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**RAMSES<sup>2</sup>**

**Freedom of Religion vs.  
Secularism?:  
Universal Rights,  
Turkish Islamism, and  
the Headscarf**

Nora Onar

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University of Oxford

**About the author:** Nora Onar is a doctoral candidate at St Antony's College. She holds the lectureship in International Relations at Worcester College, University of Oxford. She has a Masters degree in International Relations and Conflict Management from John Hopkins University's School of Advanced International Studies (SAIS), and a Bachelor's Degree from Georgetown University's School of Foreign Service (SFS). She was a Fulbright Scholar to Turkey in 1998/9.

nora.fisher@sant.ox.ac.uk

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- The (de)legitimising discourses on borders in South East Europe and the wider Mediterranean;
- The impact of imperial legacies and memories on border conflicts;
- The transformation and resolution of border conflicts.

The RAMSES2 sub-project run by St Antony's brings together a group of scholars from the European Studies Centre, the Middle East Centre, Maison Française and the Department of Politics and International Relations. The steering committee includes Kalypso Nicolaidis (Chair), Othon Anastasakis, Richard Caplan, Philip Robins and Michael Willis.

**Freedom of Religion versus Secularism?:  
Universal Rights, Turkish Islamism, and the Headscarf<sup>1</sup>**

**Nora Onar**

**Abstract**

*The global resonance of human rights discourse is undermined by what some perceive as the particularist origin of a human rights canon that emerged from the western philosophical tradition. This essay speaks to the question of whether a genuinely universal understanding of human rights is possible. It does so by examining Turkish Islamists' deployment of human rights discourse, with a focus on the debate over veiling in public institutions. It is argued that although philosophical tensions plague the Islamist rights discourse, the syncretic experiment has encouraged both the diffusion of rights principles and the generation of new conceptual categories. Notably, the Turkish Islamist project has given rise to an embryonic natural rights rationale for veiling which if further developed may serve the cause of reconciling the Islamist position with the secularist state.*

**Introduction:**

Acceptance, in principle, of the desirability of universal human rights has become a salient characteristic of the international system<sup>2</sup>. Yet, as Kofi Annan observed in 2003, the gap between principle and practice which nags the global human rights regime runs the risk of 'making a mockery' of the project<sup>3</sup>. This concern is heightened by resurgent chauvinism worldwide, and a perceived clash between 'Islam' and the 'West'. If human rights are to have truly universal purchase it is necessary to reflect upon what these rights signify and how they unfold in praxis. To what extent are so-called universal principles compatible with particularistic values in a multicultural world? Does the 'European' pedigree of universal human rights obstruct their adoption by 'non-Europeans'? Is their

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<sup>1</sup> The paper was presented at the *Oxford Symposium on (Trans)Nationalism*, St Antony's College, Oxford, 26-28 May 2006 convened by Kerem Oktem and Dimitar Bechev as part of the RAMSES2 Network workpackage on borders in the Mediterranean.

<sup>2</sup> Donnelly, Jack, *Universal Human Rights in Theory and Practice*, New York, Cornell University Press, 2003. p.38

<sup>3</sup> Annan, Kofi, 'Do we still have universal values?', *Globalist*, 24 December 2003, <[www.theglobalist.com](http://www.theglobalist.com)>

diffusion, as some argue, really an oppressive instrument of modernity<sup>4</sup>, a neo-colonial enterprise<sup>5</sup>, a ‘fundamentalism of human rights’<sup>6</sup>? Or can it be, as Chakrabarty contends, that ‘at the end of European imperialism, European thought is a gift to us all’<sup>7</sup>?

This paper speaks to these questions by examining in historical and contemporary perspective how Turkish Islamists have come to engage rights discourse. It explores the theoretical tensions which characterise such an endeavour and examines how these tensions play out in practice, specifically with regard to the ongoing debate over the permissibility of the Islamic headscarf in public institutions. It is argued that although the Turkish Islamist rights enterprise reveals some contradictions, the *process* of engaging human rights through Islamist idiom has facilitated both the diffusion of human rights principles and the generation of new categories of thought which may contribute to the long term project of reconciling western-cum-universal and ‘Islamic’ perspectives on rights.

Analysis is situated in a three-tiered framework which first presents some tensions imbedded in the western rights tradition and Islamist engagement of that tradition. Next, the historical context in which Turkish Islamists began to develop a hybrid rights discourse in their challenge to the secularist state is set forth. An empirical snapshot is then offered of how this discourse has been deployed by columnists at a leading Islamist newspaper. The analysis reveals that although the Turkish Islamist rights project has stalled, due in part to challenges inherent in the project and in part to the specifics of the Turkish experience, it has nonetheless proved a fruitful enterprise. It has helped familiarize actors across the political spectrum and the public at large with the language of human rights. Moreover, it has generated the striking syncretic proposition that the right to veil is a natural right of pious women, a formulation which if further developed may serve the cause of reconciling Turkish Islamists and the secularist state

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<sup>4</sup> Toumin, Stephen, *Cosmopolis: The Hidden Agenda of Modernity*, Chicago, University of Chicago Press, 1990.

<sup>5</sup> Nicolaidis and Howse do not necessarily endorse this view but cite it as one of the main criticisms levelled at an EU which seeks to project its own Utopia on the rest of the world.’ Nicolaidis, Kalypso and Howse, Robert, ‘This is my EUtopia...’: Narrative as Power’, *Journal of Common Market Studies*, Vol. 40, No. 4, 2002. p.767

<sup>6</sup> Eszenberger cited in Habermas, Jürgen, ‘Kant’s Idea of Perpetual Peace with the Benefit of Two Hundred Years’ Hindsight’, in Bohman, James and Lutz-Bachman, Mattias, eds, *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal*, Cambridge, Mass: MIT Press, 1997. p.146

<sup>7</sup> Chakrabarty, Dipesh, *Provincializing Europe: Post-colonial Thought and Historical Difference*, Princeton, Princeton University Press, 2000. p. 255

## **Theoretical considerations**

At the outset it is necessary to unmask and take a position vis-à-vis a false dichotomy which tends to confound comparative work in the study of human rights. This regards the question of universalism versus multiculturalism in human rights, a debate which in the 1990s took the form of the ‘Asian challenge’. At that time, critics like Onuma rightly objected to the appropriation of the term ‘universal’ by westerners for their own conception of rights, and the assignation of ‘particularity’ to others’ formulations of rights. Moreover, the western emphasis on civic and social rights premised upon an individualist ontology was charged with undermining the importance of social and economic rights in more communitarian Asian societies<sup>8</sup>. The problem with the relativist account was that it reproduced the very logic of the Orientalism it attacked by positing an authentic cultural essence to Asian positions on human rights<sup>9</sup>. Both the critique and the critique of the critique are relevant to the heated debate today over whether ‘universal’ human rights are compatible with ‘Islamic’ formulations of rights. For just as the West has no monopoly on conceptualizing human dignity, nor is there an essentially Islamic understanding of rights in the diverse societies and social groups which constitute the global population of practicing and non-practicing Muslims.

