

## **Roots of the Headscarf Debate: Laicism and Secularism in France and Turkey**

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### **Introduction**

*Laicism* and *secularism* refer to two different possibilities of how to organize state policies toward religion. These concepts are, in a limited sense, similar to each other as they both include two elements: separation between state and religion (separation of political authority from religious authority) and freedom of religion. It is the visible appearance of religion that demarcates the difference between them. Secularism is usually described as more tolerant towards public visibility of religion; a secular state plays a passive role and allows religious symbols in the public domain. In laicism the state plays a more active role by excluding religious symbols from the public domain and thus confines religion to the private domain.

Laicism or *laïcité* in French is usually defined as a unique feature of French political culture. It emerged after the 1789 Revolution as a way of separating state and religion. Today, it is accepted as the foundation of the French Republic, which ensures national unity by securing tolerance towards different religious groups and by unifying citizens as rational, enlightened members of a collective unity. Yet today the principle of *laïcité* seems to have produced the opposite result: the polarization of the French society into two. The recent debate over the ban on headscarves exemplifies this situation. The French public seems to be divided into two camps – supporters and opponents of such a ban. Turkey, which is the first and the most secular country in the Muslim world, is another country where a similar debate caused a similar polarization. Turkey, following the French tradition, defines its policies toward religion as *laiklik* in Turkish.

This paper will try to answer two questions: 1. How can we explain the emergence of *laïcité* as a unique state policy towards religion in these countries? 2. Why and how *laïcité* and *laiklik*, which has origins as an inclusive and cohesive principle, caused such great social polarization within these societies? The first part of the paper will explain the historical

conditions that lead to this principle. It will be argued that the existence of an ancient regime based on an alliance of monarchical and religious authority was the main reason for the emergence of exclusionary religious policies. Additionally, it will be argued that the principle of laïcité/laiklik was/is strongly related with national identity. The second part of this paper unravels the current debates over headscarves. Contrary to the claims of Republicans, this principle caused a polarization within the society by creating a separation between public and private sphere and by excluding ethno-religious differences from the public sphere.

## **1. State Building and the Emergence of the Principle of Laïcité**

### *1.1 France*

During medieval times, The Catholic Church was one of the most important actors in Europe. France had a special relationship with the Catholic Church and was actually known as the “elder daughter” of the church.<sup>1</sup> Before the Revolution, France was more or less religiously homogenous. As explained by Marx, social cohesion stemmed from religious exclusion during the 16<sup>th</sup> and 17<sup>th</sup> centuries.<sup>2</sup> Catholicism became the dominant religion and had great public influence. In the aftermath of the 1789 Revolution, the Jacobins intended to change this relation dramatically. The French Revolution gave birth to important ideals such as laicism and nationalism that spread to the rest of world. Both of these principles emerged as a result of a struggle against Catholicism that witnessed “[The] birth of French nationalism

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<sup>1</sup> Ahmet Kuru, *Secularism and State Policies Toward Religion The United States, France and Turkey* (New York: Cambridge University Press, 2009), 136.

<sup>2</sup> Anthony W. Marx, *Faith in Nation: Exclusionary Origins of Nationalism* (Oxford: Oxford University Press, 2003), 89. According to Marx, religious exclusion served as a main mechanism for the emergence of unified and coherent people. “Religion, both conflicts over it and exclusions accordingly, was then central to early nation-building as the most prominent collective sentiment or “focal point” of allegiance. The sixteenth and seventeenth centuries saw the development of such efforts to gain popular support and bolster or reconfigure authority that used religious exclusion as its crutch.”

amid a frontal violent conflict with Roman Catholicism on behalf of freedom, equality and reason.”<sup>3</sup>

The ancient regime of France was based on a strong alliance between monarchical rule and the Catholic Church. Monarchical authority, in order to be legitimate, needed the approval of Catholic Church. “Instead of emerging from below, authority came from above and its legitimacy was therefore intimately bound throne from God.”<sup>4</sup> Society was divided into three main orders, two of which held a privileged position: clergy and nobility. The clergy enjoyed the most privileged position due to its sacred character and its role in state administration. “The clergy endowed the social, political and intellectual structures with the aura of eternity.”<sup>5</sup> Thus, when the non-privileged groups led by the 3<sup>rd</sup> estate wanted to change the ancient regime, they first attacked the hegemony of the clergy. The revolutionaries not only challenged the position of the clergy, but also the legitimacy of its central mechanism of power. Sovereignty no longer came from divine rule, but from the people themselves. The French people as a collective *unity* deprived of any privileges became the sovereign. This idea of popular sovereignty brings nationalism and laicism into the picture, a portrait in which there is no room for privileged clergy or divine rule. This is one of the reasons why the debate on laicism is tied to the debate on national unity and identity.

*Laïcité* in France has emerged as a result of a gradual process that includes some ruptures and important thresholds. As Gunn argues, there were two formative periods for the emergence of *laïcité*; the first between 1789 and 1805, the second between 1879 and 1905.<sup>6</sup> The first period was characterized by a deep hostility towards religion and strong state control

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<sup>3</sup> Amanda Porterfield, “Politicized Religion in France and the United States: Different Histories, Common Ideals, Similar Dilemmas,” In *Religion and Politics in France and the United States* (New York: Rowman and Littlefield, 2007), 175.

<sup>4</sup> Francois Furet and Denis Richet, *French Revolution* (New York: The MacMillian Company, 1970), 16.

<sup>5</sup> Furet and Richet, *French Revolution*, 18.

<sup>6</sup> Jeremy T. Gunn, “Religious Freedom and Laicite: A Comparison of the USA and France,” *Brigham Young University Law Review* (2004): 432.

over the church. The conflict between state and church stemmed from the centrality of the latter within the ancient regime. Laicism emerged as a constitutive principle of the Republic and was defined against religion, especially Catholicism. It was believed that “a person could not be genuinely Catholic and genuinely French.”<sup>7</sup> Revolutionaries tried to cut the ties between Catholicism and French identity by giving a new definition of citizenship and nationhood.

Republican citizenship was seen as a universal, inclusive and secular category. Revolution realized that citizenship was “unmediated, undifferentiated, individual membership of the state.”<sup>8</sup> Legally equal individuals bound to the nation-state formed an *indivisible* national unity, which excluded any kind of privileges attributed to a particular community. As Brubaker explains, “in the French tradition nation is conceived in relation to the institutional and territorial frame of the state.”<sup>9</sup> This means that ethnic, cultural and religious differences could not be used as exclusionary mechanisms; citizenship should be inclusive and universal. Yet the formation of this new identity and the establishment of laïcité were put into practice by some exclusionary and intolerant means. “Exclusion [...] played a role in cohering and mobilizing the nation through during and after revolution such exclusion was instead against royalists or outward.”<sup>10</sup> During the Revolution a “xenophobic” nationalism emerged. As Brubaker claims, xenophobic nationalism did not only target the foreigners, but also *émigrés*, refractory priests, noblemen, rebels and political opponents.<sup>11</sup> The revolutionaries then repressed these groups.

The Jacobins tried to control and nationalize the Church with some reforms. The first one was the disposition and the nationalization of the Catholic Church’s property by the

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<sup>7</sup> Gunn, “Religious Freedom,” 439.

<sup>8</sup> Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (USA: Harvard University Press, 1994), 39.

<sup>9</sup> *Ibid*, “Citizenship,” 1.

<sup>10</sup> Marx, *Faith*, 184.

