Islam, Modernity and the 1876 Constitution

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Introduction

In this chapter I analyze the 1876 Constitution and various other texts that played significant roles in the modernization of Turkey with a particular focus on the discursive role played by Islam. I will contextualize the proclamation in 1876 of the first constitution (*Kanun-ı Esasi*) and the institution of the first General Assembly (*Meclis-i Mebusan*) by first focusing on two important reforms, the Reform Decree (the *Tanzimat Fermanı* of 1839) and the Reform Edict (the *Islahat Fermanı* of 1856) in terms of the way they reflect and construe the relationship between religion and state. I will then proceed to the debates over the next significant reform, the 1876 Constitution, which are illustrative of the above theme. Finally, I will analyze the Constitutions of 1876, 1921 and 1924 in a comparative fashion, focusing on similarities and differences between the 1876 Constitution and the others, and paying attention to the evolution of the discourse on the role of Islam in the public sphere. The analysis of these texts can give important clues about the nature of the modernization and secularization process in Turkey.

My method in this chapter is discourse analysis based particularly on Foucault's approach. He basically means by the term discourse "a regulated practice that accounts for a number of statements."[1] His "theory" of discourse is closely related to the notions of "truth," "power" and "knowledge," for it is because of these elements that discourse produces its effects. His work focuses partly on the ways in which social subjects struggle to exclude certain forms of knowledge from being considered as "true." He is also critical of a negative understanding of power and of what he calls the "repressive hypothesis" – that power is always about prevention, constraint and repression. This 'productive' model of power implies that it is dispersed throughout social relations and *produces* certain forms of behavior and thought as well as restricts others. For him, a proper textual analysis should be concerned with the "discursive formations," by which he means a set of rules concerning the formation of "objects," "subject positions," "enunciative modalities," "concepts" and "strategies." Foucault's approach in his "archaeological" studies includes two major theoretical insights: the idea of discourse as constitutive and constructive of social relations and identities, and of the interdependency of discursive practices. The first point above involves the notion that discourses actively produce and shape social reality, more specifically the objects of knowledge, social

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[1]   Michel Foucault, *The Archaeology of Knowledge*, [transl. S. Smith] (London: Tavistock, 1972), 80.

subjects, and the self as well as social relationships and various conceptual frame-works, whereas the latter emphasizes that they, as "texts," are in constant relation with each other, referring to the concept of intertextuality. Despite these strengths of his model, however, it lacks a dialectical understanding of the relationship be-tween discourse and social reality, paying less attention to the interaction between the pre-constituted dimensions of reality (social subjects, objects, etc.) and the dis-course that helps constitute them, and overemphasizing the constitutive power of the latter.

Foucault calls discursive organization of objects, concepts and "enunciative modalities" a "strategy," which involves different "theories" and – less coherent and stable – "themes."[2] Finding this concept too general, I distinguish three levels within it. A "meta-discursive strategy" is the most general one, which consists of the different discursive strategies that in turn contain different "discursive tech-niques" at the most specific level. Thus, for example, the strategy of invoking the sacred texts of Islam for legitimation involves such techniques as abstracting verses and *hadith*s from their contexts, and emphasizing some concepts in them while ignoring others, etc. This strategy in turn is part of the larger discursive strategy of deriving justification from Islam, which was the main pattern in the secularization process in the Middle East.

This article argues that the relationship between Islam and secularism is one of accommodation as well as conflict, and that the nature of the process of seculari-zation in Turkey involves an extensive use of the discourse of "serving religion" or "protecting Islam." The traces of this discourse that included many Islamic ele-ments can be found in the very first attempts at modernization in the Ottoman Empire. An analysis of these early attempts as well as the later corner-stones of modernization in the 19th century, including the *Tanzimat Fermanı*, the *Islahat Fermanı* and the 1876 Constitution, shows that the *meta-discursive strategy* of justi-fication with reference to the Islamic *Sharia* was extensively applied in these re-forms. The two *discursive strategies* frequently employed in them included "invok-ing sacred Islamic texts" and "maintaining the superiority of the *Sharia*." The main *discursive technique* employed in these texts was that of "renewing the existing institutions in accordance with the rules of *Sharia*," which justified extensive re-forms in the state system. When Selim III (1789-1807) first started the moderniza-tion of the army by inviting European experts and founding a new, Western-style army, he justified his attempts with reference to a famous *hadith* [saying of the prophet Muhammad] that states that "you can use your enemy's weapon." He maintained that there is nothing against *Sharia* in "defeating the infidels by using their own weapons."[3] Similarly, when Mahmud II accelerated the reforms that