Informed then by the ‘Asian values’ debate, this essay takes the position that the ‘western’ perspective on rights emerged from a specific historical and cultural context which exalts the inalienable rights of the individual. This approach served as the point of departure for those rights prescribed by modern international law, a canon which can legitimately be considered ‘universal’ having been endorsed by the majority of states of this world. Likewise, there are ‘Islamic’ understandings of rights based on traditional jurisprudence, hermeneutical revisiting of seminal texts, and *ad hoc* arguments by Islamist activists. The point is that despite their distinctive characteristics both the western-cum-universal and ‘Islamic’ rights discourse we encounter today emerged from the crucible of modernity as attempts to protect human dignity at the individual and collective levels. It is thus the encounter with modernity and the circumstances under

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<sup>8</sup> Onuma, Yasuaki, ‘Towards an intercivilizational approach to human rights’, in *The East Asian Challenge for Human Rights*, Bauer, R. Joanne and Bell, Daniel, A., eds, Cambridge, Cambridge University Press, 1999. pp.103-123

<sup>9</sup> Inoue, Tatsuo, ‘Liberal democracy and Asian Orientalism’, in Bauer and Bell. pp.37-42; Leaders like Lee Kuan Yew of Singapore who advanced these claims were also accused of opportunistically using the Asian values debate to justify autocratic policies.

which that encounter has unfolded and not an overdetermined, cultural code which shapes localised understandings of human rights across today's world. Acknowledging this makes it possible to comparatively analyse distinct traditions and their interpenetration without succumbing to either essentialism or relativism. It is also critical to grasping why 'Islamic' understandings of rights, at least in the case of Turkey, are problematically but genuinely both conservative and emancipatory, communitarian and liberal.

### *Universal Human Rights*

This article uses the term universal human rights to refer to the inalienable individual rights set forth in the United Nations' Universal Declaration of Human Rights and subsequent documents such as the European Convention on Human Rights. Over a dozen rights are grouped in families such as security rights, liberty rights, equality rights, political rights, due process rights, and welfare rights<sup>10</sup>. Especially relevant to the discussion in this paper are the rights to freedom of religion and expression.

These rights emerged from a European philosophical tradition with immediate roots in late medieval natural law and the Enlightenment. A legacy of Aquinas, seventeenth century scholastic thinkers like Suarez and Vittoria developed a Christian understanding of natural law in which God, the supremely rational being, created the world and man in his own image. Human beings thus partook of divine reason. Grotius propagated this tradition in Protestant Europe<sup>11</sup>, arguing 'anyone wishing to bring more security and certainty to their lives...might find in natural law a source of reassurance and a basis for conducting civil relations'<sup>12</sup>.

Enlightenment thinkers, however, sought to decouple rights from religion. According to Hobbes, to escape from a state of nature itself tantamount to a state of war, individuals delegated their rights to a state. Individuals could now claim *habeas corpus* by virtue of their humanity rather than their Christianity. This, in tandem with the post-Westphalian principle of state equidistance from different religious practices, allowed for

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<sup>10</sup> Nickel, James, 'Human Rights', in Edward N. Zalta, ed., *Stanford Encyclopaedia of Philosophy*.  
<<http://plato.stanford.edu/archives/sum2003/entries/rights-human/>>

<sup>11</sup> Haakonessen, Knud, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*, 2005, Cambridge, Cambridge University Press. p.15

<sup>12</sup> Williams' characterisation of Grotius in Williams, Howard, *International Relations and the Limits of Political Theory*, London, Macmillan, 1996. p.85

an increasingly non-sectarian understanding of basic human rights which could apply to people of varied backgrounds. Rights became associated with tolerance for diversity, as well as with secularism. However, if rights were a function of the individual *qua* individual, and the sovereign state the guardian of those rights, the state acquired immense power. Detaching rights from a sacred source thus simultaneously emancipated the individual from divine authority and bound him to temporal authority, a potential Leviathan, derived in principle from the body politic.

In this way, the modern state became both the enforcer and potential violator of human rights. The logic of utilitarianism meant that protection of the rights of the majority took precedence over demands of individuals or groups whose demands might impinge upon the rights of the collective. For example, advocates of a particular form of religious observance or a particular political ideology might be censured if their practice endangered the freedom of religion or expression of the rest of society. In such a situation a democratic state faces what has been called the ‘tragedy of the liberal’<sup>13</sup>: it must choose between suppressing the illiberal demands of some—thereby becoming a tyrant—or endangering the rights of other citizens and, ultimately, the democratic state itself.

Locke sought to find a balance between civic rights and state regulation of such rights by arguing, in the natural law tradition, that the right to property forms the core of social relations even in the state of nature. Property rights therefore are antecedent to the state: ‘..every man has a “property” in his own “person”. This is underpinned by the religious view that we are all God’s property and as part of his settlement of the human species on earth we are entitled to regard ourselves as the owners of our own bodies’<sup>14</sup>. Not dissimilarly, the Kantian categorical imperative identified a transcendent ‘personhood’ as the universal source of morality<sup>15</sup>.

Yet, the nineteenth and twentieth centuries saw the modern bureaucratic state accrue ever greater power over individual subjects. This was reinforced by the rise of legal positivism in which authority originated with the state. On one hand, this allowed for institutionalisation of the rule of law. Yet it also meant that law was only as ‘good’ as the statesmen who established the legal regime. Such trends, in tandem with the romantic

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<sup>13</sup> Dalacoura, Katerina, *Islam, Liberalism and Human Rights*, London, I.B. Tauris, 2003. p.27

<sup>14</sup> Williams’ citation and interpretation of Locke, p.99

<sup>15</sup> Symonides, Janusz, *Human Rights: Concepts and Standards*, New Delhi, Rawat, 2002. p.24

impulse to conceive of the body politic as an organic and unitary nation, and the logic of Social Darwinism, fed in some measure the emergence of totalitarian ideologies in which the state dwarfed the individual<sup>16</sup>.

In response, 48 western and non-western sovereign states came together in 1948 to ensure that rights were (re-)endowed with moral as well as positive content through the promulgation of the Universal Declaration of Human Rights. Given the religious, philosophical and ideological diversity of the signatories, the declaration set aside the 'traditional, but controversial, foundation for natural rights, without putting any new foundation in its place. Its strategy was to seek agreement on norms...without seeking agreement on fundamental values and beliefs'<sup>17</sup>. This contributed to the attractiveness of the rights regime, but also meant that the substantive content of rights, such as freedom of religion, remained largely unspecified<sup>18</sup>. Notably, Articles 18 and 19, which guarantee freedom of religion and expression, are ambivalent because some forms of religion or expression may violate other rights delineated in the declaration (e.g. Article 7 which asserts the right to equality before the law to protection from incitement to discrimination)<sup>19</sup>.