<sup>11</sup> Rogers Brubaker, “Citizenship,” 46-47.

state.<sup>12</sup> The nationalization of land was followed by another reform. In July 1790 the Constituent Assembly issued a law entitled “The Civil Constitution of the Clergy.” This law regulated the internal affairs of the Church by determining its geographic organization and by providing a state salary for Roman Catholic clergy.<sup>13</sup> The law declared that clergy would be elected by popular vote. It is obvious that the main purpose of this law was to create a national Church independent from the Roman Catholic Church. On November 27, 1790 a decree was issued stating that priests exercising public office had to take an oath of loyalty to the state and the nation. Some bishops and nearly half of the clergy took the oath, yet a large proportion did not. Many of those who did not take the oath fled France and the revolutionaries imprisoned the remainder.<sup>14</sup>

In official discourse, interference of the state in religious affairs was accompanied with another development, the acceptance of religious tolerance. The 1791 Constitution accepted religious liberty. Although the Declaration of the Rights of Man did not include freedom of worship and did not directly mention the freedom of conscience, it guaranteed religious tolerance by asserting that no man was to be challenged on account of his religious opinions. However, this development was followed by violent attacks towards clergy. In 1792 the clergy were forced to affirm their loyalty to the state by taking a new oath. Refusal to take the oath led to ‘priest hunts.’ Within two years many members of the clergy were murdered and nearly 40,000 emigrated.<sup>15</sup> In this sense the principle of *laïcité* during the Revolution did not promote religious tolerance, but lead to rejection of religion and exclusion of refractory priests. The revolutionaries justified these exclusionary policies as measures necessary for the protection of indivisible unity of the nation. For the revolutionaries any communitarian belief and loyalty would threaten national unity.

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<sup>12</sup> Gunn, "Religious Freedom," 439.

<sup>13</sup> Micheal Troper, "French Secularism or Laicite," *Cardozo Law Review* (1999-2000): 1275.

<sup>14</sup> Kuru, *Secularism*, 139.

<sup>15</sup> Gunn, "Religious Freedom," 437.

The French Revolution was successful in abolishing monarchy, but could not establish a stable regime. Until the beginning of 20<sup>th</sup> century, France went back and forth between a republic and monarchy. It witnessed a conflict between two Frances: modern Republican France that had emerged from the 1792 Revolution and the France of the ancient regime closely tied with Catholicism. Despite the assiduous efforts of the revolutionaries, Catholicism remained an important factor. “The Revolution [...] had neither exterminated the French clergy nor extirpated all the religion.”<sup>16</sup> The 1801 Concordat signed between Pope Pius and Napoleon restored the relation between state and church. With the Concordat, Catholicism was recognized as the religion of majority of the French people and the authority of the state over the clergy was institutionalized.<sup>17</sup> The bishops were nominated and the clergy were salaried by the state. Similar laws also regulated the relations between the state and the Protestants and the Jews. Between 1802 and 1905 these three religions were recognized by the state meaning that they were protected and salaried, but at the same time strictly controlled.<sup>18</sup> This strong relationship between religion and the state did not mean that there was no struggle the principle of laicism within society. Indeed, the struggle between Republicans and the clerics continued to exist.

In 1879 Republicans took control of both chambers of the Parliament and started to issue certain anti-clerical laws especially regulating the education system. Educational institutions became the battleground for the struggle between clerics and the Republicans. “The school became a key vector of civil power and controversy, whether for the secularists’ historical cause of social transformation and Republican integration, or for the Catholics’ divine cause of spiritual salvation and participation in the eternal life.”<sup>19</sup> Republicans believed that the existence of public and Catholic schools created a duality within the

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<sup>16</sup> Saunders, "France on," 60.

<sup>17</sup> Kuru, *Secularism*, 141.

<sup>18</sup> Jean Bauberot, "French Laicization in the Worldwide Context," *Religious Studies Review* (2007), 75.

<sup>19</sup> Saunders, "France on," 61.

education system. Two different schools were teaching two different value systems and creating two different Frances. In order to overcome this problem, Republicans initiated several secularization reforms that promoted free, obligatory and secular education.<sup>20</sup> During the 1870's the vast majority of French society was Catholic, but the resistance towards secular policies was not enough to bring these policies to a halt. In 1901, secularists issued a new law entitled "Law of Associations" that required all religious associations to have state authorization.<sup>21</sup> Three years after this law, a new law was passed that prohibited all religious communities from providing education. This legislation resulted in an expulsion of 30,000 clergy from the ranks of teachers who were no longer salaried by the state.<sup>22</sup> Yet the main success of secularists was the legislation of 1905 that separated state and church.

As Bauberot points out, the law of 1905 known as the Separation Act "remains the base of all relations between religions and state in France, the rule of all principle activity of French laicization."<sup>23</sup> The leading principles are set forth in the first two articles. Although there is no reference to the principle of *laïcité*, the first article recognizes freedom of religion by stating: "The republic ensures freedom of conscience. It guarantees the free exercise of religions with the sole restrictions decreed hereafter in the interest of public order."<sup>24</sup> The second article assures state neutrality towards religions. It declares: "The Republic does not recognize, fund or subsidize any religion. [...] [S]tate, departmental and commune budgets, together with all expenses relating to the exercise of religions will be abolished."<sup>25</sup> The neutrality principle accompanied with the elimination of state budget for the exercise of religions was detrimental to the Catholic Church, because forty-two thousand priests were no

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<sup>20</sup> Kuru, *Secularism*, 146.

<sup>21</sup> Ibid, *Secularism*, 148.

<sup>22</sup> Saunders, "France on," 63.

<sup>23</sup> Bauberot, "French Laicization," 74.

<sup>24</sup> Translated by (Saunders 2009, 68).

<sup>25</sup> Translated by (Saunders 2009, 68).

longer salaried by the state.<sup>26</sup> Also the law changed the existent hierarchical organization of religious associations. Religious groups were no longer recognized as cults, but cults as “private associations to which the state would now transfer the stewardship of church properties and incomes.”<sup>27</sup> All religious buildings built by 1905 were accepted as property of state and their maintenance was carried out by the state. This meant “religious communities would need state authorization to use their own buildings and the items inside them.”<sup>28</sup> This regulation created great discontent among the clerics, because “[b]y seizing church property and refusing to salary the clergy, the state effectively rendered the church destitute.”<sup>29</sup> Moreover, despite the recognition of freedom of conscience within the first article, “the law prohibits religious symbols in public buildings with certain exceptions, such as the places of worship, cemeteries and museums.”<sup>30</sup> In this sense, the law was intolerant towards the public visibility of religion and intended to limit religion to the private sphere. Indeed, it is assumed that there is a clear-cut division between public and private spheres and individuals are able to differentiate between them.

This law seems to give content to the principle of *laïcité*, which would become a constitutional principle in 1946. Thus, as Bauberot points out, “laïcité is best understood as a political and legal pact” rather than a universally transcendent principle.<sup>31</sup> This principle, far from being established by social consensus, was a product of a legal and political process that was shaped by conflict between clericals and Republicans. The Catholic Church strongly opposed this law until the beginning of the First World War. Desperate times called for the Church to put aside the disagreement and accept the law. From that time *laïcité* was recognized by a great majority of the society as a unifying principle securing national unity

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<sup>26</sup> Kuru, *Secularism*, 151.

<sup>27</sup> Saunders, "France on the knife-edge of religion: commemorating the centenary of the Law of 9 December 1905 on the Separation of Church and State," in *Secularism, Religion and Multicultural Citizenship*, ed. Geoffrey Brahm Levey and Tariq Modood (New York: Cambridge University Press, 2009), 68.

