

2013

Islam and Democracy: Turkey's Harmonized Model for Emerging Arab Spring Democracies

Sarah Setarah Jafari

Follow this and additional works at: https://scholarship.shu.edu/student_scholarship

Recommended Citation

Jafari, Sarah Setarah, "Islam and Democracy: Turkey's Harmonized Model for Emerging Arab Spring Democracies" (2013). *Law School Student Scholarship*. 380.
https://scholarship.shu.edu/student_scholarship/380

18 November 2011

Comparative Law and Religion

34565, INTL 9620

Professor Catherine McCauliff

**ISLAM AND DEMOCRACY: TURKEY'S HARMONIZED MODEL FOR EMERGING
ARAB SPRING DEMOCRACIES**

SARAH S. JAFARI

Turkey has undergone radical changes during the last century. Modernization and secularization were the characteristics of first reforms brought about by a brilliant military led by General Kemal Atatürk. The military guarded secularization at the expense of other values. Only recently has any attempt been made to curb the power of the military. Less secular politicians more in tune with the majority of the population set Turkey on the road to democracy. Turgut Özal (13 October 1927- 17 April 1993) concentrated on providing Turkey with a sound economy. Recep Tayyip Erdoğan (26 February 1954-) brought in democratic reforms, human rights, and the rule of law. Military imposition of values on civilian life was necessarily removed as far as possible. The military is committed to the secular values in which the rulers set forth for a population the goals and culture they deem best, whatever the population itself might want. Prime Minister Erdoğan, with greater respect for the religious sensibilities of the majority, has been able to operate in an atmosphere of liberty for the populace and greater religious choice for the individual than under Atatürk. He has effectively aimed to close the gap between the rulers and the ruled.

The question this history suggests is whether Turkey, so new to freedom and democracy itself, can be seen as a model for the Arab Spring nations.

The Modernization of Turkey and the Rise of Mustafa Kemal (19 May 1881- 10 November 1938):

Egalitarianism was introduced to Turkish society during the early nineteenth century. In 1839, the Ottoman Sultan Abdul Mecit declared a set of reforms called Tanzimat, which established a list of civil rights that protected all citizens regardless of religious affiliations or group identity.¹ A generation later, in 1876, reforms were recorded in a constitution and a Parliament was elected. Unfortunately, the reform period was cut short by new sultan, Abdul Hamid II, who suspended the constitution and Parliament within one year of its adoption.² Sultan Hamid was the 34th sultan of the Ottoman Empire who ruled with absolute power for the following three decades.³

Throughout Sultan Hamid's reign, Turkish intellectuals disdained his oppressive rule. As a ruler, Hamid suppressed dissenting voices and created an army of spies.⁴ However, he could not suppress society's desire for participation in the government. Turkish intellectuals studied past revolutions and distributed news to gain a following, which would help fight the regime. An attempt to overthrow Sultan Hamid failed in 1886, which increased the popularity of the idea amongst young freethinker Turks.

¹ STEVEN KINZER, RESET: IRAN, TURKEY, AND AMERICA'S FUTURE 6 (2010).

² *Id.* at 6.

³ *The Sultans*, THEOTTOMANS.ORG, <http://www.theottomans.org/english/family/abdulhamid2.asp> (last visited Sep. 17, 2011).

⁴ KINZER, *supra* note 1, at 6.

One of these young idealists was named Mustafa Kemal. Kemal was a cadet in the Turkish military. He was born in the diverse city of Salonika where he grew up amongst Turks, as well as Greeks, Jews, and other European nationals.⁵ As a young cadet he lived in several cities including Istanbul and Beirut, which was considered “the Paris of the Middle East.”⁶ Kemal was least impressed with his time spent in Damascus. The level of illiteracy, religious orthodoxy, and isolation from the outside world disgruntled him. The darkness and sadness of Damascus ignited his desire for revolution in his homeland.

Kemal studied western ideals of liberty, self-rule, and secularism and in 1905 formed a secret society called Vatan (Fatherland), with a group of his companions.⁷ Kemal established branches of Vatan in the Ottoman outposts of Beirut, Jerusalem, and Jaffa. He dedicated the organization to bringing freedom to the Turks by overthrowing the absolutist regime of Sultan Hamid.⁸ Slowly, the movement gained momentum and merged into a coalition called the Young Turks, who were also secular in outlook.⁹ The Turkish atmosphere was ablaze with a sense of revolution and Sultan Hamid could not calm the uproar. Not only did he fail to control revolting citizens, but he also failed to manage his own troops who joined the defiant march on Istanbul.¹⁰ The Young Turks demanded that Sultan Hamid re-open the Parliament he had closed three decades earlier. On April 27, 1909, Sultan Hamid was deposed and exiled to Salonika. The Young Turk Revolution resulted in a return to parliamentary and constitutional rule.¹¹ Sultan

⁵ *Id.* at 7.

⁶ *Beirut is Back on the Map*, LONDON COSMOPOLITAN (Jan. 3, 2011), <http://londoncosmopolitan.blogspot.com/2011/01/beirut-is-back-on-map.html>.

⁷ KINZER, *supra* note 1, at 8.

⁸ *Id.* at 8.

⁹ *Young Turks*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/654123/Young-Turks>.

¹⁰ *Id.*

¹¹ *Id.*

Hamid is considered the final authoritative Sultan of the Ottoman Empire although was replaced by his brother.¹²

The Young Turk revolution of 1908 brought several reforms to Turkish society. It opened the way for new political parties, infrastructure, newspapers and magazines, and an increased education budget.¹³ The Turks had liberated themselves from authoritarian rule, yet were skeptical of democracy and occasionally restricted public freedoms to preserve the state.

The Great War, World War I (28 July 1914- 11 November 1918):

Lieutenant Colonel Mustafa Kemal was in Sofia, Bulgaria when Archduke Franz Ferdinand was assassinated in Sarajevo on June 28, 1914.¹⁴ At the time, Enver Pasha led the Ottoman military. Kemal, as well as several other military officers, returned from abroad to follow Pasha's military commands. However, Pasha made a consequential misjudgment and aligned his empire with the Germans. During the war, the Allied forces were set on crushing the Ottoman army and planned an assault on the Gallipoli Peninsula.¹⁵ Kemal was assigned as commander of the key mobile division and as support to the German general who was appointed by Pasha to direct the peninsula's defense.¹⁶

The year 1915 marked the start of the Battle of Gallipoli. The battle was the initiated by Winston Churchill, who believed that opening a new front would force the Germans to split their

¹² *The Sultans*, *supra* note 3.

¹³ KINZER, *supra* note 1, at 10.

¹⁴ KINZER, *supra* note 1, at 34.

¹⁵ Susanna Dokupil, *The Separation of Mosque and State: Islam and Democracy in Modern Turkey*, 105 W. VA. L. REV. 53, 64 (2002).

¹⁶ *Id.* at 64.

army in order to support the “weak” Turkish army.¹⁷ This would leave their lines weakened elsewhere and the Allies would have a less powerful army to fight against.¹⁸ However, Churchill underestimated the strength and endurance of the Turkish army. Soldiers from Britain, Australia, and New Zealand stormed the beaches at Gallipoli and faced heavy Turkish fire.¹⁹ As Allied forces pushed forward, the Turks called for backup. Kemal’s forces emerged and he commanded the troops. A tough commander, Kemal shouted to his troops, “I am not ordering you to attack, I am ordering you to die! By the time we are dead, other units and commanders will be here to take our place.”²⁰ It was at Gallipoli that Kemal firmly established his reputation among his fellow Turks. He was viewed as a military genius as he naturally improvised military maneuvers with his troops. About eight months after they had stormed the beaches, Allied troops began a humiliating retreat, which left the Turks victorious.²¹ The Gallipoli Campaign cost the Allies approximately 265,000 casualties and the Turks about 218,000.²² Yet triumph at Gallipoli was the Turks’ greatest victory of the war as well as a turning point in Kemal’s life. He was a national hero and when World War I ended in 1918, he had risen to the rank of General.