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2   Ibid., 64ff.
3   Quoted in Halil İnalcık, "The Nature of the Traditional Society: Turkey" in: *Political Mod-ernization in Japan and Turkey*, ed. E. Ward and D. Rustow (Princeton, NJ: Princeton Univ. Press, 1968), 49.

had been started by his uncle, Selim III, he resorted to the same discourse. For instance, in his 1838 speech at the opening ceremony of the Royal Medical School (*Dar-ul Ulum-u Hikemiyye ve Mekteb-i Tıbbiyye-i Şahane*), which was going to be a source of change towards Westernization, the Sultan referred to the "sacred-religious duty" of protecting human health, which is one of the duties of the state and the legal system according to the Islamic *Sharia*, saying that he had "given precedence to this school because it [would] be dedicated to a sacred duty – the preservation of human health."[4] The Sultan then went on to comment on the fact that the language of instruction would be French, and insisted that it was necessary to take the medical knowledge from Europe instead of the Muslim world due to its obsolete character in the latter. The ultimate justification for the Westernization of education was to serve the cause of Muslims according to Sultan Mahmud, who paved the way for the *Tanzimat* reforms.

The Reform Decree (1839) and the Reform Edict (1856)

The *Tanzimat* era was the second phase of the Ottoman-Turkish modernization after the "New Order" of Selim III and Mahmud II. It began, as mentioned above, with the Royal Decree of Gülhane (*Tanzimat Fermanı*; sometimes called the "Gülhane Charter") on November 3rd, 1839, inaugurated by Sultan Abdülmecid I. It included several modernizing reforms especially in the legal system. A product essentially of the pressures of the European states and the modernist, 'enlightened' intellectuals, the decree, which proclaimed the principles of the *Tanzimat*, granted and guaranteed certain rights called "the fundamentals" (*Mevadd-ı Esasiye*) such as the guarantee of life, property and honor for all subjects of the Sultan – non-Muslims as well as Muslims. Although the decree was aimed at delimiting the realm of the Islamic *Sharia* and separating the government's temporal authority from the Caliph's religious sovereignty, it was filled with Islamic terminology and references to the Qur'an and the prophetic *Sunna*. The very first sentence stated the need for a change in the state institutions, which had been a widespread assumption – and a discursive strategy – in all modernizing reforms since the late 18th century, and justified the reforms with reference to the "blessed *Sharia*" which had not been obeyed properly, unlike the earlier times when "the orders of the Holy Qur'an and the rules of the *Sharia* were observed perfectly." The decree then declared the Sultan's order for issuing a number of "new laws" (*kavanin-i cedide*) that would regulate the legal and financial system "relying on the help of the Almighty God and the spirit of the blessed prophet."[5]

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4   Rıza Tahsin, *Mir'at-ı Mekteb-i Tıbbiye*, (Istanbul, 1906), I, 18; quoted in Niyazi Berkes, *The Development of Secularism in Turkey*, (New York: Routledge, 1998), 113.

5   The original Turkish text of the *Tanzimat Fermanı* was published in *Takvim-i Vekayi*, no. 187 (15 Ramadan 1255/1839); see also *Tanzimat I. Yüzüncü Yıldönümü Münasebetile* (Istanbul: Maarif Matbaası, 1940), 48-50; Mehmed Ö. Alkan (ed.), *Modern Türkiye'de Siyasi Düşünce I:*

Also, a Consultative Council prepared a protocol which stated the conditions upon which the *Tanzimat* Decree was built as follows:

a) the old disordered system has to be replaced by one based upon new laws,
b) these laws will be in accordance with the *Sharia*,
c) they will be based on the inviolability of life, property, and honor as legal fundamentals,
d) they will be applicable to all Muslims and to the peoples of the *millet*s.[6]