<sup>28</sup> Kuru, *Secularism*, 151.

<sup>29</sup> Gunn, "Religious Freedom," 441.

<sup>30</sup> Kuru, *Secularism*, 151.

<sup>31</sup> Jean Bauberot in David Saunders, "France on," 69.



and solidarity by dismissing religious sectarian movements. According to general belief, the principle of *laïcité* represents tolerance, neutrality and equality. However, as Gunn emphasized, such a view overlooks the initial periods of hostility, antagonisms, discrimination and violence in the formation of the principle of *laïcité*. In reality the principle of *laïcité* operates in a way similar to founding myths that unify citizens.<sup>32</sup> These myths do not necessarily assemble historical truths; their historical backgrounds are usually different from what is imagined.

*Laïcité* in France has emerged and evolved through the confrontation between two groups; Republicans and Clerics. This confrontation was—and still is—a confrontation about national identity. During the years of Revolution, revolutionaries defined French identity primarily on the basis of nation and rejected Catholicism as one of the pillars of French identity. Despite the diligent efforts of the revolutionaries, Catholicism remained an important part of French society, so confrontation between these two groups continued to exist. During the XIX century this confrontation was between Militant Catholics and Republicans.

[This conflict] was not a conflict between “believers” and “non believers”: The number of people “without religion” in the census of 1872 was but 82.000 people, in a population of more than 36.000.000 inhabitants. It effectively concerned two very divergent visions of French national identity

For a militant Catholicism, the identity of France is before all else a Catholic identity; France is a “Catholic nation”. According to a common expression it is even “the first daughter of the (Catholic) Church”. On the contrary, for a large laicization movement which involves not only people “without religion” but also members of religious minorities who have become free owing to the Revolution, and important number of more or less practicing Catholics, the identity of the modern France should not have a religious dimension, it comes from the French Revolution and its values, especially from the *Declaration of the Rights of Man and Citizen* of 1789.<sup>33</sup>

Starting from the 20<sup>th</sup> century *laïcité* ceased to be a subject of confrontation between Catholics and the Republicans. The Catholic Church accepted the principle of *laïcité* and it

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<sup>32</sup> Gunn, "Religious Freedom," 421-422.

<sup>33</sup> Jean Bauberot, "French Laicization," 78.

seems that Catholicism was no longer a threat to French national identity. As will be explained later, it is believed that the threat now comes from Islam and Muslim identity.

### *1.2 Turkey*

Secularism, or *laiklik* in Turkish, was accomplished after the emergence of the Turkish Republic. The secularization movement can be traced back to earlier movements in Ottoman times. Even starting from the first years of the Empire, state and religion were defined as separate spheres that were dependent on each other.<sup>34</sup> Although the classical Ottoman legal system was based on Sharia (Islamic legal code), administrative, criminal, civil and commercial law were distinguished from Sharia. This separation became explicit by the codification of the laws in 19<sup>th</sup> century following the westernization process.<sup>35</sup> Faced with economic difficulties and military defeats, the Ottoman elite felt the need to transform the Ottoman state structure. Modernization or westernization of legal codes was an important step in this process. Between the years of 1826 and 1876 new institutions and laws were introduced into the Ottoman system by state elites. For example, the *Tanzimat*, a new secular, mixed commercial court was established in addition to Sharia courts. Moreover, new Western-type secular schools were formed next to religious schools. This coexistence of secular and religious legal codes and institutions caused a duality that would end after the establishment of a larger Ottoman Republic.<sup>36</sup>

In 1876 the *Mesrutiyet* (Constitutional Monarchy) was established as a result of assiduous efforts of Young Ottomans - an organization aimed at the creation of a constitutional regime that would be in conformity with Islamic principles.<sup>37</sup> The main motivation behind the emphasis on Islam was to cope with newly emerging nationalist

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<sup>34</sup> Erik Jan Zürcher, "Kemalist Düşüncenin Osmanlı Kaynakları (The Ottoman Heritage of Kemalist Thought)," in *Modern Türkiye'de Siyasi Düşünce: Kemalizm*, ed. Tanıl Bora, (Ankara: İletişim, 2001), 45.

<sup>35</sup> Bulent Daver, "Secularism in Turkey," in *Atatürk Araştırma Merkezi Dergisi* (1988), 297.

<sup>36</sup> Kuru, *Secularism*, 207-209.

<sup>37</sup> Kuru, *Secularism*, 209.

movements in the Balkans. Islamism was deemed to be a solution for separatist movements. Thus, the 1876 constitution stated that the main duty of the Assembly was to carry out the principles of Sharia and called Islam the official religion of the state (Article 11). On the other hand, the constitution also stated that every subject would be called Ottoman and there would not be any discrimination based on religious affiliation (Article 8). The first Ottoman Constitutional regime lasted only two years, while the Young Turks established the second Mesrutiyet in 1908. The Young Turks were a reformist state elite who aimed to replace Islamic institutions with westernized ones.

Young Turks were largely influenced by European modernization processes and defended a limited role for religion. According to them, the main obstacles to modernization were the sultanate and Islamic institutions – two pillars of the ancient regime. They attacked the *ulema (Islamic Scholars)* stating that there should not be any intermediary authorities between God and subjects. They pursued policies that weakened the political power of the *ulema*. This does not necessarily mean that they were against Islam; indeed, they usually referred to Islam as the most rational and progressive religion. What they wanted to accomplish was to limit the influence of religion over education, government and politics.<sup>38</sup> *İttihat ve Terakki Cemiyeti* (The Committee of Union and Progress) was one of the most influential secret organizations of Young Turks, which held the government after 1913 until the defeat of Ottoman Empire in the First World War. Mustafa Kemal (Atatürk), who did not take part in the inner circles of power, was a well-known member of *İttihat ve Terakki*.<sup>39</sup> After the Committee had dispersed, he organized resistance groups in Anatolia and took lead of the War of Independence.

After the War of Independence, Mustafa Kemal became the leader of the newly established Republic and launched a modernization project, which would be called The

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<sup>38</sup> Zürcher, "Kemalist Düşüncenin Osmanlı Kaynakları, 46-47.

<sup>39</sup> Feroz Ahmad, *The Making of Modern Turkey* (London: Routledge, 2002), 48.

Kemalist Revolution. The Revolution was aimed at the destruction of the ancient imperial regime and the establishment of a new nation-state. Nationalization and modernization became the main goals of Kemalists who wished to replace the old social structure with a contemporary one similar to their European counterparts. Like the Committee of Union and Progress, Kemalists were highly impressed by European history, especially French history.<sup>40</sup> They wanted to establish a *laik* nation state through a top-down revolution lead by state elites. Like Jacobins in the French Revolution, their ideas were characterized by anti-clericalism, rationalism, intellectual elitism and nationalism. Similar to France, the ancient regime in Turkey was “based on the marriage between the old monarchy and religious hegemony which is perceived by the elite as a barrier against the new republican regime.”<sup>41</sup> However, different from France, the clergy in the Ottoman Empire was not isolated from society or powerful enough to question state authority. This means “there is no monolithic polarization between the ‘mosque’ and certain segments of the ‘people.’”<sup>42</sup> In this sense the Kemalist Revolution did not have broad social support from society. Second, the clergy was already bureaucratized and had been brought under state control. They were not powerful enough to oppose the Kemalist reforms.<sup>43</sup>

The principle of the separation between state and religions became gradually more effective within legal structures since the end of the War of Independence. In 1922 the Sultanate was abolished. In 1923, the Republic was founded. This was soon followed by the abolishment of the caliphate and the establishment of *Diyanet İşleri Başkanlığı*<sup>44</sup> (Ministry of Religious Affairs) in 1924 and the prohibition of religious orders in 1925. In 1928, the article

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<sup>40</sup> Ahmad, *The Making of Modern Turkey*, 78.

