

POPULIST SECULARISM

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Abstract

This article argues that in the context of a developing democracy, the rise of religiously oriented parties should be viewed contextually as part of an ongoing process of democratic negotiation and consolidation. Using Turkey as a case study, this article argues that religion and secularism are best viewed as parts of a symbiotic relationship, informing each other's identity, and defining characteristics through an ongoing process of negotiation.

The article discusses commonly used concepts relevant to secularism in general and argues for the need to distinguish between the secular, secularism, and secularization as a governance project. Through a historical survey of military interventions in the political process and judicial construction of secularism, the article discusses the development of state-religion relationship from the Ottoman Empire to modern day Turkey. The surveyed events of the republican era highlight the brutal and militant nature of the secularization project, followed by the populist response in the form of over two decades of electoral victories by the Adalet ve Kalkinma Partisi (Justice and Development Party) ("AKP") whose governance project has led to a radical reformulation of Turkish secularism.

The article also argues that even though pious populations were marginalized during the decades of militant secularization, the current shifts to a populist secularism have created new marginalized and excluded identities, including religious and ethnic minorities, LGBTQ+ populations, as well as increasing threats to gender equality and equity.

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INTRODUCTION

“The search for ‘guarantees’ can lead to the very destruction of pluralist democracy. Hence the importance of understanding that for democracy to exist no social agent should be able to claim any mastery of the foundation of society.” *Chantal Mouffe, The Return of the Political*¹

1. CHANTAL MOUFFE THE RETURN OF THE POLITICAL 151 (2005).

This article argues that in the context of a developing democracy, the rise of religiously oriented parties should be viewed contextually as part of an ongoing process of democratic negotiation and consolidation. Using Turkey as a case study, this article argues that religion and secularism are best viewed as parts of a symbiotic relationship, informing each other's identity, and defining characteristics through an ongoing process of negotiation.

Part I provides a survey of relevant concepts related to secularism, focusing particularly on the need to distinguish between the concepts of secular, secularism, and secularization. While a secular ethos proceeds secularism as an organic societal consciousness, the project of secularization involves targeted and deliberate political and legal projects implemented by the State. Identifying these distinct but related concepts is particularly important in younger democracies, like Turkey, where the project of secularization was implemented in a top-down manner to the exclusion of democratic negotiation. Here, I distinguish between militant secularism, implemented through a top-down mandate in the absence of a secular ethos, and populist secularism, the democratic reaction to militant secularism, which develops as part of a constitutional democracy, albeit an imperfect one.

Part II describes the historical development of Turkish secularism and the top-down implemented secularization project. The Turkish case study begins with an overview of Turkey's Ottoman past, including a discussion of the numerous political interventions by the military, and continues with the start of the modernization and secularization projects in the early years of the Turkish Republic. Utilizing the theory of center and periphery, this Part discusses how the project of secularization left significant portions of the Turkish population outside the ethos and epistemology of the new nation.

Part III discusses the period from 1960 to 2002, during which the Turkish Military and the Turkish Constitutional Court constructed and strictly enforced a form of militant secularism. I discuss how a strict and rigid devotion to a militant secularization project drove the Turkish Military to intervene in democratic governance, disrupting democratic growth and stunting any progress toward democratic consolidation. During the same period, the Turkish Constitutional Court acted as the extended judicial arm of the Military, dissolving religiously affiliated political parties, and limiting religious freedoms, including upholding the ban on religious headcoverings in public offices.

Part IV explores the shift in the meaning of Turkish secularism since the election of the AKP in 2000. After a survey of the political

struggles and legal reforms during this era, including two sets of constitutional amendments, this Part focuses on a 2015 Constitutional Court case decriminalizing religious marriages conducted prior to civil marriages. This case is a significant turning point in Turkish secularism as it is the first case where religious identity was not trumped by the demands of the secularization project based on privacy rights, a cornerstone legal value in liberal democracy. Another signifier of the changing scope of Turkish secularism is a law which allows imams, or Muslim clerics, to conduct and register both religious and civil marriages, a stark change from previous practice. I conclude this part of the paper with a discussion of the 2023 elections and briefly discuss the continuing erosion of individual rights and liberties for various sections of the Turkish population.

In the final part of the article, I discuss the ongoing evolution of Turkish secularism in the context of the modern liberal state and argue that, consistent with the continuum theory of secularism, the lines between the religious and the secular are blurred. Turkey's ongoing identity struggles regarding religion are really about the nation's growing pains as a younger democracy where military interventions have prevented meaningful organic growth.

I. CONCEPTUAL FRAMEWORKS

On July 24, 2020, the Hagia Sophia, a UNESCO World Heritage site since 1985 — the structure that was a church for about a thousand years, a mosque for about five hundred years, and a museum since 1934— reverted back to a mosque, open for prayer and visits by all.² The decision to revert the museum to a mosque attracted significant opposition, outcry, and concern from various circles.³ Originally a Greek Orthodox church, Hagia Sophia's reversion to a mosque open to worship was interpreted by many as an affront to Greece and Turkey's Christian minority, as well as a tactic to appeal to Turkey's Muslim masses.⁴ This was undoubtedly a ritualistic reclaiming of the space as

2. See *Ayasofya Hangi Kararla Camiye Donusturuldu? [Based on Which Decision was Ayasofya Reverted to a Mosque?]*, CNNTURK (July 24, 2022), <https://www.cnnturk.com/video/turkiye/tarihte-ne-oldu-ayasofya-hangi-kararla-camiye-donusturuldu>.

3. See e.g., Senija Causevic, *The Hagia Sophia's Reversion to a Mosque is at Odds with its Status as a UNESCO World Heritage Site*, NAT'L INT. (July 30, 2020) <https://nationalinterest.org/blog/reboot/hagia-sophias-reversion-mosque-odds-its-status-unesco-world-heritage-site-165815>.

4. Bethan McKernan, *Erdogan Leads First Prayers at Hagia Sofia Museum Reverted to Mosque*, GUARDIAN (July 24, 2020), <https://www.theguardian.com/world/2020/jul/24/erdogan-prayers-hagia-sophia->

a Muslim space, simultaneously a gesture to pious Turks and an affront to Turkey's strict secularists who long considered the areligious character of Hagia Sophia as a symbol of a secular Turkey.⁵ Before the opening prayers, Erdogan declared:

"This is Hagia Sophia breaking from its chains of captivity. It was the greatest dream of our youth . . . It was the yearning of our people and it has been accomplished."⁶

Erdogan himself led the first prayer in the newly reclaimed mosque, complete with a recitation from the Quran.⁷ Voices inside and outside of Turkey raised concerns over the loss of secularism. For example, Nobel Literature Prize winner author Orhan Pamuk expressed his opposition to the decision and declared that the decision to revert Hagia Sofia to a mosque was a move to show that Turkish secularism of the past was no more.⁸ In international media, one journalist titled her news story "*The End of the Secular Republic*," comparing Erdogan to India's Narendra Modi, an appropriate comparison in many respects.⁹ While there remains no doubt that Turkey's Erdogan is unapologetic about his Muslim identity and his desire to highlight, if not manipulate the religiosity of Turkish voters, it is unclear how the reversion of a historic site to a mosque can bring an end to a "secular republic."¹⁰ Is the assertion that an indifference to minority concerns or even outright violations of minority rights can negate the secular nature of a republic? If so, what kinds of protections need to be sustained in order for a legal system or a country to be "secular"?

Secularism and discussions and assertions related to it remain primarily emotionally and politically driven. Even most scholarly discourses on secularism often presume that the term simply refers to separation of religion and state.¹¹ This dictionary definition falls short of providing any insight into what separating religion and state

museum-turned-mosque.

5. See *id.*; Causevic, *supra* note 6.

6. McKernan, *supra* note 7.

7. *Id.*

8. DW News, *Hagia Sofia Holds Friday Prayer for First Time Since Reverting to Mosque*, YOUTUBE (July 24, 2020), <https://www.youtube.com/watch?v=t4U30h0852M>.

9. Yasmeen Serhan, *The End of the Secular Republic: India's and Turkey's Leaders are Turning Buildings into Battlegrounds for Nationalists*, ATLANTIC (Aug. 13, 2020), <https://www.theatlantic.com/international/archive/2020/08/modi-erdogan-religious-nationalism/615052/>.

10. *Id.*

11. Tobias Muller, *Secularisation theory and its discontents: Recapturing decolonial and gendered narratives*, 67 SOC. COMPASS 315, 317 (2020).

might mean in terms of regulating everyday affairs. Nor does it provide any insight into what variations of the term might imply. For instance, what makes a person secular?¹² Is it lack of piety or religious belief that defines secularity in a person, or is it the person's views regarding the role of the state in relationship to religion and religiosity? Not only are these questions often not raised, but there is also confusion and lack of clarity in discussions of religiosity—from qualifying religiosity with degrees such as moderate and fundamentalist—to qualifying a religious identity with the claim of secularity (a secular Muslim, or a secular Hindu). When Buddhist monks in Myanmar advocate for and support the violent removal of the Muslim Rohingya population from the country, are they fundamentalist Buddhists or secular nationalists?¹³

Secularity, or the state of being secular, has two separate dimensions. Secularity concerns one's own beliefs regarding a higher being or a higher order on the one hand, and one's views on the relationship between religion and state on the other. It is this self-conceptualization of religion in one's own life and the religion-state relationship that constitutes the secular. In Talal Asad's words,

“‘[T]he secular’ is conceptually prior to the political doctrine of ‘secularism,’ [] over time a variety of concepts, practices, and sensibilities have come together to form ‘the secular.’”¹⁴

In this sense, the secular develops organically, and eventually leads to formations that constitute secularism as a way of organizing governance.¹⁵ Thus, secular is “neither continuous with the religious that supposedly preceded it [] nor a simple break from it.”¹⁶ In fact, secularity and religiosity are in a continuous symbiotic relationship—without one the other does not have meaning. Secularity and religiosity are only defined in contra-distinction from one another.¹⁷

12. See also Seval Yildirim, *Conceptions of Religion in a Secular State*, 41 PEPP. L. REV. 1049 (2014) (discussing these questions further) [hereinafter Yildirim, *Conceptions of Religion*].

13. Thu Thu Aung and Poppy Mcpherson, *Insight: Monk Militia: The Buddhist Clergy Backing Myanmar's Junta*, REUTERS (Dec. 8, 2022) <https://www.reuters.com/world/asia-pacific/monk-militia-buddhist-clergy-backing-myanmars-junta-2022-12-08/#:~:text=In%20recent%20years%2C%20ultranationalist%20monks%20incited%20violence%20against,2013%20and%20army-led%20attacks%20against%20the%20Rohingya%20minority.>

14. TALAL ASAD, FORMATIONS OF THE SECULAR: CHRISTIANITY, ISLAM, MODERNITY 16 (2003).

15. *Id.* at 191.

16. *Id.* at 25.

17. Steven Kettell, *Secularism and Religion*, in OXFORD RESEARCH ENCYCLOPEDIAS (2019).

Religiosity is the state of finding meaning in a religious epistemology, whereas secularity defines itself as the modification, tempering, or abandonment of religiosity.¹⁸ Rather than being opposites, however, religiosity and secularity exist in a continuum where there can be no absolute religiosity in abandonment of worldliness, and no absolute secularity in abandonment of religion. In other words, because the two concepts have meaning only in relationship to one another, the fully dichotomous understanding of religiosity and secularity cannot be sustained. For example, Asad points out that “[e]ven when the nation is said to be ‘under God,’ it has its being only in ‘this world.’”¹⁹ This view of secularism is the *continuum theory of secularism*.

The continuum theory deviates from other theories of secularism where the secular succeeds religion, meaning secularity develops as religion and religiosity are abandoned.²⁰ For example, Max Weber argued that as capitalism developed in a society, masses would abandon religion and religiosity as a means of comfort.²¹ Emile Durkheim, viewing religion as a social phenomenon,²² wrote that the decline of religion and the rise of secularity and rationality were characteristics of modernity.²³ In fact, for Durkheim, religion and science were not compatible, and scientific methods alone could explain religion and society.²⁴ Many scholars have since explored the development of secularism with this understanding. For example, Owen Chadwick, in exploring the development of the secular in Europe, traces what he considers is the gradual abandonment of religion in the nineteenth century.²⁵ Jose Casanova is another scholar who accepts that religiosity precedes secularity.²⁶ More recently, Charles Taylor has argued that secularism has gone through three stages of development: “1 (the retreat of religion in public life) and 2 (the decline in belief and practice [of religion]) . . . [and 3] the [rise] of a humanist alternative” to religions as well as the rise of a market

18. *Id.*

19. ASAD, *supra* note 17, at 193.

20. Kettell, *supra* note 20.

21. *See generally* MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (1992).

22. *See generally* EMILE DURKHEIM, *THE ELEMENTARY FORMS OF THE RELIGIOUS LIFE* (2008).

23. *See generally* EMILE DURKHEIM, *ON MORALITY AND SOCIETY* (1973).

24. STEVEN LUKES & EMILE DURKHEIM: *HIS LIFE AND WORK* 358–59 (1985) (discussing Durkheim’s remarks at a meeting where Durkheim expressed his views on the incompatibility of religion and science).

25. *See generally* OWEN CHADWICK, *THE SECULARIZATION OF THE EUROPEAN MIND IN THE 19TH CENTURY* (1995).

26. *See generally* JOSE CASANOVA, *PUBLIC RELIGIONS IN THE MODERN WORLD* (1994).

place of alternatives to religion.²⁷ These views on secularism constitute *the decline theory of secularism*.

The decline theory presumes organic social discourses, independent self-discovery as non-religiously identified subjects, and the bottom-up development of an ethos where society eventually thinks of itself as outside of religion—the secular mind leaves religion behind as the source of truth and exploration of meaning.²⁸ Moreover, the decline theory assumes that society develops coherently and uniformly.²⁹ In other words, in a secular society, the rural farmer shares the secular ethos of the urban dweller, and different demographic groups in a society share the secular ethos as the ideal form of governance. Even if we were able to identify such a uniformly developed secular ethos in some contexts, such as Western Europe following Chadwick's argument, the decline theory fails to explain the state-religion relationship in much of the world where younger countries and younger democracies are still struggling with the evolution of an ethos of secularism.³⁰ Consequently, the decline theory fails to recognize the reality of countries where secular laws and the process of secularization have been top-down implemented governance projects.

If the secular is indeed an ethos, secularism is the epistemology that is born of that ethos. Secularism is a particular understanding regarding the relationship between the State and the citizen, the State and religion, as well as the relationships between different citizens in a community.³¹ In other words, secularism as an epistemology views the relationship of religious identity and belief as a process of constant negotiation with the self, others in society, and the State. In this sense, religion is not separate from this world, but rather is continuously redefined through a process of negotiation with worldly matters. In return, religion continuously redefines the parameters of worldly affairs. Thus, secularism is an evolving ideology that captures both domains of the worldly and of religion. For example, when Islamic legal scholars argue for a reinterpretation of the Quran to eliminate an understanding that same-sex relationships are forbidden, we see the impact of secularism on religion.³² The demand for

27. See CHARLES TAYLOR, *A SECULAR AGE* 423 (2007).

28. *Id.* at 19–20.

29. *Id.*

30. *Id.* at 2–3, 425.

31. See *id.* at 457–59.

32. Aisya Aymanee M. Zaharin, *Reconsidering Homosexual Unification in Islam: A Revisionist Analysis of Post-Colonialism, Constructivism and Essentialism*, 13 *RELIGIONS* 702, 703 (2022).

reinterpretation is a secular demand, seeking to negotiate different worldviews in a society. Likewise, when the pious Muslim woman demands that she be allowed to cover her hair while at her workplace, she forces the secular-identified public domain to accept her religious identity.³³ Her demand is both religious and secular, in that she too seeks to negotiate different worldviews in her society.

This ongoing negotiation itself is about power relations in society, whether the power imbalance or power gap is between the individual and the state, the individual and society at large, or a subsociety. The individual might negotiate their religiosity either with the state, with the community in which they live, or within their own religious community where the individual's interpretation or belief in the faith might differ from intrareligious dominant norms. For example, a Muslim inmate who believes Islam mandates veganism, thus deviating from the dominant norms under the main Islamic schools of law, would have to negotiate their position with Muslim religious authorities, as well as with the State represented via the prison system that provides the inmate with food. Again, while the individual might be acting out of religious belief or piety, the negotiations are secular, whether with individuals, communities, society, or the state.

Secularization must be distinguished from the secular and secularism. Secularization is a governance project, and inherently employs law as its implementation mechanism. Secularization can only be identified in legal reform and the enforcement of laws. For example, if a country has passed no laws regarding the state-religion relationship, then we cannot identify how the country has secularized. In other words, secularization is inherently an exercise and imposition of power through laws and their implementation by the State. As Michel Foucault asserts, the domain of law is the domain of power.³⁴ Thus, in a liberal democracy, as law defines the parameters and mechanisms of secularization, it uses its coercive authority to define individual selves as "secular," regardless of whether actual subjects of the law are in fact secular or possess an individual secular ethos. As a result, secularization is always coercive because it relies on law for its existence, and is, at times, violent because it must inherently coerce its subjects in order to succeed.

33. See TAYLOR, *supra* note 30, at 603.

34. See MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972–1977*, 96 (Colin Gordon, ed., Colin Gordon, Leo Marshall, John Mepham & Kate Soper, trans., 1980) ("The system of right, the domain of the law, are permanent agents of these relations of domination, these polymorphous techniques of subjugation.").

A secularization project must also maintain the myth of cohesion to survive.³⁵ It must maintain that the public sphere is secular and secularized, even where such a totalistic narrative may not be possible given the continued religiosity of the citizenry. After all, when religiosity is in the public sphere, participating in discourse and epistemological shifts, religiosity is part and parcel to modernity and modern politics, and consequently secularism. Not only is the claim of total secularization not possible, but “[t]he legitimate entry of religion into [the public sphere] results in the creation of modern ‘hybrids’: the principle of structural differentiation—according to which religion, economy, education, and science are located in autonomous social spaces—no longer holds.”³⁶

Secularization projects have been particularly problematic and even violent in younger democracies where narratives of nation-building and reforms of modernity have been informed by a rejection of imperial and colonial pasts.³⁷ Given that the concept of the nation itself an imagined project,³⁸ secularization laws have been particularly problematic in these contexts. As the Turkish case study below shows, where the masses lack a secular ethos or a meaningful understanding of secularism, the project of secularization is inherently top-down, and, at times, a violent project of social construction.³⁹ The secular ethos employs an epistemology and a language that is different than one where the basis of identity lies with religion. For example, in the Ottoman Empire, as discussed in further detail below, every imperial subject was identified on the basis of religion, and not ethnicity or race.⁴⁰ Religious identity determined the state-subject relationship, from the type of law that applied to the individual to the type of taxes the State demanded from its subjects. Moreover, the Sultan or the Ottoman ruler was also the head of Sunni Muslims, which meant a significant part of the Empire’s subjects did not distinguish between religious and political authority⁴¹—a different epistemology and language of governance than necessary for

35. ASAD, *supra* note 17, at 193–94.

36. *Id.* at 182.

37. See TAYLOR, *supra* note 30, at 174, 371–72.

38. See BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 5–6 (3d ed. 2006) (arguing that concept of nation and nationality are imagined constructs).

39. See ASAD, *supra* note 17, at 182 (arguing the same point for the Egyptian experience); see also SABA MAHMOOD, *RELIGIOUS DIFFERENCE IN A SECULAR AGE: A MINORITY REPORT* 68 (2016) (arguing that political secularism has been harmful to religious equality in the Egyptian context).

40. See TAYLOR, *supra* note 30, at 196–200.

41. Karen Barkey, *Islam and Toleration: Studying the Ottoman Imperial Model*, 19 *INT’L J. OF POL., CULTURE & SOC’Y* 5, 12 (2005).

a secular ethos. This epistemological gap between the nation-building elite with its project of secularization and the masses who did not fully comprehend or invest in this project is also identified in the center-periphery thesis.

In his 1961 essay, *Centre and Periphery*, Edward Shils argues that in every society there exists a “centre of society, the centre in which authority is possessed” and a “periphery, over which authority is exercised.”⁴² The center is not necessarily geographically defined, but is rather the “realm of values and beliefs” and “the realm of action.”⁴³ The center of society refers to the realm where a group of elites create a central value system through laws, reforms, and other actions.⁴⁴ In other words, it is the elites with authority that determine the dominant and ruling ethos, “a central value system” for the entire society.⁴⁵ Shils argues that this central value system is not the only system observed in society, but rather, there are degrees of observation of the central value system, along with other possible value systems in different parts of society.⁴⁶ What is significant about Shils’ observation is that a group of elites control the authority to dictate and determine the values, norms and rules that govern the whole of society.

Those who fall outside the center are in the periphery of society. Shils argues that “[a]s we move from the centre of society . . . to the hinterland or the periphery . . . attachment to the central value system becomes attenuated.”⁴⁷ Moreover, this lack of attachment to the central value system need not be intentional or in deliberate rejection, but the periphery could accept or reject parts of the central value system to varying degrees. Shils also adds that “the more inegalitarian the society” the less likely it is that the central value system will be accepted.⁴⁸ Finally, Shils argues that, over time, “with the growth of the market, and the administrative and technological strengthening of authority, contact with the central value system” increases.⁴⁹

If the secularization project is implemented in a top-down mandate, in a society where there are already center-periphery tensions, then the state-religion relationship becomes a primary point

42. Edward Shils, *Centre and Periphery* in *THE LOGIC OF PERSONAL KNOWLEDGE: ESSAYS PRESENTED TO MICHAEL POLANYI* 117, 117–31 (1961).

43. *Id.* at 117.

44. *Id.* at 118.

45. *Id.*

46. *Id.* at 123–24.

47. *Id.*

48. *Id.* at 117.

49. *Id.*

of contention and tension between the center and the periphery. In the next section, I provide a genealogy of Turkish secularism through the lens of the center-periphery divide as articulated by Shils. By “genealogy,” I refer to “a way of (re)telling history by tracing contingencies that have come together to form an apparently natural development.”⁵⁰ The next section discusses Turkey’s inheritance of center-periphery tensions from its Ottoman predecessor, the violent implementation of the Turkish secularization project in the face of resistance from the Turkish periphery, where there existed no meaningful secular ethos at the start of the secularization project, and the development of populist responses effectuated through the political process and constitutional amendments. I trace the transformation of Turkish secularism from a *militant secularization project* to *populist secularism*. I refer to the secularization project of the Kemalist nation building elite as *militant secularization* because it was upheld in violent ways by the Turkish military and with rigid interpretations of the concept by the Turkish Constitutional Court. The following historical overview traces the development of *populist secularism* as a reaction to militant secularization particularly oppressive and aggressive from 1960 until the 2000’s.

Throughout the article, I use “Turkish center” to refer to secular, and primarily urban, elites most of whom were influenced by Western European ideals on democracy and secularism, and many of whom spoke at least one European language giving them access to European intellectual discourses on democracy and religion. While the “Turkish periphery” consists of numerous groups, including ethnic, linguistic, and religious minorities, the primary demographic of the periphery consists of traditional Muslim communities, many of whom are ethnically and/or linguistically Turkish. Undoubtedly, the identity and the parameters of both the center and the periphery in any given society remain in flux and may shift over time. However, in the case of Turkey, the primary tension between the center and the periphery has been the place of religion in public life and the extent to which the state can dictate and construct identities through a top-down process.⁵¹ Furthermore, the periphery is not necessarily a geographic location. Although much of the Turkish periphery can be located in non-urban areas such as villages and small towns, even urban spaces host peripheral identities of the poor, the pious, and ethnic and religious minorities. What defines a peripheral identity is its lack of

50. Talal Asad, *Responses in POWER OF THE SECULAR MODERN: TALAL ASAD AND HIS INTERLOCUTORS* 206, 234 (David Scott & Charles Hirschkind, eds. 2006).