The war culminated in a loss for the Turks. The Turkish leaders fled the country after their shameful acts against the Armenians in eastern Turkey and Sultan Mehmet VI Vahdeddin was left to negotiate Turkey’s terms of surrender with the British.²³ The British presented

¹⁷ Peter Hart, *Book Review: ‘Gallipoli’*, THE WASHINGTON TIMES (Nov. 18, 2011), <http://www.washingtontimes.com/news/2011/nov/18/book-review-gallipoli/>.

¹⁸ *Id.*

¹⁹ *Battle of Gallipoli: February 1915- January 1916*, BBC HISTORY, http://www.bbc.co.uk/history/worldwars/wwone/battle_gallipoli.shtml (last visited Nov. 15, 2011).

²⁰ KINZER, *supra* note 1, at 36.

²¹ *Battle of Gallipoli: February 1915- January 1916*, *supra*.

²² *Casualties Figures Gallipoli*, ANZAC AUSTRALIAN AND NEW ZEALAND ARMY CORPS, <http://anzac.homestead.com/casualties.html> (last visited Nov. 15, 2011).

²³ Dokupil, *supra* note 15, at 64.

abrasive terms and the sultan complied, believing he had no alternative. The Allied forces took control of Istanbul, all sovereign Ottoman territories in Arabia, and the majority of the Ottoman army was ordered to demobilize.²⁴

Kemal was shocked at the armistice terms. He was determined to revolt against the occupation before Allies dismembered his nation. The Allies had plans to partition Anatolia and create an Armenian state, a Greek state, colonies for France and Italy, and possibly a Kurdish state.²⁵ The idea of their land being lost to local Christian minorities sparked passion of revolt in the Turks. Kemal, along with other former military leaders, schemed to break from the sultan and Allied occupation. They planned to escape from Istanbul and trek across to Anatolia where they would train an army to rebel against the occupation. Kemal traveled to Anatolia to take his role as a revolutionary leader. He arrived on the coast of Samsun, in north central Turkey, on 19 May 1919. May 19th is now a national holiday that commemorates the beginning of the national liberation movement initiated by Kemal in 1919.²⁶

The British were suspicious of Kemal and demanded he be recalled to Istanbul, but by the time the order was issued, Kemal and his troops had begun their revolt. Kemal summoned resistance leaders and together they issued a public declaration that they would reject a partition or foreign occupation and demanded that Turks rule all of Anatolia.²⁷ Kemal managed to gain support in Istanbul where a new Parliament passed a resolution insisting on full Turkish independence.²⁸ The British sent soldiers to arrest Parliament leaders and threatened to execute

²⁴ *Id.*

²⁵ KINZER, *supra* note 1, at 40.

²⁶ Talip Kucukcan, *Sacralization of the State and Secular Nationalism: Foundations of Civil Religion in Turkey*, 41 GEO. WASH. INT'L L. REV. 963, 973 (2010).

²⁷ KINZER, *supra* note 1, at 44.

²⁸ *Id.*

anyone who expressed additional defiance. It was then that Kemal prompted the Parliament to reconvene in Ankara, where he had established his headquarters, and the members complied.²⁹

As Allied diplomats gathered in Sevres to sign a treaty partitioning Turkey amongst the Greeks, Armenians, Kurds, Italians, French, and British, the members of Turkish resistance groups convened in Ankara.³⁰ In Ankara they formed a new Grand National Assembly, which claimed state power and elected Kemal as its chairman.³¹ The Turkish revolution was in some ways analogous to the American Revolution: patriots banded together to overthrow the British. Winston Churchill later described the scenario: “[h]is Empire falling to pieces around him, the Turk was still alive”.³²

The Turkish Independence War unfolded across the country in 1920. The Turks pushed the Russians and Armenians out through the east and attacked the British and Greeks when they arrived in Ankara. After triumph against the Greeks, Kemal was given the historic title of Gazi, or warrior, by the Grand National Assembly.³³ The British despised this new war. Finally, five years after the British had arrived in Istanbul, they accepted that they could not rule over the Turks.³⁴

Kemal then sent his confidant, Refet Bele, to convey his message to Sultan Vahdeddin. Bele was the revolutionary regime’s prime minister and he arrived in Istanbul to tell the Sultan that he must resign. He warned that two governments, one in Istanbul and one in Ankara, would not persist. The Sultan did not budge, at which point Kemal demanded that the Grand National

²⁹ *Id.* at 47.

³⁰ *Id.*

³¹ *Id.* at 48.

³² *Id.* at 50.

³³ *Id.* at 52; In Islam, this title is reserved for great warriors who have fought to successfully defend their faith.

³⁴ KINZER, *supra* note 1, at 55.

Assembly take a profound step and separate the sultanate from the Islamic caliphate to give the position of caliph to “[t]he member of the Ottoman family who is most qualified by learning and character.”³⁵ The Caliph had long dominated the system of Islamic government in the Ottoman Empire, had long been viewed as “[s]uperhuman and divinely guided...[and] was understood to be the point of union of the legislative, judicial, and executive domains of government.”³⁶ Although there was much dispute against this radical change, it ultimately passed and the sultan’s position was abolished.³⁷ In 1922, with help from the British, the sultan fled Istanbul and the Ottoman sultanate ended after 634 years.³⁸ Prince Abdul Mecit, the sultan’s more liberal and artistic cousin, became Caliph of All Islam.

One year later, on 24 July 1923, the British accepted the Lausanne Treaty, which gave the Turks absolute control over all of Anatolia.³⁹ The Allied soldiers left Istanbul on 2 October 1923 and the Turks were left with their homeland. Kemal had led the revolution and won the Independence War, but had not yet reached his goal. He stated, “[i]t is only now that our real work begins.”⁴⁰

From Kemal to Atatürk’s Reforms:

The Turks victoriously defeated foreign domination with success in the Independence War, but the country was not yet in order and Kemal set out to modernize Turkey’s political system. He declared to the Grand National Assembly that the form of government of the state of

³⁵ *Id.* at 56.

³⁶ Babak Rod Khadem, *The Doctrine of Separation in Classical Islamic Jurisprudence*, 4 UCLA J. ISLAMIC AND NEAR E. L. 95, 112 (2005).

³⁸ KINZER, *supra* note 1, at 57.

³⁹ *Treaty of Lausanne*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/332502/Treaty-of-Lausanne>.

⁴⁰ KINZER, *supra* note 1, at 58.

Turkey would from then on be a Republic and that the Grand National Assembly would elect the president of the Republic of Turkey. His actions gave birth to the first republic established in a Muslim country and, in 1923, Mustafa Kemal became the first President of the Republic of Turkey.⁴¹

The European ideologies aimed at, such as republicanism, nationalism, and secularism, were drawn from the French.⁴² Specifically, the Turkish word for secularism, laiklik, came from the French word laïcité.⁴³ Furthermore, several Young Turks had spent time in France and spoke French.⁴⁴ These men were greatly influenced by the works of French thinkers and institutions in Paris.⁴⁵

After taking office, Kemal unsparingly attacked religious power. He abolished the caliphate and closed all Koran schools (“madreses”).⁴⁶ Furthermore, he had the state take control of the entire education system.⁴⁷ He forbade pilgrimages to tombs of Muslim saints and outlawed the practices of Dervish sects, who embodied Sufi traditions.⁴⁸ He made sweeping changes to the legal system by shutting down religious courts and replacing the Muslim code of Sharia with Swiss civil and criminal codes.⁴⁹ The Turkish adoption of the Swiss Codes was due to the leading young elite who had studied in Switzerland.⁵⁰ The codes were viewed as the most

⁴¹ *Kemal Atatürk*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/40411/Kemal-Ataturk>.

⁴² AHMET T. KURU, SECULARISM AND STATE POLICIES TOWARD RELIGION: THE UNITED STATES, FRANCE, AND TURKEY 204 (2009).

⁴³ *Id.*

⁴⁴ *Id.* at 212.