### *Islam*

A literal reading of sources of Islamic doctrine<sup>20</sup> reveals a number of principles that are compatible with twentieth century formulations of human rights in the natural law/Enlightenment tradition. As Gellner observed, Islam manifests an 'egalitarian aversion to mediation and hierarchy'<sup>21</sup> which has limited the development of an Islamic 'church' and ensures the equal status of believers regardless of race, nationality, wealth or class<sup>22</sup>. Meanwhile, the existence of four major schools of jurisprudence allows for

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<sup>16</sup> Shestack, Jerome, 'The Philosophical Foundations of Human Rights', in Shute, Stephen and Hurley, Susan, eds, *On Human Rights: the Oxford Amnesty Lectures 1993*, New York, Basic Books, 1994. p.42

<sup>17</sup> Symonides, p.35

<sup>18</sup> Gunn, T. Jeremy, 'The Complexity of Religion and the Definition of Religion in International Law', *Harvard Human Rights Journal*, Vol.16, Spring 2003.

<sup>19</sup> Symonides, p.38

<sup>20</sup> The Koran, the Word of God, is supplemented by the *sunna* which preserves knowledge of the speech and deeds of the Prophet.

<sup>21</sup> Gellner, Ernest, 'The Turkish Option in Comparative Perspective', in Bozdoğan, Sibel and Kasaba, Reşat, eds, *Rethinking Modernity and National Identity in Turkey*, Seattle, University of Washington Press, 1997.

<sup>22</sup> Aslan, Ahmet, 'Islam, Democracy and Turkey', in Yayla, Attila, ed., *Islam, Civil Society and Market Economy*, Ankara, Liberte, 1999. p.93

plurality of interpretation<sup>23</sup>. The Koran espouses a common human ontology which is the basis for an idiom of moral universalism that acknowledges human beings have rights by virtue of their humanity<sup>24</sup>. Islam advocates separation of powers and religious authorities are required to consider the well-being of society when formulating opinions<sup>25</sup>. Arbitrary rule is condemned, and the inherent dignity of the humblest subject acknowledged<sup>26</sup>. The notion of *adl* (justice), understood as equality of all men and women before God<sup>27</sup>, occupies in Islamic thought a comparable place and meaning to the idea of liberty in France<sup>28</sup>. For all of these reasons Islam is ‘intrinsically...the closest [of the major monotheistic religions] to modern views and ideals’<sup>29</sup>. Moreover, principles such as *ijtihad* (independent reasoning) and *shura* (consultation between jurists) have been revived by Islamic modernists and set forth as a basis for Muslim democracy.

There are, however, at least four areas where traditional readings of Islam may be considered incompatible with contemporary human rights prescriptions. The first regards the ontological priority of *shari’a* or *şeriat* (in Turkish) which, in theory, denies the possibility of separating church and state and thus contradicts the secularist position of pluralist equidistance from all forms of religious practice including apostasy and atheism. Second, the Koran stipulates differential treatment of non-Muslims and women who, though granted certain rights, are accorded inferior status to male believers. Meanwhile, veiling, which can be construed as an illiberal practice, is not clearly provided for in the Koran but has long been customary in Islamic tradition<sup>30</sup>. Fourth, Islam allows for *takkiye*, dissimulation in order to achieve the ulterior end of *şeriat*. This can activate the ‘dilemma of the liberal’ wherein Muslim groups in a secular, democratic framework may be perceived to be practicing *takkiye* and repressed as such even though the nature of their ultimate goals cannot be known. For these reasons, the application of human rights, already complicated by the ‘tragedy of the liberal’, becomes even thornier in an Islamic context.

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<sup>23</sup> Lewis, Bernard, ‘A Historical Overview’, in Diamond, Plattner, and Brumberg, eds, *Islam and Democracy in the Middle East*, Baltimore, Johns Hopkins University Press, 2003. p.212

<sup>24</sup> Othman, Norani, ‘Grounding Human Rights Arguments in Non-Western Culture: Shari’a and the citizenship rights of women in a modern Islamic state’, in Bauer, Joanne E., and Bell, Daniel A., eds, *The East Asian Challenge for Human Rights*, Cambridge, Cambridge University Press, 1999. p.173

<sup>25</sup> Ibid. p.92

<sup>26</sup> Lewis, pp.211, 212

<sup>27</sup> Masmoudi, Radwan A., ‘The Silenced Majority’, in Diamond, Plattner, and Brumberg, p.259

<sup>28</sup> Lewis, p.212

<sup>29</sup> Filali-Ansary, Abdou, ‘Muslims and Democracy’, in Diamond, Plattner, and Brumberg, p.195

<sup>30</sup> Ibid. p.93

Although these tensions are genuine they are also abstract. Historical contextualisation reveals a number of attempts to reconcile the two perspectives on rights and their respective inconsistencies. The nineteenth century intellectual encounter between Muslims and western Europeans was fertile ground for such endeavours, engendering a range of reactions. One response was the adoption of the construct of nation and the institution of the nation-state by positivist, secularist elites in Turkey, Iran, and the Arab world. A second response, situated within Islamic tradition and epitomised in the works of Afghani and Abdou<sup>31</sup>, gave rise to both Islamic modernism and fundamentalist movements. Islamic fundamentalists, like their Christian and Jewish counterparts, denounced the nation-state project entirely; Islamic modernists with time came to protest their exclusion from the state in anti-authoritarian rather than anti-modern or anti-secular terms. Yet so long as the state remained authoritarian, the dilemma of how to reconcile moderate Islamist demands with human rights of natural law/Enlightenment pedigree—rights—was a moot question.

### **Historical considerations**

The paper now turns specifically to the Turkish experience. Historically, the political Islamist movement<sup>32</sup> has been borderline anti-systemic, playing by the rules of the secular democratic game in order to change the game. This stance periodically set off the ‘democratic dilemma’ in a state where republican elites had few qualms about privileging secularism over democracy. Ironically, the experience of persecution catalysed the metamorphosis of Turkey’s ‘moderate fundamentalists’ into ‘Muslim democrats’ who came to couch their opposition to the secular establishment in the language of ‘universal’ human rights.

#### *Early Republic, 1923-1949*

Turkey’s founding fathers adopted the prevailing European Orientalist view that Islam had been a source of Ottoman decline. Embracing a Comptian faith in social

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<sup>31</sup> Kedourie, Elie, *Afghani and 'Abduh: an essay on religious unbelief and political activism in modern Islam*, London, Frank Cass, 1997.