51. See generally STANFORD J. SHAW & EZEL KURAL SHAW, *HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY*, VOL. 2 at 384–88, (1997).

authority and voice in determining governance structures, and its purposeful and systematic exclusion from determining democratic norm creation by the Turkish center.

II. CONSTRUCTING LAIKLIK,⁵² OR TURKISH SECULARISM

The evolution of secularism in the Turkish Republic is impacted by three primary tensions it inherited from the Ottoman Empire:⁵³ cultural, social and political cleavages that can be explained by the center-periphery thesis; a population whose epistemology was defined by Islam and Islamic law, and a governing elite who sought to reform by top-down implementation of laws despite the lack of a developed public discourse or consensus; and, an independent military that saw itself as the protector of the ideal political order, as defined by the military. Thus, the transformation of militant secularism to populist secularism in Turkey was only possible by placing the military under effective civilian control and by giving the peripheral communities of Turkey a meaningful voice in the country's laws and governance.

A. OTTOMAN LEGACY

The Ottoman Empire (1299-1923) sprung from a tribe of Central Asian Turkic nomads.⁵⁴ At its height, the Empire included parts of Europe, West Asia and North Africa.⁵⁵ Although the Empire identified as a Muslim empire and its laws were primarily based on Islamic law, as its territory expanded, the Empire became a vast territory that was multi-ethnic, multi-lingual and multi-religious.⁵⁶ Over time, and especially with the advent of Westernizing reforms starting in the nineteenth century, there developed additional cultural gaps within the Empire, which have continued to current day Turkey. Although many scholars have discussed the founding reforms of the Turkish

52. *Laiklik* is the Turkish word used to refer to secularism. It is adopted from the French *laïcité*. In fact, besides *laiklik* and the rare use of *sekuler* the Turkish pronunciation of *secular*, there is no authentic Turkish word that refers to secularism. See generally *From Secularism to Laïcité and Analyzing Turkish Authoritarian Laiklik*, INSIGHT TURKEY (Jan. 1, 2018), <https://www.insightturkey.com/articles/from-secularism-to-lacit-and-analyzing-turkish-authoritarian-laiklik>.

53. See generally SHAW & SHAW, *supra* note 54, at 373–96.

54. MICHAEL MEEKER, A NATION OF EMPIRE: THE OTTOMAN LEGACY OF TURKISH MODERNITY 126 (2002).

55. See STANFORD J. SHAW, HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY, VOL. 1 at 55 (2000).

56. MEEKER, *supra* note 57, at 91, 94.

Republic as constituting a decisive and complete break from its Ottoman past, as I have argued elsewhere, the narrative of a complete break is inaccurate and does not reflect everyday reality of many Turkish citizens.⁵⁷ Indeed, many of the early reforms of the Turkish republic were extensions of late Ottoman socio-political and legal reforms.⁵⁸ In other words, the Ottoman State had already introduced legal and political reforms, including codification of laws. Consequently, the continuing contestations over secularism in contemporary Turkish Republic need to be understood in the context of its Ottoman past.

Discussed in turn below, Turkey inherited, among others, three primary characteristics from the Ottoman Empire:⁵⁹ 1) continuing tensions in the center-periphery relations, 2) an epistemology of religious political authority that is coterminous with the state and religious law as the primary source of law, and 3) an independent military that intervenes in politics to implement a political order of their choosing.

1. Center-Periphery Relations in the Ottoman Empire

Shils' center-periphery dichotomy has been adopted in various studies on Turkey.⁶⁰ For example, Serif Mardin traces the dynamics of the center-periphery tensions from the Ottoman Empire to the Turkish Republic.⁶¹ Noting that the Ottoman Empire had a strong center with elaborate institutions to support it, Mardin argues that prior to the modernization efforts starting in the nineteenth century, the only major confrontation in the Ottoman Empire was between the center and the periphery.⁶² The Ottoman center consisted of the Sultan and his court, as well as urban populations, while the periphery consisted of the rural nomadic populations in Anatolia, which consisted of the majority of the Empire's population.⁶³ Not only did the central Ottoman state have difficulties controlling the nomads of

57. *E.g.*, Seval Yildirim, *Aftermath of a Revolution: A Case Study of Turkish Family Law*, 17 PACE INT'L L. REV. 347, 350, 370 (2005) (arguing that certain family law provisions of the 2002 Turkish Civil Code remain the same as the Islamic law principles incorporated into family law codes of the nineteenth century Ottoman Empire) [hereinafter Yildirim, *Aftermath of a Revolution*].

58. MEEKER, *supra* note 57, at 308.

59. *See generally* SHAW & SHAW, *supra* note 54, at 373-96.

60. *See* SERIF MARDIN, RELIGION, SOCIETY AND MODERNITY IN TURKEY 298-99 (2006) [hereinafter MARDIN, MODERNITY IN TURKEY].

61. *See id.*

62. *See id.* at 299.

63. *See id.* at 300.

the peripheral lands, but this difficulty brought with it a cultural cleavage between urban and rural populations.⁶⁴ Moreover, the center remained suspicious of the periphery, particularly given the persistence of pre-Ottoman nobility and religious orthodoxy in peripheral areas.⁶⁵

The center-periphery tensions intensified in the nineteenth century with the modernization efforts of the Ottoman state. During the Tanzimat era reforms (1839-1876) the Ottoman reformers believed that building a state that was modeled after the nation-state would help strengthen the ailing empire.⁶⁶ The cohesiveness required of the nation-state model meant the reformers had to achieve the integration of the non-Muslim population and the peripheral Muslim population. However, much of the non-Muslim territories were lost during the nineteenth and early twentieth centuries, in effect rendering the need to integrate the non-Muslim population moot.⁶⁷

Mardin points out that integration of the peripheral Muslim populations “was just as much of a problem as assimilation of the non-Muslim groups.”⁶⁸ By the First World War, different attempts to incorporate the Muslim populations of the periphery had mostly failed.⁶⁹ When Mustafa Kemal, regarded as the leader of the Turkish Independence War and the nation’s first President, and his cadre began their Kemalist nation-building project, “the fear that Anatolia would be split on primordial-group lines ran as a strong undercurrent among the architects of Kemalism trying to establish their own center.”⁷⁰

The center-periphery tensions are of utmost significance in understanding why the Turkish masses have continued to resist secularization programs from the center and why the military has

64. *See id.* (“The clash between nomads and urban dwellers generated the Ottoman cultivated man’s stereotype that civilization was a contest between urbanization and nomadism, and that all things nomadic were deserving only of contempt.”).

65. *See id.* (“Another component of the center-periphery cleavage was the suspicion of the center toward the remaining traces of a pre-Ottoman nobility and a number of powerful families in the provinces whose star had risen with the Ottomans’. The provinces were also hotbeds of intractable religious heterodoxy.”).

66. *See id.* at 305.

67. *See id.* at 304 (“With its policy of exchanges of population, the Turkish Republic made the situation even simpler. In the years following the exchange, the republic might have continued to have a suspicious view of non-Muslim minorities, but only in rare cases did minority problems constitute the substance of an outstanding political issue.”).

68. *Id.* at 304.

69. *See generally id.* at 305–06

70. *Id.* at 306.

repeatedly intervened in Turkish democracy in order to enforce a rigid understanding of secularism. As discussed below, Kemalist reforms highlighted some of these cleavages, and each military interruption of the democratic process deepened them. Until the recent civilian takeover under the AKP government, the military was the primary institution (along with the Constitutional Court, albeit to a much lesser degree) of the Kemalist center and has seen itself as the guardian *not* of Turkish democracy as some scholars in the U.S. have argued,⁷¹ but of the Kemalist center and its political hegemony. As discussed in further detail below, Kemalist reforms of the center left the periphery outside the new epistemology of the new nation.⁷² Despite Mustafa Kemal's declaration that "The Villager is the Master of the Nation,"⁷³ to this day, the Turkish center has viewed rural areas with suspicion, resentment, and even disgust for their resistance to Western lifestyles. In this sense, the villages fall to the periphery of the periphery in Turkish socio-political reality. For this reason, they have been crucial in redefining the changing parameters of the Turkish center, and consequently, of Turkish secularism, since 2002.

2. Ottoman Empire as an Islamic State

The Ottoman Empire organized itself as an Islamic state—that is, a state where the Sultan, or the ruler, claimed legitimacy based on divine law and his representation of Muslims on earth,⁷⁴ where the subjects of the Empire were identified and distinguished based on religious identity (as opposed to race or ethnicity), where the law was

71. See Ozan O. Varol, *The Democratic Coup d'Etat*, 53 HARV. INT'L L. J. 291, 320, 330 (2012) [hereinafter Varol, *The Democratic Coup*].

72. See Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 348–49; Seval Yildirim, *Gender and Resistance in Turkey: On Myths of Liberty and Salvation*, 24(2) *Transnat'l L. & Contemp. Probs.* 353, 18(2) *J. Gender, Race & Just.* 399 (2015) [hereinafter Yildirim, *Gender and Resistance*]; Seval Yildirim, *The Search for Shared Idioms: Contesting Views of Laiklik Before the Turkish Constitutional Court*, in *MUSLIM SOCIETIES AND THE CHALLENGE OF SECULARIZATION: AN INTERDISCIPLINARY APPROACH* 235, 241, 243–47 (Gabriele Marranci ed., 2010) [hereinafter Yildirim, *Shared Idioms*]; Seval Yildirim, *Global Tangles: Laws, Headcoverings and Religions Identity*, 10 *SANTA CLARA J. INT'L L.* 45, 56–57 (2012) [hereinafter Yildirim, *Global Tangles*].

73. In Turkish, "Köylü milletin efendisidir." This statement can be found engraved on large monuments in various villages across Turkey.

74. The Ottoman Sultans claimed leadership of Sunni Muslims. See ANDREW DAVISON, *SECULARISM AND REVIVALISM IN TURKEY: A HERMENEUTIC RECONSIDERATION* 140 (1998). This position was disbanded altogether with modernization reforms in the early years of the Turkish Republic, as discussed below. For a discussion of law in the Ottoman Empire, see generally HAIM GERBER, *ISLAMIC LAW AND CULTURE: 1600-1840*, at 28–29, 54–55 (1999). See also TURGUT AKPINAR, *TÜRKLER'İN DİN VE HUKUK TARİHİ (TURKS' HISTORY OF RELIGION AND LAW)* 181–215 (1999).

based on Islamic jurisprudence,⁷⁵ and where religious communities were governed by their own laws.

The Ottoman legal system was based on Islamic law, the *Sharia*, and the Ottoman State created a centralized legal bureaucracy to regulate legal affairs.⁷⁶ For example, Islamic law judges were Ottoman state employees, as opposed to the pre-Ottoman era where judges were independent of the State.⁷⁷ Moreover, the Ottoman State created the office of *Sheikh-al-Islam*, the chief judge and Islamic scholar, who advised the Ottoman Sultan as to the compatibility of all matters with Islamic law.⁷⁸ All laws, including the Sultan's edicts, had to comply with Islamic law.⁷⁹ However, there were areas of law that were either not covered by Islamic law, or issues on which Islamic law was silent.⁸⁰ For these matters, the Ottoman State created a sphere of positive law, *qanun*.⁸¹ As with all other laws of the empire, *qanun* could not contradict Islamic law.⁸² This compliance requirement limited the scope and effectiveness of *qanun* to Islamic law mandates, and "*qanun* penalties were rarely if ever applied."⁸³ That positive law existed alongside religious law was particularly significant in a legal order that identified itself on the basis of religion, an Islamic state, and as a sign that religious law was not totalistic. *Qanun* was also the precursor to later legal reforms, which primarily took the form of codification.⁸⁴

As the Ottoman Empire was in decline as a world power by the mid-nineteenth century, Ottoman intellectuals had begun to engage with Western intellectual ideas, primarily on democracy and secularism.⁸⁵ The need to reform the Ottoman State and Western

75. Although Ottoman courts decided cases under all schools of Islamic law, the Ottoman State accepted the Hanafi school of law of Sunni Islam as the official basis of law in the Empire. This distinction became more significant with legal reforms, and particularly in the context of codification, starting in the nineteenth century. On different schools of law followed by courts in the Ottoman Empire, see generally GERBER, *supra* note 77, at 24–25, 68–70, 132.

76. AKPINAR, *supra* note 77, at 185–87.

77. GERBER, *supra* note 77, at 61.

78. *Id.* at 30, 54, 60–64. The *Sharia* consists of provisions listed in the *Quran*, Islam's holy book, sayings and acts of Prophet Mohammed as reported through the centuries, of *hadith*, and the interpretations of Islamic jurists over the centuries, often in the form of treatises. *Id.* at 23–28.

79. *Id.* at 23, 59; AKPINAR, *supra* note 77, at 189.

80. GERBER, *supra* note 77, at 29–30, 39.

81. *Id.* at 29; AKPINAR, *supra* note 77, at 187 (spelled kanun).

82. See AKPINAR, *supra* note 77, at 190.

83. GERBER, *supra* note 77, at 29, 59–60, 64.

84. See generally GERBER, *supra* note 77, at 132–35.

85. SERIF MARDIN, THE GENESIS OF YOUNG OTTOMAN THOUGHT 8–9 (2000)

ideological influence led to the *Tanzimat* period (1839-1876), an era of modernization and Westernization reforms.⁸⁶ Starting during this period, modernization reforms were structured via codes.⁸⁷ Codification was a distinctly Western form of organizing law, and was new to the Empire.⁸⁸ The primary legal instrument of the era was the *Gulhane* Charter.⁸⁹ The Charter was revolutionary not only because of its form as a written code, but also because it applied to all subjects of the Empire without distinction to religious identity.⁹⁰ Outlining various reforms in the military apparatus, the educational system, and other state institutions, the *Gulhane* Charter effectively created “a non-religious legal space.”⁹¹ Other codification attempts followed. Most significantly, *Mecelle*, the first Civil Code, went into effect in 1876.⁹²

In its original draft, *Mecelle* consisted of commercial law and family law provisions.⁹³ While the commercial law provisions were based on 1807 French Commercial Code, the family law provisions of the *Mecelle* were based on Hanafi jurisprudence, one of four main Sunni Islamic schools of law.⁹⁴ Not only was this the first time Islamic law was codified, but it also established the Ottoman state affiliation with the Hanafi school of Islamic law.⁹⁵ As a result of the strong

[hereinafter MARDIN, YOUNG OTTOMAN THOUGHT].

86. See NIYAZI BERKES, *THE DEVELOPMENT OF SECULARISM IN TURKEY* 138 (1999). Berkés also adds that although European powers had no direct advisory role in reforms at this point, they were instrumental in pushing for reforms in their advocacy of minorities in the Ottoman Empire. *Id.* at 143–44.

87. *Id.* at 144–45.

88. *Id.* at 145.

89. *Id.*

90. *Id.* See also MARDIN, YOUNG OTTOMAN THOUGHT, *supra* note 88, at 154–68 (discussing the individuals behind the *Gulhane* Charter, the political dynamics leading to its enactment, and international reactions to the new law).

91. Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 352.

92. BERKES, *supra* note 89, at 168–69.

93. *Id.* at 169; Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 353.

94. Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 353. It is noteworthy that Cevdet Pasha, the main proponent and the architect of the *Mecelle*, found support for codification of civil relations and establishment of secular courts in an Islamic law treatise written by Jalal al-Din Dawwani. Dawwani argued that “secular courts were not only compatible with Islam but also were necessary to it.” *Id.*; BERKES, *supra* note 89, at 165, 168.

95. The Ottoman state had always preferred the Hanafi school for its flexibility in allowing for a centralized state system. However, because the court system was not centralized, the judges had considerable flexibility to apply alternative theories. On the flexibility of the use of various schools of Islamic law, see generally GERBER, *supra* note 77, at 68–70. Through an analysis of four different judges in different parts of the Ottoman Empire during a time span of almost two and a half centuries, Gerber shows that the state’s dictate of one school of law was not rigidly applied in practice. *Id.*

objections by the *Sheikh-al-Islam*, only the commercial law part of the code went into effect.⁹⁶ Notably, new secular courts were established to administer the new code, and they followed new procedural guidelines, including accepting testimony from non-Muslim witnesses.⁹⁷

Center-periphery tensions manifested in debates surrounding codification and adoption of secular laws.⁹⁸ The Islamists objected to the secular nature of the reforms, as well as to the top-down mandate of their implementation.⁹⁹ As the ideas of nationalism and democratic governance continued to spread among the intellectuals, advocates of reform demanded further democratization.¹⁰⁰ Prior to its end, the Ottoman Empire experimented with democracy in two periods: from 1876 to 1878 and from 1908 to 1920, when the Parliament was dissolved by the invading British forces.¹⁰¹

Continuous negotiation over the identity of the Empire persisted between the Islamists, Ottomanists and the Turkish nationalists. Reform of family law was one of the most contested areas of legal reform. The Law of Family Rights was enacted as part of the *Mecelle* in 1917.¹⁰² Leading up to its enactment, debates over the code included “disagreements over whether family law could be codified, whether all schools of Islamic law could be included in the code and whether any or all these suggestions were un-Islamic, thus a threat to the core of the Empire.”¹⁰³ During these debates, two imperial edicts established grounds on which women could sue for divorce.¹⁰⁴ These 1915 edicts provided that women could sue for divorce “in cases of desertion, or the existence of a husband’s contagious disease making conjugal life dangerous.”¹⁰⁵ These grounds for divorce initiated by women departed from classical Hanafi jurisprudence, but were taken from other schools of Islamic law.¹⁰⁶ The 1917 Family Law provisions

96. DENIZ KANDIYOTI, *End of Empire: Islam, Nationalism and Women in Turkey*, in *WOMEN, ISLAM AND THE STATE* 22, 27 (Deniz Kandiyoti ed., 1991).

97. BERKES, *supra* note 89, at 162; see Yildirim, *Aftermath of a Revolution*, *supra* note 60.

98. See KANDIYOTI, *supra* note 99, at 24–25 (regarding reactions to legal reforms during Tanzimat).

99. *Id.* at 26.

100. *Id.*

101. *Id.* at 28.

102. KANDIYOTI, *supra* note 99, at 28.

103. Yildirim, *Aftermath of a Revolution*, *supra* note 60; see also, BERKES, *supra* note 89, at 367-77; KANDIYOTI, *supra* note 99, at 27.

104. KANDIYOTI, *supra* note 99, at 28.

105. JOHN L. ESPOSITO & NATANA J. DELONG-BAS, *WOMEN IN MUSLIM FAMILY LAW* 51 (2001).

106. *Id.*

further expanded women's rights in divorce.¹⁰⁷ Based on various schools of Islamic law, the new code limited husband's absolute right to divorce and polygamy.¹⁰⁸ Additionally, for the first time in the Ottoman Empire, Jewish and Christian personal laws were codified as part of the Family law.¹⁰⁹ However, after facing strong backlash, provisions applying to non-Muslims were abrogated in 1919.¹¹⁰

Although an Islamic state in its identity and laws, the Ottoman Empire started the tradition of top-down modernization reforms, a tradition that nation-building elites would adopt and emulate. As would be the case with the Turkish nation-building project, legal reform in the form of codification was the means of effectuating reformist ideals and implementing them across the nation. Codification requires special attention, as the process involves selection and rejection. It is thus an exercise in construction of a new legal reality, and, consequently, a new legal identity. In the Ottoman context, codification meant a deviation from classical Islamic jurisprudence where Ottoman code drafters could select the opinions from different Islamic legal school to construct their ideal law. Moreover, as in the Ottoman context, when codification alters religious law, the positive nature of the new codified law is particularly highlighted. Thus, codification is a secular act that alters religious law, legal identities, and relationships.¹¹¹

3. Military Interventions in Politics in the Ottoman Empire

In addition to the tensions from the center-periphery divide, and top-down reforms, the Turkish Republic also inherited an Ottoman past filled with a strong and organized military intervening in politics.¹¹² From the beginning of the Empire in 1299 until the nation-building Kemalists abolished the throne in 1922, 12 of the 36 Ottoman sultans were overthrown by military forces.¹¹³ The last Ottoman sultan, Sultan Mehmet VI, or Vehdeddin, lost his title when the

107. *Id.*

108. *Id.*

109. *Id.*

110. SERAFETTIN TURAN, *TURK DEVRIM TARİHİ III: YENİ TÜRKİYE'NİN OLUSUMU* [TURKISH REVOLUTIONARY HISTORY] 218 (1995).

111. For a more detailed discussion of codification in the late Ottoman period and its implications for secularism, see Yildirim, *Aftermath of a Revolution*, *supra* note 60.

112. *Id.*

113. ERHAN AFYONCU, ET AL., *OSMANLI İMPARATORLUGU'NDA ASKERİ İSYANLAR VE DARBELER* [MILITARY UPRISINGS AND COUPS IN THE OTTOMAN EMPIRE] 16 (2016).

Kemalists declared the Turkish Republic and abolished the sultanate.¹¹⁴ In effect, Vehdeddin was also overthrown by the military forces that had won the war against invading European forces and formed a representative parliament.¹¹⁵

The Ottomans established an organized standing army during the second Ottoman Sultan Orhan's rule (1324 –1362).¹¹⁶ In addition to the Ottoman army, Janissaries (*Yeniçeri*, or new army in Turkish) were formed in the late 1300's during Sultan Murad I's rule.¹¹⁷ The Janissaries were even independent from the Palace Army.¹¹⁸ These two units at times supported different potential sultans or palace factions and stood against one another.¹¹⁹ In 1826, Sultan Mahmud II sought to reform the Janissaries, which was met by resistance and eventual revolt on June 15, 1826.¹²⁰ Sultan Mahmud II managed to convince the palace military to support him against the Janissaries.¹²¹ The palace troops bombed the Janissary barracks, killing about 6,000 Janissaries that day.¹²² Many burned to death in the barracks, and others died fighting the palace troops.¹²³ Mahmud II sent additional troops to hunt down the remaining Janissaries to ensure they would no longer be a threat to his throne.¹²⁴ Following the annihilation of the Janissaries, Mahmud II began efforts to reform the military following European military models under the guidance of European military consultants, but the Ottoman military would not gain its strength again until the end of the Empire.¹²⁵

The first notable military intervention in the state was a military

114. Yildirim, *Aftermath of a Revolution*, *supra* note 60.

115. *Id.*

116. *Id.*

117. CAROLINE FINKEL, *OSMAN'S DREAM: THE STORY OF THE OTTOMAN EMPIRE 1300–1923* at 28 (2005). Initially, the Janissaries were non-Muslim boys who were taken from their families to be raised as Muslims, in absolute loyalty to the Sultan. Over time, Muslim boys were also brought into Janissary schools to be trained for the forces. Janissaries were the most organized and independent of the Ottoman military forces. Because they were brought into Janissary schools as young boys and grew up with a common identity to serve God and the Ottoman Empire, the Janissaries proved to be a force of their own. They intervened regularly in the affairs of the throne to fulfill their duty, as they perceived it, to protect the Empire. *Id.* at 434–36.