A basic presupposition in the protocol as well as in the decree was the idea that "the old disordered system has to be replaced by one based upon new laws," the necessity of a change, which was explicitly mentioned in article (a).[7] What was implicit, however, was the direction of this change: the change in the legislative system would be towards the secular West. The "new laws" mentioned in the text and article (a) of the protocol were the ones that would limit the authority and domain of the Islamic *Sharia*, as well as that of the Sultan, which would be proven by later developments – e.g. the institution of the first-ever constitution and parliament in 1876. That is why the authors of the protocol needed to refer in the next article to the *Sharia* as the source of legitimation, unlike in older times when the necessity of a law being driven from *Sharia* had been taken for granted and was not mentioned in the legislative process, as it was associated with the realm of "doxa" – a set of uncontested beliefs and ideas of which subjects are often unaware.[8] This protocol paved the way for the positioning of the *Sharia* as an object of the discourse of secularization – as a source of legitimacy in law making. However, its objectification would take a different form in later years, and its discursive status as the only source of legitimacy would shift to that of being in need of protection by the political-legal system as well.

Thus, the significance of these texts lies in the fact that they involved many Islamic elements on the discursive level and yet signified an important departure from the sovereignty of Islamic law in the current legal system. It is explicitly mentioned both in the decree and in article (b) above that all new laws should be "in

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Tanzimat ve Meşrutiyet'in Birikimi, Istanbul: İletişim, 2001), 449-451. English translations can be found in various sources, including Edward Hertslet, *The Map of Europe by Treaty*, 3 vols. (London: Butterworths, 1875), 2:1002-5; and Frank Edgar Bailey, *British Policy and the Turkish Reform Movement: A Study in Anglo-Turkish Relations 1826 – 1853* (Cambridge: Harvard Univ. Press, 1942.), 277-79.

6   Quoted in Berkes, *Development*, 145. The complete text of the protocol can be found in Reşat Kaynar, *Mustafa Reşit Paşa ve Tanzimat* (Ankara: TTK, 1954), 172-73.

7   A parallel discursive technique that assumes the backwardness of Islamic society, for which "tradition" is blamed, was a common pattern among statesmen and intellectuals in the Second Constitutional Period as well. However, actors also always insisted that the "true Islam" that could be found in "sources" (sacred texts and early Islamic history) was not to blame; on the contrary, the solution was deemed to be found in "returning to the sources"; see İsmail Kara, *İslamcıların Siyasi Görüşleri, vol. I: Hilafet ve Meşrutiyet*, 2nd ed. (Istanbul: Dergah, 2001), 20-21.

8   Pierre Bourdieu, *Distinction: A Social Critique of the Judgment of Taste* (London: Routledge & Kegan Paul, 1984).

accordance with the *Sharia*," acknowledging the superiority of Islamic law over the Sultan's (or the government's) will. Moreover, the basis of these proposed new laws as stated in article (c) again was Islamic law. The principles of the "inviolability of life, property, and honor," together with those of 'reason' and 'generation', constitute what is known as the "five goals of Sharia." According to Islamic *fiqh*, all rules and laws exist ultimately for the purpose of protecting these five elements of human life.[9] We see therefore a clear reference to an Islamic framework for the justification of the reforms that were proposed by the royal decree.

However, the discourse employed in the protocol had an important implication: it proposed to limit the authority of the Caliph-Sultan. The decree, too, which was itself signed by the Sultan, limited his sovereignty, making him an executive bound to the laws made by others – by the councils of deliberation (*Mecalis-i Meşveret*). So, the sources of legislation would become these councils whose members would increasingly consist of high-ranking staff officers who had a Western-style education. Moreover, it is very significant that although the decree acknowledges the Sharia, and although it obviously concerns it, the proclamation of the decree was unusually not accompanied by a *fetva* (religious permit) by the *Şeyhulislam*, the Caliph's chief religious deputy, indicating a decline in the *Şeyhulislam*'s power. In traditional practices of passing a law or issuing a decree, a *fetva* had been considered a must in order to provide a practice with legitimacy. Thus, the lack of *fetva* – as a discursive practice itself – signifies the first formal breach between "the temporal" and "the religious" in legislation. This is highly significant especially when we consider the fact that even as late as 1922, almost a century later, Mustafa Kemal and his friends *did* need a *fetva* by the chief *Müfti* when they decided to abolish the Ottoman monarchy.