<sup>32</sup> Turkish Islamism is a highly complex and fragmented movement with, amongst others, Nurçu, Nakşibendi, Fethullahçı, and Alevi groups competing with the Sunni orthodoxy controlled by the state through its Directorate of Religious Affairs. The political Islam traced in this essay is that of the mainstream political Islamist opposition led by a group with Nakşibendi connections closely associated with the National View (*Milli Görüş*) movement. This focus means that the paper does not examine discourse associated with the popular Islamic modernist Nurcu movement today led by Fethullah Gülen which has a following estimated at five or six million but claims to be apolitical.

engineering<sup>33</sup> and a vision of secularism inspired by French *laïcité*, they sought to manoeuvre religion out of public life. *Şeriat* was abolished, the caliphate and traditional clergy eliminated, the unorthodox Sufi orders banned, and orthodox Islam put firmly under control of the state. Religious propaganda and organization for political purposes was outlawed, and the link to the Arab world and Koranic tradition severed through adoption of the Latin alphabet and Gregorian calendar. Dress codes, which had an important semiotic function in Ottoman society<sup>34</sup>, were another instrument of westernisation: the fez—itself adopted by the Ottomans as a symbol of westernisation—was banned for its association with ‘Oriental backwardness’. The Islamic veil, meanwhile, was strongly discouraged. This project was embraced by the urban elite and a generation of women whose lives were transformed by the new state feminism.

Though the purpose of such reforms was to privatise religion, in effect the statist understanding of citizenship was an ‘absolute, homogenous, all-encompassing category’<sup>35</sup> which sought the ‘public and private transformation of...citizens everyday lives’<sup>36</sup>. This left the individual little room for religiosity. Turks were steered ‘towards a common good defined by the state elite in accordance with their will to civilization’<sup>37</sup>. As a result, even private religiosity was circumscribed by the centrist understanding of the duties of the citizen.

### *The multiparty era*

Since the achievement of democratic governance was part and parcel of the Kemalist project’s will to modernity, a tentative window was opened to aspiring Islamist actors in the multiparty era. The military and judiciary however, ever on guard against *takkiye*, continued to patrol the secular, westernist order against potential Islamist radicalism.

In 1970, two decades into the multiparty era, Necmettin Erbakan founded the first explicitly Islamist party. It was immediately shut down and re-established under a different name, a pattern of closure and reconstitution which would repeat itself in the

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<sup>33</sup> Hanioglu, Şükrü, *The Young Turks in Opposition*, Oxford, Oxford University Press, 1995. p.204

<sup>34</sup> Kalaycioğlu, Ersin, ‘The Mystery of the *Türban*: Participation or Revolt’, *Turkish Studies*, Vol. 6, No. 2, June 2005. p.236

<sup>35</sup> Kadioğlu, Ayşe, ‘Citizenship and individuation in Turkey: the triumph of will over reason’, CEMOTI, January 2006. <<http://cemoti.revues.org/document34.html>>

<sup>36</sup> Gökarişel, Banu, and Mitchell, Katharyne, ‘Veiling, secularism, and the neoliberal subject: national narratives and supranational desires in Turkey and France’, *Global Networks*, Vol. 5, No. 2, 2005. p.151

<sup>37</sup> Keyman, Fuat, ‘Global Modernity, Identity and Democracy: The Case of Turkey’ in Özdoğan, Günay Gökso and Tokay, Gül, *Redefining the Nation State and Citizen*, Istanbul, Eren, 2000.

decades to come. Erbakan's 'National View Movement' (*Milli Görüş Hareketi* NVM) combined classic Islamist nostalgia for the Ottoman era and rejectionism of West values. The NVM opposed 'cosmopolitanism' in the name of 'national' (i.e. Islamic) authenticity. According to this Huntingtonian proposition Turkey was destined by culture, history and geography to leadership of a Muslim bloc. This 'Muslim Union' would in turn balance and challenge the West<sup>38</sup>. Turkish westernisers had denied the country glory by marginalising Islam from the state and social order. 'delegitimising and marginalising' Islam from its 'rightful place in the social and political order'<sup>39</sup>. In this respect, NVM-affiliated parties under Erbakan's leadership objected not to the authoritarian tendencies of the Turkish state but to its philo-western secularism. Indeed, Islamists benefited from the 1980 coup directed against extremist left-right partisans after which the military feared communism more than Islam. To fight Soviet expansionism, the army endorsed a doctrine called the 'Turkish-Islamic synthesis' which promoted religion and family values. This paved the way for the reintegration of religion into mainstream public life through institutionalisation, for example, of obligatory religion classes in secondary schools and the creation of religious high schools.

In the 1990s, Erbakan's Welfare Party (*Refah Partisi* RP) developed a grassroots following by providing community services to poor, rural migrants whom the state was unable to reach. By casting themselves as champions of the common man and his rights, RP representatives were able to win municipal elections across the country. Their religiosity and populism spurred them to mix religious and liberal metaphors. This gave rise to a budding rights discourse. The case of one local mayor is indicative: playing on the Turkish word for 'right' which is also one of the names for God (*Hak*), he explained the notion of transparency to his constituents by saying, 'I am not the one who is giving you this right to check up on those you have elected...this right was granted to you by God. I am only preparing a suitable ground for you to use this right'<sup>40</sup>. Here, the Refah official positioned himself as an enabling agent of God-given rights rather than as a mediator between the state and the rights-holding citizen.

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<sup>38</sup> Dağ, İhsan D., 'Transformation of Islamic Political Identity in Turkey', *Turkish Studies*, Vol.6, No.1, March 2005. p23

<sup>39</sup> Ibid.

<sup>40</sup> Mayor of Kağıthane quoted in Navaro-Yashin, Yael, *Faces of the State: Secularism and Public Life in Turkey*, Princeton, Princeton University Press, 2002. p.142

No such hybrid language was to be heard from the RP leadership. When Erbakan became prime minister in charge of a coalition government he embarked on provocative series of moves to reorient foreign and domestic policy, from visits to Iran and Libya, to attempts to ban alcohol and gambling. This set in motion the ‘28 February process’—named for the day a campaign was launched to curb all perceived anti-secularist activities. Led by the military, it was actively endorsed by influential civic organisations such as the Turkish Industrialists and Businessmen’s Association (*Türk Sanaycılar ve İşadamlar Derneği* TÜSİAD). Erbakan was compelled to resign in May 1997 when his party was closed by the Constitutional Court for anti-secularism. He personally was banned from involvement in politics for five years and has yet to make a comeback.

### *Muslim Democrats*

28 February was a critical moment for Turkish political Islam, catalysing an apparent transformation of Islamist perspectives on democracy and human rights<sup>41</sup>. In a radical move, Erbakan protested Refah’s closure by filing a suit against the Turkish state with the European Court of Human Rights (ECtHR<sup>42</sup>) on grounds of violation of freedom of assembly and association<sup>43</sup>. Refah’s successor, the Virtue Party (*Fazilet Partisi* FP), went further by adopting a pro-EU, pro-human rights, and pro-democracy programme. The aboutface did not convince the Constitutional Court which soon shut down the party. In keeping with the closure-reconstitution dialectic through which Islamist discourse has taken on ever more moderate forms, the FP’s demise cleared the path for a group of young reformists who had been active in municipal government during the 1990s. Founding the Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP), they were fluent in the language of pluralist democracy. The party programme identified the individual rather than the Koran as the basis for being and action, religiosity was to be expressed within a secular framework, and universal human rights such as freedom of religion, expression, and organisation, as well as women’s rights were extolled<sup>44</sup>.