⁴⁵ *Id.*

⁴⁶ Kucukcan, *supra* note 25, at 964.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Interview by Gaby Ochsenbein and Jean-Michel with Hans-Lukas Kieser, Historian, President, Swiss-Turkey Research Centre (Oct. 4, 2006),

modern, concise, and simply formulated European codes with the greatest popular touch.⁵¹ Moreover, he replaced the Muslim lunar calendar with the twelve-month western calendar and declared that Sunday replaced Friday as the official day of rest.⁵² Kemal also replaced “prayer-oriented timekeeping” with the twenty-four hour clock and directed that the call to prayer no longer be announced in Arabic, but in Turkish.⁵³ Furthermore, the Grand National Assembly enacted a law imposing the metric system and Western numerals.⁵⁴ A law that required all Turks to take a surname followed this and from then on, Kemal became Atatürk (“Father of the Turks”).⁵⁵ Finally, Atatürk fully legalized alcohol.

One of Atatürk’s most ambitious reforms was the Alphabet Reform. He banned Arabic script and invited a group of linguists to create a new Turkish alphabet in 1928.⁵⁶ The new alphabet was in Roman letters and was immediately taught to adults and children. Atatürk had dreams of building a European style university, but he could not attract a full faculty due to lack of Turkish scholars and the disinterest of foreign intellectuals. This changed in 1933, when Adolf Hitler expelled Jewish faculty from German universities. Atatürk offered asylum and employment to the Jews and managed to construct a strong faculty foundation to establish Istanbul University.⁵⁷ Turks had a history of good relations with the Jews, ever since the Ottomans welcomed exiled Jews from Bavaria and Spain in the fifteenth century.⁵⁸

Berthoud http://www.swissinfo.ch/eng/Home/Archive/Turkey_marks_80_years_of_Swiss_civil_code.html?cid=5482762

⁵¹ *Id.*

⁵² KINZER, *supra* note 1, at 65.

⁵³ *Id.* at 66.

⁵⁴ *Id.* at 67.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 71.

⁵⁸ *The Jewish Community of Turkey*, EUROPEAN JEWISH CONGRESS, http://www.eurojewcong.org/ejc/news.php?id_article=125 (last visited Nov. 10, 2011).

Atatürk not only aimed to reform his country, but also to change public personal appearance. Shocking many Turks, he dressed in a suit and tie and often wore a bowler hat. Atatürk declared that “[a] civilized, international dress is worthy and appropriate for our nation, and we will wear it. Boots or shoes on our feet, trousers on our legs, shirts and tie, jacket and waistcoat, and of course, to complete these, a cover with a brim on our heads. This covering is called ‘hat.’”⁵⁹ Subsequently, the Grand National Assembly approved the Hat Reform.⁶⁰ Under the Hat Reform, the fez, a hat that had been adopted in the Ottoman era as a symbol of religion, progress, and modernity, was outlawed. The new Hat Law sparked numerous protests, because it was “[c]onsidered a symbol of Christian Europe.”⁶¹ Those who violated the law faced a one-year imprisonment and in some instances the protestors were executed.⁶²

Atatürk’s drastic reforms did not have the support of all Turks. His close partners in the Independence War turned against him and formed opposition parties that demanded, “[r]espect for religious opinions and beliefs.”⁶³ Atatürk, nevertheless, did not believe his country was ready for competitive politics and imprisoned opposition members. He did not permit time for any uprisings to be organized and any threats to his power and nation-building goals were quickly shut down. He once said, “One should not wait before crushing a reactionary movement [and] one should act at once.”⁶⁴ This included attempted rebellions by the Kurdish minority in southeast Turkey and by citizens who had fought under his command during the Independence War. Atatürk considered the Kurds a primitive population. Kurdish leaders were publicly

⁵⁹ KINZER, *supra* note 1, at 66.

⁶⁰ KURU, *supra* note 42, at 222.

⁶¹ *Id.*

⁶² *Id.*

⁶³ KINZER, *supra* note 1, at 68.

⁶⁴ *Id.* at 71.

hanged in Diyarbakir.⁶⁵ The government ordered all Kurdish newspapers to be closed, outlawed Kurdish names, and restricted the use of the Kurdish language.⁶⁶

Atatürk and the Turkish government claimed to be devoted to ideals of liberty and freedom, yet he was intolerant of Turkish diversity. This type of repression had occurred before, in 1915, when Armenian rebels were deemed a threat and horrendously slaughtered by Turkish troops, with no exception for women and children.⁶⁷ Disdain of diversity was further expressed when the government enforced a population exchange based on religion.⁶⁸ This exchange occurred in 1923, after the Treaty of Lausanne ended the Greek-Turkish war of 1919-1922.⁶⁹ It is analogous to modern day “ethnic cleansing” campaigns. Approximately 1.5 million Ottoman citizens of Greek descent were forced to vacate their homes in Anatolia and move to Greece, while about 500,000 Muslims who lived in Greece were forced to move to Turkey.⁷⁰ It has been found that the majority of Greeks fled with the Greek army after their defeat in the war and that approximately 150,000 were resettled in Greece in an orderly way.⁷¹

Although Atatürk had goals of modernization and liberty, in practice he was considered radically intolerant by most of society. As he grew older, his fiery energy faded; he became tired and introspective.⁷² In 1936, he was diagnosed with cirrhosis, likely as a result of his excessive consumption of alcohol, cigarettes, and coffee. Then on 10 November 1938, Atatürk passed

⁶⁵ DAVID McDOWALL, A MODERN HISTORY OF THE KURDS 196 (2004).

⁶⁶ *Id.* at 3.

⁶⁷ *Armenian Massacres*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/35323/Armenian-massacres>.

⁶⁸ Steven Stavros Skenderis, *The Ethnic Greeks of Turkey: The Present Situation of the Greek Minority and Turkey's Human Rights Obligation Under International Law*, 16 ST. THOMAS L. REV. 551, 555 (2004).

⁶⁹ *Id.*

⁷⁰ SPYROS A. SOFOS, TORMENTED BY HISTORY: NATIONALISM IN GREECE AND TURKEY 116-117 (2008).

⁷¹ *Id.*

⁷² KINZER, *supra* note 1, at 79.

away, at the age of fifty-seven.⁷³ The news of his death caused an outburst of public grief. His body was transported to Ankara and placed in a mausoleum, which today is the closest memorial Turkey has to a national shrine and is visited by millions of people every year.⁷⁴ In 1932, H.C. Armstrong, a British officer imprisoned by the Turks in World War I, wrote the first full-length English biography of Atatürk.⁷⁵ He accurately described Atatürk as, “A MAN, cruel, bitter, iron-willed, who overthrew the Sultan in 1908; battered the British Empire off Gallipoli in 1915; chased the Greeks into the sea at Smyrna in 1922; harried the victorious Allies out of Constantinople in 1923; destroyed the power of the Caliph in 1924; hanged the entire opposition in 1926; and by 1932 had made out of a crumbling empire A NATION.”⁷⁶

Many Turks do not think the Turkey of today would exist without Atatürk. Although he ruled by force and destroyed religious freedoms, he built a government based on organizations and institutions and brought new secular dignity and confidence to the people of Turkey. Atatürk was so respected that in 1951 parliament passed a law that made it a crime to explicitly insult or ridicule his legacy.⁷⁷ Atatürk was aware that “[a]bsolutism leads ultimately to instability, and that even dictatorship should have limits.”⁷⁸ Educated Turks believed in constitutionalism and republican government long before Atatürk. Turks would one day achieve true political democracy, but at the time, it was largely felt that Atatürk’s rule was the only type of government possible.

⁷³ See *Kemal Atatürk*, *supra* note 41.

⁷⁴ Kucukcan, *supra* note 25, at 968.

⁷⁵ See H.C. ARMSTRONG, *GRAY WOLF: THE LIFE OF KEMAL ATATÜRK* (1932).

⁷⁶ KINZER, *supra* note 1, at 81.

⁷⁷ Kucukcan, *supra* note 25, at 968.

⁷⁸ *Id.* at 82.