A similar observation can be made for the Reform Edict (*Islahat Fermanı*), which was proclaimed on February 28th, 1856 – again as a result of the pressures by the European countries to further extend the privileges of Christians living in Turkey – and granted important privileges to the non-Muslim subjects of the Empire.[10] This meant the creation of a whole new institution, the modern *citizenship*, and a further step towards the formation of a modern state. The edict included the reaffirmation of older rights and privileges as well as additional rights such as the guarantee of equal treatment of non-Muslims in matters of education, military service, administration of justice, taxation, and the appointments to governmental posts; the right of foreigners to own property; the reform of the judicial tribunals and penal and commercial codes; and the representation of religious

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9   ʿAbdalkarīm Zaydān, *Al-Wadjīz fī uṣūl al-fiqh*, 3rd ed. (Muʾassasat al-Risālah, Maktabat al-Bashāʾir. 1411/1990).

10   For the full text of the Edict in Turkish see Enver Ziya Karal, *Osmanlı Tarihi* (Ankara: TTK, 1947), 5:266-72; Alkan, *Siyasi Düşünce* I, 451-454; for the English version, Bailey, *British Policy*, 287-91.

communities in the Supreme Council. The edict described the non-Muslim sub-
jects of the Empire as "the *emanet* trusted by Almighty God," and granted equality
for all subjects "who are related to each other with the sincere bonds of citizen-
ship." There was, however, much less reference to the Islamic *Sharia* in the edict
compared to the *Tanzimat* Decree. Instead the edict extensively employed another
discourse: that of 'catching up with contemporary civilization'. The edict granted
privileges to non-Muslims with reference to the principle of freedom of con-
science. As a justification of the proposed regulations, it stated the necessity "to
improve the conditions [of the citizens] in accordance with the glory of our Sub-
lime State and the eminent place it holds among the civilized nations." Therefore,
the edict implied, as Berkes observes,[11] political, legal, moral, religious, educa-
tional, and economic reforms in which such notions as equality, freedom, mate-
rial progress, and rationalism form the "background."[12]

What we see in the two reform projects, then, is an attempt to separate reli-
gious and temporal authority, and delimit both the sovereignty of the Sultan and
the authority of the *Sharia*, which was made possible with the help of the dis-
course of renewing the old institutions in accordance with the *Sharia*. This argu-
ment based on the inadequacy of the old institutions, including laws, and the
need to replace them with new ones would be repeated time and again in the later
reforms that would embody and reproduce the ideology of secularism. Supported
by the two reforms, the political and economic developments which brought the
Ottoman State closer to Europe in that era[13] paved the way for the first-ever con-
stitution in Turkish history.

Debates on the 1876 Constitution and the Parliament

The young Sultan Abdülhamid II came to power by means of a deal he made
with the Young Ottomans, promising them a transition to the constitutional sys-
tem. This would also be a proper response to the European powers, including
Russia, that were pressuring Istanbul for further economic and political reforms,
reforms that would open the Ottoman borders to European capitalists and further
expand the rights of non-Muslim Ottomans. The proclamation of the first consti-
tution (*Kanun-i Esasi*) and the institution of the first General Assembly (*Meclis-i
Mebusan*) in 1876, which marked the beginning of the First *Meşrutiyet* era, were
important corner stones on the way to the secularization of the Ottoman State.
For they signified a radical, even though partial, change in the foundation of the

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11 Berkes, *Development*, 153.
12 See Şerif Mardin, "Turkish Islamic Exceptionalism Yesterday and Today: Continuity, Rup-
    ture and Reconstruction in Operational Codes," *Turkish Studies* 6.2 (2005).
13 Roderic Davison, *Reform in the Ottoman Empire 1856-1876* (Princeton: Princeton Univ.
    Press, 1963).

state's sovereignty by assigning 'the people' part of the basis for its legitimation and thereby limiting the domain of the monarchy. In his royal decree, the Sultan defined the purposes of the new general assembly as follows:

> To guarantee the complete enforcement of the laws needed; to make them *in accordance with the Sharia* and the real and legitimate needs of the country and the people; to supervise the balance of revenues and expenditures of the state.[14]

Again we see here the same meta-discursive strategy employed in virtually all modernizing reforms in the pre-1924 era of the Ottoman modernization. From the late 17th century on, all social, political and legal changes had been justified with reference to the *Sharia*. The theme of the congruence of the new laws with the *Sharia* had already been maintained in the *Tanzimat* decree. Here, too, there is a clear reference as a complementary discursive technique to the 'implementation of the rules of the *Sharia* in a more efficient way' in the institution of the new Parliament, which constituted another step in the formation of modern state. Within the intra-discursive realm, therefore, there is the relationship of what Foucault (1972) calls "presence" between the two texts: the discourse embodied in the earlier text(s) is present in the latter, too. Although this element of discourse seems to be in a "relationship of opposition" to secularism it is actually "complementary" to the process of modernization because it is part of a strategy that binds Islam to the process of reform.

