent compromise from which provisional elite consensus is forged. Bereft of their

old strategies of repression, Kemalist elites must enter the political ring on equal terms and actually defend their orthodoxy rather than imposing it from above. This new political landscape, in turn, suggests that the discontinuities between social and institutional consensus that have long characterized the headscarf debate may soon give way. The post-referendum political order in Turkey is one in which neither the traditional Kemalist elites nor the counter-elite now represented by the AKP can impose its preferences through recourse to sheer repression. In this new political order, a consensus- based negotiating process may be the only available channel for reconciling their competing conceptions of secularism and modernity, or of the relationship of Islam and the state. During the 1980s and 90s, the alternative vision of the newly empowered pro- Islamic social actors had been expressed in opposition to the state, as the perspective of the periphery seeking to assert itself against the center. Under the AKP, these alternative visions have been brought within the state. With the Kemalist conception of modernity and its alternative represented by competing sets of forces within the stateand the likelihood of a successful, if contingent, negotiation over core differences to overcome the ossified binaries of the 20th century suddenly appears far more attainable.

Throughout this essay, I have argued that the headscarf debate stands in as one of many possible manifestations of an underlying set of confrontations over the identity of the Turkish state, its relationship to religion and its conception of modernity. With the changes to the political landscape of Turkey that I have briefly traced in this final section,

the possibility of addressing these underlying tensions has greatly improved. Should the contestation over the relationship of the state and religion – and of competing conceptions of Islam and modernity – become the subject of ordinary politics, without resort to extrapolitical repression, then the contingent compromises produced through those negotiations may forge elite convergence that no longer displaces the underlying conflict on to the symbolic battlefield of the headscarf.

One early sign that a genuine, socially-grounded renegotiation of the identity crises of Turkey's last decades might finally be underway recently arose, once again around the question of the headscarf. In October 2010, a month after the passage of the constitutional amendments by referendum, a surprising set of developments came into the media spotlight. YÖK, Turkey's Higher Education Board – which has been the source of the decrees to enforce the headscarf ban on university campuses – ordered Istanbul University to stop teachers from expelling headscarved students from class(1). By mere regulatory change, YÖK paved the way to untying the Gordian knot of the campus headscarf debate that has plagued the country for decades. Moreover, YÖK undertook this change of position with the support of both the AKP and the CHP. Indeed, as part of its bid to improve its electoral prospects following the September referendum (and in anticipation of 2011's national legislative elections), the CHP publicly announced support for modifying or ending the ban weeks before YÖK

(1) Ece Toksabay and Ibon Villelabeitia, "In quiet revolution, Turkey eases headscarf ban," Reuters, October 17, 2010.

issued its order to Istanbul University[1]. While this was not the last word in this round of debate – the Supreme Court of Appeals (Yargıtay) announced that the lifting of the ban may violate the constitution – it represents an important step forward in resolving the issue.

For decades, the overwhelming social consensus in support of lifting the ban among more than 70% of the Turkish electorate had not been enough to move the CHP to reconsider its stance. In a political context in which the military and judiciary backed the headscarf ban, the CHP was shielded from democratic accountability for its position. Constituent preferences did not figure in the party's policies regarding core issues connected to the identity of the state, so long as politically-insulated state actors could preserve the CHP's ideological preferences. That calculation has apparently changed as political authority has shifted in the last decade from the unelected branches of the state to the elected civilian government.

While the judiciary may continue to block a complete lifting of the headscarf ban under the present constitution, it is unlikely to be able to block the broad social consensus in support of a new draft civilian constitution for much longer. Both the AKP and the CHP have promised to initiate such a new constitutional project in their 2011 electoral platforms. With the introduction of new drafts for a civilian constitution, the definition of constitutional secularism and a host of other issues – individual liberties, political rights, minority rights, civilian-military relations, and judicial reform, to name a

(1) Marc Champion, "Turkey Rolls Back University Scarf Ban," Wall Street Journal, October 7, 2010.

few – will finally be subject to a robust public debate. The possibility of such a constitutional exercise, where none of the competing parties has a trump card to disrupt the ordinary political processes of negotiation and bargaining, is a source of great promise.

Such an exercise may first produce a contingent compromise over an alternative model of secularism capacious enough to defend the neutrality of the state with respect to religion without seeking to suppress the private expression of religious identity in the Turkish public sphere. More importantly, open debate about the definition of secularism, the relationship of the state to religion, and alternative conceptions of modernity in the Turkish context represent the possibility of moving past the cycles of repression that have attended each of these questions for decades. Most promising of all, the traditional Kemalist elites, negotiating on a level playing field with their thoroughly modern, pro- Islamic political adversaries, may yet participate in the production of indigenous and contemporary conceptions of both secularism and modernity as the fitting culmination of their century-long experiment in state formation through secularization and modernization.