Turkey Post Atatürk (11 November 1938- 13 March 2003):

After Atatürk's death, the Grand National Assembly elected his chief lieutenant, Mustafa İsmet İnönü, the second president of the Republic of Turkey.⁷⁹ Learning from history, President İnönü aimed to keep his country neutral during World War II. Ultimately, Turkey became aligned with the United States and broke diplomatic relations with Adolf Hitler's government.⁸⁰ Later, this action permitted Turkey to become one of the fifty-one original members of the United Nations.⁸¹ The Turks carried on their relationship with the United States by sending fifteen thousand soldiers to Korea to fight along side the Americans.⁸² As the Korean War and the Cold War heightened, Turkey became viewed as a valued partner and in 1952 Turkey was admitted to the North Atlantic Treaty Organization ("NATO").⁸³ This was a colossal step for Turkey and established its position as a European power.

Unlike Atatürk, President İnönü permitted competitive elections, since he saw that Turks were ready and wanted to choose their own leaders. On 22 May 1950, Turks rushed to the polls and elected Adnan Menderes as their new prime minister.⁸⁴ Prime minister Menderes spent a decade in office, during which the Turkish population more than doubled and per capita income tripled from 1950 to 1960.⁸⁵ Menderes' early years benefitted from economic prosperity, but during his third term the economy began to falter. He then began arresting dissenters and

⁷⁹ *İsmet İnönü*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/288786/Ismet-Inonu>.

⁸⁰ Helen Chapin Mets, *Turkey: A Country Study*, U.S. LIBRARY OF CONGRESS, <http://countrystudies.us/turkey/15.htm> (last visited Nov. 11, 2011).

⁸¹ *UN Member States: Founding Member States*, UNITED NATIONS ONLINE, <http://www.un.org/depts/dhl/unms/founders.shtml> (last visited, Nov. 11, 2011).

⁸² KINZER, *supra* note 1, at 99.

⁸³ *Background Note: Turkey*, U.S. DEPARTMENT OF STATE (May 13, 2011), <http://www.state.gov/r/pa/ei/bgn/3432.htm>

⁸⁴ *Adnan Menderes*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/374821/Adnan-Menderes>

⁸⁵ KINZER, *supra* note 1, at 101.

censoring the press.⁸⁶ On 27 May 1960, after decreased support for the regime, the Menderes government was overthrown in a coup d'état by a group of army officers.⁸⁷ Several government leaders were sentenced to death and Menderes was executed.⁸⁸ Thus began a series of military coup d'états displacing civilian rule.

The military took rigid control and engineered coup d'états in 1971, 1980, and in 1997 a post-modern coup d'état. The military was a long-standing symbol of a secular Turkey, envisioned by Atatürk for decades. After seizing the government, the military withdrew from power, until they staged a new coup d'état. Political parties became dominated by military control and military intervention in politics was frequent. It was not until recently, with the emergence of the Recep Tayyip Erdoğan administration, that the military's role changed.

The Rise of Democracy, Prime Minister Erdoğan (13 March 2003- Present):

Recep Tayyip Erdoğan was raised in the Kasimpasha neighborhood of Istanbul where he attended an imam hatip school.⁸⁹ At a young age he worked for the Istanbul transit authority but quit after a dispute with his boss. His boss had demanded that he shave his mustache, because it was seen as an Islamic symbol, but Erdoğan refused.⁹⁰ This was one of his first political statements as a young man.

In 1994 Erdoğan ran for mayor of Istanbul and was elected. He was considered an "Islamic politician" and viewed as more efficient and honest than his predecessors.⁹¹ At the time, the military generals were wary of any religiously oriented leaders. In a post-modern coup

⁸⁶ *Id.*

⁸⁷ See *Adnan Menderes*, *supra* note 83.

⁸⁸ *Id.*

⁸⁹ KINZER, *supra* note 1, at 132.

⁹⁰ *Id.*

⁹¹ *Id.*

d'état, in 1997, Prime Minister Erbakan, a Muslim man, was forced to resign from office.⁹² Erdoğan responded to the coup d'état by forming a new party called the Justice and Development party, also known as the AK Party.⁹³ Shortly after, Erdoğan recited a verse from a Turkish poem in a speech under the umbrella of the AK Party. The poem read, "The mosques are our barracks, their domes are our helmets, Minarets are our bayonets, and the faithful our soldiers."⁹⁴ Ziya Gokalp, a defender of secularism, had ironically, written the poem.⁹⁵ Pressured by military generals, prosecutors charged him with inciting religious hatred, alleging that he was determined to destroy secularism and was advocating an Islamic revolution.⁹⁶ Erdoğan was convicted and sentenced to ten months in jail, but he was freed after four months.

Erdoğan treated his conviction as an honor and promised his supporters, "This song is not over yet!"⁹⁷ It was clear that the military were trying to teach him a lesson, but it backfired and Erdoğan became a hero and a martyr for democracy. After being released he ignited a grassroots political campaign that resulted in a sweeping victory and Erdoğan was elected prime minister of the Republic of Turkey in 2003.⁹⁸

Once in office, Erdoğan began implementing various reforms. He abolished the death penalty, ended torture in Turkish prisons, and guaranteed prisoners' rights.⁹⁹ He repealed repressive laws that had been drafted to intimidate dissenters, amended the constitution so that it

⁹² *Id.* at 133.

⁹³ *Justice and Development Party*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/1018363/Justice-and-Development-Party>.

⁹⁴ *Turkey's Charismatic pro-Islamic Leader*, BBC NEWS, (Nov. 4, 2002), <http://news.bbc.co.uk/2/hi/europe/2270642.stm>

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ KINZER, *supra* note 1, at 134.

⁹⁸ *Recep Tayyip Erdoğan*, ENCYCLOPÆDIA BRITANNICA ONLINE Encyclopædia (Nov. 15 2011), <http://www.britannica.com/EBchecked/topic/913988/Recep-Tayyip-Erdogan>

⁹⁹ KINZER, *supra* note 1, at 134.

accepted the authority of the European Convention on Human Rights, and turned the National Security Council, which was the military's weapon to harass political leaders, into a civilian run advisory board.¹⁰⁰

Although he is greatly admired for the aforementioned reforms, Prime Minister Erdoğan is criticized for not resolving certain domestic issues that have been a part of Turkish politics for decades. The primary issue is that of ethnic Kurds who live primarily in the east and southeast regions of Turkey. In the 1930s the Turkish government performed a failed attempt to assimilate the Kurds. The Kurds' resistance movements have persisted throughout the years and there have been several Kurdish rebellions resulting in the death of thousands of Kurds.¹⁰¹ When Prime Minister Erdoğan took office in 2003, he was determined to reverse Turkey's decade-old policy of Kurdish repression.¹⁰² He eased restrictions on the ban of the Kurdish language and held talks with Kurdistan Workers' Party ("PKK") to resolve the conflict.¹⁰³

Peace was not reached and in recent years Kurdish activists have been staging attacks against Turks in the capital city of Ankara.¹⁰⁴ It has been argued that the Kurds are backed by Israel, which seeks revenge for Turkey's expulsion of the Israeli ambassador after Israel refused to apologize for attacking and killing several Turks aboard the Mavi Marmara—a flotilla carrying humanitarian aid to Gaza in May 2010.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ See Christopher Hitchens, *Struggle of the Kurds*, NATIONAL GEOGRAPHIC, Aug. 1992, at 32.

¹⁰² *Turkey and the Arab Spring: A Flawed Example*, THE ECONOMIST (Sep. 24, 2011), <http://www.economist.com/node/21530167>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

It is clear that peace between the Turks and Kurds is important if Turkey wishes to be a democratic leader that protects minorities within its state, but evidently the ongoing conflict has layers of complexity.

Another criticism against Prime Minister Erdoğan has been from the Armenian government, Turkey's neighboring state, and the Armenian diaspora that want Turkey to recognize the murder of 1.5 million Armenians in 1915 as genocide committed by the Ottoman Turks.¹⁰⁶ The Turkish government continues to claim the deaths were a result of famine, disease, and World War I battles.¹⁰⁷ Although Prime Minister Erdoğan will not recognize the genocide, in 2009 he signed a deal to re-establish diplomatic ties with Armenia and to open their shared border, which has remained closed since 1993 when Armenia went to war against Azerbaijan over the disputed territory of Nagorno-Karabakh.¹⁰⁸ The deal came to a halt when Prime Minister Erdoğan stated, "Unless Azerbaijan and Armenia sign a protocol on Nagorno-Karabakh, we will not sign any final agreement with Armenia on ties. We are doing preliminary work but this definitely depends on resolution of the Nagorno-Karabakh problem."¹⁰⁹ There are currently no diplomatic relations between Turkey and Armenia.