Moreover, Abdülhamid II, the sultan who signed the decree, was not sympathetic to the 'Westernizers' (Young Ottomans) and secular reforms; on the contrary, as mentioned above, he pursued a Pan-Islamist policy during his sultanate. However, due to the delicate balance of power relations with the European states and the Young Ottomans, he had to cooperate with them in instituting the Assembly and proclaiming the Constitution in 1876, which he later abolished when he found the opportunity in 1878. The significance of this point lies in the fact that it was not only the reformers but also the anti-Westernists (conservatives) themselves who resorted to the same discourse of serving Islam when attempting to modernize the political system.

A similar example illustrates this point even further. After the Sultan's decree, the issue was brought to the Council of Ministers and then to a larger convention where approximately two hundred persons, including ministers and the dignitaries of the civil, military, and *ulema* ranks, discussed the institution of a parliament. Despite the opposition by the majority of the *ulema*, and the accusation that Midhat Pasha, the *Sadrazam* (Grand Vizier) and a leading figure among the Young Ottomans, who was called the "Father of the Constitution," behaved in an un-Islamic way by letting the 'infidel' (non-Muslim) deputies into the Parliament,

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[14] Ahmed Midhat, *Üss-i İnkılab*, 2 vols. (Istanbul: Takvimhane-i Amire, 1294-1295), 2:281 [my italics].

he succeeded in winning over the *ulema*.[15] He did this with the help of some members of the *ulema* themselves, the Constitutionalist members who justified the idea of a parliament with reference to the Qur'an. Among them, for example, Chief Justice (*Kadıasker*) Seyfeddin Efendi played an important role:

> Seyfeddin again explained at length, "by *akli* [rational] and *nakli* [textual] evidences," that *meşveret* [consultation, which he interpreted as 'Parliament'] was "perfectly in accordance with Islam." To the delight of the constitutionalists who interpreted *meşveret* on their own way, Seyfeddin supported Midhat Pasha with a number of *hadith*s and the Qur'anic injunctions such as *washawir hum fi'l amri* and *wa ta'muru baynakum bi-ma'rufin* ("and consult with them upon the [conduct of] affairs" [III, 59]; and "and consult together in kindness"[LXV, 6]).[16]

In fact, this is another example of a situation where we often see that modernists apply the strategy of deriving justification for a reform (here, for a constitutional government) from the Qur'an, by employing different discursive techniques including dissecting the sacred texts; abstracting verses, sentences, or even phrases from their context; and applying these to the solution of an emerging problem in terms of the lexicographical meaning of the selected phrases. Moreover, in the above quote, Islam (or the Qur'an) still preserves its 'object position' as being the primary source of legitimation for a constitutional change. However, the verses that were cited by the speaker were being transformed through a brand new and, given the centuries-long tradition of *tafsir* (the interpretation of the Qur'an) in Islam, unusual interpretation.[17] This – what I would like to call – "transformative technique" by which meanings of verses as objects of knowledge were transformed would frequently be repeated; hence the new meanings attributed to

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[15] See Cemil Oktay, "Hum Zamirinin Serencamı: Kanun-ı Esasi İlanına Muhalefet Üzerine Bir Deneme," *Hum Zamirinin Serencamı* (Istanbul: Bağlam, 1991).