118. *Id.* at 549.

119. *See generally*, AFYONCU, ET AL., *supra* note 113.

120. *Id.* at 11.

121. *Id.* at 149.

122. *Id.*

123. *Id.*

124. FINKEL, *supra* note 117, at 435.

125. AFYONCU, ET AL., *supra* note 113, at 11.

revolt in 1446.¹²⁶ Revolts by military units are too many to recount here, but that recurring military revolts against the sultans was a part of the Ottoman fabric is significant.¹²⁷ The tension between the sultans and the military that saw it acceptable to intervene in the political affairs of the throne is highlighted in the fact that the military dethroned one third of all Ottoman sultans. The first sultan to be overthrown by the military was Sultan Beyazid II in 1512. By the seventeenth century, “no sultan could be at odds with the military.”¹²⁸

While each of these sultans were overthrown for different reasons, a common theme in these military interventions is either socio-economic hard times in the Empire or disagreements over which son of the previous sultan should ascend to the throne, i.e. political alliances. A running theme, which is also significant for purposes of understanding modern Turkey, is that in each instance the military, or a faction thereof, perceived itself to be the ultimate judge of what is best for the Empire and took matters into its own hands. In the Ottoman Empire, the army (including the Janissaries) pledged allegiance first to Allah and then to the Sultan as the Caliph (the leader of Sunni Muslims) as the representative of Allah on earth. Thus, when the army faction disrupting the political order by overthrowing the sultan had to justify its actions, they would do so by triggering their duty to Allah.

Moreover, both those deposing the Sultan and the Sultan resisting the overthrow by attempting to bring other military factions to his side would turn to religious leaders for fatwas (religious opinions) to maintain religious, and thus, legal legitimacy for their actions.¹²⁹ This is an important point to highlight, particularly in comparison to military coups in the Turkish Republic. As the next section outlines, in the Turkish Republic, the military justified each of its interventions as its duty as the guardian of the Kemalist principles of the Turkish Republic, and in particular of secularism. In other words, both the Ottoman military units and the Turkish army units that intervened in the political process attempted to justify and legitimize their actions by the laws of the day, legal justification provided by the fatwas in the Ottoman Empire and legal justification provided from a declared role as the guardian of Turkish democracy in the Turkish Republic. Almost five centuries of the military's intervention in the political order continued in Republican Turkey

126. *Id.* at 12.

127. See *id.*, for a more complete account of military rebellions, revolts, and coups against the Ottoman state.

128. FINKEL, *supra* note 120, at 177.

129. AFYONCU, ET AL., *supra* note 128, at 12–13.

until an elected government was able to take effective civilian control of the military.

4. End of the Empire, Beginning of the Republic

In its last century, there were two periods of democratic experimentation in the Ottoman Empire. The first period of constitutional monarchy was short lived from November 23, 1876 until February 13, 1878.¹³⁰ The second constitutional period began on July 3, 1908 and lasted until March 1920 when the occupying Allied forces disbanded the Ottoman Parliament.¹³¹ The first armed takeover of an elected government took place in 1913, known as the Babiali Baskini or Babiali Raid.¹³² The leadership of the main opposition party (two of whom were military officers) led an armed raid of the main government building and forced the elected premier to sign a resignation letter.¹³³ The governing party was known for its close ties to the Sultan and was thus blamed for the continuing decline of the Empire.¹³⁴

The Ottoman Empire's continuing experimentation with constitutional monarchy did not change the decline of its military strength, continuing loss of its territories and ethno-religious stirrings in its remaining territories. As early as 1853, Russian Tzar Nicholas referred to the Ottoman Empire as "the sick man of Europe" as he discussed plans of partitioning it with a British ambassador.¹³⁵ During World War I, the Ottoman Empire sided with the Central Powers of Germany and the Austro-Hungarian Empire.¹³⁶ The Armistice of Mudros on October 30, 1918 ended the war for the Empire with Ottoman surrender, preparing the path for the partitioning of the Ottoman Empire by the Allies.¹³⁷ On August 10, 1920, the Treaty of Sevres outlined how the Ottoman Empire would be partitioned

130. Yildirim, *Aftermath of a Revolution*, *supra* note 57, at 354.

131. FINKEL, *supra* note 120, at 135; Ellinor Morack, *Ottoman Parliamentary Procedure in the Chamber of Deputies (Meclis-i Mebusan) and the Great National Assembly of Turkey (Turkiye Buyuk Millet Meclisi), 1876-1923*, in *PLANTING PARLIAMENTS IN EURASIA, 1850-1950*, at 220-255, 233 (2021).

132. For a detailed account of the coup, see AFYONCU, ET AL., *supra* note 128, at 164-69.

133. *Id.* at 168.

134. *Id.* at 164-69; FINKEL, *supra* note 120, at 523.

135. FINKEL, *supra* note 120, at 457.

136. *Id.*

137. DAVID FROMKIN, *A PEACE TO END ALL PEACE: THE FALL OF THE OTTOMAN EMPIRE AND THE CREATION OF THE MODERN MIDDLE EAST* 372 (2010).

between France, Britain, Italy, Greece and Armenia.¹³⁸ While the Sevres Treaty may not be a major part of the European psyche, “Turks turned it into a major trauma and a living document to understand European policies toward Turkey.”¹³⁹ Time and again, this treaty partitioning Ottoman lands is used as a reminder that if there is the slightest fracture in national unity, the Sevres nightmare could return and Turks could wake up to European soldiers on their streets again.

Mustafa Kemal, a Turk born and raised in Selanik (Thessaloniki in contemporary Greece) and schooled in military schools, emerged as a revolutionary figure amidst these developments.¹⁴⁰ A member of the Ottoman military, Mustafa Kemal, along with his cadre, was able to unify the peoples of Anatolia to successfully oust European invaders.¹⁴¹ Mustafa Kemal’s leadership cannot be overstated, a military officer who fought for the Ottoman Empire in a number of different wars, resigned from the Army to lead and organize a resistance movement after the European forces invaded the remaining Ottoman lands.¹⁴² He became an outlaw with a warrant for his arrest.¹⁴³ Not only was he successful in unifying different factions to win the Independence War against the European invaders, but he also led efforts that culminated in the first Turkish Grand National Assembly opening on April 23, 1920.¹⁴⁴

Mustafa Kemal’s military background and his military service up to the point of European invasion are significant facts that are highlighted in the Turkish psyche to this day. It is commonly accepted among Turks that Mustafa Kemal’s military training and experience enabled his success leading the make-shift resistance troops in the Independence War.

Mustafa Kemal also used religion and Muslim religious identity as a unifier during the Independence Movement. After all, the invasions following the Sevres Treaty “raised Islamic political consciousness against the occupying European powers by bringing the external other (the West) into actual contact with a defeated and

138. FINKEL, *supra* note 120, at 457.

139. M. HAKAN YAVUZ, ISLAMIC POLITICAL IDENTITY IN TURKEY, 45 (2003).

140. *See generally* ANDREW MANGO, ATATURK (2002); *see also* Kemal Ataturk President of Turkey, BRITANNICA, <https://www.britannica.com/biography/Kemal-Ataturk> (last visited Sept. 17, 2024).

141. YAVUZ, *supra* note 139, at 8.

142. *See generally* MANGO, *supra* note 140.

143. Greg Beyer, *Mustafa Kemal Ataturk: The Father of the Turks*, THE COLLECTOR (Dec. 25, 2023) <https://www.thecollector.com/mustafa-kemal-ataturk-life-father-turks/>

144. *Id.*

now technically subordinated Muslim population.”¹⁴⁵ Thus, during the Independence War, Muslim identity was central in unifying different ethnic groups such as Turks, Kurds, and Circassians, among others. Religious scholars, or the *ulema*, actively encouraged this unity and “in the first Turkish parliament, 20 percent of the deputies were ulema, or religious scholars.”¹⁴⁶

During the opening speech of the Grand National Assembly in April 1920, Mustafa Kemal said: “It should not be assumed that there is only one kind of nation from the communities of Islam inside these borders. Within these borders, there are Turks. There are the Cerkes [Circassian], as well as other Muslim communities.”¹⁴⁷ In other words, during the Independence War, the struggle was framed as one of Muslims against non-Muslim invaders, rather than along national lines.¹⁴⁸ This recognition of the diversity of the Muslim populations would give way to a staunch nationalism seeking to erase ethnic difference during the early years of the Republic—later to be used as the basis of significant human rights abuses by military regimes against Turkey’s Kurdish population, especially after the 1980 coup.¹⁴⁹

By 1922, the Turkish Independence Movement had shown its perseverance and the invading forces began negotiations at Lausanne, leading to the Treaty of Lausanne on July 24, 1923, which accepted Turkish victory over the invading troops.¹⁵⁰ On October 29, 1923, Mustafa Kemal and the leaders of the Independence Movement declared the Turkish Republic.¹⁵¹ It was now time for nation-building, which meant articulating a vision for the new Republic that would

145. YAVUZ, *supra* note 143, at 45; *see also* Yildirim, *Gender and Resistance*, *supra* note 75, at 354 (discussing how my maternal grandmother, Nesime, disliked Christians until the end of her life because of her childhood experiences under Italian occupation in the town of Denizli).

146. YAVUZ, *supra* note 143, at 45.

147. *Id.*

148. *Id.* (“During the war years, Atatürk defined the nation in Islamic terms and argued that ‘the nation that we are trying to protect similarly not only consists of one community. It is composed of different Muslim communities.’”).

149. *See id.* at 69 (“Because many Kurdish and Alevi activist groups were allied closely with Marxist organizations and movements, the military coup leaders felt compelled to use Islamic institutions and symbols as a legitimizing counterweight.”).

150. Lausanne Peace Treaty, July 24, 1923, 704 U.N.T.S. 11; *see also* *The Treaty of Lausanne*, LAUSANNE PROJECT, <https://thelausanneproject.com/history-lausanne-treaty/> (last visited Apr. 4, 2024).

151. *How the Turkish Republic was Established*, HÜRRIYET DAILEY NEWS (Oct. 29, 2019), <https://www.hurriyetdailynews.com/how-the-turkish-republic-was-established-148033> (“‘Gentlemen! We shall declare the republic tomorrow’ is what modern Turkey’s founder Mustafa Kemal Atatürk said on the night of Oct. 28, 1923 as he addressed lawmakers and his close brothers-in-arms.”).

distinguish it from its Ottoman imperial past.

Thus began the story of the Republic of Turkey in 1923—founded upon the wins of 1923 independence war led by a military officer,¹⁵² its first 1924 Constitution written upon the new nation's first military success, drafted by a committee of the first mono-party parliament,¹⁵³ followed by three overt military coups in 1960, 1971 and 1980,¹⁵⁴ a soft coup in 1997,¹⁵⁵ the two later constitutions of 1961 and 1982 written under military rule,¹⁵⁶ and the latest failed coup attempt in 2016 and its aftermath.¹⁵⁷

Mustafa Kemal had a clear and well-defined strategy for nation-building, including a vision for his new nation—a country bridging the West and the East, maintaining its cultural roots, but reforming in order to join what he thought were civilized nations of Western Europe. The nation-building project was defined by Mustafa Kemal's six principles: republicanism, reformism, secularism (or *laiklik*), populism, nationalism, and statism.¹⁵⁸ These Kemalist principles were later incorporated into the Turkish Constitution as non-amendable provisions.¹⁵⁹ Mustafa Kemal was a product of military training in the Ottoman Empire and it was through his mobilization of the military that the independence struggle was successful.¹⁶⁰ Thus, after he passed away in 1938, he left behind a Turkish military that would serve as the protector and guardian of his legacy and reforms, and consequently prevent Turkish democracy from evolving and maturing organically.¹⁶¹

B. KEMALIST REFORMS AND THE CONSTRUCTION OF THE TURKISH STATE BY THE CENTER

Although Kemalist reforms had a clear and determined trajectory to Westernize, the founding elite had to face various complexities in the new nation. Reflecting the multi-faceted, multi-ethnic, multi-faith, multi-linguistic nature of its predecessor, Ottoman Empire, new

152. IHSAN YILMAZ, *CREATING THE DESIRED CITIZEN: IDEOLOGY, STATE AND ISLAM IN TURKEY* 45 (2021).

153. *Id.* at 15.

154. *Id.* at 46.

155. *Id.* at 113.

156. *Id.* at 91.

157. *Id.* at 122.

158. *Id.* at 47.

159. *Id.*

160. See Bill Kissane, *Atatürk and After: Three Perspectives on Political Change in Turkey*, 76 *REV. POL.* 293, 294 (2014).

161. *Id.*

Turkey found the resolution of differences in fascistic definitions of the nation (as ethnically Turkish), the citizen (as a Turk), and culture (for example, with Turkish as the language of the state). Their project was a top-down implemented modernization project, conceptualized and enforced by the Turkish center. At this point, the Turkish center consisted of elites who believed in the modernization project, which they saw as synonymous with Westernization.¹⁶² Many of these elites had been educated either in Europe or in Western ideology and spoke at least one European language.¹⁶³ Secularism was a defining characteristic of the Turkish center during nation-building. Law became the implementing tool of the modernization project.¹⁶⁴ Elsewhere, I have argued that not only did the periphery resist these reforms, but that some of these reforms have not changed socio-political behavior in the periphery.¹⁶⁵ To appreciate how Kemalist reforms and later military interferences to protect the reforms have deepened center-periphery cleavages, a brief survey of the reforms and new laws is useful.

Legal reforms, top-down modernization, and secularization had begun in the Ottoman Empire in the nineteenth century.¹⁶⁶ Although at first sight Kemalist reforms might appear like a decisive break from the Ottoman past, many of the reforms, such as a secular civil code, the act of codification itself, and parliamentary democracy, were all innovations that had been experimented with during the last stages of the Ottoman Empire. However, aimed at creating a break with the Ottoman past, Kemalist reforms targeted the Islamic nature of the Ottoman state.¹⁶⁷ To that end, the Kemalist reforms “eliminated or banned institutions of Islamic influence such as the Caliphate and Islamic brotherhoods, and they placed all main Islamic institutions, such as the mosques, under government control.”¹⁶⁸ As early as 1924,

162. See Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 358.

163. See *id.*, at 352.

164. See *id.* at 353–54; see also Yildirim, *Gender and Resistance*, *supra* note 75, at 359.

165. See, e.g., Yildirim, *Gender and Resistance*, *supra* note 75, at 361.

166. For a detailed account of these reforms, see generally BERKES, *supra* note 89, at 137–54; Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 351–55.

167. Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 347.

168. *Id.* at 355. To this day, the Turkish state maintains control of religion mainly by Diyanet, or the Office of Chief of Religious Affairs, operating under the Office of the Prime Minister. See generally, *Establishment and a Brief History*, DIYANET (Mar. 28, 2013), <https://www.diyamet.gov.tr/en-US/Institutional/Detail//1/establishment-and-a-brief-history>. Diyanet certifies and appoints religious personnel, evaluates their performance, and pays their salary from the treasury. *Id.* Another method of state control of religion is through centralized education, eliminating any religious influence that could be disseminated through educational institutions. This Kemalist reform was

positions of religious authority, specifically the caliphate and sheik-al-Islam position were abolished, and religious courts were shut down.¹⁶⁹ In 1925, another law closed centers of Sufi orders.¹⁷⁰ Also in 1925, *Şapka Kanunu* or the Hat Law prohibited the use of fez and other Ottoman male clothing and mandated that all men wear European style hats.¹⁷¹ The Christian calendar replaced the Islamic one in 1926 and a modified Latin alphabet replaced the Arabic alphabet of the Ottoman era in 1928.¹⁷² Women's status was a primary concern for the Kemalists, as they believed this to be an essential part of being a modern Western state.¹⁷³ Although no law regulated female attire, "through state propaganda, newly founded educational institutions and Mustafa Kemal's unequivocal statements, women were specifically encouraged to abandon any kind of veiling."¹⁷⁴ In 1930, women were enfranchised and their right to hold office in municipal elections was recognized.¹⁷⁵ In 1934, this right was extended to national elections.¹⁷⁶

established by Act No. 430 of 3 March 1340 (1924) on the Unification of the Educational System. Rather than eliminating religious instruction from schools, however, the Turkish state propagates its own version of "true Islam" modeled primarily after the Hanafi school of Sunni Islam. Moreover, the centralization of education even covers government supervision of courses teaching the *Quran*. See *Tevhidi Tedrisat Kanunu* [Law of Unification of Educational Instruction] 1924 no. 430 (Turk.).

169. See Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 356.

170. *Tekke ve Zâviyelerle Türbelerin Seddine ve Türbedarlıklarıyla Birtakım Ünvanların Men' ve İlgâsına Dâir Kânun* [Closure of Dervish Monasteries and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles] 1925 no. 677 (Turk.).

171. *Şapka İktisâsi Hakkında Kanun* [Law on the Wearing of Hats] 1925 no. 671 (Turk.).

172. *Türk Harflerinin Kabul ve Tatbiki Hakkında Kanun* [Law on the Adoption and Application of the Turkish Alphabet] 1928 no. 1353 (Turk.). On the Kemalist reforms, see generally Nilüfer Göle, *Modernist Kamusal Alan ve İslami Ahlak* [*Modernist Public Space and Islamic Morality*], in *İSLAM'IN YENİ KAMUSAL YUZLERİ* [NEW PUBLIC FACES OF İSLAM] 20, 23 (Nilüfer Göle ed., 1st ed. 2000). For a discussion of how these reforms alienated the masses, especially in the periphery, see Yildirim, *Gender and Resistance*, *supra* note 75, at 359–61. With a narrative of my maternal grandmother Nesime, I discuss how the reforms sought to change everyday life. *Id.* For Nesime, for example, the language reform meant that she became illiterate overnight as she could not read the Latin alphabet. *Id.*, at 354.

173. For a detailed account of reforms regarding women's status, see Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 355; Yildirim, *Global Tangles*, *supra* note 75, at 57; Yildirim, *Gender and Resistance*, *supra* note 75, at 372–73.

174. Yildirim, *Global Tangles*, *supra* note 75, at 57.

175. See Binnaz Toprak, *Dinci Sag* [*Religious Right*], in *GECIS SURECİNDE TÜRKİYE* [TURKEY IN TRANSITION] 237–55 (1992).

176. *Id.* For a detailed discussion of the Turkish Civil Codes since the beginning of the Turkish Republic, see Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 357; Yildirim, *Global Tangles*, *supra* note 75, at 57.

Legal reform was the central mechanism of the Kemalist revolution, and codification was the main method of legal reform.¹⁷⁷ The Constitution, first enacted in 1921, was revised in 1924.¹⁷⁸ It was accompanied by the adoption and adaptation of various European codes. For instance, in 1929, the Code of Execution and Bankruptcy was adopted based on the Swiss Federal Code of 1889.¹⁷⁹ The Italian Criminal Code of 1889 became the basis for the Criminal Code of 1926.¹⁸⁰ The Swiss Civil Code and the Code of Obligations was adopted in 1926 as the new uniform civil code of the new republic.¹⁸¹ To promote the new law and introduce the new tradition of the non-religious civil marriage, an accompanying law was passed mandating that a marriage ceremony be conducted before a competent official.¹⁸²

Despite these reforms aiming at a clear break with the Islamic Ottoman past, Article 2 of the first constitution of the Turkish Republic recognized Islam as the religion of the new nation: "Islam is the religion of the Turkish State."¹⁸³ The initial draft of the 1924 Constitution was a product of negotiation between representatives who believed that the new nation should continue the Islamic traditions of the Ottoman Empire and those who believed that modernity required abandoning religion in politico-legal institutions.¹⁸⁴ As the Kemalists gained confidence in their reforms, the amendments to Article 2 reflected the changing nature of the Turkish state under the modernization project. In 1928, Article 2 was amended to omit any reference to Islam as the religion of the Turkish state.¹⁸⁵ As the Kemalist reforms were implemented, and as Mustafa

177. Yildirim, *Aftermath of a Revolution*, *supra* note 60, at 357.

178. *Id.* at 356.

179. Adnan Guriz, *Sources of Turkish Law*, in INTRODUCTION TO TURKISH LAW 1, 9 (Tugrul Ansay et al. eds., 1996).

180. *Id.* at 10.

181. *Id.* at 9.

182. One of the reforms that cannot be modified by any interpretation is "[t]he principle of civil marriage according to which the marriage act shall be concluded in the presence of a competent official, adopted with the Turkish Civil Code. No. 743 of 17 February 1926, and Article 110 of the Code." TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 174(4).

183. 1924 TÜRKİYE CUMHURİYETİ ANAYASASI [1924 Constitution of the Republic of Turkey] Apr. 20, 1924, Madde [art.] 2. Article 2 originally reads: "Türkiye Devleti'nin dini, Dini İslamdir, resmi dili Türkcedir, makarri Ankara şehridir. [Islam is the official religion of the Turkish State, Turkish is its official language and the city of Ankara is its capital.]" *Id.*

184. See Francesco Clementi, *A Different Form of Assemblearism: the Turkish Constitution of 1924*, 61 DPCE ONLINE 3573, 3574 (2024).

185. 1924 TÜRKİYE CUMHURİYETİ ANAYASASI [1924 Constitution of the Republic of Turkey] Apr. 20, 1924, Madde [art.] 2. Law No. 1222, Section 1 passed on April 10, 1928, amended Article 2 as follows: "Türkiye Devletinin resmi dili Türkcedir, makarri

Kemal's six principles were clearly articulated, Article 2 was amended again in 1938 to incorporate these changes; in its final version, the amended article read in relevant part: "The Turkish State is a republican, nationalist, populist, statist, secular and reformist state."¹⁸⁶

The amendments to Article 2 reflect the changing landscape of the Turkish Republic as the modernization project was implemented through top-down reforms and state propaganda. For the nation-building elite, the ideal Turk had to look and act like a European. Starting in nineteenth century, Ottoman urban elites had already started adopting different dress styles, and other customs.¹⁸⁷ However, for the majority of the population living in peripheral areas of the Empire, life had not changed much.¹⁸⁸ Kemalist reforms sought to reach these peripheral areas. Ironically, the intensity of the changes sought to bring strengthened peripheral identities- ethnic, religious, cultural identities that did not share the epistemology or the commitments of the nation-building reformist elites of the center.

The Surname Law of 1934 exemplifies this epistemological gap between the center and the periphery in the early years of the Republic.¹⁸⁹ This law mandated that every Turkish citizen take on a surname.¹⁹⁰ Originally nomadic peoples, ethnic Turks did not have a tradition of last names, thus the Ottoman state did not require them. The concept was so foreign to the masses that Section 2 of the law had to explain what this new requirement meant. It reads: "In speech, in writing, in signature, real [first] name is used first; surname is used at the end."¹⁹¹ In the periphery, the law was implemented by sending government agents to the villages.

For example, my paternal grandfather, Halil, was known as

Ankara sehridir" (The official language of the Turkish State is Turkish, and the city of Ankara is its capital). *Id.*

186. *Id.* Law No. 3115, Section 1 passed on February 5, 1937 amended Article 2, the full final version of which reads as follows: "Turkiye Devleti, Cumhuriyetci, milliyetci halkci, devletci, laik ve inkilapcidir. Resmi dili Turkcedir. Makarri Ankara sehridir." (The Turkish State is a republican, nationalist, populist, statist, secular and reformist state. Turkish is its official language. City of Ankara is its capital.) *Id.*

187. Betul Ipsirli Argit, *Clothing and Fashion in Istanbul (1453-1923)*, HIST. OF ISTANBUL, <https://istanbultarihi.ist/485-clothing-and-fashion-in-istanbul-14531923#:~:text=Changes%20occurred%20earlier%20in%20the.with%20the%20traditional%20style%20occurred> (last accessed Apr. 4, 2024).