Although Prime Minister Erdoğan has been criticized for his inability to reach an agreement with the Kurds and Armenians, the reforms he has implemented have paved Turkey's path to democratic and economic success and greatly outweigh his shortcomings.

¹⁰⁶ *Armenia PM Tigran Sarkisian 'Ready for Turkish Ties'*, BBC NEWS (June 16, 2011), <http://www.bbc.co.uk/news/world-europe-13791571>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Turkey-Armenia Deal to Refer to Karabakh Solution*, TODAY'S ZAMAN NEWS (April 13, 2009), http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&link=172294

History of the Ban Against Islamic Headscarves in Turkish Educational Institutions (1981-2003):

The ban against the wearing of Islamic headscarves has been an issue of debate in Turkey for decades. Opponents of the law view it through a lens of human rights and religious freedom, while proponents of the ban deem it necessary to prevent Islamization of society and maintain strict secular order in Turkey.¹¹⁰

The first regulation addressing wearing of headscarves in universities was issued in 1981. The regulation “[r]equired staff working for public organizations and institutions and personnel and students at State institutions to wear ordinary, sober, modern dress...[and] female members of staff and students [to] not wear veils in educational institutions.”¹¹¹ Following this regulation, the Higher Education Council issued a circular, which prohibited women from wearing headscarves in university classes because it was a “[s]ymbol of a vision that is contrary to the freedoms of women and the fundamental principles of the Republic [of Turkey].”¹¹²

In 1988, the Turkish Grand National Assembly (“TGNA”) responded by passing a provision that stated that “Modern dress or appearance shall be compulsory in the rooms and corridors of higher-education institutions, preparatory schools, laboratories, clinics and multidisciplinary clinics. A veil or headscarf covering the neck and hair may be worn out of religious conviction.”¹¹³ President Kenan Evren responded by applying to the Turkish Constitutional Court to annul this provision. Because the Turkish Constitution does not have a specific provision regarding wearing of religious clothing in universities, the Court was left to

¹¹⁰ Adrien Wing & Ozan Varol, *Is Secularism Possible in a Majority-Muslim Country?: The Turkish Example*, 42 TEX. INT’L L.J. 1, 33 (2006).

¹¹¹ Leyla Şahin v. Turkey, No. 44774/98, para. 36 (Eur. Ct. H.R. June 29, 2004).

¹¹² *Id.* at para. 38.

¹¹³ *Id.* at para. 41

subjectively address the principle factors required for secularism. In 1989 the court struck down the provision in a 10-1 decision, stating that the provision violated the Preamble, Article 2 (secularism), Article 10 (equality before the law), Article 24 (freedom of religion), and Article 174 (protection of Atatürk's reforms) of the Constitution.¹¹⁴ The Court emphasized that the provision was inconsistent with the important secular principles established by Atatürk, particularly because in a secular state, laws should not be derived from religion. It stated that "[l]aws that are based on religion mandate different laws for different religions and do not encompass the principle of religion..."¹¹⁵ Furthermore, the Court noted that the provision was based on religion which immediately eliminated the neutrality a secular government must have towards all religions.¹¹⁶

In regards to Article 10 of the Constitution of equality before the law, the Court found that the provision was in violation because it made a special exception for Islamic clothing "out of religious conviction".¹¹⁷ The Court stated that the provision would lead to the coercion of all Islamic women to wear headscarves.¹¹⁸ The Court further noted that the violation of Article 24, on freedom of religion, would result because wearing of religious symbols in a university would ultimately lead to discrimination between people of both different and the same religions. It stated that Muslim women who did not choose to wear a headscarf would inevitably be viewed as faithless or nonbelievers and would be discriminated against.¹¹⁹

One year after the Turkish Constitutional Court's decision, the TGNA passed a new law that stated that "Choice of dress shall be free in higher-education institutions, provided that it

¹¹⁴ See, Wing & Varol, *supra* note 109, at 37.

¹¹⁵ *Id.*

¹¹⁶ See *Id.*

¹¹⁷ See *Id.*

¹¹⁸ See *Id.*

¹¹⁹ *Id.*

does not contravene the laws in force.”¹²⁰ Rather than explicitly permit religious clothing, the law allowed freedom of dress, in order to abide by the constitutional principles the Court had previously stated were violated. Again, there was an application to the Constitutional Court for the annulment of the law. The Court held the law constitutional in a 7-4 decision.¹²¹ However, the Court reasoned that women would still not be allowed to wear headscarves in educational institutions because wearing the headscarf violated the “laws in force [the Turkish Constitution].”¹²² The Court held that, “The freedom afforded by this provision is conditional on its not being contrary to ‘the laws in force’. The [previous] judgment of the Constitutional Court established that covering one’s neck and hair with the headscarf is first and foremost contrary to the Constitution.”¹²³ Ultimately, although the Court held that the law was constitutional, it stated that the law was conditioned on a matter that was violated and, thus, the law did not allow women to wear headscarves in universities.¹²⁴

Leyla Şahin v. Turkey (2004):

The issue surrounding the ban of headscarves was heightened further by Leyla Şahin. Ms. Şahin brought her case to the European Court of Human Rights (“ECHR”), alleging that Turkey’s ban against the wearing of Islamic headscarves in educational institutions violated her rights under Article 8, 9, 10, 14, and Article 2 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms.¹²⁵ She argued that the circular violated her rights because there was “[n]o statutory basis for the circular and the Vice-Chancellor’s Office had no

¹²⁰ Şahin, No. 44774/98, para. 40.

¹²¹ Decision No. 1991/8 (Turk. Const. Ct. 1991).

¹²² *Id.*

¹²³ Şahin, No. 44774/98, para. 41.

¹²⁴ Decision No. 1991/8 (Turk. Const. Ct. 1991).

¹²⁵ *See* Şahin, No. 44774/98, para. 3.

regulatory power in that sphere.”¹²⁶ In addition, she alleged the ban violated her Article 14 rights because it forced students to choose between education and religion and her rights under Article 8 and 10 because the ban hindered her ability to express her beliefs.¹²⁷

Ms. Şahin was enrolled as a student at the University of Istanbul Department of Medicine in August 1997.¹²⁸ Prior to her enrollment, the University of Istanbul had adopted a resolution which stated that “[t]he Constitutional Court has delivered a judgment which prevents religious attire from being worn in universities.”¹²⁹ Moreover, on 23 February 1998, the Vice Chancellor of the university issued a circular which stated, in part, that “[s]tudents whose ‘heads are covered’ (who wear the Islamic headscarf) and students (including overseas students) with beards must not be admitted to lectures, courses or tutorials.”¹³⁰

In the following months Ms. Şahin was denied access to take an oncology examination, the chair excluded her from a course on orthopedic traumatology, refused her admission to a neurology lecture, and denied her permission to complete a public health examination all because she was wearing an Islamic headscarf.¹³¹ Thereafter, Ms. Şahin filed suit in the Istanbul Administrative Court for an order setting aside the circular.¹³² The Court dismissed the application, holding that a university vice-chancellor had the power to regulate students’ dress

¹²⁶ *Id.* at para. 18

¹²⁷ Benjamin Bleiberg, *Unveiling the Real Issue: Evaluating the European Court of Human Rights’ Decision to Enforce the Turkish Headscarf Ban in Leyla Şahin v. Turkey*, 91 CORNELL L. REV. 129, 144 (2005).

¹²⁸ *See* Şahin, No. 44774/98, para. 15.

¹²⁹ *Id.* at para. 45.

¹³⁰ *Id.* at para. 16.

¹³¹ *Id.* at para. 17.