<sup>41</sup> Kuru, *Secularism*, 23.

<sup>42</sup> Kuru, *Secularism*, 35.

<sup>43</sup> Yet the lack of powerful clergy did not necessarily mean there was not any religious opposition against Kemalist reforms. In Turkish case the opposition to laiklik came from the dervish brotherhoods (tarikat), not from the clergy. For more information see Touraj Atabaki and Eric Zürcher, *Men of Order Authoritarian Modernization Under Atatürk and Reza Shah* (London: IB Tauris, 2004), 102.

<sup>44</sup>The role of this institution will be explained below.

that deemed Islam the official state religion was annulled, yet until the 1937 amendments *laiklik* was not mentioned in the constitution. Aside from the reforms related to state organization, many reforms were introduced in order to secularize social and cultural life.<sup>45</sup> The object of these reforms was to limit the influence and visibility of religion within the public sphere and make religion a personal affair.<sup>46</sup> The exclusion of religion was seen as a necessity for the establishment of a new nation. Like French Republicans, Kemalists believed that a new nation could only be based on a national identity shared by each and every individual. In the public realm people needed to exist only as citizens sharing a common bond and having equal rights. Any sign that showed any attachment toward a community outside the nation was believed to threaten the national unity. Thus, they tried to exclude religion from the creation of a national identity. However, this was not easy to accomplish, and it was never fully realized. Despite the Kemalist discourse, national identity remains tied to Islam.

The formation of a national identity was problematic, since there was no clear definition of “Turk” among the elites for a very long time. The Ottoman legacy, despite all efforts of Republican elites, remained influential on the formation of national identity. In the Ottoman period, subjects were defined according to their religious affiliation. This system was called the *millet* system.<sup>47</sup> “Turk” in this system did not refer to any ethnic category but referred to Muslim subjects of the Empire. After the establishment of Republic, Kemalist elites tried to formulate a new Turkish national identity devoid of any religious content. “Turkishness” emerged as a political citizenship based on common territory, language and

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<sup>45</sup>In 1928 the medreses (religious education institutions, akin to Universities) were closed. This ended the duality within the education. In 1925, a law enforcing wearing the top hat (a symbol of western culture) instead of fez was put into force. Within the same year Western calendar was adopted and the holidays changed from Friday (religious Holiday in Islam) to Saturday. One of the most important developments is the adoption of Latin alphabet in 1928 which helps to detach the ties with Ottoman heritage. The Arabic ezan (call to prayer) was banned in 1932 and in 1934 religious dresses were also banned.

<sup>46</sup> Ali Kazancıgil, "Alaturka Laiklik: Devletin Din ve Etnik Milliyetçilik ile Bulanık İlişkileri," in *Semih Vaner Anısına Avrupa Birliği, Demokrasi ve Laiklik*, ed. Cengiz Çağla and Haldun Gülalp (İstanbul: Metis Yayınları, 2010), 191.

<sup>47</sup>For more information see (Küçükcan 2003, 480-483) and (Karpat 1982, 141-142).

voluntarism for living together.<sup>48</sup> Yet contrary to their intention to create a political definition of citizenship, religion remained an important marker for being Turk.<sup>49</sup> This was especially obvious in state policies regarding non-Muslims. “Primarily, the heritage of the Ottoman Empire, and not language or political citizenship shaped Ankara’s attitude towards non-Muslims.”<sup>50</sup> Contrary to Kemalist discourse and legal framework, in practice the national identity remained tied with Islam.

This connection between national identity and Islam affected the principle of *laiklik*. It is usually accepted that the principle of *laiklik* means separation between state and religion, yet the state continues to control the religion. The principle of *laiklik* refers at the same time to both an exclusion of religious symbols within the public sphere and control over religion by the state. Kemalists, contrary to general discourse, did not disconnect the state and Islam completely. This could be seen in state policies on education and the formation of *Diyanet İşleri Başkanlığı (DİB)*. This institution was tied to the Office of the Prime Minister and was responsible for the administration of mosques and appointments of all Muslim clerics. As a result, Muslim clerics became paid employees of the state and were subject to its scrutiny.<sup>51</sup> The main motivation behind this institution was the desire to control religion and the clergy. Similar to French Revolutionaries, the Republican elite in Turkey needed to create its own religious hierarchy. Thus the construction of *DİB* can be seen as the replacement of a

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<sup>48</sup> Soner Çağatay, *Islam, Secularism and Nationalism in Modern Turkey. Who is a Turk?* (London: Routledge, 2006), 14.

<sup>49</sup> Another important marker of Turkishness beside religion was/is ethnicity. Kemalist nationalism, contrary to its claims, always includes a dimension of ethnicity. As a result of its ethnic dimension, Kemalism has a tendency to exclude and repress other ethnic groups living within the state borders. However “Turkishness has not been a stable category. [...] It has been both open and closed to non-Turks. In other words, Turkishness has been open to some non-Turks, but not all of them” (Yegen 2009, 606). Similar to Ottoman millet system, Turkishness is open to all Muslim groups within society, but not to non-Muslims. Those Muslims who are ready to accept either assimilation or integration are welcomed as “Turks.”

<sup>50</sup> Çağatay, “Islam, Secularism,” 39-40. As an example 1923 Convention concerning population exchange between Turkey and Greece specified that the Orthodox citizens living in Turkey would be exchanged with Muslims living in Greece. As a result many non-Muslim Greek citizens whose mother language was Turkish forced to leave the country, and Muslims living in Greece whose mother Language was not Turkish were resettled in Turkey For more information see Baskın Oran, *Türkiye’de Azınlıklar*, (İstanbul: İletişim, 2008) and Soner Çağatay, “Islam, Secularism,”

<sup>51</sup> Binnaz Toprak, "Islam and Secular State in Turkey," in *Turkey: Political, Social and Economic Challenges in 1990s*, ed. Çiğdem Balım (Leiden: E. J. Brill, 1995), 35.

“theocratic religious authority” with a “political religious authority.”<sup>52</sup> This institution was also recognized in the 1961 and 1982 constitutions. The 1982 Constitution, which was known for defending the strictest understanding of *laiklik*, states that *DİB* aims at national solidarity while exercising its duties (Article 136). The consideration of a religious institution as promoting national solidarity shows that religion (not all religions but only Islam) is recognized as a tool for the protection of national unity. As Davidson argues, *DİB* remained as the state’s *DİB*: “its institution of Islamic thought and practice usable for its ideological and legitimation objectives.”<sup>53</sup>

On the other hand, the traditional form of Islam was seen as a sign of backwardness and an obstacle for both modernization of society and the nationalization project. Thus the state promoted a ‘modern,’ more ‘civilized’ version of Islam (indeed of Sunni Islam) by controlling both the religious doctrine and religious practices.<sup>54</sup> Education became an important tool for controlling religion. In 1924, as a replacement to the *medreses* that were closed, new educational institutions called *İmam Hatip Schools* were established. *İmam Hatips* were vocational schools designed to train officials for the performance of religious services. Although their numbers decreased in subsequent years and they were closed down in 1932, they played an important role in the training of Republican imams who were loyal to Kemalism and its modernization project. After the establishment of the multi party regime, *İmam Hatips* were opened again. Between 1970 and 1980, their number increased considerably and until 1997 their graduates could attend any universities. Thus they were no longer merely vocational schools, but regular public schools offering religious curricula based solely on Sunni Islamic principles. Thus, as Davison claims, “the operative understanding of

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<sup>52</sup> Samim Akgönül, "Fransa'da ve Türkiye'de Laiklik: Kavramlar, Süreçler ve Uygulamalar," in *Semih Vaner Anısına Avrupa Birliği, Demokrasi ve Laiklik*, ed. Cengiz Çağla and Haldun Gülalp (İstanbul: Metis, 2010), 218.