188. *Id.*

189. See Surname Law, Kanun No. [Law No.] 2525 Resmi Gazete [Official Gazette], 2 July 1934 No. 2741, enacted: 21 June 1934.

190. *Id.*

191. *Id.* The original Turkish reads: Soyleyiste, yazista, imzada oz ad onde, soy adi sonda kullanilir. *Id.*

Yildirim Halil (lightening Halil) because he had a reputation for finishing tasks with lightning speed. The government agents that came to Halil's village (Isabey, Denizli) simply wrote his nickname, Yildirim, as his last name. Isabey is a village of ethnic Turks, many of whom resemble their Central Asian ancestors to this day. Thus, the last name mandate was a strange law for the Isabey residents, but did not pose a particular burden, especially since they ignored the mandate in their everyday lives. In fact, to this day, when I walk around in our village, I am known as the granddaughter of Yildirim Halil, proving that a law that has been in place for over 80 years has not changed how people recognize one another. For other peripheral identities, however, the last name mandate was a mandate to abandon their ethnic or religious identity.

Section 3 of the law prohibited the use of foreign names.¹⁹² Later in 1934, a regulation was issued to clarify the meaning of Section 3, and "names ending with 'yan, of, ef, vic, is, dis, pulos, aki, zade, mahdumu, veled, and bin' could not be registered. This made it impossible to register respectively, Armenian, Bulgarian, Macedonian, Bosnian, Serbian, Croatian, and other Slavic names, as well as Greek, Cretan, Persian, Georgian, or Arabic last names."¹⁹³

Despite the sweeping modernization reforms, Mustafa Kemal recognized that a democracy could only develop if the military remained out of political affairs. This belief is evident in the multiple provisions of the Military Criminal Code of 1930, strictly prohibiting *any* political activity or interference by any soldier.¹⁹⁴ Unfortunately, efficacy of this law would only last until the 1960 military coup, as discussed below. In fact, as the next few sections discuss, the type of militant secularism that ruled Turkey until the 2000's was constructed, maintained and enforced by the Turkish military on the one hand, and the Turkish Constitutional Court on the other.

C. MILITARY INTERVENTIONS IN THE TURKISH REPUBLIC, 1960-2002

When Mustafa Kemal passed away in 1938, he left his

192. *Id. See also*, SONER CAGAPTAY, ISLAM, SECULARISM AND NATIONALISM IN MODERN TURKEY: WHO IS A TURK? 61–62 (2006). Cagaptay discusses how religious and ethnic minorities (Christians, Jews, Kurds, to name a few) were especially burdened by this law and that many felt the need to adopt Turkish last names and gives examples of how Jewish citizens had to change their existing last names to sound Turkish. *Id.* For example, Kohen to Kan, Behar to Bayar, Karaso to Karasu. *Id.*

193. CAGAPTAY, *supra* note 202, at 62.

194. Military Penal Code, Kanun No. [Law No.] 1632 Resmi Gazete [Official Gazette], 15 June 1930 No. 1520, enacted: 22 May 1930 [hereinafter Military Penal Code].

modernization project to the party he founded, the Republican People's Party (Cumhuriyet Halkci Parti) ("CHP").¹⁹⁵ CHP was the sole party in the parliament until the first multi-party elections in 1946.¹⁹⁶ The party of the Kemalists and of the modernizing reforms, CHP had failed to create a strong bond with the rural populations, as modernizing reforms remained foreign to much of the periphery.¹⁹⁷ Founded in 1946, Democratic Party (Demokrat Parti) ("DP") emerged as the party of the peripheral small towns and villages, particularly with its populist narratives and appeal to Islam.¹⁹⁸ DP advocated that it was the party of "the real populists" while CHP was the party of "the bureaucrats."¹⁹⁹ Serif Mardin has argued that "the Republican People's Party represented the 'bureaucratic' center, whereas the Democrat Party represented the 'democratic' periphery."²⁰⁰ DP's leadership, particularly Adnan Menderes, consisted of former CHP representatives who had disagreements with the CHP.²⁰¹ In the 1946 elections, DP entered the National Assembly with 62 out of 465 seats.²⁰² By the next election in 1950, DP became the majority party with 405 of 539 seats and continued its dominance at the polls winning 502 of 541 seats in the 1954 elections.²⁰³

Although DP leaders "remained prosecular and fully supported the Kemalist programs," their voter base pushed the party to take a "more confrontational policy toward militant secular injunctions."²⁰⁴ The DP was eventually perceived as the party of the Islamic movement, "integrated into the center-right of the Turkish political

195. Hakan Uzun, *Cumhuriyet Halk Partisi'nin 1946 Olganustu Kurultayi [The Extraordinary Congress of Republican People's Party of 1946]*, 13 CAGDAS TURKIYE TARİHİ ARASTIRMALARI DERGISI [J. OF MOD. TURKISH HIST. STUD.] 139, 140 (2013).

196. AYDIN CINGI, *CHP: A PARTY ON THE ROAD TO SOCIAL DEMOCRACY* 3 (2011).

197. MARDIN, *MODERNITY IN TURKEY*, *supra* note 63, at 311–12 (2011).

198. *Id.* at 313.

199. *Id.* at 313.

200. *Id.* at 314.

201. YAVUZ, *supra* note 143, at 61.

202. *Id.* at 60 ("New industrialists who were critical of statism, landowners who opposed the 1945 Land Reform Bill, intellectuals who wanted greater freedom of speech, small merchants who resented the patronage of the state enjoyed by leading merchants, Sufi leaders who had been persecuted, and most villages voted for the DP, which consciously depicted itself as the voice of the peripheral and marginalized masses of society and depicted the CHP as the party of the oppressive bureaucrats").

203. *Between 1950 – 1977 General Election Results by Constituency*, SUP. ELECTION COUNCIL, PRESIDENCY, <http://www.ysk.gov.tr/ysk/content/conn/YSKUCM/path/Contribution%20Folders/SecmenIslemleri/Secimler/1950-1977-MVSecimleri/Turkiye.pdf> (last visited Apr. 4, 2024).

204. YAVUZ, *supra* note 143, at 61.

spectrum.”²⁰⁵ In the spirit of the Cold War, starting in the 1950s the Turkish state started to utilize Islamic sentiments to counter communist rhetoric.²⁰⁶ As a result, and especially with the DP’s inclusive attitude, Islamic movements began participating in the politics of the new nation.²⁰⁷ In fact, Hakan Yavuz argues that the DP’s “liberal policies toward Islam prevented the radicalization of religious groups and expanded the social basis of the state by integrating religious groups into the system.”²⁰⁸

Besides the religion-state dynamics, the 1950s were significant for other reasons. In 1948, Turkey started receiving large amounts of economic and military aid from the United States as part of the Truman Doctrine during the Cold War.²⁰⁹ U.S. foreign aid was a defining moment for Turkish history as it meant the growth and expansion of the Turkish military to a degree that could not have been envisioned before.²¹⁰

Turkey’s shift to more liberal economic policies also started in the early 1950s. An original member of the United Nations,²¹¹ Turkey also became a member of the North Atlantic Treaty Organization (“NATO”) in 1952.²¹² During the 1950s Turkey’s increased participation in the international arena was matched with increasingly outward looking economic policies. The liberalization policies of the early 1950s was supported by “large landowners [and] business bourgeoisie” among others, and it came to an end by the May 27, 1960 military coup.²¹³ However, after the Marshall Plan aid ended,

205. *Id.* at 62.

206. *Id.*

207. *Id.*

208. *Id.* (“In the 1950’s and 1960’s, Islamic movements acquired nationalistic, anticommunist, and conservative features.”).

209. Truman Doctrine refers to President Harry Truman’s plan of strengthening Greek and Turkish states through United States foreign aid so that these two countries could effectively serve as a barrier to Soviet expansion into the Middle East and Europe. For the text of President Truman’s speech to the U.S. Congress seeking approval for the Truman Plan, see Harry S. Truman, President of the United States of America, Address Before a Joint Session of Congress (Mar. 12, 1947), http://avalon.law.yale.edu/20th_century/trudoc.asp.

210. Although Turkey is no longer among the top recipients of U.S. foreign aid, it ranks among the top all-time recipients since the start of the Truman Plan. See Elizabeth Shell & Matt Stiles, *Where Does U.S. Military Aid Go?*, PBS (Aug. 30, 2012), <http://www.pbs.org/newshour/spc/multimedia/military-spending/>.

211. See *UN Membership*, DAG HAMMARSKJOLD LIBR., <http://www.un.org/en/members/growth.shtml>. (last updated Mar. 14 2024).

212. *NATO Member Countries*, NATO https://www.nato.int/cps/en/natohq/topics_52044.htm (last visited Sept. 17, 2024).

213. İsmet Akca, *Türkiye’de Darbeler, Kapitalizm ve Demokrasi(sizlik) [Coups, Capitalism and (lack of) Democracy in Turkey]* in CUMHURİYET TARİHİNİN TARTISMALI

Turkey needed alternative sources of aid.²¹⁴ Prime Minister Menderes began discussions with the Soviet Union for an alternative source of aid.²¹⁵ However, he would be removed from office soon thereafter, putting an end to Turkey's potential alliance with the Soviet Union.

1. 1960 Military Coup

At 4 a.m. on May 27, 1960, Turkish Republic's first military coup was announced to the nation on the radio.²¹⁶ At the time of the coup, the DP still maintained its stronghold in the National Assembly, having won 48% of the popular vote in the 1957 elections, yielding 424 out of 610 seats.²¹⁷ While it is indisputable that there were protests against the DP by CHP supporters and that the DP government had pursued anti-democratic measures, including limiting free speech of the press and its opponents, the primary reasons cited for the coup were DP's permissive policies toward religion in public spaces and its close ties with the United States. Prime Minister Menderes and other DP leaders were arrested that day and were charged with a number of crimes to be adjudicated before a military tribunal.²¹⁸ Among the charges against Menderes was generally violating the Constitution and a claim that he had forced his mistress to abort their baby, which was a criminal act at the time.²¹⁹ It is undisputed that the defendants were not given a proper chance to defend themselves.²²⁰ Menderes became the first and last elected official of the Turkish Republic to be executed by hanging on September 17, 1961.²²¹ Along with Menderes, Foreign

KONULARI [CONTROVERSIAL TOPICS IN REPUBLICAN HISTORY] 49, 54 (Bulent Bilmez ed., Tarih Vakfi 2013) [hereinafter Akca, *Coups, Capitalism*].

214. Gul Tuba Dagci & Kaan Diyarbakirlioglu, *Turkish Foreign Policy During Adnan Menderes Period*, 12 *TURKISH J. OF INT'L RELS.* 19, 29 (2013).

215. *Id.*

216. Ekrem Bugra Ekinci, *The 1960 Coup: First Attack on Turkish Democracy*, *DAILY SABAH* (Aug. 8, 2016), <https://www.dailysabah.com/feature/2016/08/08/the-1960-coup-first-attack-on-turkish-democracy>

217. *Between 1950 - 1977: General Election Results by Constituency*, TR SUPREME ELECTION COUNCIL, <http://www.ysk.gov.tr/ysk/content/conn/YSKUCM/path/Contribution%20Folders/SecmenIslemleri/Secimler/1950-1977-MVSecimleri/Turkiye.pdf> (last visited Apr. 4, 2024).

218. Ilyas Topcu & Sema Akilmak Topcu, *Adnan Menderes'in Yargilanmasi ve Idami [The Trial and Execution of Adnan Menderes]*, 61 *AKADEMIK BAKIS DERGISI [ACADEMIC VIEW JOURNAL]* 59 (2017).

219. *Id.* at 69.

220. See 'Kisa Kes, Polatkan!..' ['Cut It Short, Polatkan!..'], *SABAHONLINE* (Jan. 15, 2000), <http://arsiv.sabah.com.tr/2000/01/15/g06.html>.

221. *17 Eylul: Adnan Menderes'in Idam Edildigi Kara Gun [September 17: The Dark Day When Adnan Menderes Was Executed]*, *SABAH* (Sept. 17, 2017),

Affairs Minister Fatin Rustu Zorlu and Finance Minister Hasan Polatkan were also executed by hanging.²²² Images of Menderes in his cell immediately before his execution, walking to his execution and hanging at the end of a rope are now parts of Turkish history.²²³

The military regime solidified its hold first by a purge of DP supporters, then by convening a draft committee for a new constitution. The military regime's purge included two thousand military officers and 147 university professors and many others in different positions.²²⁴ The purge included "pro-DP local leaders, including some Kurdish tribal chiefs and 485 Kurdish politicians," and desecrating the tomb of a major religious leader, Said Nursi, and disposing of his body in an unknown location, thus exacerbating existing divisions and creating new ones in Turkish society.²²⁵ While the 1961 Constitution established the Constitutional Court with judicial review powers, a closer look at the Constitution reveals that along with the purges and new junta-picked bureaucrats, it served to ensure that the military would remain an integral part of Turkish politics with significant oversight of civilian political affairs.

First, the drafters of the 1961 Constitution had to be approved by the military regime and the military supervised their work.²²⁶ Thus, the 1961 Constitution was influenced and approved by the military. Second, when the new constitution was put to a nationwide referendum, the military regime prohibited and prevented all campaigning to reject it.²²⁷ Even with the prohibition on advocacy against the junta's constitution, only 61.8% of the voters approved the constitution.²²⁸ Given the fear of the junta and recent memories of

<http://www.sabah.com.tr/galeri/yasam/17-eylul-adnan-menderesin-idam-edildigi-kara-gun>.

222. *Id.*

223. For the September 17, 1961 account of the soldier charged with taking the pictures of Menderes' execution, see *Menderes Idam Sehпасini Gorunce Ne Yapti?* [What Did Menderes Do When He Saw the Gallows], INTERNETHABER (Sept. 17, 2012), <http://www.internethaber.com/menderes-idam-sehпасini-gorunce-ne-yapti-461439h.htm>.

224. YAVUZ, *supra* note 143, at 63.

225. *Id.* at 63–64.

226. Nicolas Camelio, "The Military Seize the Law": The Drafting of the 1961 Constitution, in ORDER AND COMPROMISE: GOVERNMENT PRACTICES IN TURKEY FROM THE LATE OTTOMAN EMPIRE TO THE EARLY 21ST CENTURY 122 (Marc Aymes, Benjamin Gourisse & Elise Massicard eds., 2015).

227. Fatih Tugluoglu, *1961 Anayasa Referandumu ve DP Tabani* [1961 Constitution and Democrat Party Electoral Body], 12 AKADEMİK BAKIS [ACAD. VIEW] 135, 140 (2019).

228. *1961 Anayasa Referandumu Sonuçları* [Results of the 1961 Constitutional Referendum], YENİ ŞAFAK

<https://www.yenisafak.com/secim-referandum-1961/secim-sonuclari> (last visited Sept. 17, 2024).

Menderes hanging from the gallows, it is still notable that close to 40% of the population still voted to reject what they perceived as the junta's constitution. That the majority of the masses did not support the coup is evident in the fact that when the military returned the country to multi-party election, pro-Menderes and anti-coup Justice Party (Adalet Partisi) ("AP") emerged as the leading party with 46.6% of the votes, as compared to the 38.4% received by the CHP (some of whose leadership supported the coup).²²⁹

Finally, while the 1961 Constitution expanded individual liberties, various provisions of the 1961 Constitution legitimized the coup and ensured that the military would have a constant hand in the nation's politics. The Preamble declared that the coup was a revolution of the "Turkish nation" who had used its right of resistance against a government that had violated the Constitution and laws.²³⁰ Whereas Article 3 of the 1924 Constitution recognized sovereignty as belonging unconditionally to the Nation,²³¹ Article 4 of the 1961 Constitution replaced it with the following: "Sovereignty belongs unconditionally to the Turkish Nation. The Nation exercises its sovereignty, based on Constitutional provisions, through authorized agencies."²³²

The "authorized agencies" in Article 4 were outlined in later parts of the Constitution, which changed the face and make-up of the national legislature and established a constitutional court with judicial review powers.²³³ Article 70 added the additional chamber, the Senate, to the Turkish National Assembly, and made the junta leaders and supporters 15 permanent members of this Senate.²³⁴ The

229. YAVUZ, *supra* note 143, at 60; *see also* MARDIN, MODERNITY IN TURKEY, *supra* note 63, at 314 ("The grassroots had no confidence in the progressive, democratic, and populist policies outlined in the various electoral programs of the Republican People's Party, because it placed no confidence in its methods of change.").

230. In the original Turkish, this first paragraph of the Preamble is: "Tarihi boyunca bagimsiz yasamis, hak ve hurriyetleri icin savasmis olan; Anayasa ve hukuk disi tutum ve davranislariyla mesrulukunu kaybetmis bir iktidara karsi direnme hakkini kullanarak 27 Mayis 1960 Devrimini yapan Turk Milleti." 1961 TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] July 9, 1961, prmb1.

231. Article 3 of the 1924 Constitution in original Turkish reads: Hakimiyet bila kaydu sart Milletindir. 1924 TÜRKİYE CUMHURİYETİ ANAYASASI [1924 CONSTITUTION OF THE REPUBLIC OF TURKEY] Apr. 20, 1924, Madde [art.] 3.

232. In the original Turkish: "Egemenlik kayitsiz sartsiz Turk Milletindir. Millet, egemenligini, Anayasanin koydugu esaslara gore, yetkili organlar eliyle kullanir." 1961 TÜRKİYE CUMHURİYETİ ANAYASASI [1961 CONSTITUTION OF THE REPUBLIC OF TURKEY] July 9, 1961, Madde [art.] 4; *see also*, YAVUZ, *supra* note 143, at 63 (discussing the changes in the constitution establishing military oversight of the political domain).

233. 1961 TÜRKİYE CUMHURİYETİ ANAYASASI [1961 CONSTITUTION OF THE REPUBLIC OF TURKEY] July 9, 1961, Madde [art.] 4.

234. *Id.* art. 70.

remaining 150 members of the Senate would be elected by popular vote.²³⁵ Thus, Article 70 cloaked junta leaders as senators and ensured that the junta leaders would continue to be directly involved in the political decision-making process.

The Constitution also established a Constitutional Court with the power of judicial review.²³⁶ Under Article 145, the Court consisted of 15 permanent and 5 substitute justices.²³⁷ The same article distributed the authority of selecting justices, with the majority of the permanent members elected by other appellate courts as follows: 4 members by the Court of Cassation, 3 members by the Court of State, 1 member by the Court of Accounts.²³⁸ Additionally, 3 members would be elected by the House of Representatives and 2 by the Senate.²³⁹ The President would elect the remaining 2 permanent members of the court, however, he had to elect one of these members from a list of 3 candidates provided to him by the Military Appellate Court.²⁴⁰ The Military Appellate Court was in turn made up of only military personnel, who were elected by the President from another list of candidates also compiled by the Military Appellate Court.²⁴¹ In other words, these provisions ensured that at least one member of the Constitutional Court would be a member of the military. The Constitution further authorized the Court to dissolve political parties that did not comply with constitutional values.²⁴²

The 1961 Constitution also created Milli Guvenlik Kurulu, or the National Security Council.²⁴³ Consisting of the Prime Minister, Chief of Armed Forces, and other elected and military leaders as determined by law, the Council would be chaired by the President.²⁴⁴ At the time, the National Security Council included “chiefs of the land, air, navy, and gendarmerie forces, as well as the chief of staff [military], and the secretary of the Council, [] also a three-star general.”²⁴⁵ The original amendment charged the Council with the task of “informing” the Cabinet.²⁴⁶ As discussed below, this provision would be amended to

235. *Id.*

236. *Id.* arts. 145–52.

237. *Id.* art. 145.

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.* art. 141.

242. *Id.* art. 57.

243. *Id.* art. 111.

244. *Id.*

245. YAVUZ, *supra* note 143, at 63.

246. 1961 TÜRKİYE CUMHURİYETİ ANAYASASI [1961 CONSTITUTION OF THE REPUBLIC OF TURKEY] July 9, 1961, Madde [art.] 111.

change this authority after the 1971 coup. Significantly, Article 110 removed the Chief of the Staff from civilian supervision.²⁴⁷

To ensure that future military interventions in the democratic process would be justified, the junta further deviated from Mustafa Kemal's vision of the apolitical military²⁴⁸ and put into force the new Military Internal Service Law.²⁴⁹ Of particular importance is Article 35 of the law, which stated: "The duty of the Turkish Armed forces is to care for and protect the Turkish homeland and the Turkish Republic, as established by the constitution."²⁵⁰ This law was complemented by the new Military Internal Service Regulations.²⁵¹ Article 85 of the Regulations explicitly stated that the duty of the Armed Forces was to "protect the Turkish homeland and the republic against internal and external [elements], if necessary with arms."²⁵² These provisions provided not only justification for the coup that had taken place, but would also be used to justify and legitimate future military coups and interventions, until they were abrogated under the AKP regime, as discussed below.

While the military regime permitted the return to multi-party elections in 1961, the military would intervene again in another ten years is proof that the military coup of 1960 was anything but "democratic."²⁵³ The 1960 Coup, the violence of military's oppression of the masses in the coup's aftermath, the increase in ethnic, religious and cultural divisions in society, military's self-assertion into the political and legal structures of the country all constituted a blow to Turkish democracy.

The following era was one of "heavy protectionism" economically, with a focus on import substitution industrialization.²⁵⁴

247. *Id.* art. 110; *see also* Yavuz, *supra* note 143, at 63

248. *See* Military Penal Code, *supra* note 205 (prohibiting any political involvement for any member of the armed forces).

249. Türk Silahlı Kuvvetleri İç Hizmet Kanunu [Turkish Armed Forces Internal Service Law], Kanun No. [Law No.] 211 Resmi Gazete [Official Gazette], 10 January 1961 No. 10703, enacted 4 January 1961.

250. *Id.* at art. 35 ("Silahlı Kuvvetler'in vazifesi; Türk yurdunu ve anayasa ile tayin edilmiş Türk Cumhuriyeti'ni kollamak ve korumaktır.").

251. Türk Silahlı Kuvvetleri İç Hizmet Yönetmeliği [Turkish Armed Forces Internal Service Regulations], Resmi Gazete [Official Gazette] 6 September 1961 No. 10899.

252. *Id.* at 5049.