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<sup>41</sup> Fokas, Effie, ‘The Islamist Movement and Turkey-EU relations’, in Uğur, Mehmet and Canefe, Nergis, eds., *Turkey and European Integration: Accession prospects and issues*, London, Routledge, 2004. p.131

<sup>42</sup> The Court is designated here as ECtHR in order to avoid confusing it with the European Convention on Human Rights rendered as ECHR.

<sup>43</sup> Article 11 of the ECHR. The Court did not deem it necessary to separately consider if the plaintiff’s freedom of thought, freedom of expression, freedom from discrimination, freedom from abuse of rights, and freedom from curtailment of rights had been violated (Articles 9, 10, 14, and 17 of the Convention respectively). [Source Grand Chamber Judgement in Refah Partisi (Welfare Party) and Others vs. Turkey, <http://www.echr.coe.int/Eng/Press/2003/feb/RefahPartisiGCjudgmenteng.htm>]

<sup>44</sup> Toprak, Binnaz, ‘Islam and Democracy in Turkey’, *Turkish Studies*, Vol.6, No.2, June 2005, p.171

Three broad explanations have been offered for the metamorphosis<sup>45</sup>. Sceptics believed the invocation of universal values to be a form of *takkiye*. The AKP leadership had learned from 28 February that if they are thought to be using democratic means to undermine the secular regime they will be barred from the corridors of power. They therefore strategically use the rhetoric of freedom of religion and expression in order to penetrate the state which they will then Islamicise. In particular, they aim to change the education system and overturn the ban on Islamic headscarves in public institutions.

Others from within both secular liberal and moderate Islamist camps insisted that Islamists had ‘learned the true value of democracy’<sup>46</sup> due to 28 February. The pattern of gradual moderation of party discourse as a result of intermittent repression corroborates this explanation. Such genuine conversion is compatible with the aforementioned strategic considerations but evinces less suspicion of the AKP’s long term goals.

A third explanation suggests that a quiet Muslim Reformation has occurred in Anatolia producing a Muslim bourgeoisie which demands liberal politics and integration into the global economy whilst upholding social conservatism. The favourable views of globalisation in the party programme, Islamist media, and religious business community support this argument. These actors believe globalisation to be inevitable and that Turkey is poised to be a competitive player. Access to the global economy, at least for the time being, is best secured by closer integration with the EU and there is no contradiction in promoting socially conservative—even religious—values whilst pursuing profit. This explanation is supported by recent commentaries on the blossoming of so-called ‘Islamic Calvinism’ in booming Anatolian manufacturing hubs<sup>47</sup>.

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<sup>45</sup> Other factors exogenous to the Islamist movement no doubt bolstered the transformation. The capture of Kurdish separatist leader Abdullah Öcalan in 1999 encouraged liberal critics to challenge taboos on pluralism and identity politics. The mood was also fuelled by indignation at inadequate state response to a devastating earthquake. Swift and effective aid from Turkish NGOs and international relief organisations awakened middle class faith in Turkey’s burgeoning civil society and the prospects of greater domestic and international openness. Furthermore, the acquisition of full candidate status to the EU reinforced the perception that the solution to Turkey’s problems lay with greater democracy, accountability, and EU membership. With the economic meltdown precipitated by ineffective leadership of late 2000 and 2001, a majority of the population was willing to look towards civil society and the EU for answers [Source: Özel, Soli, ‘Turkey at the Polls: After the Tsunami’, in Diamond, Plattner, and Brumberg]

<sup>46</sup> Toprak

<sup>47</sup> Indicatively, the Muslim rival to TÜSİAD, the Independent Industrialist and Businessmen’s Association (*Müstakil Sanayici ve İş Adamları Derneği* MÜSİAD) founded in 1990 and composed predominantly of small and medium-sized Anatolian enterprises has released a booklet entitled *Homo Islamicus*. It reflects on the Prophet Mohammed’s merchant activities and uses religious sources to call for limitation of state interference in the free market. [Source: European Stability Initiative (ESI), ‘Islamic Calvinists: Change and Conservatism in Central Anatolia’, < [http://www.esiweb.org/pdf/esi\\_document\\_id\\_69.pdf](http://www.esiweb.org/pdf/esi_document_id_69.pdf) >]

Whatever the source of transformation, the AKP won a third of the vote in November 2002 elections by pitching itself as the champion of democracy and human rights. It also pledged to its core constituency that once in power it would rescind the ban on Islamic headscarves in public institutions. With a majority in parliament but a minority of the electorate's endorsement, the moderate Islamist AKP found itself at the helm of a secular democracy. Observers watched with drawn breath to see if the Islamists' rapid rise to power would aggravate the 'democratic dilemma' of the secular state and its military guardians.

### **The case of the Islamic headscarf**

Its first two years in power the AKP sought to skirt the touchy question of the headscarf. The Islamist press, however, continued to champion the cause. This section explores the contours of the headscarf debate with reference to the liberal Islamist predicament in a predominantly Muslim, secular republic. At the heart of the debate lies the question: Is veiling a civic right of pious women? Or is it an instrument of oppression and an attempt to subvert the secular order?

As discussed above, Islamic scripture is unclear on whether women *must* cover their heads but the practice is believed by many to be a religious duty for all Muslim women. Turkey's republican founders rejected this view. Emancipating women through—among other measures—discouraging the veil meant emancipating the fledgling nation-state from the despised Ottoman-Islamic past. The ideal woman/citizen was middle class, educated, professionally active, and did not veil<sup>48</sup>. The headscarf or lack thereof became a powerful symbol of the exclusion of Islamic values from the lifelines of the state. With mass migration to cities, uneducated, rural and poor women discovered that they did not match the republican ideal<sup>49</sup>. Upwardly mobile migrant women began to don 'modern' Islamic headgear which more closely resembled the revolutionary attire of Iranian women than the loose embroidered scarves of the Anatolian peasantry. Emboldened by the military's endorsement of a 'Turkish-Islamic synthesis' in the 1980s, several female medical students began to demand exemption from dissecting male cadavers and removing their headscarves in

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<sup>48</sup> Kadioğlu cited in Gökarisel and Mitchell, p.155

<sup>49</sup> Gökarisel and Mitchell, p.155

operating theatres<sup>50</sup>. As the controversy grew, the Board of Higher Education, then the Constitutional Court ruled on constitutional grounds that university students should not be allowed to ‘cover the neck and hair with a veil or headscarf for reasons of religious conviction’<sup>51</sup>.

Since this 1991 ruling, and a circular calling on public universities to enforce the ban in 1998, the tenor of the headscarf debate has acquired ever greater proportions. The anti-ban camp is made up of activist veiled women who believe they are battling a ‘state hegemony that restricts their rights to choose freely’<sup>52</sup>, (mostly male) Islamist intellectuals who argue their case, a handful of liberal journalists, scholars, and activists, and a sprinkling of post-modern as well as Islamist feminists who argue that the right to veil is a basic civil right of observant women<sup>53</sup>.