<sup>53</sup> Andrew Davidson, "Turkey, a 'Secular' State? The Challenge of Description," in *The South Atlantic Quarterly* 102:2/3, (2003): 340.

<sup>54</sup> Turkification of Ezan was a famous example of state control over religious practices. This example also shows that Islam is not only modernized, but also nationalized.

the founding principle of *laiklik* is that state-sponsored religious training and instruction and “national education” go together.” It is not that *laiklik* does not prevent the mixing of religious instruction and state education. The relation is stronger than that: *laik* institutional arrangements make their mixing possible in national education.”<sup>55</sup>

Even though it is usually argued that *laiklik* secures the neutrality of the state towards different religions, in practice this is rarely achieved. By propagating a specific religion and by financing the activities of *DİB* while not contributing to other Muslims and non-Muslim organizations, the state did not remain impartial towards different religions and religious groups.<sup>56</sup> Non-Muslims and Alevis (a Muslim sect) are usually faced with discriminatory *laik* policies despite the letter of constitution stating that the state cannot favor any specific religion. One of the most important discriminatory policies is related to religious education in schools, which is based on Sunni doctrine and excludes all other religious believes.

*Laiklik* as a form of relation between state and religion does not mean a clear-cut separation between them; rather it refers to the control of religion by the state. This principle is used as a mechanism for modernization and nationalization. This tendency was especially strong during the state-building period between 1923 and 1945. Similar to the ancient regime in France, Ottoman Empire was defined as monarchical rule having close ties with a hegemonic religion. Republican elites in Turkey, in order to secure the newly established regime, felt the need to control not only the clergy but the religion itself. Like French Jacobins, they wanted to create a national civil religion through education and limit the visibility of religious symbols within the public sphere. Religion, in this understanding, became a personal affair; a belief only concerned with the conscience of the individual. It should be limited within the boundaries of the private sphere and should not interfere in the

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<sup>55</sup> Davidson, "Turkey," 339.

<sup>56</sup> Fuat Keyman, "Modernity, Secularism and Islam: The Case of Turkey." *Theory, Culture, Society* (2007): 226-227.



public sphere. Similar to the French case, the Kemalist elite imagined a nation in which religious affiliations become a personal affair and religious practices are invisible.<sup>57</sup>

Although Kemalist elites were relatively successful in controlling religion and giving it a clearly delineated role, there still existed a gap between legal reforms and social cultural norms. Despite the influence of ‘civilized’ Islam, traditional Islam continued to be an important doctrine and a constitutive part of national identity. The existence of such an Islam threatens the Kemalist imagination of the nation as composed of equal, rational, modern individuals whose affiliation is first to the nation.

## **2. Contemporary Debates on Headscarves**

### *2.1 France*

Similar to Turkey, after the 1980's France witnessed a strong polarization between Republicans and Islamist groups about the issue of the headscarf.<sup>58</sup> In October 1989, three female Muslim students who wore headscarves were expelled from a public high school. This event gained national importance and became a highly debated issue in the media. In order to solve the issue, the Minister of Education, Lionel Jospin, appealed to the *Conseil d'Etat* (Higher Administrative Court in France), which decided that religious clothing in schools is compatible with the principle of *laïcité*. It was stated that students have the “right to express and to manifest their religious beliefs inside the schools, while respecting pluralism and the freedoms of others.”<sup>59</sup> Students could wear religious clothing as long as they were not ostentatious or threatened the freedom of other students. There was no general rule, but schoolteachers and ministers were instructed to determine appropriateness on a case-by-case basis.

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<sup>57</sup> Samim Akgönül, "Fransa'da ve Türkiye'de Laiklik: Kavramlar, Süreçler ve Uygulamalar," in *Semih Vaner Anısına Avrupa Birliği, Demokrasi ve Laiklik*, ed. Cengiz Çağla and Haldun Güllalp (İstanbul: Metis, 2010), 214.

<sup>58</sup>In France the debate is not about the university education, but primary and secondary schools.

<sup>59</sup> Avis du Conseil D'Etat No. 346893, cited by Avis du Conseil D'Etat No.346893, cited by Gunn, "Religious Freedom," 455.

Despite the ruling of the *Conseil* in 1994, the Minister of Education Francois Bayrou issued a decree prohibiting every ostentatious sign of religious affiliation in schools. “Bayrou drew a distinction between ‘discreet signs,’ those that demonstrated personal religious conviction, and “ostentatious signs,” whose effect was to introduce difference and discrimination into an educational community that, like the nation it served, ought to be united.”<sup>60</sup> The objective of this decree was to limit permissible religious signs; some signs were so ostentatious that there was no need to look at the behavior of the student. Despite this decree, the *Conseil d’Etat* ruled that “wearing a headscarf is not automatically [ostentatious] and expulsion is permissible only if the student’s action constitutes a threat to public order over and above the mere wearing of the headscarf.”<sup>61</sup> The decision created discontent among politicians, elites and the people. The *Conseil* was criticized as acting against public opinion.

In 2003, the issue became much more politicized and turned into an issue of national unity. The Muslim population in France grew rapidly during the 1980’s. In fact, today Muslims constitute 5-10% of the entire population.<sup>62</sup> The majority of Muslims come from former French colonies. The headscarf is conceived as a sign of rejection of French identity for the sake of Muslim identity. It is argued that Muslims are much more resistant to integrate than any other immigrant groups because of the religion. As an example Gaston Defferre, a former socialist interior minister, said that:

When Poles, Italians, Spanish, and Portuguese live in France and decide to naturalize, it matters little whether they are Catholics, Protestants, Jews, or atheists... But the rules of Islam are not simply religious rules. They are rules of living that concern ... marriage, divorce, the care of children, the behavior of men, the behavior of women... These rules are contrary to all the rules of French law [...] What is more in France we don’t have the same habits of living.<sup>63</sup>

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<sup>60</sup> John W. Scott, *Politics of The Veil*, (Princeton: Princeton, 2007), 27.

<sup>61</sup>Elisa T. Beller, “The Headscarf Affair: Conseil D’etat on the Role of Religion and Culture in French Society,” in *Texas International Law Journal* (2004): 585.

<sup>62</sup>See The World Fact Book: <https://www.cia.gov/library/publications/the-world-factbook/geos/fr.html#People>

<sup>63</sup> Beller, “The Headscarf,” 595.