253. Varol, *The Democratic Coup*, *supra* note 74. Contrary to Varol's repeated assertions that the 1960 Coup was a democratic coup, the bloody aftermath of the coup and the military's self-interested remake of the political order and its self-insertion into political organizations make it self-evident that the 1960 Coup was a significant blow to the development of Turkish democracy. *Id.*

254. Ziya Önis & Suleyman Özmucur, Capital Flows and the External Balancing of Turkey's Imports 48 (OECD Dev. Ctr., Working Paper No. 36, 1991)

Although Turkey joined the International Monetary Fund (“IMF”) in 1947, it was only in 1961 that Turkey received its first loan from the IMF.²⁵⁵ As part of the transition to increasing liberal economic policies, the 1961 Constitution established not just a military state security apparatus, but also recognized the need for a social security establishment.²⁵⁶ To this end, the immediate era following the 1960 military coup had optimism that labor and the Left on the one hand and the more conservative elements of private business and the military on the other could work to improve Turkey’s ailing economy. The social and political cleavages created by the 1960 coup were exacerbated by the economic problems of the era. Left political movements gained momentum, especially in “autonomous state institutions such as the universities.”²⁵⁷ At the same time, the AP government continued the DP’s policies of inclusiveness regarding religion, “arguing that the state ‘must be secular’ but not the individuals.”²⁵⁸ This attitude also continued to see religion as “an antidote to the leftist movements.”²⁵⁹ In addition to the socio-political tensions and economic problems facing the country, the parliament did not have a cohesive agenda. By 1969, there were eight political parties with seats in the parliament, which meant that parties with smaller numbers of seats could prevent the coalition government from enacting legislation.²⁶⁰ This in turn led to a further loss of trust in the political system, with increased unrest, demonstrations, and violence on the streets.²⁶¹

2. 1971 Coup by Memorandum

On March 12, 1971, the military intervened in the country’s politics once more, this time with a military declaration forcing the democratically elected government to resign.²⁶² In a memorandum,

255. JOHN TASKINSOY, A DELICATE MOMENT IN TURKEY’S ECONOMIC TRANSITION: CAN TURKEY SURVIVE MOUNTING ECONOMIC PROBLEMS WITHOUT THE IMF’S BAILOUT PACKAGE? 2 (2019).

256. Akca, *Coups, Capitalism*, *supra* note 224, at 55.

257. YAVUZ, *supra* note 143, at 65.

258. *Id.*

259. *Id.*

260. Turk Silahlı Kuvvetleri İç Hizmet Kanunu [Turkish Armed Forces Internal Service Law], Kanun No. [Law No.] 211 Resmi Gazete [Official Gazette], 10 January 1961 No. 10703, enacted 4 January 1961.

261. WILLIAM L. CLEVELAND, A HISTORY OF THE MODERN MIDDLE EAST 266 (2nd ed. 1994).

262. Roger P. Nye, *Civil-Military Confrontation in Turkey: The 1973 Presidential Election* 8 INT’L J. MIDDLE E. STUD. 209, 212 (1977).

military leaders accused the government of inability to deal with the rising unrest and violence on the streets and explicitly stated that they were ready to take over governance.²⁶³ Prime Minister Suleyman Demirel of the AP resigned.²⁶⁴ Unlike the 1960 military coup, the parliament was not dissolved and the constitution was not abrogated.²⁶⁵ Rather, the military appointed an existing member of the parliament to take office as the prime minister.²⁶⁶ Soon thereafter, a state of emergency was declared in 11 provinces and lasted until 1973.²⁶⁷ The AP was a party that identified with the Turkish periphery, the traditional circles, and small business owners from the provinces.²⁶⁸ Thus, center-periphery tensions were also at the heart of the 1971 military intervention.

Anti-communist sentiments after the 1960 coup within the military and the center-right parties, including the AP, caused them to target leftist groups with increased might. The 1971 coup is remembered for the execution by hanging of three young leftist activists: Deniz Gezmiş (age 25), Yusuf Aslan (age 25), and Huseyin Inan (age 23).²⁶⁹ The Turkish criminal court sentenced the three young men to death by hanging for crimes against the constitutional order and the National Assembly voted to approve the sentences.²⁷⁰ During the vote, representatives from the AP voting to approve the death sentences shouted: "Three from us, three from them," referring to the executions of President Adnan Menderes and his two ministers in the aftermath of the 1960 coup.²⁷¹ The military had taken three conservatives, so now they voted to execute three leftists.²⁷² The three

263. *Id.*; Memorandum of March 12, FILOZOF.NET, <http://www.filozof.net/Turkce/tarih/siyasi-tarih/41742-12-mart-muht-ras-nedir-nedenleri-metni-maddeleri-hakk-nda-bilgi.html?showall=&start=6> (last updated Mar. 16, 2024).

264. Nye, *supra* note 275.

265. CLEVELAND, *supra* note 274, at 267.

266. *Id.*

267. Nye, *supra* note 275, at 209.

268. *Id.* at 212.

269. See generally NIHAT BEHRAM, DARAGACINDA UC FIDAN [THREE SAPLINGS AT THE GALLOWS] (82nd ed. 2013).

270. *Remembering Deniz Gezmiş, Yusuf Aslan and Huseyin Inan, Young Executed Revolutionaries*, ATIK (May 6, 2014), <https://www.atik-online.net/english/remembering-deniz-gezmis-yusuf-aslan-and-huseyin-inan-young-executed-revolutionaries/>.

271. Celalettin Can, *Denizlerin Idamında Evet'e Kalkan "İki El"di! [There Were "Two Hands" Raised to Approve Deniz's Execution]*, BIRGÜN (June 18, 2015), <https://www.birgun.net/haber/denizlerin-idaminda-evet-e-kalkan-iki-el-di-82996>.

272. *Demirel: Denizleri Milli İrade Astı [Demirel: Nation's Will Hung Deniz and Friends]*, EN SON HABER (June 9, 2012), <http://www.ensonhaber.com/demirel-denizleri-milli-irade-asti-2012-06-09.html>. Years later, when asked if he regrets his

young men, referred to as “Uc Fidan” or “three saplings,” became primary symbols of the leftist movement against the military and the conservatives, and their deaths continue to be commemorated to this day in leftist circles.²⁷³ Their deaths and the slogans of the AP representatives during the vote on their death sentences also highlight a sad reality in Turkish politics: each military intervention and each attempt to erase peripheral identities, be they leftist, social conservative, ethnic minority or pious identities, led to further tensions and confrontations between different factions of society. These cleavages grew deeper and more pronounced with each military intervention into the political process.

Economic liberalization under military approval also contributed to these societal rifts. The next multiparty elections were held in 1973. Unfortunately, the global financial crisis during the mid-1970’s also impacted Turkey.²⁷⁴ In a self-preservationist attempt, labor movement solidified protectionist efforts such as keeping fair wages, and maintaining strong and active labor unions.²⁷⁵ The backlash to the rise of labor power made clear that there was a brewing class war in Turkey.²⁷⁶ This was the narrative of the middle classes who grew increasingly vocal in their complaints of labor, particularly high wages and collective bargaining deals.²⁷⁷ Instead of retreating, labor sought to solidify its power base and increased strikes. Between 1973 and 1976 the number of strikes was 65 and total days lost to strikes was under one million, but in the period between 1977 and 1980 there were 190 strikes and 3.7 million days lost.²⁷⁸

vote to approve the death sentences, Demirel argued that the National Assembly, as the representatives of the people, voted to hang the three young men. Therefore, if there was blame, it was the nation’s and not his alone. He also claimed that he did not remember the AP representatives’ slogan, “Bizden 3, onlardan 3” (3 from us, 3 from them). *Id.*

273. See BEHRAM, *supra* note 282. In his book on the surrounding events, Nihat Behram, a leftist activist who was jailed after the 1971 coup, gives a detailed account of the events surrounding the execution of his friends, Deniz Gezmiş, Yusuf Aslan and Huseyin Inan. *Id.*

274. See generally, Julian Germann, *International Political Economy and the Crisis of the 1970’s: The Real ‘Transatlantic Divide.’* 4 J. CRITICAL GLOBALIZATION STUD. 10 (2011) (explaining the 1970’s financial crisis).

275. Akca, *Coups, Capitalism, supra* note 224, at 59.

276. *Id.*

277. *Id.*

278. İsmet Akca, *Hegemonic Projects in Post-1980 Turkey and the Changing Forms of Authoritarianism*, in *TURKEY REFRAMED: CONSTITUTING NEOLIBERAL HEGEMONY* 13, 14 (İsmet Akca et al. eds., 2014) [hereinafter Akca, *Hegemonic Projects*].

3. 1980 Military Coup

By the summer of 1980, different political factions were protesting on the streets again to voice their discontent with one another as well as the government.²⁷⁹ Occasional car bombs, routine police brutality against students marching in protest, and gun fights between right wing and left-wing groups became common in some cities.²⁸⁰ On September 12, 1980, Turkish citizens watched General Kenan Evren on Turkish television as he told the masses that the military had dismissed the elected parliament and taken over the governance of the country.²⁸¹ Citizens were to remain in their homes until later notice in compliance with curfew, as the junta had declared a state of emergency throughout the country.²⁸² General Evren blamed political parties and politicians on both the right and the left of the political spectrum for the chaos, and said the coup was necessary “to place on strong foundations the democracy that could not control itself.”²⁸³

What followed was a period of military regime brutality, including evening curfews implemented throughout the country, tanks and soldiers roaming the streets, detentions, rampant torture and the numerous executions of both right and left wing activists.²⁸⁴ In his public remarks, General Evren made clear that the junta regime sought to eliminate those who did not belong to the center.²⁸⁵ In the years after the military regime, Evren explained how the junta attempted to eliminate the influence of the periphery: “To show we were not on either side, we hung one from the right, one from the

279. ELIFCAN KARACAN, REMEMBERING THE 1980 TURKISH MILITARY COUP D'ÉTAT: MEMORY, VIOLENCE, AND TRAUMA 80 (2014).

280. *Id.* My personal experiences and recollection from my childhood in the city of Denizli during the late 1970's.

281. Erdem Bekaroğlu & Trevor Barnes, *Dictatorships and Universities: The 1980 Turkish Military Coup D'état and Turkish Geography*, 91 POL. GEOGRAPHY (2021).

282. Kenan Evren, 12 Eylül Darbesi TV Konusmasi [Kenan Evren, TV Speech of September 12 Coup D'état] <https://www.youtube.com/watch?v=HWrfpbp1RUc>; for the text of the speech in Turkish, see *Kenan Evren'in Türkiye'yi Karanlığa Tasiyan Darbe Aciklamasi* [Kenan Evren's Coup Speech That Carried Turkey Into Darkness], T24 (May 10, 2015), <http://t24.com.tr/haber/kenan-evrenin-turkiyeyi-karanliga-tasiyan-darbe-aciklamasi.296157>.

283. *Id.*

284. Akca, *Hegemonic Projects*, *supra* note 292, at 16.

285. See KARACAN, *supra* note 293, at 81–82.

left.”²⁸⁶ Between 1980 and 1984, 50 people were hanged.²⁸⁷ Of these, 18 were guilty of left wing activities, 8 were guilty of right wing activities, 1 was an Armenian guilty of terrorism, and 23 were guilty of other crimes.²⁸⁸ Referring to the leftist activist Erdal Eren who was executed at the age of 17, General Evren would speak his famous line: “Should we feed them rather than hang them?”²⁸⁹

Under the military regime, more than 650,000 people were detained; police files were opened on about 1,680,000 people; there were 210,000 political trials in which 7,000 people faced the death penalty; 50 of 517 death penalties were executed; 300 people died in prisons for allegedly unspecified reasons; 171 died from torture; 1,680,000 people were classified in police files; 388,000 were deprived of their right to a passport; 30,000 people were fired from the civil service; 14,000 people lost their citizenship; 39 tonnes of published material were destroyed; and 23,677 associations were shut down.²⁹⁰

The numbers alone do not adequately convey the level of brutality and violence during the military regime. Torture was rampant in police stations, gendarme houses, and especially in

286. See “Bir Sagdan Bir Soldan Astik” Aciklamasi [Explanation for “We Hung One From the Right, One From the Left”], HURRIYET (Nov. 22, 2012), <http://www.hurriyet.com.tr/bir-sagdan-bir-soldan-astik-aciklamasi-21978372> [hereinafter *We Hung One*]. Evren was prosecuted for crimes against the state committed during and in the aftermath of the 1980 coup. In his responses to the Court, Evren said he did not regret any of his actions and defended his statements regarding executing equal amounts of leftist and right-wing activists as the junta’s attempt to be fair and impartial. *We Hung One, supra*. He was later found guilty and sentenced to life. *Former Turkish Military Chief Evren Sentenced to Life for Staging 1980 Coup*, REUTERS (June 18, 2014), <https://www.reuters.com/article/world/former-turkish-military-chief-evren-sentenced-to-life-for-staging-1980-coup-idUSKBNOET20E/>

287. *80 Yilin Utanc Listesi: Idam Kurbanlari [The List of Shame of 80 Years: Victims of Capital Punishment]*, BIANET (Aug. 3, 2002), <http://www.bianet.org/bianet/siyaset/12143-80-yilin-utanc-listesi-idam-kurbanlari>.

288. *Id.* The military tribunals originally issued 517 death sentences. Some were not approved by higher military courts on appeals, and others were commuted to life sentences. *Id.*

289. See *Asmayalim da Besleyelim mi Sozunden Pisman Oldu [He Regrets the Words “Should We Feed Them Rather Than Hang Them”]*, HURRIYET (Dec. 4, 2012), <http://www.hurriyet.com.tr/gundem/22072827.asp>. Evren’s son-in-law later reported that Evren regretted his words years later. *Kenan Evren ve Tahsin Sahinkaya’ya Muebbet Hapis Cezasi [Life Sentences for Kenan Evren and Tahsin Sahinkaya]*, CNN TURK (June 18, 2014), <http://www.cnnturk.com/haber/turkiye/kenan-evren-ve-tahsin-sahinkayaya-muebbet-hapis-cezasi>. As part of the Erdogan era cases aiming to uncover anti-state activities in the military, Evren was indicted for crimes against the state and was sentenced to life imprisonment on June 18, 2014. *Id.*

290. Akca, *Hegemonic Projects, supra* note 292, at 16.

prisons.²⁹¹ Different peripheral identities were targeted differently. The military regime saw leftist groups as “the greatest threat to its authority,” and in an attempt to use Islamic institutions to control and counter leftist activity, it “opened new Qur’anic courses; made religious instruction compulsory in public schools; and employed new preachers.”²⁹² Thus, while the junta regime established the strictest implementation of militant secularization (including banning headscarves in schools, universities, and public offices), it also used and co-opted religious organizations and religiosity as a tool to confront the spread and strength of leftist ideology in Turkey.²⁹³

Besides the most brutal crackdown on dissidents in post-1950 Turkey, the 1980 military coup would also mark the start of Turkey’s primary era of economic liberalization.²⁹⁴ Ending class-based politics and restructuring the state were central to the military regime’s agenda.²⁹⁵ Thus, in Turkey, militarism was coupled with economic liberalism. As with the 1960 coup, the law became the tool of military permanence and dominance in Turkey, as the junta regime selected a committee to draft the 1982 Constitution.²⁹⁶

The return to multiparty elections in 1983 solidified the foundations of economic liberalism in Turkey. Anavatan Partisi (Motherland Party) (“ANAP”) was elected, and its leader Turgut Özal became the prime minister, and would become the foremost advocate of economic liberalism in Turkey.²⁹⁷ After all, he was the author of a new economic plan written for the government months before the

291. For narratives of survivors, see ELIFCAN KARACAN, REMEMBERING THE 1980 TURKISH MILITARY COUP D’ÉTAT: MEMORY, VIOLENCE, AND TRAUMA (2014). For example, Ulucanlar Prison in Ankara is now a museum to remind the nation of the military’s brutality, complete with reenactments of tortured prisoners, and restored torture devices. *See id.*

292. YAVUZ, *supra* note 143, at 69. For leftists who were ethnic minorities, particularly Kurds who were imprisoned in the primarily Kurdish southeastern parts of Turkey, the military regime’s violence had additional dimensions. KARACAN, *supra* note 293, at 119. The most infamous of these prisons, the Diyarbakir prison was also a place of cruel nationalism and fascism. *Id.* Despite the fact that many of the prisoners’ families spoke only Kurdish, speaking any language other than Turkish was forbidden and brutally punished. *Id.* On the wall in the visitation room, in large letters prisoners and their non-Turkish speaking families were reminded: “Turkce Konus, Cok Konus” meaning “Speak Turkish, Speak A Lot.” *Id.* (“[P]risoners were forced to write nationalist slogans on the walls, such as . . . ‘Happy to be Turk!’”).

293. *See* Begüm Burak, *Turkey’s Secularism Experiment as an Impediment to Democratic Consolidation*, 4 J. POL. ADMIN. & LOCAL STUD. 54, 54–60 (2021).

294. YAVUZ, *supra* note 143, at 10.

295. Akca, *Coups, Capitalism*, *supra* note 224, at 59.

296. YAVUZ, *supra* note 143, at 71–72.

297. *Id.* at 10, 69, 75.

military coup.²⁹⁸ Now, with the approval and protection of Turkey's military, he could implement his plan. Thus, the era following the 1980 military coup was one of deregulation, implementing capitalist free-market reforms, privatization, increased participation in the global economy through exports, increased foreign direct investment, and marginalization of labor.²⁹⁹ Economic liberalization also led to increased population mobility from the smaller towns and villages to large cities.³⁰⁰ This was primarily evident in higher education institutions. Women from traditional backgrounds increasingly sought to participate in public life but did not abandon their traditional attire.³⁰¹

In the meantime, the junta leader, General Evren became President Evren after the multiparty elections of 1983.³⁰² The son of an imam, Evren believed Islam was fine in the home but did not belong in modern Turkish public spaces.³⁰³ In 1987, he issued a presidential order banning headscarves in universities, declaring that women who covered their hair at universities were fundamentalists.³⁰⁴ ANAP still controlled the majority in the Parliament, as the party had consolidated the support of the Turkish center-right and advocated for expanded liberties, including religious freedom.³⁰⁵ A year later, in 1988, the Parliament passed a law lifting the headscarf ban, which was held unconstitutional by the Constitutional Court on the grounds that it violated secularism as defined in the Constitution.³⁰⁶ Evren himself was the petitioner to the Court.³⁰⁷ A year after the Court decision, the Parliament passed another law, also lifting the headscarf ban, albeit with different wording.³⁰⁸ The Court once again found the law unconstitutional because it violated the secularism principle of the

298. Seven Erdoğan, *The Role of Turgut Özal in Turkey's Application to The European Union for Full Membership in 1987*, 3 İMGELEM 239, 241 (2019).

299. Önüs & Özmucur, *supra* note 267, at 19.

300. YAVUZ, *supra* note 143, at 91.

301. *Id.* at 99.

302. *Id.* at 127.

303. *Id.* at 69-73, 127.

304. *See generally* Yildirim, *Global Tangles*, *supra* note 75, at 60-61 (discussing the headscarf bans and related Constitutional Court cases).

305. YAVUZ, *supra* note 143, at 75-76.

306. Anayasa Mahkemesi [Constitutional Court], Esas No. [Case No.] 1989/1, Karar No. [Judgment No.] 1989/12 (TC Resmi Gazete, 1989, No. 20216) [Official Gazette of Republic of Turkey, 1989, No. 20216].

307. *Id.*

308. Anayasa Mahkemesi [Constitutional Court], Esas No. [Case No.] 1990/36, Karar No. [Judgment No.] 1991/8 (TC Resmi Gazete, 1991, No. 20946) [Official Gazette of Republic of Turkey, 1991, No. 20946].

Constitution.³⁰⁹ The headscarf ban would remain in place until the early 2010s, when piece by piece the AKP government would dismantle it in the universities, schools, courts, police forces, the military, the Parliament, and other public offices.³¹⁰

4. 1997 Coup by Memorandum

The final successful military intervention in Turkish democracy was in 1997. On February 28, 1997, the generals on the National Security Council (the brainchild of the 1960 coup) issued a memorandum to the governing Refah Party (Welfare Party).³¹¹ The memorandum expressed the generals' views on what they perceived as a threat to Turkish secularism and a warning to the democratically elected Refah government.³¹² As the nation was waiting in fear of once again waking up to military tanks in the streets, the Refah government resigned.³¹³ The next year, the Constitutional Court dissolved Refah for violating secularism, which decision was later upheld by the European Court of Human Rights.³¹⁴

While the Turkish military had a clear idea of the ideal Turkish secularism, and consequently Turkish democracy, the periphery continued to reject that idea and challenge it through the ballot box.³¹⁵ The rise and sustained success of the AKP is best understood as the periphery's reaction and response to decades of exclusion and marginalization under the military's control, even during periods of democratic elections.

D. TURKISH CONSTITUTIONAL COURT: THE COURT OF MILITANT SECULARISM

While the military intervened in Turkish democracy numerous times after the 1961 constitution created the Constitutional Court and

309. *Id.*

310. See generally Yildirim, *Gender and Resistance*, *supra* note 75, at 371 (discussing the end of the headscarf ban).

311. YAVUZ, *supra* note 143, at 243-44.

312. *Id.*

313. See generally SAYGI OZTURK, BELGELERLE 28 SUBAT DUNDEN BUGUNE [FROM THEN TILL NOW, FEBRUARY 28TH IN DOCUMENTS] (2013) (detailing account of events leading up to and in the aftermath of the 1997 coup).

314. See Yildirim, *Shared Idioms*, *supra* note 75, at 242-43 (detailing a discussion of the Refah case before the Turkish Constitutional Court); see also Yildirim, *Global Tangles*, *supra* note 75, at 67-68 (describing the Turkish Refah case before the European Court of Human Rights).

315. YAVUZ, *supra* note 143, at 256-57.

introduced judicial review, the Turkish Constitutional Court became the judicial arm of militant secularism.³¹⁶ The process of appointing justices to the Court as defined by the 1961 Constitution ensured that there would always be at least three military appointed judges appointed to the Court; the 1982 Constitution also continued this mandate.³¹⁷ Thus, it is not unexpected that the Court maintained a rigid understanding of secularism until its composition changed after the 2010 amendments.³¹⁸

Since it held its first session in 1963, the Turkish Constitutional Court has dissolved 19 political parties.³¹⁹ Most of these decisions closed leftist parties or parties representing minority communities, reflecting the military's position on parties that deviated from the center of the political spectrum.³²⁰ The majority of the religiously oriented parties dissolved by the Court belonged to the Milli Gorus or the National View movement as discussed below.³²¹ These were Milli Nizam Partisi (National Order Party) dissolved in 1971,³²² Refah dissolved in 1998,³²³ and Fazilet Partisi (Virtue Party) dissolved in 2001.³²⁴ It was no surprise when the Court heard the 2008 case accusing AKP of violating secularism.³²⁵ Short of one vote to dissolve, the Court gave AKP a warning and a fine in the form of limiting state support for the party, since most justices found that the party or its members had engaged in anti-secular activities.³²⁶

Party dissolution was not the only means the Court used to enforce its understanding of secularism. Other cases ranged from

316. *Id.* at 63, 74–77.

317. Ozan O. Varol, *Military Influence on the Constitutional Order: Turkey*, in CONSTITUTIONALISM IN CONTEXT, 474, 486–88 (David S. Law ed., 2022) [hereinafter Varol, *Military Influence*].

318. See Yildirim, *Shared Idioms*, *supra* note 75, at 243–48.

319. Anayasa Mahkemesi [Constitutional Court of Turkey], Esas No. (Case No.) 2021/2, Karar No. (Judgment No.) 2021/2 (10/11/2022) (TC Resmi Gazete, 2021, No. 31405) [Official Gazette of Republic of Turkey, 2021, No. 31405].

320. Varol, *Military Influence*, *supra* note 331317, at 488.

321. Yildirim, *Gender and Resistance*, *supra* note 75, at 369–70.

322. Anayasa Mahkemesi [Constitutional Court of Turkey], Esas No. (Case No.) 1971/1, Karar No. (Judgment No.) 1971/1 (5/20/1971).