[16] Berkes, *Development*, 233 quoting from Mahmud Celaleddin, *Mir'at-ı Hakikat*, 3 vols. (Istanbul: Matbaa-i Osmaniye, 1326-1327), 1:189. The Qur'anic concepts of *şura* and *meşveret* were also interpreted as "democracy" and "parliament" by a member of the so-called Islamist Welfare Party in the early 1990s, indicating the continuity of the same trend in contemporary Turkey. Şerif Mardin, *Religion and Social Change in Modern Turkey: The Case of Bediuzzaman Said Nursi* (Albany – New York: SUNY Press, 1989) analyzes how the Islamic "idiom" was used by Said Nursi, a leading Islamic figure in late Ottoman and early Republican periods, for cultural and religious mobilization of the masses in Turkey. For accounts of the use of the Qur'anic idiom in political discourses in different secularized contexts – in contemporary Yemen, Iran, and Egypt, see Brinkley Messick, *The Calligraphic State. Textual Domination and History in a Muslim Society* (Berkeley etc.: Univ. of California Press, 1993); Anabelle Sreberny-Mohammadi and Ali Mohammadi, *Small Media, Big Revolution: Communication, Culture, and the Iranian Revolution* (Minneapolis: Univ. of Minnesota Press, 1994) and Gregory Starrett, *Putting Islam to Work: Education, Politics, and Religious Transformation in Egypt* (Berkeley: University of California Press, 1998), respectively.

[17] The interpretation of the Qur'anic verses in unusual ways became a very common discursive technique, especially after 1908, in accordance with the pace of modernization in Turkey; see Suat Mertoğlu, "Osmanlı'da II. Meşrutiyet Sonrası Modern Tefsir Anlayışı (Sırat-ı Müstakim/Sebilürreşad Dergisi Örneği: 1908-1914)," unpubl. PhD Thesis, Istanbul: Marmara University, 2001.

them would be reproduced, in subsequent attempts at Westernizing political institutions and secularizing the political sphere. Furthermore, in the text the speaker put himself, and other Constitutionalists whom he represented, in a subject position where he had the authority to interpret the sacred text in an unusual way, and thus to bring about change in a state institution in accordance with his political agenda. Finally, the non-discursive element that made his discourse possible was the institutional position he occupied – his being the Minister of Justice and a member of the *ulema* class. His bureaucratic position and scholarly authority not only made it possible for him to perform this speech-act, but also to consolidate the subject position constituted in his speech by legitimizing his authority to be an interpreter of the Qur'an based on his power/knowledge. This, then, is an instance of a situation where we can detect the interaction between discursive and non-discursive structures.

On the other hand, the fact that a member of the *ulema*, albeit a supporter of the Constitutionalists, referred to the authority of the Qur'an and *hadith*s to prove the compatibility of a Western institution with Islam indicates again that important changes in the way of modernization were often realized in both discursive and political spheres by resorting to Islam itself. In other words, we see in the quote above that the recurrent theme of the congruence of a reform with Islam appears again, however with a different technique. Although he encountered great opposition, Seyfeddin successfully integrated the Islamic elements, which were supposed to belong to a different, even an opposite, field of statements, into a discourse that he deliberately employed to make his case in the debates over the institution of the Parliament, lending a life-saving support to Midhat and the Constitutionalists. This case is one of the early examples of the imbrication of power with knowledge where the secularists, up until 1924, were often in desperate need of the support by the modernist *ulema* who were the only social group who could draw upon Islam for the justification of the secularizing reforms.[18] One of the most important of these reforms was the proclamation of the 1876 Constitution.

Constitutions and the Formation of the Modern State

a – The 1876 Constitution (Kanun-i Esasi)

The *Kanun-i Esasi* [Basic Law],[19] the first-ever constitution in Turkish history, included 119 articles and was more developed than the next (1921) constitution (*Teşkilat-ı Esasiye*) which was prepared in the midst of war. The main discursive

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[18] For discussions on the 1876 Constitution, see Cemil Oktay, "'Hum' Zamirinin Serencamı: Kanun-ı Esasi İlanına Muhalefet Üzerine Bir Deneme," in id., *"Hum" Zamirinin Serencamı* (Istanbul: Bağlam, 1991).