They are arrayed against a pro-ban coalition of liberal and less liberal secularists and feminists who insist that permitting the headscarf in public institutions is a form of discrimination against women who do not veil. It entails supporting a dogmatic, communitarian, and patriarchal ideology which forces women to veil whether or not they are aware of the coercion. Here, Islamism is perceived as a social movement rather than as a religion, and Islamist claims as ideology rather than a matter of conscience. Veiling also threatens the rights of all non-practicing individuals in Turkey’s predominantly Muslim society, representing a symbolic challenge to the secular body politic. In short, one side ‘claim[s] to experience oppression and the other envision[s] a threat to secular democracy’<sup>54</sup>. The secularist authorities’ position is all the more uncomfortable because in the Turkish case it is a (small) majority whose demands are subordinate to the perceived need to protect the rights of a (large) minority<sup>55</sup>.

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<sup>50</sup> Kalaycıoğlu, p.234

<sup>51</sup> 1991 Turkish Constitutional Court decision cited in [Grand Chamber Judgement – Leyla Şahin v. Turkey, European Court of Human Rights, press release 11 November 2005.](http://press.coe.int/cp/2005/608a(2005).html)  
<[http://press.coe.int/cp/2005/608a\(2005\).html](http://press.coe.int/cp/2005/608a(2005).html)>

<sup>52</sup> Masood, Maliha, ‘At the Crossroads of Islamic Feminism: Negotiating the gender politics of identity’, *al Nakhlah*, Spring 2004. <[http://fletcher.tufts.edu/al\\_nakhlah/archives/spring2004/masood.pdf](http://fletcher.tufts.edu/al_nakhlah/archives/spring2004/masood.pdf)>

<sup>53</sup> Arat, Yeşim, ‘Group-Differentiated Rights and the Liberal Democratic State: Rethinking the Headscarf Controversy in Turkey’ *New Perspectives on Turkey*, Vol. 25, Fall 2001. p. 32

<sup>54</sup> Ibid. p.32

<sup>55</sup> Çarkoğlu, Ali, and Toprak, Binnaz, *Değişen Türkiye’de Din, Toplum ve Siyaset, İstanbul, TESEV, 2006.*

In an important twist, the Islamist position on the debate from the end of the 1990s onwards became intimately associated with their perspective on ‘Europe’ and the liberal, democratic norms and institutions the EU seeks to project. The EU’s ardent defence of human rights on the international arena and its willingness to chide Turkey for a range of other human rights abuses, encouraged the impression amongst moderate Islamists that the accession process would give them leverage to lift the ban, just as it would require clamping down on torture<sup>56</sup>. Such an expectation was considered naive by many secular observers<sup>57</sup>. But so long as the Islamists spearheaded reforms in areas other than the headscarf, liberal secular intellectuals and professional organisations such as former nemesis TÜSİAD registered cautious approval of the government.

This equation changed with the case brought to the ECtHR<sup>58</sup> by Leyla Şahin, a veiled medical student who had been prevented from completing her studies in Turkey. The ECtHR ruled against her twice in June 2004 and November 2005, and France cited the 2004 decision when enacting its own legislation banning the veil from secondary schools. Moderate Islamists bemoaned the verdict as a miscarriage of justice. The post-2005 flagging of the AKP’s EU drive, although of course the upshot of a number of factors, suggests considerable disillusionment with the liberal-Islamist synthesis and the ability of ‘universal’ values to deliver.

### ***Linking the headscarf and human rights, 1999-2004***

From 1999 to 2004 moderate Islamists at *Yeni Şafak* (New Horizon)<sup>59</sup> wrote about human rights with passion and evident faith that the government’s EU trajectory would lead to the rescinding of the ban.

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<sup>56</sup> Sazak, Derya, *Milliyet*, 7 February 2004

<sup>57</sup> Fokas, p.53

<sup>58</sup> Though the Court is a Council of Europe rather than EU organ, subscription to the universal values it was founded to defend is considered a prerequisite to EU candidacy and membership. And in any case, the distinction between the Council of Europe and the EU is lost in the public debate in Turkey.

<sup>59</sup> Founded in 1995, *Yeni Şafak* (New Horizon) is a forum for Islamist intellectuals of both pro-EU and more traditionalist stripe; it has also hosted several well-known secular liberal intellectuals who oppose the headscarf ban in principle. The editor-in-chief is a close advisor to AKP leader and Turkish Prime Minister Tayyip Erdoğan. Whilst the views of this cadre are not to be taken either as homogenous or representative of Islamist sentiment overall<sup>59</sup>, recurring themes in their position on the headscarf from the acquisition of EU candidacy up through the 2005 Şahin decision provides a sense of the evolution of Islamist discourse linking the headscarf and human rights.

Kemalists, on the other hand, were castigated for their authoritarian attitudes which were attributed to a mixture of dogmatism and vested interests<sup>60</sup>. Düzgören, for example, complained that the state fails to distinguish between the various groups it fears when in fact these groups have radically different agendas—they include anti-secularists, separatists, advocates of the EU, and defenders of human rights and the rule of law<sup>61</sup>. The authorities and the Turkish left, especially representatives of Atatürk’s Republican People’s Party (*Cumhuriyet Halk Partisi* CHP), were mocked as beholden to developmentalist and modernist clichés which hold the country back from ‘real’, that is, popular and democratic political debate<sup>62</sup>. They were also accused of ‘politicising’ the headscarf question in order to create social conflict so as to perpetuate their hold on power. They were thus out of touch with the wishes of ‘the people’.

This theme of elite alienation was recurrent. Kemalists did not understand that ‘our religious compatriots have never left the middle road when it comes to Islam’<sup>63</sup>. What ‘the people’ want is for the ‘mothers of our soldiers’, ‘our wives’, ‘our headscarved, university student daughters’ to be spared the humiliation of having to bare their heads or wear wigs in public institutions<sup>64</sup>. Variations on the theme of ‘victim’ typically accompanied references to veiled would-be university students.

The language of victimhood was notable for the way it combined religious and liberal understandings of rights. An Islamist lawyer, for example, wrote that ‘every woman who has chosen the Muslim religion covers her head as a requirement of Islam’. She possesses the right to do so ‘from birth’ and it is an inalienable right which ‘time can not destroy’ and which ends only with a person’s death<sup>65</sup>. Here, the intertwining of liberal and Islamist notions of duty and right is evident in the emphasis on women’s *choice* to be Muslim, a choice which carries with it both the birthright and the obligation to veil.

In a similar vein the charge that veiling impinges on the rights of others was countered in a twofold manner: the veil should be permissible so long as it does not impair a civil servant’s ability to perform her job, and if it is not obligatory for all women. The right to

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<sup>60</sup> Ilıcak, Nazlı, ‘Avrupa Birliği “in” 28 Şubat “out”, *Yeni Şafak*, 14 December 1999

<sup>61</sup> Düzgören, Koray, ‘Sürekli kriz, sürekli geçimsizlik ve sürekli huysuzluk!..’ *Yeni Şafak*, 25 Mart 2002

<sup>62</sup> Ibid.