Islam is claimed to be in contradiction with the principle of *laïcité* and the problem becomes one of integration of Muslims into greater French society. “The headscarf is increasingly seen as the symbol of a foreign people -with a foreign religion- who have come to France, but who do not wish to integrate themselves fully into French life or accept French values.”<sup>64</sup> The French public and politicians became more and more intolerant towards the public visibility of religious symbols, especially the headscarf.<sup>65</sup> In 2003 President Chirac issued a decree forming a commission to investigate the application of the principle of *laïcité*. The Commission established a report, the Stasi Report, named after its chairman Bernard Stasi. After the release of the Report, in 2004 Parliament accepted a law known *laïcité*, addressing conspicuous religious symbols in schools (law 2004-228 of 15 March 2004). The law bans all conspicuous religious symbols in public schools. In order to understand the reasoning behind the law, what must be understood first and foremost is the specific interpretation of *laïcité*.

Although there is no one clear definition of the term, *laïcité* is usually seen as one of the foundations of the Republic and collective identity.<sup>66</sup> It is usually praised for securing tolerance, freedom of religion, social cohesion and maintaining the peace. It is unique to French history: it emerged first in the 1789 Revolution.<sup>67</sup> Starting from this time, by securing freedom of religion and neutrality of state, it created a peaceful environment for the coexistence of different religions within the society. Yet in some instances these two characteristics of *laïcité* – freedom of religion and neutrality of state – may contradict each other. The state sometimes needs to limit the freedom of religion in order to secure national unity and public order.<sup>68</sup> There should be a separation between religion and politics, yet the

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<sup>64</sup> Gunn, "Religious Freedom," 456.

<sup>65</sup> As Gunn argues in 2003 the headscarves issue became a national problem due to “a combination of popular prejudices, media sensationalism, and exploitation by the political class.” (2004, 476).

<sup>66</sup> Translated from Turkish translation of Stasi Report by Turhan Ilgaz, *Avrupa’da Laiklik Demokrasi ve Islam Tartismalari Stasi Raporu* (Ankara: Paragraf Yayinlari , 2005), 37. The source will be referred as Stasi Report.

<sup>67</sup> Stasi Report, 37.

<sup>68</sup> Stasi Report, 59.

state cannot be seen as the sole guardian of this wall of separation.<sup>69</sup> The laic state might interfere in the religious sphere in order to protect the national identity and common values of the republic.

Similar to Turkish *laiklik*, the principle of *laïcité* assumes a strict division between public and private spheres. Any kind of religious and ethnic differences could be visible within the private sphere, but the only legitimate identity, which could be visible in the public sphere, is collective/national identity. In this sense the public sphere emerges as a neutral sphere where each and every individual take part only as equal citizens. The visibility of ethnic and religious identities in public is regarded as a sign of communitarianism and a threat to national unity.<sup>70</sup> Communitarianism implies self-isolation and the rejection of collective identity. This understanding creates competition between citizenship as a universal membership to a national unity and other religious and ethnic group affiliations. As Jansen explains:

Citizenship implies the priority of belonging to the state over all other kinds of attachment to specific groups. This gives an extra dimension to *laïcité*, which persists in its contemporary understandings where the concern is not so much the freedom of conscience and the disestablishment of religion, but rather a “communitarian concern for civic unity”, which tends to try to “substitute democratic civil loyalty for religious and traditional allegiances.” In this sense *laïcité* has much to do with the tradition of assimilation in the sense of allegiance to the nation.<sup>71</sup>

In this sense the principle of *laïcité* entails some expectations with regards to Muslim immigrants. In order to be a member of a political unity, they should accept the cultural norms of French society. Although citizenship in France is not based on ethnicity and thus open to other ethnicities, it requires cultural assimilation. As Brubaker explains, “[W]hile French nationhood is constituted by political unity, it is centrally expressed in the striving for

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<sup>69</sup> Stasi Report, 45.

<sup>70</sup> Stasi Report, 49.

<sup>71</sup> Yolanda Jansen, “French Secularism in The Light of the History of Politics of Assimilation,” in *Constellations* (2009), 595.

cultural unity. Political inclusion has entailed cultural assimilation.”<sup>72</sup> What is expected from people having different ethnic and religious backgrounds is to become a part of national unity, which is conceived as homogenous. Thus, the visibility of different practices and backgrounds within the public sphere is delegitimized and the idea of political equality is reduced to public sameness.<sup>73</sup> Such a delegitimization creates suspicion towards students wearing headscarves.

The Stasi Report mainly deals with the application of the principle of *laïcité* in educational institutions. Schools are always one of the main battlegrounds for conflicts about the definition of national values and principles. Schools are seen as the first and principal institutions where republican ideals are cultivated.<sup>74</sup> The destruction of the school system is believed to cause the collapse of the Republic. Thus the issue of headscarves in schools is critical for the protection of the principle of *laïcité*. According to the Commission, the existence of religious symbols within the schools is incompatible with the principle of *laïcité*. The sole function of schools is not academic training but the creation of enlightened, rational and critical individuals.<sup>75</sup> A religious symbol as a sign of dogmatism contradicts the enlightenment ideal. Moreover, school is the place where students coming from different backgrounds learn how to become citizens. School is the “place of transition between the space of ‘private’ existence and the existence of ‘public’ space.”<sup>76</sup> Students are detached from their particular identities and become equal members of the political community, the nation. School is a place for socialization and social cohesion.<sup>77</sup> Thus the visibility of religious symbols, which is a sign of a particular community, disturbs and destroys order and

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<sup>72</sup> Brubaker, “Citizenship,” 1.

<sup>73</sup> Jansen, “French,” 599.

<sup>74</sup> Stasi Report, 97.

<sup>75</sup> Stasi Report, 104.

<sup>76</sup> Etienne Balibar, “Dissonances within Laicite,” *Constellations* (2004), 357.

<sup>77</sup> Stasi Report, 104-105.

unity within the school. The headscarf will disturb this unity by creating a division first between men and women and second between believers and non-believers.

The claim that the visibility of religious symbols such as headscarves creates a polarization of believers and non-believers and the oppression of the latter by the former in France lacks solid ground. Although it is always possible that a religious symbol might be a repressive tool over non-believers, in France it is very unlikely, if not impossible, for the headscarf to be a repressive instrument over non-Muslims, particularly since Muslims compose a minority of the population and it seems that this will not change in a near future. Indeed, the claim that headscarves lead to sexual inequality seems more serious. Republicans argues that headscarves imply inferiority of women by covering the female body and controlling female sexuality. Female students using headscarves are conceived of as victims of their traditional cultures. They wear headscarves not out of preference but because they were forced to do so by their families.<sup>78</sup> Thus a ban on headscarves would lead to the emancipation of female students. On the other hand, other groups claim that a ban on headscarves is a limitation on the freedom of religion. They call for the right of equal participation in public life despite cultural and religious differences. For them, the ban on headscarves is reminiscent of French imperialism, another method of cultural discrimination.<sup>79</sup> The abolishment of the ban would mean the emancipation of the Muslim immigrant. Thus there emerged two different and contradictory emancipatory claims. It seems that the reconciliation of these two claims in the near future is nearly impossible. This creates a strong polarization within society.

To sum up, the debate on the principle of *laïcité* in France is closely tied with the debate on national unity. *Laïcité* is claimed to be the foundational principle of the French republic that unifies citizens by promoting tolerance and social inclusion. Yet the principle of

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<sup>78</sup> Stasi Report, 87.

<sup>79</sup> Etienne Balibar, "Dissonances," 359.

*laïcité* could be understood as creating sharp polarizations within society by justifying the exclusion of some symbols and some parts of society. In this respect, the debate on headscarves in Turkey is very similar to that of France.