323. Anayasa Mahkemesi [Constitutional Court of Turkey], Esas No. (Case No.) 1997/1, Karar No. (Judgment No.) 1998/1 (1/16/2018) (TC Resmi Gazete, 1998, No. 23266) [Official Gazette of Republic of Turkey, 1998, No. 23266].

324. Anayasa Mahkemesi [Constitutional Court of Turkey], Esas No. (Case No.) 1999/2, Karar No. (Judgment No.) 2001/2 (6/22/2001) TC Resmi Gazete, 2002, No. 24631) [Official Gazette of Republic of Turkey, 2002, No. 24631].

325. Anayasa Mahkemesi [Constitutional Court of Turkey], Esas No. (Case No.) 2008/1, Karar No. (Judgment No.) 2008/2 (7/30/2008) (TC Resmi Gazete, 2008, No. 27034) [Official Gazette of Republic of Turkey, 2008, No. 27034].

326. *Id.*

upholding the ban on religious headscarves in public offices, schools, and universities to upholding the criminalization of conducting a religious marriage before conducting a civil marriage.³²⁷ In particular, as briefly discussed earlier, the cases upholding the headscarf ban in universities reflect the Court's rigid understanding of secularism as excluding any religious expression in public spaces including schools, courts, and all other government offices.³²⁸ After the second Court decision finding the second legislative attempt to eliminate the ban unconstitutional, a medical student, Leyla Sahin took her case to the European Court of Human Rights.³²⁹ The European Court agreed with the Turkish Court that a Muslim woman's headscarf was a threat to secularism.³³⁰

The headscarf ban became a symbol of the militant secularism of the Turkish center.³³¹ It was a clear message to the periphery that if they wanted to be a part of Turkish society, they had to comply with the norms of the center.³³² The ban became a central issue in elections for about two decades.³³³ All the parties that were dissolved for violating secularism advocated for lifting the headscarf ban.³³⁴ In fact, in the cases against Refah, Fazilet, and AKP, their promises to lift the headscarf ban became evidence of anti-secular activities.³³⁵ It was this rigid insistence that the masses had to follow the center's conception of secularism that led to the continuing success of the AKP in consolidating various factions of the Turkish periphery and changing the legal and political landscape in Turkey.

III. THE AKP YEARS: CONSTRUCTING THE SECULARISM OF THE PERIPHERY

The Turkish periphery has consistently elected political parties

327. YAVUZ, *supra* note 143, at 247–48.

328. Anayasa Mahkemesi [Constitutional Court], Esas No. [Case No.] 1989/1, Karar No. [Judgment No.] 1989/12 (TC Resmi Gazete, 1989, No. 20216) [Official Gazette of Republic of Turkey, 1989, No. 20216].; Anayasa Mahkemesi [Constitutional Court], Esas No. [Case No.] 1990/36, Karar No. [Judgment No.] 1991/8 (TC Resmi Gazete, 1991, No. 20946) [Official Gazette of Republic of Turkey, 1989, No. 20946].

329. Leyla Sahin v. Turk., App. No. 44774/98 Eur. Ct. H.R. (2005).

330. *Id.* ¶¶ 104–23.

331. YAVUZ, *supra* note 143, at 99.

332. *See generally id.* at 99–101.

333. *See* Burak, *supra* note 307, at 64–65.

334. Yusuf Şevki Hakyemez, *Containing the Political Space: Party Closures and the Constitutional Court in Turkey*, 10 INSIGHT TURKEY, 135–44 (2008).

335. *See id.*; Anayasa Mahkemesi [Constitutional Court of Turkey], Esas No. (Case No.) 2008/1, Karar No. (Judgment No.) 2008/2 (TC Resmi Gazete, 2008, No. 27034) [Official Gazette of Republic of Turkey, 2008, No. 27034].

that recognized the legitimacy and value of religious and conservative voices. From 1950s onward, an ideology that was popular with the Turkish periphery, particularly in ethnically Turkish areas, was a nationalist religious movement called Milli Gorus or National View.³³⁶ Milli Gorus has had varying degrees of success in elections but has remained a notable current in Turkish politics.³³⁷ The Turkish Constitutional Court's efforts to dissolve the various parties that Milli Gorus has formed failed in the elimination of the movement.³³⁸ The Milli Gorus movement materialized in the form of a series of parties: Milli Nizam Partisi (National Order Party) 1970–1971, dissolved by the Constitutional Court,³³⁹ Milli Selamet Partisi (National Salvation Party) 1972-1981, dissolved by the military regime following the 1980 military coup, Refah Partisi (Welfare Party) 1983-1998, dissolved by the Constitutional Court,³⁴⁰ Fazilet Partisi (Virtue Party) 1998-2001, dissolved by the Constitutional Court.³⁴¹ After Fazilet was dissolved, a group of its members formed the AKP, a more market-economy oriented party that supported free markets and joining the European Union.³⁴² The remaining members formed Saadet Partisi (Felicity Party) in 2001.³⁴³ Although Saadet has not been successful in elections since, it is still active today and continues to advocate the ideals of Milli Gorus.³⁴⁴

AKP emerged in the 2002 elections with a landslide victory, winning 363 out of the possible 550 parliamentary seats.³⁴⁵ AKP was

336. YAVUZ, *supra* note 143, at 207–08.

337. Nezir Akyeşilmen & Arif Behiç Özcan, *Islamic Movements and Their Role in Politics in Turkey*, 31 SELCUK UNIV. J. INST. SOC. SCI. 29, 34–36 (2014); *see generally id.* at 207–17.

338. YAVUZ, *supra* note 143, at 207–12.

339. Anayasa Mahkemesi [Constitutional Court of Turkey], Esas No. (Case No.) 1971/1, Karar No. (Judgment No.) 1971/1 (5/20/1971) (TC Resmi Gazete, 1971, No. 14072) [Official Gazette of Republic of Turkey, 1971, No. 14072].

340. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 1997/1, Karar No. (Judgment No.) 1998/1 (1/16/2018) (TC Resmi Gazete, 1998, No. 23266) [Official Gazette of Republic of Turkey, 1998, No. 23266].

341. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 1999/2, Karar No. (Judgment No.) 2001/2 (6/22/2001) (TC Resmi Gazete, 2002, No. 24631) [Official Gazette of Republic of Turkey, 2002, No. 24631].

342. Yildirim, *Gender and Resistance*, *supra* note 75, at 369.

343. *Id.* at 369 n.101.

344. *Id.*

345. Soner Cagaptay, *The November 2002 Elections and Turkey's New Political Era*, WASH. INST. (Dec. 1, 2002), <https://www.washingtoninstitute.org/policy-analysis/november-2002-elections-and-turkeys-new-political-era>; *see also* YUKSEK SECIM KURULU [SUPREME ELECTORAL COUNCIL OF TURKEY], <http://www.ysk.gov.tr/ysk/docs/2002MilletvekiliSecimi/turkiye/milletvekilisayisi.pdf> (last visited Mar. 31, 2024) (listing official general election result numbers).

clear about its economic liberal outlook and its desire to lead Turkey to be a fully integrated member of the international political and economic order.³⁴⁶ While the Turkish center was quick to criticize the AKP as Islamist and thus a threat to democracy, AKP continued to rise in popularity and has maintained a stronghold on Turkish politics to this day.³⁴⁷ Initially, AKP's mission focused on expanding individual rights. In its 2023 Vision, AKP reiterated the following:

The center of our focus in the economy has been the individual and improving his condition . . . Maintaining a strong democracy based on rule of law and a strong economy is like the two sides of the coin. We acted with a vision that it is not possible to maintain a strong democratic transformation without a strong economy. Likewise, we believe it would not be possible to have a strong and viable economic system without a strong democracy based on the rule of law.³⁴⁸

While AKP comes from a line of parties with an Islam-centered social conservatism, it has distinguished itself from its earlier predecessors in its ability to mobilize voters at the grassroots level and, more importantly, by successfully synthesizing religious identity politics with the language of liberal development policies.³⁴⁹ Consequently, AKP appeals to a broad range of voters who are religiously and economically motivated. This broad appeal enabled AKP to achieve repeated electoral wins since 2002.³⁵⁰ Central to AKP's project has been legal reform—at first to enhance individual liberties, specifically in the area of religious rights, and to expand the liberal marketplace.³⁵¹

Since AKP first took office in 2002, it has reformed laws at various levels, from municipal regulations to constitutional amendments.³⁵² AKP-controlled governments survived massive public protests in 2013, and a failed coup attempt in 2016.³⁵³ In 2010 and 2017, Turkish

346. For a discussion of AKP's agenda, see Yildirim, *Conceptions of Religion*, *supra* note 15, at 1053–56; Yildirim, *Gender and Resistance*, *supra* note 75, at 368–74.

347. See Yildirim, *Gender and Resistance*, *supra* note 75, at 369–74.

348. *2023 Political Vision: Economy*, AK PARTY, <https://www.akparti.org.tr/en> [<https://web.archive.org/web/20231216231120/https://www.akparti.org.tr/parti/2023-siyasal-vizyon/siyaset/>].

349. See Yildirim, *Gender and Resistance*, *supra* note 75, at 368–69 (“AKP continues to be the governing party to this day . . . its policies have focused less on religious legislation and more on neoliberal economic expansion and development projects.”); see also Yildirim, *Conceptions of Religion*, *supra* note 15, at 1053–55.

350. See, e.g., Yildirim, *Conceptions of Religion*, *supra* note 15, at 1053.

351. *Id.* at 1054–55.

352. See, e.g., Yildirim, *Gender and Resistance*, *supra* note 75, at 370.

353. *Id.* at 374; Presidency of the Republic of Türkiye, *The Inquiry Commission on the State of Emergency Measures Activity Report 2017–2022*, at 3 https://soe.tccb.gov.tr/Docs/SOE_Report_20172022.pdf (last visited Apr. 7, 2024).

voters approved AKP-proposed amendments to the Constitution, fundamentally changing the structure of Turkish politics, including a shift from a parliamentarian to a presidential system, and electing AKP leader Recep Tayyip Erdogan as the president.³⁵⁴

A. 2010 CONSTITUTIONAL AMENDMENTS AND CONTINUED ELECTORAL SUCCESS

In the September 12, 2010, national referendum, exactly 30 years after the 1980 military coup, the Turkish electorate approved the changes to the Constitution by 57.88% of the votes.³⁵⁵ Although there had already been numerous amendments to the 1982 Constitution (dealing primarily with expansion of individual rights), 2010 changes constituted the most significant set of changes to date.

For example, certain amendments expanded the judiciary at both the constitutional court and the appeals courts levels, and expanded constitutional court jurisdiction. The expansion of the Constitutional Court to 17 members meant that AKP would have significant control over the Court.³⁵⁶ Under the new constitutional guidelines, and a subsequent law enacted to effectuate the constitutional amendments, the President selects 14 of the 17 members of the Court from various proposed lists submitted by a variety of groups, and the Parliament elects 3 members from similar proposed lists.³⁵⁷ Moreover, another change makes the office of the President a popularly elected position.³⁵⁸ Although in its earlier years AKP faced a hostile President in Ahmet Necdet Sezer, a former chief justice of the Constitutional Court, Abdullah Gul of AKP served as president from 2007 until 2014.³⁵⁹ Thus, when the amendments were passed in 2010, AKP's opponents interpreted the changes to constitute court packing at all

[hereinafter *Commission Report*].

354. See Arwa Ibrahim, *What Was Turkey's Failed Coup About—and What's Happened Since?*, AL JAZEERA (July 15, 2022), <https://www.aljazeera.com/news/2022/7/15/turkeys-failed-coup-attempt-explainer>.

355. Fatih Güler, *Türkiye's Referendum Experience*, 6 ULUSLARARASI YÖNETİM AKADEMİSİ DERGİSİ [INT'L MGMT. ACAD. J.] 127, 136 (2023) (Turk.).

356. Aylin Aydın-Cakir, *The Impact of Judicial Preferences and Political Context on Constitutional Court Decisions: Evidence from Turkey*, 16 INT'L J. CONST. L. 1101, 1107 (2018).

357. Ömer Şahin & Dilek Hayirli, *What Will the Sept. 12 Referendum Bring?*, TODAY'S ZAMAN (Oct. 10, 2012), <https://web.archive.org/web/20121010013031/http://www.todayszaman.com/tz-web/news-218436-what-will-the-sept-12-referendum-bring.html>.

358. Aydın-Cakir, *supra* note 370, at 1111 n.37.

359. See Güler, *supra*, note 369, at 134.

levels.³⁶⁰

The 2010 amendments recognized private individual standing before the Constitutional Court for the first time in Turkish history.³⁶¹ Moreover, Temporary Article 15 immunizing the 1980 coup members from liability was abrogated, thus opening the way for legal recourse for the atrocities of the military regime.³⁶² On September 13, 2010—the day after the referendum—the chief prosecutor, on behalf of a group of private citizens, filed for criminal charges against General Evren and other leaders of the 1980 military coup.³⁶³ Evren later received a life sentence and died in 2015 while serving his prison sentence.³⁶⁴

Emboldened by strong support, AKP's neoliberal developmental project has moved forward full steam. Not all support AKP's aggressive privatization and economic neoliberalization project. For example, resistance to AKP's urban development projects in Istanbul led to nationwide massive protests in May 2013, known as Gezi Protests.³⁶⁵ However, despite strong public unrest during the spring and summer of 2013, AKP came out victorious at the March 2014 local elections.³⁶⁶

B. 2016 COUP ATTEMPT

AKP and Fethullah Gulen, a cleric who has lived in exile in Pennsylvania since 1999, began drifting apart in 2013.³⁶⁷ The growing opposition gave rise to a failed coup attempt on July 15, 2016, when a

360. See generally Aydin-Cakir, *supra* note 370, at 1104–06 (discussing the interaction between political context and judicial preferences in Turkey).

361. See Ergun Özbudun, *Turkey's Constitutional Reform and the 2010 Constitutional Referendum*, IE MED (2010), <https://www.iemed.org/publication/turkeys-constitutional-reform-and-the-2010-constitutional-referendum/>.

362. See Şahin & Hayirli, *supra* note 371.

363. *Darbe Karsitlari Kenan Evren ve 12 Eylül Darbecileri Hakkında Suc Duyurusunda Bulundu [Opponents of the Coup Filed a Criminal Complaint Against Kenan Evren and the September 12 Coup Plotters]*, MARKSIST (Sept. 13, 2010), <http://web.archive.org/web/20120712212121/http://www.marksist.org:80/haberler/1855-gecici-15-madde-cope-gitti-12-eylulculer-yargilanacak>.

364. Aydin Hasan, Türker Karapinar & Ünal Çam Ankara, *Kenan Evren Hayatini Kaybetti [Kenan Evren Passed Away]*, MILLİYET (May 9, 2015), <https://www.milliyet.com.tr/gundem/kenan-evren-hayatini-kaybetti-2056525>.

365. For a detailed discussion of Gezi Protests, see Yildirim, *Gender and Resistance*, *supra* note 75, at 374–76 where I discuss some of my observations from field interviews in Turkey during summer 2013.

366. *Id.* at 374.

367. Ibrahim, *supra* note 368.

faction of the military affiliated with Gulen captured tanks, fighter jets and other military equipment and attempted a military coup.³⁶⁸ As the coup attempt was unfolding, President Erdogan called in to a live program on CNNTurk and made a plea to Turkish citizens to take over the streets and airports.³⁶⁹ He said through Facetime, “I have not known a power mightier than the power of the people.”³⁷⁰ Indeed, the masses from varying political backgrounds took to the streets and in many instances, stood before military tanks and soldiers. The coup was televised, while the world witnessed soldiers shooting at civilians, jets firing at the Parliament building with parliamentarians inside, and jets firing at the hotel where President Erdogan was vacationing.³⁷¹ Eventually, the coup attempt failed because the majority of the military’s higher ranks did not participate in it and were able to mobilize the remaining troops to fight the insurgents.³⁷² The toll was heavy, with 251 people killed and 2020 injured.³⁷³

While the failure of the coup attempt could have been a victory for Turkish democracy, what followed was a government purge of AKP perceived opponents including any person or organization suspected of being Gulenist, and other dissidents, particularly those who have advocated for increased rights for the Kurdish minority.³⁷⁴ A state of emergency was declared, lasting until July 17, 2018.³⁷⁵ The Turkish government response has been akin to the purges after the 1980 coup, with Decrees 672 and 673 expanding the purge to include those with suspected ties to all terrorist organizations, thus capturing a wide net of citizens.³⁷⁶ As a result, academics, politicians, Kurdish activists and other dissenters of the Government’s policy regarding

368. *Id.* (detailing the day of the attempted coup). To this day, Gulen has denied any involvement with the coup attempt. *Id.*

369. *Erdogan: Milletimi Meydanlara Davet Ediyorum* (BBC News Türkçe television broadcast July 15, 2016), <https://www.youtube.com/watch?v=7LEfGo0uN-o>.

370. *Id.*

371. *Id.*

372. *Id.*

373. *Commission Report, supra* note 367, at 8.

374. *See Commission Report, supra* note 367, at 65 (“The Turkish government announced a state of emergency following the Gülenist Terror Group’s (FETÖ) and its U.S.-based leader Fetullah Gülen’s attempt to seize power on July 15, 2016, when the state moved to start a purge of suspected Gülenists from the Turkish Armed Forces (TSK).”).

375. *Turkey Declares ‘State of Emergency’ After Failed Coup*, AL JAZEERA (July 21, 2016), <https://www.aljazeera.com/news/2016/7/21/turkey-declares-state-of-emergency-after-failed-coup>.

376. *See generally* Hüsnü Öndül, *Emergency Decree Laws and Their Impact on Human Rights in Turkey*, HUM. RTS. ASS’N 6–8 (Dec. 2021), <https://ihd.org.tr/en/wp-content/uploads/2022/05/EmergencyDecreeLawsReport.pdf>.

the Kurdish minority were included in the purge.³⁷⁷ There have been multiple reports of torture, cruel, degrading or inhuman treatment while in detention.³⁷⁸

The Inquiry Commission on the State of Emergency Measures was founded in 2017 as an administrative oversight body to review the measures taken during the state of emergency.³⁷⁹ According to the Commission's final report, 131,922 such measures were taken, including 125,678 people dismissed from public service.³⁸⁰ All government institutions, including all branches of the military, the judiciary, universities, and the police, were in the scope of the Emergency, and 3,483 ranks were annulled.³⁸¹ Moreover, 2,761 corporate and private entities were closed, including 204 media outlets.³⁸² In the first two years after the coup attempt, 6,081 academics and 1,427 university administrators were fired.³⁸³ Overall, following the coup attempt, there were 597,783 inquiries of various degrees, 234,419 passports were rescinded, 282,790 were detained and 94,975 were arrested.³⁸⁴ In the sentences issued in 289 criminal cases before the courts, 2,532 were sentences for lifetime imprisonment.³⁸⁵ Undoubtedly, the trauma of the coup attempt and the Emergency measures in the aftermath scarred the Turkish citizenry. At the same time, President Erdogan and AKP were able to further solidify their position with their base.

C. 2017 CONSTITUTIONAL AMENDMENTS

AKP's continued popularity also allowed it to make further significant changes to the Constitution by another national referendum in 2017.³⁸⁶ With the 2017 amendments to the Constitution, AKP successfully eradicated the military-authored 1982 Constitution.³⁸⁷ However, while eradicating the anti-democratic aspects of the military constitution, the new amendments do not necessarily create a more democratic infrastructure for Turkey.

377. *See id.* at 24.

378. *See id.*

379. *See Commission Report, supra* note 367353, at 1.

380. *Id.* at 1.

381. *Id.* at 9.

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. *See Ibrahim, supra* note 368354.

387. *See id.*

The most significant change in the new constitutional regime is Turkey's shift from a parliamentary system to a strong presidential one.³⁸⁸ Under the new Constitution, Article 101 establishes a presidential system where the president is elected directly by an absolute majority of public vote.³⁸⁹ Each presidential term is five years, with a two-term limit.³⁹⁰ Under Article 104, the President is the Commander-in-Chief of the Turkish Armed Forces,³⁹¹ and under Article 118, serves as the chair of the National Security Council.³⁹² Under Article 146, the Constitutional Court judges are increased to 15, with the president appointing 12 judges and the parliament appointing 3.³⁹³ Additionally, under Article 159, President appoints 6 of the 13 members of the Council of Judges and Prosecutors, the body that oversees the Turkish judicial system.³⁹⁴ Given that AKP has enjoyed significant wins in national elections, and thus has held the majority of parliamentary seats, the judiciary's pro-AKP partisan nature becomes clear.

With the 2017 Constitutional amendments, AKP has effectively changed the Turkish politico-legal landscape with significant impact on the nature of Turkish secularism. Through legal reform and constitutional amendments, AKP has reversed the entrenchment of the military in the judiciary and ensured that the Constitutional Court has justices representing the interests of the Turkish periphery, and dismantled military independence by establishing effective civilian control of the military. In other words, the 2017 amendments ensure that the two bodies, the military and the constitutional court, that had constructed and upheld the centrist militant secularism would be under civilian control. AKP's continued popularity is directly related to its self-acclaimed peripheral identity and its continuing deconstruction of Turkish secularism to reflect majoritarian preferences of the periphery. AKP owes its success in changing the scope of Turkish secularism to its success on two fronts.

388. *Id.*

389. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 101.

390. *Id.*

391. *Id.* Madde [art.] 104.

392. *Id.* Madde [art.] 118.

393. *Id.* Madde [art.] 146.

394. *Id.* Madde [art.] 159.

D. FROM MILITANT TO POPULIST SECULARISM: CHANGING DEFINITIONS
AND CONCEPTIONS

Because Kemalist reforms were framed as a departure and break from Turkey's Islamic Ottoman past, the place of Islam in the new nation was at the heart of the negotiation process during the constituent debates.³⁹⁵ Thus, in the first constitution of the new Republic, Article 2 identified Islam as the religion of the country.³⁹⁶ The parliament removed this provision from the Constitution in 1928, and in 1937, six principles of Kemalism, including *laiklik* or secularism were added to the Constitution.³⁹⁷ The 1924 Constitution was in effect until the junta regime abrogated it immediately after the 1960 military coup.³⁹⁸ The 1961 and the 1982 constitutions were both drafted after military coups, by committees appointed by the junta regime.³⁹⁹ Thus, until the 2010 amendments, accepted by a nationwide referendum, Turkish constitutional order was the product of military interventions into the democratic political order.⁴⁰⁰

As explained above, the place of Islam in public life has been at the heart of democratic growth in Turkey. At every opportunity, religiously oriented politicians formed political parties that spoke to the periphery, particularly the Muslim periphery of Turkish society, and promised a secularism that recognizes the Muslim identity that had been suppressed under military-drafted and approved constitutions.⁴⁰¹ Repeatedly, these parties were successful in national elections and thus were perceived as threats to the militant secularist ethic of the military. Because the military entrenched itself throughout the Turkish political system, including in the process of appointing justices to the Turkish Constitutional Court, the Court

395. See Cem Tecimer, *Commentary: How Was Secularism Added to the Turkish Constitution? The Varying Rationales*, ISLAMIC L. BLOG (Dec. 8, 2017), <https://islamiclaw.blog/2017/12/08/how-was-secularism-added-to-the-turkish-constitution-the-varying-rationales/>.