¹³² *Id.* at para. 18.

for purposes of maintaining order in the university setting.¹³³ On appeal, the Council of State affirmed this judgment.

Ms. Şahin applied her case to the ECHR and argued that the headscarf ban “[c]onstituted an unjustified interference with her right to freedom of religion, in particular, her right to manifest her religion [under Article 9].”¹³⁴ Article 9 states:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.¹³⁵

The ECHR Chamber held unanimously that Article 9 of the Convention was not violated by the implementation of the headscarf ban, because the interference with Ms. Şahin’s right to manifest her religion pursued a legitimate aim and was “necessary in a democratic society.”¹³⁶ The Court did not address her claims under Articles 8, 10, or 14 reasoning that the circumstances were the same as those discussed in regards to Article 9.¹³⁷

Ms. Şahin then applied to the Grand Chamber of the ECHR. The Grand Chamber affirmed the lower court, in a 16-1 decision, stating the Islamic headscarf ban in universities did

¹³³ *Id.* at para. 19.

¹³⁴ *Id.* at para. 70.

¹³⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, 213 U.N.T.S. 222, entered into force Sep. 3, 1953.

¹³⁶ Şahin, No. 44774/98, para. 71.

¹³⁷ *Id.* at para. 8.

not violate Article 9 of the Convention. The court stated that the interference with Ms. Şahin's right to manifest her religion was "prescribed by law" because it had a basis in domestic law, the basis was accessible to Ms. Şahin, and the interference was foreseeable to a degree that is reasonable in the circumstances.¹³⁸ The court held that although there was an interference in Ms. Şahin's right to manifest her religion, it was validly based on the 1991 interpretation of religious clothing in educational institutions by the Turkish Constitutional Court, which was accessible by Ms. Şahin, and the interference by the University was foreseeable since the regulation was enacted in 1994.¹³⁹ Furthermore, the court noted that the interference with Ms. Şahin's right to manifest her religion was "[p]rimarily [for the purpose of] pursuing the legitimate aims of protecting the rights and freedoms of others and of protecting public order."¹⁴⁰

Finally, the Court affirmed that the interference was "necessary in a democratic society", especially in the Turkish context, to prevent fundamentalist religious movements from pressuring students and protecting public order.¹⁴¹ The Court emphasized that there is a "margin of appreciation" accorded to the member states in order to permit the state to protect the rights and freedoms of others, to secure civil peace, and to promote "true religious pluralism" through the regulation of education.¹⁴² The Court accorded a great deference to the university leaders stating that they were in a better position to evaluate the needs of the university and to the laws of Turkey enshrining secularism.¹⁴³

In regard to Ms. Şahin's claim that her Article 2 of Protocol No. 1 right (stating "no person shall be denied the right to education") had been violated, the Court held that the right to

¹³⁸ *Id.* at para. 75.

¹³⁹ *Id.* at para. 94.

¹⁴⁰ *Id.* at para. 99.

¹⁴¹ *Id.* at para. 110.

¹⁴² *Id.*

¹⁴³ *Id.*

education may be limited through the “margin of appreciation” enjoyed by the state and the right is not absolute.¹⁴⁴ The Court noted that the limitations to Ms. Şahin’s education aimed to “[p]reserve the secular character of educational institutions” and, thus, there was no violation of Article 2 of Protocol No. 1 of the Convention.¹⁴⁵

The Court concluded by assessing the headscarf ban in relation to gender equality and women’s rights. The Court stated that gender equality is a central principle of the Convention and “[a] goal to be achieved by member States of the Council of Europe” and allowing women to wear the Islamic headscarf in educational institutions violated gender equality in Turkey.¹⁴⁶ It further noted that “[w]earing the Islamic headscarf could not easily be reconciled with the message of tolerance, respect for others and, above all, equality and non-discrimination...”¹⁴⁷

Imperfections of the ECHR’s Decision:

In *Leyla Şahin v. Turkey*, Ms. Şahin contested the Chamber’s findings with points that took into account a comprehensive view of Turkey’s history. She argued that “[t]he notions of ‘democracy’ and ‘republic’ were not alike. While many totalitarian regimes claim to be ‘republics’, only a true democracy could be based on the principles of pluralism and broadmindedness.”¹⁴⁸ She accurately claimed that the structure of Turkey’s government and university systems were the result of decades of military coup d’états and not politically legitimate.¹⁴⁹ By not taking this into account, the ECHR foolishly granted extreme deference to the Turkish Constitutional Court and did not strictly scrutinize Turkey’s assessment of the need

¹⁴⁴ *Id.* at para. 154.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at para. 115.

¹⁴⁷ *Id.* at para. 111.

¹⁴⁸ *Id.* at para. 100.

¹⁴⁹ *Id.*

of the headscarf ban. Ms. Şahin also argued that there had been no signs of tension that would have justified the radical measure taken by the Court.¹⁵⁰ Ms. Şahin was an adult who was fully able to determine what was appropriate conduct and the allegations that she had shown disrespect towards others by wearing her Islamic headscarf were entirely unfounded.¹⁵¹ She had not sought to influence other students by wearing the Islamic headscarf and the Court presented no evidence that she had ever attempted to exert coercive pressure on her classmates.¹⁵² Her choice to wear the headscarf had been wholly based on “[r]eligious conviction, which was the most important fundamental right that [a] pluralistic, liberal democracy had granted her.”¹⁵³ Her decision to wear the headscarf should be indisputable if she considers it appropriate.

In its opinion, the ECHR continuously defended the value of secularism to protect democracy in Turkey, yet it did not correctly judge Turkey’s interpretation of secularism. The Court unquestionably accepted that any action taken by Turkey to preserve the principle of secularism was consistent with human rights, rather than strictly scrutinize the denial of a right to an individual and weigh the consequences carefully. The Court should have looked to recent Turkish history, which is plagued with military coup d’états and no truly democratically elected leaders.

Rather than allowing religious freedom, the Turkish state imposed Kemalist Islam on society. For decades, the Kemalist military leaders used strict secularist ideals to control the political arena, while incorporating Islam when it was politically advantageous.¹⁵⁴ The Kemalists brutally restricted religious freedom and strictly regulated Islamic religious education

¹⁵⁰ *Id.* at para. 100.

¹⁵¹ *Id.* at para. 101.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Bleiberg, *supra* note 126, at 153.

through the Directorate of Religious Affairs (the Diyanet).¹⁵⁵ The Diyanet also controlled contents of the imam's Friday prayer sermons and regulated Turkey's 75,000 mosques.¹⁵⁶ Unfortunately, the ECHR did not address any of these issues when deciding whether the headscarf ban was necessary. Rather than be influenced by its own political agenda and Islamophobia, the Court should have discussed the possibility of the Kemalists' desire to indoctrinate female students and convert them to their practice of Kemalist Islam.

Furthermore, the ECHR showed ignorance when stating that wearing the Islamic headscarf was an expression of gender inequality. It is evident that the Court was highly influenced by the French stereotypes of the Islamic headscarf and by French-influenced Kemalist stereotypes, when writing the opinion. Western popular culture has for long struggled to understand how there could be any other reason than coercion that a Muslim woman would wear a headscarf. Many supporters of the ban view the headscarf as "[o]ppressive, reasoning that women who 'choose' to wear the headscarf must have been brainwashed by their families and their religion into thinking that they are required to wear it."¹⁵⁷ In its opinion, the Court addressed its concern for gender inequality within Islam, rather than fully focus on the task to determine whether a headscarf ban is necessary in a democratic society.¹⁵⁸ If the ECHR's goal was to promote gender equality by upholding the headscarf ban in universities, the decision was extraordinarily underinclusive.¹⁵⁹ The Court should have imposed a more extensive ban throughout the society if it was in fact concerned with principles of gender equality. The ECHR ignores that coercion is not the only reason that women choose to wear an Islamic headscarf.

¹⁵⁵ *International Religious Freedom Report 2004: Turkey*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/g/drl/rls/irf/2004/35489.htm> (last visited Nov. 10, 2011).