## *2.2 Turkey*

Islamic movements and Kurdish separatism shaped Turkish politics at the end of the 1980s. On the one hand, pro-Islamist parties emerged as important political actors challenging Kemalist ideology and its principle of *laiklik*. On the other hand, the 1982 Constitution, a product of the 1980 military coup, introduced a very strict definition of *laiklik* and for the first time the law prohibited headscarves at higher education institutions.<sup>80</sup> This was followed by protests at universities about headscarves and the politicization of the headscarf itself. While the Republican elite believed that one of the founding principles of the Republic, *laiklik*, was under constant threat, pro-Islamic groups claim that their freedom of religion is eliminated by Kemalists. Although the “post-modern” military coup in 28 February 1997<sup>81</sup> seems to have slowed down the Islamic movement, the conflict between pro-Islamic groups and Kemalist elite gained momentum after the electoral victory of the Justice and Development Party. In 2007, as a result of continuous debates over the presidential election, society was divided into two camps: Republicans and Islamists. In order to explain the dynamic behind this polarization we should start our analysis with the military coup in 1980.

On September 12, 1980, the Army took control of the government, disbanded the parliament and extinguished all political parties. The military coup was justified as a

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<sup>80</sup>Before this there was not any law that explicitly prohibits the wearing of headscarves, yet it was usually accepted that wearing in education institutions was inappropriate. In a sense there was a tacit agreement on that.

<sup>81</sup>It is called post-modern intervention because military by introducing new organizational devices was able to reshape the political life without really taking the control of government. For more information see Umit Cizre and Menderes Cinar, “Turkey 2002: Kemalism, Islamism, and Politics in the Light of the February 28 Process,” *The South Atlantic Quarterly*, Volume 102, Number 2/3 (Spring/Summer 2003): 309-332.

necessary act to protect national unity and state authority. Kemalist nationalism and the principle of *laiklik* were announced as the founding principles of the Republic. The 1982 Constitution was designed to promote and protect those principles. Thus it was accepted that all rights and liberties could be limited in order to secure those principles. Religious freedom was not an exception to this general rule. Even though freedom of conscience was recognized as an unlimited right, it was accepted that acts of worship could be limited by the state (Article 24).

Although the strengthening of *irtica* (religious reaction) was deemed dangerous, Islam was seen as the way to prevent separatist and socialist views. Thus, the 1980 military intervention paved the way for the strengthening of political Islam by using religion as a unifying tool and by eliminating leftist political parties, trade unions and organizations.<sup>82</sup> State controlled Sunni Islam became a political, social and cultural tool for national unity and security.<sup>83</sup> Indeed, the state effectively used Islamic symbols<sup>84</sup> as a unifying tool in its war against all kinds of so-called “dangerous ideologies.” On the other hand, some religious symbols were excluded from the public sphere, such as the headscarf. In 1981, the cabinet, which was formed after the military coup, issued a regulation stating that female students at state institutions should wear ordinary, moderate and modern dress. It was also asserted that female members and students would not be permitted to wear headscarves at universities. A year later, the *Yüksek Öğretim Kurumu* (Council of Higher Education) prohibited headscarves at all universities both public and private. As a result of this regulation, female students who refused to unveil were expelled from school. In 1988, the government tried to repeal this

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<sup>82</sup> Kazancıgil, 192.

<sup>83</sup> As an example, the religious education, which in practice means the education of Sunni Islam, became compulsory in primary and secondary schools (Article 24). As a result of this policy the religion gained importance slowly within the public sphere.

<sup>84</sup> According to Kazancıgil, the usage of Islamic symbols such as *gazilik* (religious title used to refer disabled soldier) and *şehitlik* (a religious title similar to martyrdom) by the state institutions (even by the army which is known as the guarantor of Kemalist *laiklik*), made Islam “official religion of laik state.” Ali Kazancıgil, “Alaturka,” 197.



regulation by enacting transitional section 16 of the Higher Education Act (Law no. 2547) that states:

Modern dress or appearance shall be compulsory in the rooms and corridors of institutions of higher education, preparatory schools, laboratories, clinics and multidisciplinary clinics. A veil or headscarf covering the neck and hair may be worn out of religious conviction.<sup>85</sup>

The Turkish Constitutional Court found this regulation unconstitutional and it was annulled. In response, the government tried to find another solution that would allow headscarves at universities and enacted transitional section 17 of the Higher Education Act that claims that the “choice of dress shall be free in institutions of higher education provided that it does not contravene the laws in force” (Law 2547). The Republican People’s Party applied to the Constitutional Court for the annulment of this article arguing that it is against the principle of *laiklik*. The Court rejected this argument but interpreted the law in such a way that prohibits wearing headscarves. With this decision the Court complied with previous decisions that deem the headscarf to be a symbol against *laiklik*.

The Justice and Development Party (JDP) which still controls the government has also made a similar attempt that would allow headscarves at higher education institutions. Rather than mentioning the headscarves, they made changes in two Constitutional articles related to the equality of law and education.<sup>86</sup> The Constitutional Court, similar to its previous decisions, found these amendments in contradiction with the principle of laicism and was declared unconstitutional.<sup>87</sup> As can be seen from these decisions, the main actor that defines the content of the principle of *laiklik* in Turkey is not the Parliament as it is in France, but the

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<sup>85</sup> Translated in Şahin vs. Turkey (ECHR, Nov. 10, 2005)

<sup>86</sup> A new phrase stating “state organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings and in benefiting from all public services.” was added to Article 10. The intention of the article is to make differentiation between those providing a public service and those benefiting from it. With such a differentiation JDP hoped to remove the headscarf ban for the students. Another change was related with article 42; a new clause was added saying that “no one can be deprived of his/her right to higher education for reasons not openly mentioned by laws. The limits of the use of this right will be determined by law.” This article also targeted the university students.

<sup>87</sup> Just a month after this constitutional amendments, in March 2008 Chief Prosecutor petitioned the constitutional court for the closure of JDP for being a center of anti-laik activities. Turkish Constitutional Court, which is infamous for party closures, was established after 1961 military coup in order to protect the supremacy of the Constitution. Till from that day, TCC closed down 25 parties which are mostly Socialist, Pro-Kurdish and pro-Islamist parties. Although JDP was not closed, it was deprived of half of state funding.

Constitutional Court. Thus it would be useful to look at the Court's decisions in order to understand the nature of the relation between state and religion.

*Laiklik* and Kemalist nationalism are defined as the constitutive principles of the Republic by the Constitutional Court and in this sense they are accepted as closely tied. The Constitutional Court defines *laiklik* not only as a separation between state and religion, but as a form of life that should be dominant within society.

Laiklik is a civilized form of life which by abolishing medieval dogmatism in favor of the primacy of reason and enlightened mentality makes the understanding of freedom and democracy the basis of nationalization, national independence and human ideal. Civilized science has emerged and developed by the abolishment of scholastic form of reasoning. Although laiklik in its narrow sense can be defined as separation between state and religious affairs, although it is open to different definitions, in reality it is commonly accepted as the last stage of evolution of societies. Laiklik is a step towards a society that is based on democracy, freedom and information; it is the civilized ordering of political, social and cultural life.<sup>88</sup>

In this sense *laiklik* is only limited with a dull separation between state and religion; it does not only regulate state policies but social life as a whole. So, it turns out to be the main instrument to create a modern society composed of rational, enlightened individuals. The independence and freedom of individuals are dependent on the principle of *laiklik* that will protect them from dogmas and communitarianism. Indeed, according to the Court the principle of "laiklik gives to the individuals personality and the possibility of the free will."<sup>89</sup> The self-realization of the individual is only possible through being a citizen who actively takes part within the public sphere. In this sense, the Court assumes that the public and private spheres are distinctly separate from each other. Individuals could take part within the public sphere as equal citizens. Citizenship emerges as a universal category, deprived of any kind of divisive particularities that are related to the private sphere. The visibility of different practices and backgrounds associated with religious and traditional allegiances within the public sphere threatens the national unity.