<sup>63</sup> Taşgetiren, Ahmet, ‘Hayali bir yazı’, *Yeni Şafak*, 12 March 2002

<sup>64</sup> Ibid.

<sup>65</sup> Ballı, Mehmet, ‘Yök başkanı Erdoğan Eaziç Başörtüsü konusunda hukuki düşünmüyor’, *Yeni Şafak*, 12 January 2002.

veil was presented as a win-win proposition and non-covered women would be relieved to see an end to the persecution of their veiled friends<sup>66</sup>. Here, as above, veiling is depicted as at once a religious duty and an individual preference which can be practiced in a secular, democratic framework that respects the right of other women to not veil. This argument is not discordant with the conception of rights in the natural law tradition, pointing to the sacred origin of the right to veil which precedes and bypasses the state. At the same time it seeks to assure the state that the pluralist, secular understanding of rights will not be violated.

*Leyla Şahin v. Turkey, 29 June 2004*

On 29 June 2004, the Grand Chamber of the ECtHR announced its verdict that in the case of *Leyla Şahin v. Turkey* there was no violation of Article 9 of the European Convention on Human Rights which provides for freedom of thought, conscience and religion. Likewise, there was no violation of the right of access to education, respect for private and family life, freedom of expression, and the right to freedom from discrimination. The ban was ‘appropriate to the Turkish context’<sup>67</sup> and Şahin had been liable to censure for her refusal to remove her headscarf long before she was actually suspended five years into her education. The ban was based on the principle of secularism, which ‘as the guarantor of democratic values, was the meeting point of liberty and equality’ and which the state defended as an ‘impartial arbitrator’ protecting ‘the individual not only against arbitrary interference by the State but from external pressure from extremist movements’<sup>68</sup>. The Court basically endorsed the Turkish state’s position that the movement to allow headscarves in universities represents an attempt by Islamist activists to impose their values on society at large. It thereby acknowledged that curtailment of some rights in democratic Turkey is legitimate in order to preserve public order.

Columnists at *Yeni Şafak* were stunned by what they called an ‘irrational’<sup>69</sup>, ‘political’<sup>70</sup>, ‘subjective’<sup>71</sup>, and ‘misinformed’<sup>72</sup> verdict. Initial disappointment was manifest in perplexity at how a Court whose very *raison d’être* is the protection of the rights of the

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<sup>66</sup> Taşgetiren

<sup>67</sup> Koru, Fehmi, ‘Yanlış bir karar’, *Yeni Şafak*, 30 June 2004.

<sup>68</sup> Grand Chamber Judgement – *Leyla Şahin v. Turkey*, European Court of Human Rights, press release 11 November 2005, < <http://www.echr.coe.int/Eng/Press/2004/June/ChamberjudgmentsSahinandTekin.htm>>

<sup>69</sup> Koru

<sup>70</sup> Ballı

<sup>71</sup> Ibid.

<sup>72</sup> Kekeç, Ahmet, ‘Biz AB’ye giremedik ama AB bize girdi bile’, *Yeni Şafak*, 30 June 2004.

‘other’ could fall so far short of defending multiculturalism<sup>73</sup>. The ECtHR understanding of secularism was criticised and the right of the state or any court to determine an individual’s relationship with religion was questioned<sup>74</sup>. This line of reasoning—that a secular court is not competent to pass judgement on religious duties—thereby began to toe a fine line between a natural law claim for individual rights, and a rejection of the authority of temporal law. The argument also undermines the rationale for embracing universal human rights (i.e. why file the suit if you do not accept the court’s purview?)

Outrage at the Court became diffused to anger at ‘Europe’ for its ‘double standard’<sup>75</sup>, ‘two-facedness’<sup>76</sup>, and ‘deep-rooted fear of Islam’<sup>77</sup>. One columnist wrote that even if ‘human rights, freedom of thought, and democracy’ are legitimate in and of themselves, Europe instrumentally used these ‘myths’ to legitimise its material interests and its ‘psychological hegemony over non-western societies’<sup>78</sup>. The ECtHR decision was both ignorant and malicious, displaying no knowledge of the sociological, historical, and religious realities of Turkish society but assuming the worst of Islamists and the innocuous headscarf because of a latent assumption that Islam and democracy are incompatible<sup>79</sup>. Accordingly, the Court was accused of perpetuating the clash of civilisations<sup>80</sup>. The verdict demonstrated that Christians and Jews and ‘even’ Jehovah’s Witnesses may actualise their right to freedom of religion but not Europe’s Muslims<sup>81</sup>. The upshot has been that ‘thousands of people have lost their faith in ‘European justice’<sup>82</sup>. In spite of this evident disappointment, another recurring theme was that sooner or later justice will prevail. This was frequently avowed in terminology reminiscent of the American civil rights movement including comparisons of veiled activists like Leyla Şahin to Rosa Parks<sup>83</sup>.

Meanwhile, continuities from earlier discourse included the image of elite/‘people’ cleavage which the ECtHR, having taking its cue from Turkish Kemalists, had widened. The fault for this lay as much with Kemalist ‘manipulation’ as it did with the Court.

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<sup>73</sup> Koru, Fehmi, ‘Avrupa’nın hukuk sorunu’, *Yeni Şafak*, 1 July 2004

<sup>74</sup> Kekeç

<sup>75</sup> Bayramoğlu, Ali, ‘Doğu-Batı ekinde vahim karar’, *Yeni Şafak*, 1 July 2004

<sup>76</sup> Hocaoglu, Sami, ‘Batılılar kılavuzu kim?’, *Yeni Şafak*, 5 July 2004

<sup>77</sup> Ibid.

<sup>78</sup> Emre, Akif, ‘Başörtüsü ile yüzleşme’, *Yeni Şafak*, 6 July 2004

<sup>79</sup> Karaalioglu, Mustafa, ‘AİHM demesk istiyor ki...’

<sup>80</sup> Bayramoğlu

<sup>81</sup> Ibid.

<sup>82</sup> Tosun, Resul, ‘Batı herşey değildir’, *Yeni Şafak*, 3 July 2004

<sup>83</sup> Ilıcak

Infuriated by perceived Kemalist gloating, several articles accused pro-ban Turks of self-hatred. That is, since the written decision stated the headscarf was based on ‘legitimate foundations within a Turkish context’, and since there is no such ban at the university level in any EU country, then ‘Europe’ clearly has different and less exacting human rights standards for Turkey than it does for EU members because second rate justice is ‘good enough for the East’<sup>84</sup>. Those in Turkey who celebrate the ECtHR decision are therefore masochists applauding Turks’ second class status in they eyes of ‘Europeans’<sup>85</sup>.