¹⁵⁶ *Id.*

¹⁵⁷ Bleiberg, *supra* note 126, at 161.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

Many Muslim women consider dressing provocatively in public repressive and feel that modest dress is freeing. Women have also chosen to wear the Islamic headscarf for reasons of political protest, expression of personal identity, custom, culture, and religious conviction. Whatever the reason may be, to wear or not to wear a headscarf should be a choice made by each woman and not one imposed by law.

The ECHR's ruling may have superficially set out to protect women from coercion and curb fundamentalist Islam, yet in effect it precluded a large group of women from attending universities at all. Daughters of wealthy families, like Prime Minister Erdoğan's daughters, were able to send their children to study in the United States where they have the freedom of choice.¹⁶⁰ However, the majority of women who were forced not to wear a headscarf at university continued to wear the headscarf; giving up access to education rather than betray their values. Many women were no longer competitive in the job market and did not receive the benefit of a secular education that is so highly valued by the Turkish Constitutional Court. Similar to "[p]olicies of forced veiling that terrorize the women of some other Islamic countries, Turkey's ban 'undercuts individual autonomy and choice, a fundamental aspect of women's rights.'"¹⁶¹ Freedom of choice for each individual woman would resolve the issue of women being forced to wear the headscarf and the issue of women denied the right to choose.

Erdoğan's Response to the Islamic Headscarf Ban:

In his victorious 2007 campaign, Prime Minister Erdoğan promised to lift the ban on Islamic headscarves in public institutions.¹⁶² In 2008, the Turkish Parliament passed a Constitutional amendment that gave women the right to wear headscarves in Turkish

¹⁶⁰ *Id.*

¹⁶¹ Bleiberg, *supra* note 126, at 163.

¹⁶² *Turkey and Islam: Veils of Half-Truth*, THE ECONOMIST (Feb. 14, 2008), <http://www.economist.com/node/10701684>.

universities.¹⁶³ Erdoğan's AK Party stated that the ban had stopped education for many women and that wearing a headscarf was a matter of personal and religious freedom, but the military and Turkish Courts stated that easing the ban would violate the Constitution's secular principles and blocked removal of the ban.¹⁶⁴

On 12 September 2010, a constitutional referendum was passed on twenty-six proposed changes to the Turkish Constitution that had been drafted by the military after seizing power in 1980.¹⁶⁵ Approximately 58% of voters were proponents of the amendments, which aimed to bring the Constitution more in line with European Union standards.¹⁶⁶ The amendments included granting civilian courts power to try military personnel for crimes against the state, strengthening gender equality, and banning discrimination against children, elderly, and disabled persons.¹⁶⁷ The amendments also removed the ban on politically motivated strikes and allowed workers to join more than one union.¹⁶⁸

After winning the referendum, the head of the government's Higher Education Board (YÖK), Yusuf Ziya Özcan, vowed to support any university student who was disciplined for wearing an Islamic headscarf on campus. Mr. Özcan stated that "You cannot tell anyone, especially a female student over the age of 18, how to dress. This is humiliating for them... We [YÖK] will do our part [as] this is a matter of the right to an education. No one can take that

¹⁶³ *Court Annuls Turkish Scarf Reform*, BBC NEWS (June 5, 2008), <http://news.bbc.co.uk/2/hi/europe/7438348.stm>.

¹⁶⁴ *Id.*

¹⁶⁵ *Turkey Backs Constitutional Changes*, BBC NEWS (Sep. 12, 2010), <http://www.bbc.co.uk/news/world-europe-11278602>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

away...I give my personal guarantee [that] students who do not wear headscarves will also be under our protection.”¹⁶⁹

Although the debate has not ended, the actions of the AK Party has resulted in almost all universities in Turkey abandoning the prohibition of women wearing headscarves.¹⁷⁰ The abandonment of this law is the path to preservation of a fundamental human right to freedom of religion, which had been violated for decades. University students who had been long been deprived of their rights have stated, “I feel happy that I don’t have to stop in a mosque on the way [to class] and change into [a] wig.”¹⁷¹ The AK Party has made a move toward justice and religious freedom, which are key principles necessary in a true democracy.

Changing Role of the Turkish Military with the Emergence of the AK Party:

The Turkish military has long seen itself as the guardian of Turkey’s secular system and has forcefully intervened when it has felt any threat towards its Kemalist regime. The military has overthrown civilian governments through engineered coup d’états in 1960, 1971, and 1980.¹⁷² Most recently, in 1997, a military led campaign forced the resignation of Turkey’s first Islamic government.¹⁷³

The absolute control of the government by the military was suddenly interrupted with the bombshell resignations of several military chiefs in July 2011. The resignations are said to be

¹⁶⁹ *YÖK Head Gives Guarantee to All Turkish Students on Headscarves*, HÜRRİYET DAILY NEWS (Oct. 13, 2010), <http://www.hurriyetdailynews.com/n.php?n=yok-head-gives-personal-guarantee-to-all-students-2010-10-13>.

¹⁷⁰ *Quiet End to Turkey’s College Headscarf Ban*, BBC NEWS (Dec. 31, 2010), <http://www.bbc.co.uk/news/world-europe-11880622>.

¹⁷¹ *Id.*

¹⁷² KINZER, *supra* note 1, at 132.

¹⁷³ *Turkey: Military Chiefs Resign En Masse*, BBC NEWS (July 29, 2011), <http://www.bbc.co.uk/news/world-europe-14346325>.

the result of the government arresting senior officers accused of plotting a military coup d'état.¹⁷⁴ The chief of the Turkish armed forces, Isik Kosaner, as well as the heads of the army, navy, and air force resigned just hours after a court "[c]harged twenty-two suspects, including several generals and officers, with carrying out an internet campaign to undermine the government."¹⁷⁵ The allegations stemmed from tension between the military and AK Party and the 2003 "Sledgehammer" conspiracy—a coup d'état planned at a military seminar to depose the government.¹⁷⁶

The resignations, which occurred shortly before a round of military promotions, were unprecedented in Turkey. For the first time in history, civilians took charge of appointing new commanders to the Turkish armed forces. After a four-day meeting chaired by Prime Minister Erdoğan, the new appointment decisions were made, led by announcement of the new army chief, General Necdet Özel.¹⁷⁷ General Özel had been a visibly apolitical officer, but it is too soon to know if his leadership will reform the armed forces. However, the massive military resignation can be viewed as a mini-revolution in Turkey. The AK Party has successfully established the principle of civilian supremacy over the unconditional military rule that had unseated four Turkish governments and achieved an important principle of true democracy.

Turkey as a Model for the Arab Spring's Emerging Democracies:

Although Turkey has only recently arrived at its democratic destination with the emergence of the AK Party, it is likely that emulation of its success will result in progress and

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Turkey Appoints Military Heads After Shock Resignations*, BBC NEWS (Aug. 4, 2011), <http://www.bbc.co.uk/news/world-europe-14401661>.

success in the Arab Spring nations. A main motto during Arab Spring demonstrations was “The people want to bring down the regime.”¹⁷⁸ In Tunisia, the nation that sparked the initial set of protests, citizens were infuriated by high unemployment rates, government corruption, poor living conditions, food inflation, and lack of freedom of speech.¹⁷⁹ After successfully ousting President Zine El Abidine Ben Ali, who had held office for twenty-three years, Tunisia held its first democratic elections on 23 October 2011.¹⁸⁰ Voters elected representatives for the new Constituent Assembly, which is responsible for drawing up a new constitution and appointing a new transition government.¹⁸¹

In a historic poll, the moderate Islamic Ennahda party won 41% of the vote, securing 90 seats in the 217-member parliament.¹⁸² Tunisia’s largest secularist party, the Congress for the Republic, came second with nearly 14% and 30 seats in parliament.¹⁸³ Ennahda, which was banned under the Ben Ali regime, “[s]ays it has modeled itself on the governing AK Party in Turkey, another Muslim-majority country which has remained a secular state.”¹⁸⁴ Like Prime Minister Erdoğan, the Ennahda party leader, Rachid Ghannouchi, has vowed to make Tunisia a “[f]ree, independent, developing and prosperous [state], in which the rights of God, the Prophet,

¹⁷⁸ Uriel Abulof, *What is the Arab Third Estate?*, HUFF POST WORLD (March 10, 2011), http://www.huffingtonpost.com/uriel-abulof/what-is-the-arab-third-es_b_832628.html.