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<sup>88</sup> 07.03 1989 tarihli 1989/1 E., 1989/12 K.

<sup>89</sup> 07.03 1989 tarihli 1989/1 E., 1989/12 K.

*Laiklik* is seen as a guarantor of national unity and social peace. Without the principle of *laiklik*, national unity is assumed to be under a constant threat of social polarization and conflict that will emerge due to the discontent between different religious groups. It is usually accepted by the Court that any kind of ethnic and religious differences that are publicly visible cause the dissolution of the nation and the Republic. The nation should be homogenous or at least seemingly homogenous which means that every ethnic and religious symbol should be excluded from the public sphere. This requires a ban on religious symbols in public institutions. Any kind of symbol that shows religious affiliation creates discontent and conflicts among the citizens. As for the headscarves, this is also true. Similar to France it is argued that religious symbols would engender a polarization between believers and non-believers and discrimination against those who do not use a headscarf.<sup>90</sup> Thus religion is expected to be private, related with one's own conscience. Individuals may have different ethnic, political and religious backgrounds and these differences are tolerated as long as they are limited within the private sphere.

It is assumed that the visibility of religion in the public sphere causes both the politicization of religion and the domination of politics by religion. As the Court suggests: "In a *laik* government religion is rescued from politicization, it no longer becomes a political tool, it is kept outside where it really belongs; the conscience of individuals. Thus science and law become the real basis of political life."<sup>91</sup> Any religious symbol destroys this separation and thus threatens the Kemalist Revolution and the Republic. The Court usually refers to the unique conditions of Islam, the dominant religion, in order to justify this separation. Turkish *laiklik* is usually compared with the secularism of other European/Modern countries, it is claimed that Islam is different from Christianity. While Islam aims to regulate both religious and state affairs Christianity does not have any claim

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<sup>90</sup>07.03 1989 tarihli 1989/1 E., 1989/12 K.

<sup>91</sup> 07.03 1989 tarihli 1989/1 E., 1989/12 K.

about state authority.<sup>92</sup> Thus, if Islam is not confined to the private sphere, it would lead to the collapse of the Republic and (re)emergence of a theocratic state.

According to the Constitutional Court, the principle of *laiklik*, contrary to the arguments of Islamist groups, cannot be reduced to freedom of religion. “Although *laiklik* and freedom of religion are separate entities, *laiklik* by providing necessary environment and guarantees for freedom of religion gained a unique place in the national life.”<sup>93</sup> *Laiklik* does not mean the state’s non-interference in religion, in order to secure the social peace the state may control and limit religious freedom, in particular the freedom of worship. Indeed this also proves that *laiklik* does not presume a strict separation between state and religion. In a *laik* state, religion can never be influential over state affairs. The political, social and economic structure of the state is exempt from religion. The Constitutional Court argues that although the boundary between state and religion is fixed for the church, it is blurred for the state. As the protector of public security and individual rights, the state has the authority to limit and regulate religious affairs.<sup>94</sup> A *laik* state may maintain its *laik* character and at the same time may appoint and give salaries to employees responsible for religious conduct. This is the reason why the Court regards the DİB and obligatory religious courses within the national education system as constitutional. This explains the justification for the following decision:

The state control over religion has various reasons such as; to educate the skilled people who would work in religious affairs in order to hinder religious fanaticism and thus carrying Turkish Nation to the level of contemporary civilization, and to provide concrete needs such as providing a personnel who would work in religious affairs, construction of religious buildings and their maintenance in a country where the majority of the population is Muslim.<sup>95</sup>

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<sup>92</sup> It is obvious that such a perspective neglects the the history of Christianity and development of the relations between state and Catholic Church. By doing so, Court attributes the differences to the nature of different religious beliefs, not to the historical political struggles.

<sup>93</sup> 07.03 1989 tarihli 1989/1 E., 1989/12 K.

<sup>94</sup> 07.03 1989 tarihli 1989/1 E., 1989/12 K.

<sup>95</sup> 21.10.1971 sayılı ve 1970/53E., 1971/76K.

As seen above, state control over religion is not regarded in conflict with the principle of *laiklik*. Indeed it is necessary in order to reach the main objective of *laiklik*, which is modernization.

To sum up, according to state discourse *laiklik* does not only refer to a legal principle that promotes freedom of religion and the neutrality of the state; it is more than a dull separation between state and religion. It is a form of life that establishes a modern society composed of rational, enlightened individuals and it is one of the principles of the republic that secures social cohesion and national unity. It is this central role of *laiklik* that justifies strict control over religion. The founding principle of the Republic, *laiklik* may demand the exclusion of religious symbols — especially the headscarf — from the public sphere, even though this means the exclusion of an important portion of society. This exclusionary practice embedded within the doctrine of *laiklik* imagines a homogenous public sphere in which political equality is understood as public sameness. In the end, this exclusionary practice does not secure unity, but leads to the emergence of a strong polarization between Republicans and Islamic groups within the society.

## **Conclusion**

The French and Kemalist Revolutions are in many aspects similar to each other. They were both aimed at the creation of a national Republic and a secular state. Starting from the first years of the Republic the principle *laicite/laiklik* was closely tied with the definition of national identity, which is assumed to be a universal and inclusive category. *Laicite* and *Laiklik* are both described as unifying and inclusive values that secure neutrality of state, equality between citizens and religious toleration. Despite the claims of cohesion and inclusion, starting from its formation, *laicite/laiklik* was tangled with intolerance and divisive conflicts. As Gunn claims while comparing American secularism and French *Laicité*: “If we

probe their historical backgrounds, it becomes clear that neither doctrine originated as a unifying or founding principle. Rather, each emerged during periods of confrontation, of intolerance, and often of violence against those who held dissenting beliefs.”<sup>96</sup> In France, national unity was more or less established before the Revolution. The birth of the principle of *laïcité* was accompanied with suppression and exclusion of all religious identities, especially Catholicism from the public sphere. In the Turkish case, not all religious identities were excluded, since the establishment of national identity required Islam as a cohesive factor. The principle of *laiklik* was attached with a modern version of Islam. Thus, *laiklik* led first to the exclusion of non-Muslims and second to the exclusion of one version of Islam.

In both France and Turkey, the debate on headscarves is closely tied with the debate on national unity and identity. Both assume that the visibility of religious symbols means rejection of national identity. In France it is the immigrants and in Turkey it is traditional Islam that threatens national unity. Both assume that there should be a clear division between public and private, and divisive symbols should be limited to the private sphere. The public sphere emerges as a neutral sphere where each and every individual takes part only as citizens. The only legitimate identity that could be visible in this sphere is the collective national identity. The visibility of ethnic and religious identities in public is regarded as a threat to the unity of the nation. In this view, national unity turns out to be a homogenous collectivity and political equality of citizens is reduced to public sameness. Cultural assimilation becomes the only way for political inclusion. However, this imagination of the nation as an entity of culturally homogenous unity does not overlap with the reality of modern society. If *Laïcité/laiklik* continues to insist on this imagination and tries to cover up the differences within the public sphere, the only achievement will be the deepening of social polarization.

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<sup>96</sup> Gunn, "Religious Freedom," 422.

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