In sum, the immediate reaction to the ECtHR decision reflected deep disappointment and anger at the Court in particular, sentiment which was conflated into an undifferentiated, all-encompassing of ‘Europe’. It seems to have taken the majority of columnists by surprise and disoriented those who had been outspoken in their advocacy of EU membership and confident that the EU norms would provide effective leverage in the headscarf battle. Yet, interestingly, only a minority of the responses condemned ‘universal’ values or ‘European’ justice out of hand, lamenting instead a perceived miscarriage of that justice.

#### *Leyla Şahin vs. Turkey, 11 November 2005*

The 11 November 2005 decision reiterated the court’s judgement of the previous year on all counts. The reaction this time was calmer, in that the outcome was not unanticipated, and angrier, in that blame was increasingly laid at the door of ‘European’ justice *per se*.

Several of the columnists continued to defend the position that a person is born with rights rooted in ‘natural law’; the politicised ECtHR decision, by way of contrast, had nothing do with the ‘law’<sup>86</sup>. The mixing of religious and liberal rationales for rights was thus still evident, but the bias was increasingly slanted towards religion. The right to veil is God-given and cannot be curtailed by any secular authority if it does not infringe upon the rights of others<sup>87</sup>. Erdoğan generated tremendous controversy with this logic when he stated that he did not think the court had a right to pass judgement on the matter, especially without informing itself of the position of Islamic religious authorities

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<sup>84</sup> The trope of European double-standards vis-à-vis Turkey is in fact common to discourse across the political spectrum in Turkey. Özdenören, Rasim, ‘İHM, insan hakları, adalet vs.’, *Yeni Şafak* 13 November 2005

<sup>85</sup> Hocaoglu, Sami, ‘Dinime dahleden bari Müslüman olsa’, *Yeni Şafak*, 18 November 2005

<sup>86</sup> Özdenören

<sup>87</sup> Kahraman, Hayrettin, ‘Sevenler ve üzülenler’, *Yeni Şafak*, 13 November 2005

(*ulema*)<sup>88</sup>. He soon retracted the comment and sought to explain it as a call for the Court to inform itself of the Islamist as well as Kemalist view of the headscarf as religious duty. Some *Yeni Şafak* columnists tried to make the statement more palatable to secularists, saying that just as no religious authority can tell the state what to do, no government authority has the competence to tell a believer what to do regarding his or her personal religious observance<sup>89</sup>. Others took the line to its extreme, positing an essential incompatibility between Islamic observance and western understandings of secularism. Emre—who, granted, had always been somewhat sceptical of the AKP’s drive towards Europe<sup>90</sup>—wrote that the ECtHR decision should make it clear to those ‘neo-Islamists who defend Anglo-Saxon liberalism’ as an alternative to ‘Jacobin French laicism’ that this secularism is but a ‘more refined way of destroying the religious bases of society’<sup>91</sup>.

As in 2004, the theme of double-standard was ubiquitous, with one author castigating her colleagues for the dangerous habit of pointing to freedoms in a foreign country in order to promote freedom at home<sup>92</sup>. A conflated Europe/EU/ECtHR—no longer painted in a glowing light—was criticised for ardently defending the rights of Kurds, Alevis and other minorities in Turkey whilst approving the violation of the rights of the Sunni majority.

## Conclusion

Since the last ECtHR decision deep antagonism has characterised the relationship between the AKP leadership and key actors within the secular establishment including the military. The headscarf question has figured prominently in this escalation from delay in the appointment of a new central bank governor whose wife veils, to the tragic assassination of a justice of the pro-ban Court of Higher Appeals by an Islamist militant. With eyes on upcoming presidential and national elections, the chief of the armed forces has drawn near the fine line of the ‘democratic dilemma’ in strong public statements warning of the danger of Islamic fundamentalism. In tandem with doubts as to the EU’s

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<sup>88</sup> The comment was dissected by the media for weeks: ‘The court does not have the right to pronounce judgement on this subject. The right to pass judgement is that of the religious *ulema*. If one is a Jew one asks the representative of that religion, if one is Christian [one asks] that religion’s representative. [One asks] does this really have the status of a binding duty? If so, you have to respect it. If [it were] not [a religious command] then it would be a different thing, in that case its political, ideological. That’s a different situation. But I say that in religion this [the headscarf] has a place. We have some expertise [*mürekkep yaladık*] in this area. I think it is wrong that those who have no connection to this field and who have not even consulted the *ulema* try to pull this decision in another direction.’

<sup>89</sup> Bayramoğlu, Ali, ‘Ulema krizinin perde arkası’, *Yeni Şafak*, 17 November 2005

<sup>90</sup> Emre, Akif, ‘Huntington yanıldı mı?’, *Yeni Şafak*, 12 December 1999

<sup>91</sup> Emre, Akif, ‘Aziz Nesin’den “türban dersi”, *Yeni Şafak*, 15 November 2005

<sup>92</sup> Karabiyik Barbarosoğlu, Fatma, ‘Başörtüsü karşıtlarına özgürlük’, *Yeni Şafak*, 18 November 2005

commitment to Turkey's eventual accession and rising nationalist sentiment, the AKP's will to liberal reform appears to be exhausted.

Some might argue that the syncretic approach to rights was doomed from the start given the contradictions imbedded in the project. The analysis in this paper suggests otherwise. Although attempts at synthesis might yield unstable formulae in the medium term, the *process* is such that the short term exercise can generate debate and new political theoretical formulations that may contribute to the long term project of reconciling 'universal' and 'Islamic' conceptualisations of human rights.

At the practical level, the moderate Islamist experiment conditioned a range of actors across the Turkish spectrum—including the AKP's opponents—to countermand moderate Islamist arguments by developing their own take on rights. As a result, large parts of the Turkish population—elite and 'people', Kemalist and Islamist, and the majority of citizens in between—have been exposed to and come to actively engage the language of rights.

In the author's view the most interesting thing to emerge from the debate is how some Islamist commentators hit upon what could be construed as a natural law rationale for the veil in the wake of the successive ECtHR decisions. This idea, formulated in an *ad hoc* fashion by activists, is underdeveloped. But it reminds one of the neo-Lockean discourse of God-given rights often heard in the United States. Although this argumentation did not sway Kemalist and ECtHR judges, it may provide a conceptual building block for future endeavours of those seeking to reconcile the 'universal' and 'Islamic' rights perspectives.

Though overcoming the currently polarised atmosphere is a great challenge, it is important to recall that every day there is *de facto* management of the headscarf question in private and many public universities where enforcement of the ban is, at most, idiosyncratic. Statistics show that a majority of the population does not oppose veiling in public institutions, yet most of these same people either do not vote for political Islamists or, if they do, do not wish to see secular law replaced by religious law<sup>93</sup>. This speaks of an impulse towards a liberal-Islamist synthesis on the headscarf within the population. Should Turks manage to draw on the latent theoretical and social sources of consensus,

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<sup>93</sup> Çarkoğlu and Toprak

then the Turkish experience of resolving a deep human rights paradox in a Muslim context will be an example for all.