¹⁷⁹ *Tunisia Riots: Reform or be Overthrown, US Tells Arab States Amid Fresh Riots*, THE TELEGRAPH (Nov. 19, 2011), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/tunisia/8258077/Tunisia-riots-Reform-or-be-overthrown-US-tells-Arab-states-amid-fresh-riots.html>

¹⁸⁰ *Q&A: Tunisia Elections*, BBC NEWS (Oct. 17, 2011), <http://www.bbc.co.uk/news/world-africa-15309152>.

¹⁸¹ *Id.*

¹⁸² *Tunisia’s Islamist Ennahda Party Wins Historic Poll*, BBC NEWS (Oct. 27, 2011), <http://www.bbc.co.uk/news/world-africa-15487647>.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

women, men, the religious and the non-religious are assured because Tunisia is for everyone.”¹⁸⁵ Foreign tourism is a great source of revenue for Tunisia (employing 400,000 people and worth approximately \$2.5bn to the GDP in one year), as it is for Turkey, thus Ennahda has said it will not ban alcohol or bikinis on beaches.¹⁸⁶

Egypt, another Arab Spring nation, is scheduled to have its first parliamentary elections, since the overthrow of former President Hosni Mubarak, on 28 November 2011.¹⁸⁷ For the majority of the nine months since Mubarak’s resignation, Egypt’s Supreme Military Council has been in control of the country. The military generals have appointed a weak cabinet and prime minister and aim to maintain control of Egypt beyond election day.¹⁸⁸ They are promoting constitutional principles that will secure the military’s place as guardians of the state and place military supremacy above parliamentary power.¹⁸⁹ Ironically, the protesters seem to have paved the path for a military dictatorship for generals who were long loyal to Mubarak. The military has arrested protesters, tortured them, and put them on trial before military tribunals.¹⁹⁰ The military has not moved to revive the Egyptian economy, which activists believe is a military tactic to remain in control of civilians.¹⁹¹ Egyptians are currently protesting against provisions

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Youssef Hamza, *Generals in Control; Egyptians Unenthused About Elections*, THE NATIONAL (Nov. 14, 2011), <http://www.thenational.ae/news/worldwide/generals-in-control-egyptians-unenthused-about-elections>.

¹⁸⁸ *Id.*

¹⁸⁹ Trudy Rubin, *The Turkish Model May be Egypt’s Best Hope, but it’s Unlikely to Replicate There*, DAILY NEWS (Nov. 9, 2011), <http://bgdailynews.com/articles/2011/11/09/opinion/commentary/comment1.txt>.

¹⁹⁰ Hamza, *supra* note 185.

¹⁹¹ *Id.*

that grant great constitutional power to the military.¹⁹² The protesters believe that the “[a]rmy is the people’s institution, and the people have the right to supervise it [and not vice versa].”¹⁹³

Turkey’s model of pro-business and pro-globalization can help both the Tunisian and Egyptian economies prosper through trade and economic progress. After all, the Arab Spring demonstrations were greatly precipitated by poverty and high unemployment rates. In the past decade, Prime Minister Erdoğan has “[a]ggressively embraced free market capitalism and nearly tripled per capita income in the Turkey.”¹⁹⁴ The AK Party has successfully found a balance between issues of faith, nationalism, religion, and globalism while achieving economic and political stability.¹⁹⁵ Under Prime Minister Erdoğan, Turkey has become a “[m]anufacturing and export powerhouse.”¹⁹⁶ The AK Party has addressed Islam’s call for social justice by “[c]ombin[ing] privatization with massive social welfare programs that offer affordable housing, near-universal health care and the free distribution of sugar, flour, coal and even schoolbooks.”¹⁹⁷ Most importantly, the AK Party has shown the world that Islam, democracy, and secularism can harmoniously co-exist.

Arab Spring countries should look to the democratization of Turkey and build a respectful relationship between religious and secular sects of their civil societies. The threat to democracy is authoritarian rule, not Islam. When drafting their new constitutions, Tunisia and

¹⁹² 18 November 2011 is the first time since the revolution that the emerging military rule has been vigorously challenged. Thousands of protestors attended the demonstrations in Tahrir Square.

¹⁹³ David Kirkpatrick, *Egypt Islamists Demand the End of Military Rule*, THE NEW YORK TIMES (Nov. 18, 2011), http://www.nytimes.com/2011/11/19/world/middleeast/egyptian-islamists-rally-to-protest-military-rule.html?pagewanted=2&_r=1&nl=todaysheadlines&emc=tha2.

¹⁹⁴ David Rohde, *Trust Tunisia*, REUTERS (Oct. 24, 2011), <http://www.reuters.com/article/2011/10/24/idUS281529449020111024>.

¹⁹⁵ *Profile: Recep Tayyip Erdoğan*, BBC NEWS (June 12, 2011), <http://www.bbc.co.uk/news/world-europe-13746679>.

¹⁹⁶ *Id.*

¹⁹⁷ Rohde, *supra* note 190.

Egypt should mandate “[e]lections, individual rights, and protections for women and minorities.”¹⁹⁸ These protections will be the defense against authoritarian leaders, whether they are in the form of military generals or dictators.

For a democracy to thrive, it is crucial, especially in the current state of Egypt, that the military be subservient to the elected civilian authority. It was not until the AK Party cemented its authority over the Turkish military, that it was able to govern without high risk of a military organized coup d’état. The current Egyptian protests are evidence that the people of Egypt fear that their revolution may be hijacked by the military. The Egyptian military has refused to withdraw its guideline, but has agreed to continue the debate with political leaders who stand true to principles of parliamentary rule.¹⁹⁹ Egyptians should examine the AK Party’s success in cementing civilian control of the military in order to block the path to Egypt becoming a military state.

As Prime Minister Erdoğan declared to a crowd in Cairo in the summer of 2011, “Democracy and freedom is as basic a right as bread and water for you...Governments have to get their legitimacy from the people's will. Otherwise they are illegitimate, this is the core of Turkey's politics in the region.”²⁰⁰ This ability to balance Islam and democracy is rare and should be carefully studied by Arab Spring nations as they draft new constitutions and form new governments. Essential to the success of Turkey’s democracy is that the AK Party does not view secularism as a means to oppress religion, but as a principle that leads to dealings with people in every religion in an equal manner. Prime Minister Erdoğan stresses that there are “[n]o

¹⁹⁸ *Id.*

¹⁹⁹ Kirkpatrick, *supra* note 194.

²⁰⁰ *Turkey's Erdoğan Tells Arabs to Embrace Democracy*, THE SUN DAILY (Sep. 12, 2011), <http://www.thesundaily.my/news/142761>.

contradictions between Islam and secularism in its modern sense.”²⁰¹ He has called for secular constitutions in the Arab Spring nations and intellectuals throughout the Arab world “[u]nderstand that a secular constitution resembles a safety valve, maintains the country's unity, enhances its national security, and allows the country to merge into the international system.”²⁰²

The struggle will be to convince the majority of the Arab world that a modern secular constitution does not oppress freedom of religion, as it did during the reign of Atatürk’s Turkey. It must be conveyed to those who have lived under authoritarian rule for decades that they need not choose between economic prosperity and individual freedom. Prime Minister Erdoğan’s actions of defending religious freedom of expression through his attempts to lift the Islamic headscarf ban and his successful restructuring of the role of the military demonstrates the possibility of secular democracy to exist harmoniously in a Muslim majority state. Turkey has successfully achieved a balance and its model should be used to help the Arab Spring nations establish economic and political stability and strength to build rich, sustainable democracies in the region.

²⁰¹ Mohammad Akef Jamal, *Erdoğan’s Call for Secular Constitutions*, GULF NEWS (Oct. 25, 2011), <http://gulfnews.com/opinions/columnists/erdogan-s-call-for-secular-constitutions-1.917927>.

²⁰² *Id.*