396. 1924 TÜRKİYE CUMHURİYETİ ANAYASASI [1924 CONSTITUTION OF THE REPUBLIC OF TURKEY] Apr. 20, 1924, Madde [art.] 2; see also *id.*

397. See Tecimer, *supra* note 409; Halim Alperen Çitak, *A Brief History of Turkish Constitutionalism*, LABORATOIRE MÉDITERRANÉEN DE DROIT PUB. (Jan. 4, 2019), <http://lmdp.org/a-brief-history-of-turkish-constitutionalism/>.

398. Çitak, *supra* note 411.

399. *Id.*

400. Sebnem Arsu & Dan Bilefsky, *Turkish Reforms Pass by Wide Margin*, N.Y. TIMES (Sept. 12, 2010), <https://www.nytimes.com/2010/09/13/world/europe/13turkey.html>.

401. Mustafa Akyol, *Turkey's Troubled Experiment with Secularism*, CENTURY FOUND. (Apr. 25, 2019), <https://tcf.org/content/report/turkeys-troubled-experiment-secularism/>.

became the judicial arm of militant secularism.⁴⁰² Various court cases dissolved religiously oriented political parties, prohibited every political attempt to permit religious expression in public offices, and banned politicians from politics for expressing any vision of secularism that contradicted their militant version.⁴⁰³

As is evident from the numerous military interventions in Turkish politics, and Constitutional Court cases, secularism and its definition has been at the heart of contestations of democracy's meaning and scope in Turkey. The 2010 and 2017 constitutional amendments approved by national referenda should be viewed in this light. By changing the appointment process for the Turkish Constitutional Court and establishing effective civilian control of the military, the amendments have ensured that Turkish secularism would be reconstructed. As a result, not just legislation but also Constitutional Court cases now continue to redefine the scope of Turkish secularism.

As part of its election campaign in 2002, AKP promised a series of liberalization reforms that would guarantee expanded individual rights and freedoms.⁴⁰⁴ Its campaign spoke directly to the Turkish periphery: increased religious freedoms, such as permitting headscarves in public offices and schools, and increased cultural and linguistic rights for ethnic minorities.⁴⁰⁵ AKP has kept some of these promises. For example, the ban on head coverings in public offices and schools has been abrogated during the AKP years.⁴⁰⁶ Thus, there is no longer a ban on headscarves in public offices or schools in Turkey.⁴⁰⁷ The first Turkish parliamentarians wearing headscarves took the parliamentarian's oath in October 2013, and since then, courts, universities, schools, and even the military have accepted headscarves as part of the Turkish social landscape.⁴⁰⁸

AKP also expanded Turkey's participation in the international legal order by either ratifying international human rights treaties,⁴⁰⁹

402. *Id.*

403. *See id.*

404. *Id.*

405. *See generally Kalkınma ve Demokratikleşme Programı [Development and Democratization Agenda] AK PARTİ [AK PARTY] (2002)*, <https://acikerisim.tbmm.gov.tr/xmlui/bitstream/handle/11543/926/200205071.pdf?sequence=1&isAllowed=y> [hereinafter *AK Party Program*].

406. Akyol, *supra* note 415.

407. *Id.*

408. Yildirim, *Gender and Resistance*, *supra* note 75, at 371.

409. *See* U.N., *United Nations Human Rights Treaty Bodies*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=EN (last visited May 13, 2024).

and by establishing individual standing before the Turkish Constitutional Court to seek remedies for violations of individual rights guaranteed under the European Convention on Human Rights.⁴¹⁰ Through constitutional amendments and other laws and regulations, AKP has effectively changed the nature and scope of Turkish secularism.

1. Secularism in the Constitution

Despite extensive changes to the Constitution since 2010, the provisions regarding Turkish secularism, or *laiklik*, have remained the same. Accordingly, the Preamble defines the Turkish Republic as a secular country, and under Article 2, secularism is one of the inherent characteristics of the Republic.⁴¹¹ Freedom of religion and conscience is defined in Article 24, protecting both belief and practice.⁴¹² Article 24 places religious education under State regulation, while mandating religious culture and morality classes in primary and secondary education.⁴¹³ Article 68 mandates that political parties comply with the principle of secularism in their party programmes.⁴¹⁴ Parliamentarians and the President swear to uphold Turkish secularism in their oaths for office.⁴¹⁵ Article 174 declares that the Kemalist reforms enacted to ensure the secular character of the Republic may not be amended.⁴¹⁶ The reforms listed in the Article include the law closing certain Islamic brotherhoods and sects, the law prohibiting religious personnel from wearing religious garb when not on religious duty, the law replacing the Arabic alphabet with the Latin alphabet and the 1926 Civil Code provision mandating that marriage be conducted by a government official.⁴¹⁷ Finally, Article 136 establishes the Presidency of Religious Affairs, charged with conducting its duties in accordance with the principle of secularism.⁴¹⁸ Following the 1960 coup, the Presidency of Religious Affairs was first established in 1965, in an effort to establish state

410. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 148. This was amended on September 12, 2010.

411. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 2.

412. *Id.* Madde [art.] 24.

413. *Id.* (teaching religion in schools was seen as a way to both regulate religious teachings, and to counter the spread of leftist ideology).

414. *Id.* Madde [art.] 68.

415. *Id.* Madde [art.] 81.

416. *Id.* Madde [art.] 174.

417. *Id.*

418. *Id.* Madde [art.] 136.

control of religion and religious education.⁴¹⁹ To that end, the Presidency of Religious Affairs employs and regulates all religious personnel working in Turkey's mosques, and controls and regulates religious training schools.⁴²⁰ Turkish secularism as defined in the Constitution is one that guarantees religious freedoms but also regulates religious activity. While these provisions remain unchanged, the amendments to the Constitution since 2010 have enabled the AKP government to redefine secularism.

The constitutional amendments since 2010 have changed the nature of Turkish democracy in various ways. Part of the 2010 amendments, Article 148 introduced individual standing before the Constitutional Court to enforce fundamental rights and freedoms guaranteed in the European Convention of Human Rights.⁴²¹ Although Turkey signed the Convention in 1950 and ratified it in 1954, until the 2010 amendment Turkish citizens did not have individual standing before the Constitutional Court.⁴²² Instead, they had to rely on lower courts to petition the Constitutional Court on their behalf, based only on violations of the Turkish Constitution.⁴²³ While citizens could then petition the European Court of Human Rights to seek remedy, individual standing before the Turkish Constitutional Court has opened a significant and more expedient new venue to enforce fundamental rights. As stated earlier, the 2017 amendments has enabled AKP and President Erdogan to control all judicial appointments, ensuring that incoming judges and justices at all levels including the Constitutional Court, share an accommodationist understanding of secularism where religion in the public sphere is welcome and accommodated.⁴²⁴ This is a stark departure from the pre-AKP years in Turkey where the military and the Constitutional

419. İftar B. Gözaydın, *A Religious Administration to Secure Secularism: The Presidency of Religious Affairs of the Republic of Turkey*, 11 *MARBURG J. RELIGION* 1, 3 (2006).

420. Diyanet İşleri Başkanlığı Kuruluş ve Görevleri Hakkında Kanun [Law on the Establishment and Duties of the Presidency of Religious Affairs], *Türk Medeni Kanun* [Turkish Civil Code], Law No.: 633 Yayımlandığı R. Gazete, 2 July 1965 No. 12038, enacted: 22 June 1965.

421. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 148.

422. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 148. This was amended on September 12, 2010.

423. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 148, 150, 152. The original text of which limited standing to the President, parliamentarians and political parties prior to the 2010 amendments.

424. Sinan Ekim & Kemal Kirişçi, *The Turkish Constitutional Referendum, Explained*, BROOKINGS (Apr. 13, 2017), <https://www.brookings.edu/articles/the-turkish-constitutional-referendum-explained/>.

Court ensured that there would be no religious expression in the public domain and any deviations from this rigid understanding of secularism would be punished by law.⁴²⁵

As discussed earlier, the 1960 and 1980 military coups provided the military with the opportunity to entrench itself in every aspect of the political system- from establishing military courts with broad jurisdiction and authority independent of any civilian oversight, to appointments mechanisms that mandated the inclusion of military judges on Constitutional Court. The 2010 and 2017 amendments have effectively eliminated all military control of the political system. The 2017 amendments repealed Article 122 providing for martial law.⁴²⁶ By abrogating Article 145 on Military Justice, Article 156 on High Military Court of Appeals, and Article 157 on High Military Administrative Court the 2017 amendments eliminated the independent military judiciary.⁴²⁷ Instead, Article 142 on the formation of courts was extended to explain that military courts may only be established for disciplinary purposes.⁴²⁸ Moreover, under Article 104, the President is charged with overseeing the military and appointing military personnel.⁴²⁹ In addition to constitutional amendments establishing civilian control of the military, the AKP government also eliminated provisions of the military's internal codes that permitted the military to intervene in politics.⁴³⁰ Since the failed coup attempt of July 2016, the Parliament has passed additional laws and regulations to effectively overhaul the military establishment and bring it under complete civilian control.⁴³¹

Another set of significant changes to the constitution ensured that the Constitutional Court would no longer be the judicial arm of the military. In its final form, Article 9 of the Constitution states that justice is administered by courts that are "independent and impartial," adding the term "impartial" to the provision.⁴³² Most significantly, the Constitutional Court now consists of 15 justices, 3 of whom are

425. See Tecimer, *supra* note 409.

426. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 122.

427. *Id.* Madde [art.] 145; *id.* Madde [art.] 156; *id.* Madde [art.] 157.

428. *Id.* Madde [art.] 142.

429. *Id.* Madde [art.] 104.

430. *E.g., id.* Madde [art.] 156.

431. NEWS WIRES, *Turkey Marks Fifth Anniversary of Failed Coup that Prompted Sweeping Crackdown*, FRANCE 24 (July 15, 2021), <https://www.france24.com/en/europe/20210715-turkey-marks-fifth-anniversary-of-failed-coup-against-erdogan>.

432. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 9.

appointed by the parliament and 12 of whom are appointed by the President.⁴³³ The appointments are made from lists provided to the Parliament and the President by the bar organizations, the courts of appeal, and the Council of Higher Education.⁴³⁴ Consequently, this provision abrogates the mandate that the President elect at least two justices from the lists provided by the military.⁴³⁵ While the 2010 amendments introduced what may be termed court packing by the President, the abrogation of military's role in the appointments process was part of the 2017 amendments. Today, none of the justices of the Constitutional Court have military ties.⁴³⁶

Thus, primarily through these Constitutional Amendments, the AKP has eliminated the two primary obstacles to redefining Turkish secularism to reflect populist demands: the Constitutional Court is no longer the judicial arm of the Turkish center and the military, and now under civilian control, the military is no longer independent. The 2015 Constitutional Court case decriminalizing religious marriage ceremonies and the 2017 law authorizing muftis (Islamic legal jurists) to register marriages provide a lens into the populist redefinition of Turkish secularism.⁴³⁷

2. Defining Populist Secularism in the Area of Family Law

Reconstructing Turkish family was a primary concern for Kemalist reforms. As part of the secularization project, provisions of the 1926 Civil Code defined the only legitimate marriage as civil and monogamous.⁴³⁸ The 1926 Civil Code eliminated polygamy as a legitimate form of marriage by requiring that both the prospective spouses be single at the time of marriage.⁴³⁹ Moreover, all marriages had to be conducted before a government official.⁴⁴⁰ A religious marriage ceremony could only be conducted after the civil marriage ceremony, upon presenting proof to the religious authority that civil

433. *Id.* Madde [art.] 146.

434. *Id.*

435. *See id.*

436. *See Deputy Chairman and Members, ANAYASA MAHKEMESİ, <https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/>.*

437. Umut Uras, *Turkey: Religious Officials to Perform Civil Marriages*, AL JAZEERA (Oct. 19, 2017), <https://www.aljazeera.com/news/2017/10/19/turkey-religious-officials-to-perform-civil-marriages>.

438. Türk Medeni Kanun [Turkish Civil Code], Kanun No. [Law No.]: 743, Medde [art.] 112 Resmi Gazete [Official Gazette], 4 April 1926 No. 339, enacted: 17 February 1926.

439. *Id.*

440. *Id.* Medde [art.] 108.

marriage had been conducted.⁴⁴¹ In 1936, the Criminal Code Article 237 was updated to include a two to six month jail sentence for those who knowingly married in a religious marriage ceremony prior to a civil one.⁴⁴² The same article imposed monetary fines and up to one month jail sentence for imams, or religious personnel, who failed to report couples who violated Article 237.⁴⁴³ Moreover, under Article 174(4) of the Turkish Constitution, one of the republican reforms that cannot be modified or amended is the requirement of civil marriage, according to which the marriage act shall be concluded in the presence of a competent government official, as adopted in the Civil Code.⁴⁴⁴

It is worth reemphasizing that Kemalist reforms sought to fundamentally change the very nature of Turkish society, especially in contrast to the new nation's predecessor Ottoman Empire. At the very core of the Ottoman Empire's character was its Islamic and religious identity.⁴⁴⁵ Kemalist reforms sought to change that identity through top-down reforms.⁴⁴⁶ Top-down reforms in the absence of a supporting bottom-up cultural shift cannot escape resistance and even eventual decline. For example, in 1999, the Constitutional Court received a petition from a lower criminal court regarding the constitutionality of Article 237 section 4 of the Criminal Code prohibiting religious marriage prior to civil marriage.⁴⁴⁷ The petitioner lower court asked the Constitutional Court to invalidate the law as violating the principle of equality as well as the right to freedom of religion.⁴⁴⁸ The lower court argued that if a couple cohabitating

441. *Id.* Medde [art.] 110.

442. *ürk Ceza Kanunu* [Turkish Penal Code], Kanun No. [Law No.]: 3038, Medde [art.] 237 *Resmi Gazete* [Official Gazette], No. 6715, 6 November 1936, enacted: 23 June 1936.

443. *Id.*

444. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 174.

445. Akyol, *supra* note 415.

446. *Id.*

447. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 1999/27, Karar No. (Judgment No.) 1999/42 (11/24/1999) (appealing decision from Asliye Ceza Hakimliği [Criminal Courts of First Instance]). Since the 1961 Constitution established the Constitutional Court, lower courts have had standing to petition the court to determine constitutionality of law as to form and substance. *See also*, Yildirim, *Shared Idioms*, *supra* note 75, at 240. TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] Nov. 7, 1982, Madde [art.] 151; TÜRKİYE CUMHURİYETİ ANAYASASI [CONSTITUTION OF THE REPUBLIC OF TURKEY] July 9, 1961, Madde [art.] 151.

448. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 1999/27, Karar No. (Judgment No.) 1999/42 at III.B.2, III.B.3 (TC Resmi Gazete, 2002, No. 24743) [Official Gazette of Republic of Turkey, 2002, No. 24743] (appealing decision from Asliye Ceza Hakimliği [Criminal Courts of First Instance]).

without marriage violated no laws, a couple conducting a religious marriage ceremony prior to a civil one could not be criminalized, as that would be treating similarly situated people disparately.⁴⁴⁹ Moreover, the lower court argued, Article 237(4) violated the right to freedom of religion because it interfered with the parties' freedom to practice their faith freely.⁴⁵⁰ The Constitutional Court rejected both these arguments.⁴⁵¹ First, the Court found that couples cohabitating without marriage were not similarly situated as couples entering marriage.⁴⁵² Couples entering marriage were subject to the State's registration requirements, and the legislature was owed deference in deciding how it would effectively register marriages.⁴⁵³ Nor was the right to freedom of religion violated, since the couples could conduct religious marriage ceremonies after registering their civil marriages.⁴⁵⁴

Interestingly, the Court noted that despite legal changes in the Republican era, people had continued to follow the "old" law, meaning Islamic law, instead of secular laws.⁴⁵⁵ The Court also expressed concern that because religious marriages were not recognized by law, women could not benefit from legal protections in cases of divorce, and children born into unregistered religious marriages were left outside the law's protection.⁴⁵⁶ Thus, the Court reasoned, the mandate to register a civil marriage before a religious one served the purpose of protecting women upon divorce and children from abandonment by the father.⁴⁵⁷

The Civil Code was significantly amended in 2001⁴⁵⁸ and the 1926 Criminal Code was replaced by a new one effective 2005.⁴⁵⁹ In the 2005 Criminal Code, Article 230(5) maintained the prohibition on

449. *Id.* at V.B.

450. *Id.* at I.

451. *Id.* at V, VI.

452. *Id.* at V.B.

453. *Id.*

454. *Id.*

455. *Id.* at V.A.

456. *Id.*

457. *Id.* at V.B.

458. Medeni Kanun [Turkish Civil Code], Kanun No. [Law No.]: 4721, Madde [art.] 130 Resmi Gazete [Official Gazette], 8 December 2001 No. 24607, enacted: 22 November 2001; *see also*, Yildirim, *Aftermath of a Revolution*, *supra* note 60 (discussing changes to the Turkish Civil Code).

459. Türk Ceza Kanunu [Turkish Penal Code], Kanun No. [Law No.]: 5237 Resmi Gazete [Official Gazette], 10 Oct 2004 No. 25611, enacted: 26 September 2004 (passing amendments to the Criminal Code in 2004 but taking effect in 2005 which is why the code is referenced as the "2005 Criminal Code").

conducting religious marriages prior to a civil ceremony.⁴⁶⁰ However, the new provision provided that as soon as a civil marriage is registered, all pending charges and sentences are nullified.⁴⁶¹ Under Article 230(6), any person who conducts a religious marriage without confirming that a civil marriage has been registered is subject to a jail term ranging from two to six months.⁴⁶²

Alongside the changes to the laws, after the 2010 constitutional amendments took effect, the composition of the justices changed, reflecting views more aligned with the accommodationist stance of the AKP.⁴⁶³ In other words, the new justices are no longer affiliated with the military, the Turkish center or the militant secularism they upheld.⁴⁶⁴

A 2015 Turkish Constitutional Court decision on religious marriages marked the changing nature of Turkish secularism by holding that Article 230(5) and 230(6) of the Criminal Code violated the Constitution on numerous grounds.⁴⁶⁵ As in the earlier 1999 case on the issue, the petitioner was a lower Criminal Court of Peace.⁴⁶⁶

Specifically, the Court found Criminal Code Article 230(5) and 230(6) violated the Constitution's Article 13 guarantee of fundamental rights, Article 20 guarantee of privacy of private and family life, and Article 24 guarantee of freedom of conscience, religious belief and conviction.⁴⁶⁷ Some of the arguments rejected by

460. *Id.* at Madde [art.] 230(5).

461. *Id.*; *see also* Yildirim, *Gender and Resistance*, *supra* note 75, at 362 (discussing the continuing prohibition on polygamy as outlined in the 2002 Civil Code and the parallel provisions in the 2005 Criminal Code).

462. Türk Ceza Kanunu [Turkish Penal Code], Kanun No. [Law No.]: 5237, Madde [art.] 230(6) Resmi Gazete [Official Gazette], 10 October 2004 No. 25611, enacted: 26 September 2004.

463. Bertil EMrah Oder, *The Turkish Constitutional Court and Turkey's Democratic Breakdown: Judicial Politics Under Pressure*, 18 VIENNA J. ON INT'L CONST. L. 127, 131 (2024).

464. *Id.*

465. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 2014/36, Karar No. (Judgment No.) 2015/51 at VI. (TC Resmi Gazete, 2015, No. 29382) [Official Gazette of Republic of Turkey, 2015, No. 29382] (appealing decision from Sulh Ceza Hakimliği [Criminal Courts of Peace]).

466. *Id.* (stating at the beginning of the decision the Applicant is Pasinler Criminal Court of Peace); *see also* Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 1999/27, Karar No. (Judgment No.) 1999/42 (TC Resmi Gazete, 2002, No. 24743) [Official Gazette of Republic of Turkey, 2002, No. 24743] (appealing decision from Asliye Ceza Hakimliği [Criminal Courts of First Instance]).

467. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 2014/36, Karar No. (Judgment No.) 2015/51 at V (TC Resmi Gazete, 2015, No. 29382) [Official Gazette of Republic of Turkey, 2015, No. 29382].

the 1999 Court formed the basis of the Court's decision in 2015.⁴⁶⁸ The Court held that couples who cohabitated without marriage and couples who married in a religious ceremony without a civil ceremony were similarly situated, but the law only criminalized the latter.⁴⁶⁹ Consequently, Criminal Code Article 230 treated similarly situated persons disparately, and violated the Constitution's Article 10 equal protection guarantees.⁴⁷⁰ The Court also highlighted that the right to religious freedom under Article 24 and the right to private and family life outlined in Articles 20 were fundamental rights, and could only be limited narrowly, even where the State could provide justification.⁴⁷¹ The Court found that there existed no necessity to limit or criminalize acts that were otherwise protected as fundamental freedoms.⁴⁷² Moreover, the Court reasoned that if the state wanted to regulate the family unit, there were clearly less restrictive ways of achieving that goal.⁴⁷³ Thus, the Court struck down and voided Criminal Code provisions 230(5) and 230(6) criminalizing conducting religious marriages ceremonies without a civil marriage.⁴⁷⁴

In keeping with its privacy jurisprudence, the Court's discussion of Turkey's international law obligations in interpreting the constitutionality of laws is notable. For example, in explaining the parameters of Article 24 guarantee of religious freedom, the Court quoted from the United Nations Human Rights Committee General Comment No. 22, discussing that Article 18 of the International Covenant on Civil and Political Rights includes a right to ritual practice and religious ceremonies.⁴⁷⁵ Moreover, the Court discussed the religious exercise protections offered by the European Convention on Human Rights, and cited to numerous European Court of Human

468. *Id. Cf.* Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 1999/27, Karar No. (Judgment No.) 1999/42 (TC Resmi Gazete, 2002, No. 24743) [Official Gazette of Republic of Turkey, 2002, No. 24743] (opining couples married with a religious ceremony and couples married without a religious ceremony are not similarly situated for purposes of the law).

469. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 2014/36, Karar No. (Judgment No.) 2015/51 at V (TC Resmi Gazete, 2015, No. 29382) [Official Gazette of Republic of Turkey, 2015, No. 29382].

470. *Id.*

471. *Id.*

472. *Id.*

473. *Id.*

474. *Id.* at VI.

475. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 2014/36, Karar No. (Judgment No.) 2015/51, V. (5/27/2015) (explaining that although Turkey signed the ICCPR in 2000, it was during the first term of the AKP government that Turkey ratified the Convention).

Rights cases interpreting the Convention.⁴⁷⁶ The Court concluded that freedom of religion and conscience is a cornerstone of a democratic society, and is similar to the Article 20 right to privacy, in that neither the State nor private parties may violate these rights.⁴⁷⁷ The Court recognized that the Constitution provides for specific limitations of these rights, such as violating personal privacy for national security reasons, or limiting religious freedoms where they pose a threat to secularism.⁴⁷⁸ However, since none of these exceptions applied to religious marriage ceremonies, the Court found that criminalizing religious exercise was not justified in this case.⁴⁷⁹

In two separate opinions, the four dissenting justices found no violation of religious rights, but rather found that permitting religious marriages ceremonies prior to civil marriage violated the principle of secularism.⁴⁸⁰ Justices Özgüldür, Kaleli and Kömürcü cited to Court cases from the 1980's to show that decriminalizing religious marriage without civil marriage was an attempt to erode Turkish secularism, and violated the Kemalist reform laws, which are non-amendable provisions of the Constitution.⁴⁸¹ In a separate dissent, Justice Paksüt focused on the low numbers of couples cohabitating without marriage as compared to the high numbers of couples marrying with religious ceremonies.⁴⁸² He concluded that due to the disparity in numbers, the couples could not be seen as similarly situated, thus rendering the equality analysis unnecessary.⁴⁸³ Moreover, Justice Paksüt argued that the requirement of civil marriage prior to religious marriage was meant to protect women from abuses by their husbands.⁴⁸⁴ Thus, even if there was a violation of equality, it was justified as a measure to achieve gender equality.⁴⁸⁵

The decision engendered reactions on all sides. The center-periphery divide was clear in these reactions. Some celebrated the decision as a breakthrough moment in liberalizing Turkish secularism

476. *Id.*

477. *Id.*

478. *Id.*

479. *Id.*

480. *Id.* at First Dissenting Opinion.

481. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 2014/36, Karar No. (Judgment No.) 2015/51, First Dissenting Opinion [TC Resmi Gazete, 2015, No. 29382] [Official Gazette of Republic of Turkey, 2015, No. 29382].

482. Anayasa Mahkemesi [Constitutional Court of Turkey] Esas No. (Case No.) 2014/36, Karar No. (Judgment No.) 2015/51, Second Dissenting Opinion [TC Resmi Gazete, 2015, No. 29382] [Official Gazette of Republic of Turkey, 2015, No. 29382].

483. *Id.*

484. *Id.*

485. *Id.*

and ensuring that the law would recognize and not criminalize widespread traditional practices that had persisted despite all legal reforms to eradicate them.⁴⁸⁶ Others saw the decision as the first step in the erosion of secularism in Turkey.⁴⁸⁷ Women's rights groups were particularly concerned about child marriages in Turkey, fearing that the decision would embolden traditional circles to marry underage girl children with a religious ceremony only, thus circumventing other laws criminalizing child marriages.⁴⁸⁸

Another significant change to the nature of Turkish secularism is the recognition of religious personnel, specifically local muftis, as government agents authorized to conduct civil marriages. In 2017, the parliament approved a change to existing law to authorize local muftis, or religious scholars, to conduct and register civil marriages.⁴⁸⁹ As muftis are government employees in Turkey, the law added muftis to the list of authorized governments agents who can

486. See generally Yildirim, *Gender and Resistance*, *supra* note 75; Ihsan Yilmaz, *Muslim Legal Pluralism in Turkey*, in *MUSLIM LAWS, POLITICS AND SOCIETY IN MODERN NATION STATES: DYNAMIC LEGAL PLURALISMS IN ENGLAND, TURKEY AND PAKISTAN*, 85–127 (2005) (explaining how the Turkish masses have continued to ignore reform laws regarding marriage practices).

487. See, e.g., AYM'nin *İmam Nikahi Kararina Tepki: Çok eşlilik ve çocuk yaşta evliliklere yol açar* [Reaction to the Constitutional Court's Imam Marriage Decision: It Leads to Polygamy and Child Marriages], T24 BAĞIMSIZ İNTERNET GAZETESİ [INDEP. INTERNET GAZETTE] (May 30, 2015) <http://t24.com.tr/haber/aymnin-imam-nikahi-kararina-tepki-cok-eslilik-ve-cocuk-yasta-evliliklere-yol-acar,298214>.

488. See, e.g., Burcu Karakas, *Çok Eşlilige ve Erken Yasta Evliliğe Tesvik* [Encouraging Polygamy and Underage Marriage], MİLLİYET (May 30, 2015) <http://www.milliyet.com.tr/cok-eslilik-ve-erken-yasta-gundem-2066592/>. Articles 103, 104 and 105 of the 2005 Criminal Code criminalize sexual contact with a minor, with jail terms of up to 15 years, depending on the age of the minor, the type of sexual conduct and the type of familial relationship of the perpetrator to the child. Türk Ceza Kanunu [Turkish Penal Code], Kanun No. [Law No.]: 5237, Madde [art.] 103–05 Resmi Gazete [Official Gazette], 10 October 2004 No. 25611, enacted: 26 September 2004. There are competing statistics on child marriages, primarily due to lack of consensus about the age of consent. *İstatistiklerle Çocuk, 2022*, TÜRKİYE İSTATİSTİK KURUMU [TURKISH STATISTICAL INSTITUTE] (Apr. 2024), <https://data.tuik.gov.tr/Bulten/Index?p=Istatistiklerle-Cocuk-2022-49674> (according to a recent study by a government agency, child marriages for girl children at ages 16-17 constituted 2% of all marriages in Turkey, a decline from the 7.3% in 2002.). Civil Code Article 124 sets 17 as the age of consent for marriage for both genders. However, under extraordinary circumstances (not defined in the law), a judge may approve a marriage at age 16. Medeni Kanun [Turkish Civil Code], Kanun No. [Law No.]: 4721, Madde [art.] 124 Resmi Gazete [Official Gazette], 8 December 2001 No. 24607, enacted: 22 November 2001.

489. Nüfus Hizmetleri Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun [The Law on Changes to the Population Services Law and Other Laws], Kanun No. [Law No.]: 7039, Madde [art.] 6 Resmi Gazete [Official Gazette], 3 November 2001 No. 30229, enacted: 19 October 2001.

conduct and register civil marriages.⁴⁹⁰ The first such marriage officiated by a mufti was that of the National Security Minister's son, and President Erdogan was in attendance as a witness and to celebrate the occasion—both of the wedding and the change in the law.⁴⁹¹

In the last two decades, AKP has effectively transformed political power dynamics in Turkey. From lifting the ban on head coverings in public offices and in educational institutions,⁴⁹² to normalizing and legitimizing religious marriages, AKP has explicitly changed the nature of Turkish secularism. AKP's and President Erdogan's continued success at the ballot box indicate that these changes continue to enjoy popular support, albeit with strong opposition from groups like the Kurdish minority, religious minorities, areligious or non-religious Turkish citizens, sexual and gender minorities and others who have increasingly been rendered vulnerable due to AKP's socially conservative nationalist agendas. In the latest elections on May 14, 2023, AKP maintained its stronghold in the parliament as the leading party, winning 268 out of 600 seats.⁴⁹³ While the number is significantly lower than the 295 seats AKP held after the previous 2018 elections, the party still maintains its stronghold as Turkey's leading party since 2002.⁴⁹⁴ Like his party, President Erdogan also maintained his position in the 2023 elections which went to a second round to be concluded on May 28, 2023.⁴⁹⁵ Erdogan continued his

490. See also Nüfus Hizmetleri Kanunu [Population Services Law], Kanun No. [Law No.] 5490, Medde [art.] 22(2) Resmi Gazete [Official Gazette], 29 April 2006 No. 26153, enacted: 25 April 2006 (updated as of Oct. 19, 2017) (updating the law to include "district muftis" able to perform marriages).

491. *İlk Resmi Müftü Nikahı Cumhurbaşkanının Şahitliğinde Kılıldı* [The First Official Mufti Wedding Was Certified in the Presence of the President], DİKEN (May 12, 2017), <https://www.diken.com.tr/ilk-resmi-muftu-nikahi-cumhurbaskaninin-sahitliginde-kiyildi/>.

492. For a further discussion on the ban on head coverings, see generally, Yildirim, *Global Tangles*, *supra* note 75. For a further discussion on the lift of the ban on head covering, see generally, Yildirim, *Gender and Resistance*, *supra* note 75.

493. See Yüksek Seçim Kurulu [High Election Board], Karar No. [Judgment No.]: 2023/1255, (May 30, 2023) <https://www.ysk.gov.tr/doc/karar/dosya/45639002/2023-1255.pdf> (publishing the official announcement from the Supreme Election Council, the central administrative body charged with overseeing elections).

494. *Presidential Election and 27th Term Parliamentary General Election*, TC SUPREME ELECTION BOARD, <https://ysk.gov.tr/doc/dosyalar/docs/24Haziran2018/KesinSecimSonuclari/2018M V-96D.pdf> (last visited Sept. 17, 2024) (noting official election results published by the High Election Board).

495. Gul Tuysuz, Yusuf Gezer & Tamara Qiblawi, *Erdogan Wins Turkish Election, Extending Rule to Third Decade*, CNN (May 29, 2023), <https://www.cnn.com/2023/05/28/europe/turkey-president-runoff-polls-erdogan->

office as the president winning 51.91% of the popular vote, defeating his opponent, Kemal Kilicdaroglu who received 48.09% of the votes.⁴⁹⁶ The two candidates represented two coalitions, whose narratives captured a wide array of issues including the rights of the Kurdish minority, the economic crisis, the fate of Turkey's immigrant and refugee population, and earthquake recovery efforts.⁴⁹⁷ The nature of Turkish secularism remained an issue at the heart of the debates. Erdogan continued to center his campaign around Turkey's identity as a Muslim country, and focused on his and AKP's 20-year record of ridding the nation of a brutal past. For example, in a campaign speech, he appealed to the late Democratic Party leader and Prime Minister Adnan Menderes who was executed by the 1961 junta.⁴⁹⁸ Using the Democratic Party slogan, Erdogan declared, "Enough! The Word Belongs to the People."⁴⁹⁹ In the same speech, Erdogan also talked about continuing the fight against imperialism and maintaining the gains of the AKP years.⁵⁰⁰

Erdogan's opponent, Kemal Kilicdaroglu, was the candidate of a coalition led by the main opposition party, People's Republican Party, or CHP (Cumhuriyet Halk Partisi).⁵⁰¹ Kilicdaroglu's history as a staunch proponent of militant secularism was at the heart of the attacks against him.⁵⁰² In particular, Kilicdaroglu had to defend himself on his earlier position supporting the ban on head coverings in public offices and universities.⁵⁰³ Kilicdaroglu's campaign agenda also included anti-immigrant rhetoric, with promises to expel the millions of Syrians and Afghans currently residing in Turkey.⁵⁰⁴

[intl/index.html](#).

496. Yüksek Seçim Kurulu [High Election Board], Karar No. [Judgment No.]: 2023/1255, (May 30, 2023) <https://www.ysk.gov.tr/doc/karar/dosya/45639002/2023-1255.pdf>

497. *Results, Candidates, Issues: Turkey Election Run-Off in 400 Words*. Al Jazeera (May 28, 2023) <https://www.aljazeera.com/news/2023/5/28/results-candidates-agenda-turkey-election-in-400-words>.

498. *Erdogan:14 Mayıs'ta Bunlara Oyle Cakalim ki Bir Daha Bellerini Dogrultmasinlar* [Erdogan: Let's Hit Them So Hard on May 14 That They Will Never Be Able to Straighten Their Backs Again], EURONEWS (Apr. 2, 2023), <https://tr.euronews.com/2023/02/04/erdogan-14-mayista-bunlara-oy-le-cakalim-ki-bir-daha-bellerini-dogrultmasinlar> [hereinafter *Erdogan: Let's Hit Them So Hard*].

499. *Id.* (translating the slogan in the original Turkish as "Yeter! Soz Milletindir!").

500. *Id.*

501. *Kilicdaroglu: Basortusu Yasagini Universitelerde Kaldiran Bu Kardesinizdir* [Kilicdaroglu: This Is Your Brother Who Lifted the Headscarf Ban in Universities], BIRGUN (Oct. 10, 2022), <https://www.birgun.net/haber/kilicdaroglu-basortusu-yasagini-universitelerde-kaldiran-bu-kardesinizdir-407285>.

502. *Id.*

503. *See, e.g., id.*

504. *See, e.g., 'Suriyeliler Gidecek' Soylemi Siginmacilari Nasil Etkiliyor?* [How does

Erdogan, on the other hand, focused on caring for fellow Muslims from Syria and Afghanistan and played on the public fears of returning to the days of militant secularism when women with head coverings were banned from public offices, schools and universities.⁵⁰⁵ Erdogan's victory for another five year term as the president, coupled with AKP's victory to remain the leading party in the parliament, continue to cause concern and discontent for some citizens of Turkey, as was evident with the recent opposition wins at the local elections.⁵⁰⁶ While the reconstructed populist secularism allows for formerly excluded religious voices to be heard, it increasingly others and excludes those who have never enjoyed full participatory access to Turkish democracy. Among the marginalized are Turkey's Kurdish minority,⁵⁰⁷ religious minorities, including the Shiite sect of Alevis,⁵⁰⁸ and Turkey's LGBTQ+ population.⁵⁰⁹ Moreover, gender rights are increasingly under threat.⁵¹⁰ For example, access to abortion is increasingly difficult, and there is a looming threat of diminishing women's rights.⁵¹¹ Signaling further attacks to women's rights,

the 'Syrians will go' discourse affect refugees?], EURONEWS (May 26, 2023), <https://tr.euronews.com/2023/05/26/suriyeliler-gidecek-soylemi-siginmacilari-nasil-etkiliyor>.

505. See, e.g., *Erdoğan: Let's Hit Them So Hard*, *supra* note 514.

506. Paul Kirby and Cagil Kasapoglu, *Turkish Local Elections: Opposition Stuns Erdogan With Historic Victory*, BBC (Apr. 1, 2024), <https://www.bbc.com/news/world-europe-68704375>.

507. See *Turkey's Erdogan: Releasing Demirtas from Jail Out of Question*, REUTERS (May 28, 2023), <https://www.reuters.com/world/middle-east/turkeys-erdogan-releasing-demirtas-jail-out-question-2023-05-28/> (discussing the former Kurdish presidential candidate, Selahattin Demirtas who has been in jail on charges of terrorism since 2016; Demirtas continues to deny all charges.).

508. See generally, *Human Rights Violations Against Ethnic and Religious Minorities in Turkey*, TURKISH DEMOCRACY PROJECT (2021), <https://turkishdemocracy.com/wp-content/uploads/2021/12/TDP-Report-Human-Rights-Violations-Against-Ethnic-Religious-Minorities-in-Turkey.pdf>; see also Nil Mutluer, *Turkiye'de Alevilik- Hayatin Her Alaninda Ayrimcilik Var [Alevism in Turkey—There is Discrimination in Every Aspect of Life]*, MILLIYET (Jan. 13, 2013), <https://www.milliyet.com.tr/gundem/turkiyede-alevilik-hayatin-her-alaninda-ayrimcilik-var-1654629> (describing the challenges Alevis face).

509. See *Erdoğan'ın cumhurbaşkanlığı zaferi sonrası LGBTQ+ toplumunda korku katlanarak arttı [“Fear Increased Exponentially in the LGBTQ+ Community” After Erdoğan's Presidential Victory]*, EURONEWS (May 29, 2023), <https://tr.euronews.com/2023/05/29/erdoganin-cumhurbaskanligi-zaferi-sonrasi-lgbtq-toplumunda-korku-katlanarak-artti> (exemplifying Erdogan explicitly targeting the LGBTQ+ community in his victory speech in the 2023 presidential elections).

510. See, e.g., Jessie Williams, *What's at Stake for Women in Turkey's Election*, OPEN DEMOCRACY (May 12, 2023), <https://www.opendemocracy.net/en/5050/turkey-erdogan-election-2023-womens-rights-we-will-stop-femicides>.

511. See, e.g., Laura Villalon, *'It was My Right, But They Refused': Turkish Women Denied Access to Free, Safe Abortions*, GUARDIAN (July 5, 2022),

Minister of Justice Yilmaz Tunc has explicitly stated that the administration will review the entire body of Turkish family law, including sending domestic disputes and domestic violence cases to mandated mediation.⁵¹²

IV. EVOLVING NOTIONS OF SECULARISM AND DEMOCRACY IN THE LIBERAL STATE

The Turkish experience with evolving notions of secularism, and the consequences thereof, should be understood in the context of the modern liberal state, rather than as a simple political struggle between religiosity and secularity. The above brief survey of Turkish secularism shows that, at least in the Turkish context, the evolution of secularism has been directly tied to evolving power dynamics in the modern state. First the pro-Westernization nation building elite claimed ownership of defining the identity of the new nation, only to be replaced by a reactionary new class of Turkish citizens during the AKP years. The discourses around Turkish secularism is more than just about the place of religion in a liberal state. These discourses constitute the very heart of defining political power dynamics in a young nation where various issues of governance continue to evolve. This is evident in the numerous instances of military interventions in the political process and the cooptation of politico-legal infrastructures including significantly amending the constitutional text, and its implications for national identity and the make-up of courts.

In other words, the growing pains of Turkish secularism are the growing pains of Turkish democracy. This recognition, that the evolution of Turkish secularism is not simply a part of Turkey's democratic order, but rather the very heart of it, is indeed significant. It requires that we rethink not just the relationship between religion and the State, but also our assessment of the primary actors involved. For instance, thinking of the AKP and President Erdogan as "Islamists" is indeed useless, if not inaccurate. AKP's initial party agenda in 2002 was not much more than an ordinary liberal democratic party agenda that advocated for individual rights, an accommodationist secularism (rather akin to that of the United States), and a neoliberal economic

<https://www.theguardian.com/global-development/2022/jul/05/legal-yet-virtually-banned-turkish-women-denied-right-to-free-safe-abortions>.

512. *Minister: "We Will Reexamine Family Law from Scratch,"* BIANET (Aug. 31, 2023), <https://bianet.org/english/law/283413-minister-we-will-reexamine-family-law-from-scratch>.

project focusing on privatization.⁵¹³ Compared to the United States, the AKP agenda read somewhere between those of the Democratic and Republican parties.⁵¹⁴ Thus, the question remains as to what variables would reasonably render a particular party *religionist*, whether Islamist or in a different context like the United States, perhaps *Christianist*? Classifying parties of modern polities as primarily advocates of their religions raises more questions than answers. For example, what kind of Islam is advocated by a party one could call *Islamist*, given there are different and differing interpretations of and schools of law in Islam? What does such a classification mean for the neoliberal agenda of the party, which cannot effectively be tied to the religiosity of the party members? These questions are significant, given that AKP benefits from its identification with Islam at the ballot box, and, for that reason alone, the *Islamist* identity tag assigned to it should be questioned.

Turkey's story also shows that religion does not predate secularism as posited by the decline theory discussed earlier, but rather that religion and secularism exist in a mutually affirming relationship as posited by the continuum theory. Starting in the Ottoman Empire and throughout the Turkish Republican history, Islam and secularism have evolved in relationship with each other, in reaction to each other and in response to each other. Islamic cultural and political movements that exist in Turkey today, including the religious rhetoric employed by AKP and Erdogan are part and product of a modernity that would have been unthinkable during the Ottoman Empire, or in earlier eras of Islamic history. Current day narratives that employ religious rhetoric and Muslim religious identity are narratives in the liberal democratic marketplace of a Turkish nation that is continuously redefining itself. Neither the secular nor the religious rhetoric in modern Turkey are simple and none exist in a vacuum free of the others. As the boundaries between the religious and the secular are often blurred, so too are the boundaries between secularism and religion.

This is also evident in that the recent populist formations of secularism have heavily relied on reversing the center-periphery power dynamics, at times deploying such narratives in exaggerated ways. Significantly, much of AKP's lasting electoral success can be traced to its skillful consolidation of small to mid-size businesses in the Turkish provinces, combining neoliberal economic strategies with socially conservative religious rhetoric and liberal values of

513. See generally *AK Party Program*, *supra* note 419.

514. *Id.*

accommodationist secularism. AKP has also excelled at keeping alive the mass traumas from Turkish military interventions and illiberal exclusionist policies of militant secularism that defined pre-AKP years of the republic. This tactic of always keeping at the forefront the brutality of militant secularism and military interventions was deployed even during the May 2023 elections, even though military interventions and militant secularism are no longer viable threats.

Also significant is that the drastic redefinition of Turkish secularism has been an almost entirely legal project that involved changing almost every aspect of the Turkish legal infrastructure but leaving intact the textual constitutional parameters of secularism intact. As discussed above, the legal changes that made it possible to redefine Turkish secularism involved constitutional amendments that changed the parliamentary system to a strong presidential one, which in turn led to significant court-packing practices, and consequently to a judiciary that strongly supports AKP's positions on secularism, economics and other aspects of the neoliberal projects such as privatization and urbanization.⁵¹⁵ Amidst all the political, legal, and jurisprudential changes during the AKP era, the constitutional provisions defining the parameters of Turkish secularism have remained intact. As also highlighted by Zuhtu Arslan, the Chief Justice of the Turkish Constitutional Court, it was the court's interpretation of the constitutional provisions on secularism that changed during the AKP years.⁵¹⁶ While changing interpretations of constitutional text is often considered a sign of stability and continuity, it remains to be seen if the same constitutional court will continue to expand rights for other marginalized populations in the Turkish Republic, including religious, sexual and gender minorities.

Turkey's experience with militant secularization shows that while there may be varieties of governance structures that are secular, not all secular governmentality is liberal. The brutality of militant secularism and the secularization project of the pre-AKP years was not simply about controlling the place of religion in the Turkish Republic, but it was a part of, if not central to, controlling the identity of the new republic. The militant secularization project, along with the brutal and violent military interventions throughout the republican era, aimed at ensuring that all citizens of Turkey would accept and

515. See generally Yildirim, *Gender and Resistance*, *supra* note 75.

516. *AYM Baskani Arslan: Basortusu Yasaginin Kaldirilmesi Laiklik Temelinde Yapildi* [Constitutional Court President Arslan: *The Lifting of the Headscarf Ban Was Done on the Basis of Secularism*], INDEPENDENT (Jan. 3, 2023), [https://www.indyturk.com/node/594946/haber/aym-başkanı-arслан-başörtüsü-yasağının-kaldırılması-laiklik-temelinde-yapıldı](https://www.indyturk.com/node/594946/haber/aym-baskani-arслан-başörtüsü-yasağının-kaldırılması-laiklik-temelinde-yapıldı).

internalize the same identity, as defined by the military and a constitutional court representing the values of an elite that only wanted to see a Turkey that longed to be Western. In reaction to this earlier era, AKP's governance project seeks to reverse the tables and slowly but steadily impose a new identity on the Turkish public, which is sure to lead to a new kind of brutality and violence. The very idea of democracy should be to create equitable, not just equal, spaces for all, regardless of differences and disputes. The demand to be similar or the same is oppressive and anti-democratic, whether the demand is to be progressive or conservative. As the epigraph that began this article argues, no particular group or persons "should be able to claim any mastery of the foundation of society."⁵¹⁷ There should be no guarantee that we will all agree on all values all the time. A pluralistic society is necessarily one where there is disagreement, discontent, and adversity. As Chantal Mouffe has argued, the way to construct a truly pluralist society is to acknowledge, accept and embrace differences and conflicting and even clashing perspectives, and ensure that there is room for all of them in a pluralistic society.⁵¹⁸ What Mouffe calls agonistic pluralism demands that we start seeing each other as adversaries rather than enemies.⁵¹⁹ For Mouffe, "[a]n adversary is a legitimate enemy, an enemy with whom we have in common a shared adhesion to the ethico-political principles of democracy."⁵²⁰ Mouffe further argues that this type of agonistic pluralism requires a conversion, or an epistemological shift.⁵²¹ This is precisely the kind of epistemological shift Turkish pluralism needs. Turkey is currently in a new phase of the same sad cycle, where what used to be peripheral identities marginalized and suppressed have now claimed the narrative of the center, seeking to peripheralize and marginalize what used to be the center. Breaking this cycle will take the kind of radical epistemological shift, or a conversion, to realize the agonistic pluralism Mouffe envisions.

517. Mouffe, *supra* note 1, at 151.

518. Chantal Mouffe, *Deliberative Democracy or Agonistic Pluralism?*, 66 SOC. RSCH. 745, 756 (1999).

519. *Id.*

520. *Id.*

521. *Id.*