[19] See *Düstur*, tertib 1, 4:4-20, see also Tarhan Erdem, *Anayasalar ve Seçim Kanunları 1876-1982* (Istanbul: Milliyet, 1982), 3-26; Suna Kili, *Türk Anayasaları* (Istanbul: Tekin, 1982).

strategy employed in the former constitution was the inseparability of Islam and the Caliph-Sultan, and many of the articles contained in it expressed different techniques comprising this main strategy. For example, the *Kanun-i Esasi* maintained first and foremost that both the sultanate and the caliphate belonged to the Ottoman dynasty (Ar. no. 3), and that the Sultan was the protector of Islam and the ruler of the subjects of the Ottoman Empire (Article 4). The Constitution also glorified the Sultan maintaining that "the blessed Sultan himself is sacred and unaccountable" (Ar. no. 5). However, because Abdülhamid II abolished the Constitution in 1878 and set himself as the absolute ruler until 1908, the Constitution would later be amended by the ruling CUP in 1909 by adding a new sentence to Ar. no. 3 requiring an oath by the Sultan that he be loyal to the "blessed Sharia and the rules of the Basic Law [the Constitution]." Also, the Sultan's authority to abolish the Parliament (Ar. no. 73) was abrogated later in 1914. Thus, the absolute ruler's authority was gradually limited through modifications in the articles of the Constitution. In accordance with the earlier pattern, this was done by applying the same discursive strategy, 'by reference to the *Sharia*', as is evident in the requirement of the oath which would also be in the name of God. Taking an oath in the name of God, which was required of both the Sultan and deputies, and not only in this but also in the following two constitutions (1921, 1924) was a discursive practice that functioned as part of the larger strategy to derive justification for a modern institution (the Parliament) from Islam.

Moreover, the original version of the Constitution itself limited the authority of the Sultan and the *Sharia*. For instance, the principle of the separation of powers was adopted, and separate sections were devoted to the executive branch, instituting a modern government with a prime minister, ministries and a cabinet (Ar. nos. 27-38); to the legislation (Ar. nos. 42-80) restraining the power of the Caliph-Sultan; and to the jurisdiction (Ar. nos. 81-91), which involved a bifurcation in the legal system separating the religious courts (*Mehakim-i Şer'iyye*) from the administrative ones (*Mehakim-i Nizamiyye*). Bifurcation was also maintained in the education system, which involved in higher education both religious schools (*medrese*s) and 'secular' ones (*mekteb*s). The adoption of the modern principle of the separation of powers, which had originally been put forward by Montesquieu (1834), was another important element of a modern state ("Constitutional Absolutism") characterized by the co-existence of what Max Weber calls bureaucratic or "legal-rational" and "traditional" authorities.[20]

The Constitution also maintained that the official language of the State was Turkish (Ar. no. 18), and the state religion was Islam, but that all other beliefs and religions could also be freely practiced (Ar. no. 11). Furthermore, it was stated that "all subjects of the State have personal freedom" (Ar. no. 9), which included, in

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[20]   See Max Weber, *The Theory of Social and Economic Organization*, (New York: Oxford University Press 1947).

accordance with the regulations in the earlier Reforms, the non-Muslims living in the Ottoman territory who were granted, together with Muslims, other rights such as equality before the law (Ar. no. 17) and equality in public employment (Ar. no. 19). All these regulations meant the 'constitutionalization' of citizenship, as anticipated in the earlier Reform Decrees, making the inhabitants of the Empire both 'subjects' of the Sultan and 'citizens' of the state at the same time – another indication of the hybridity of the Ottoman (traditional and legal-rational) political system.

Finally, the granting of freedom of the press (Ar. no. 12) also contributed to the modernization as both secularand religious ideas gained a ready soil for dissemination, and to the limitation of the Sultan's sovereignty, especially considering the fact that the press was the main basis of the opposition and the basic tool that disseminated the revolutionary ideas towards 1908. That is why Abdülhamid II, after abolishing Parliament, censored the press and exiled the opposition leaders (who then founded the CUP abroad), who were also the publishers of various newspapers, particularly in France and Macedonia. That is also why the CUP leaders added, after the 1908 Young Turk revolution, the phrase "with no censorship" to the same article, though later (after 1913) they themselves would censor the press.

b – The 1921 Constitution (Teşkilat-ı Esasiye)

The CUP controlled the Ottoman state from 1908 until the end of World War I, when the three leaders of the Committee, Enver, Cemal and Talat Pashas, fled the country. But it was the CUP leaders, including also Kara Kemal, who organized the resistance movement in Anatolia by first founding an underground organization called the "Karakol," which would later turn into the "Anatolian Association of the Defense of Rights," and appointing Mustafa Kemal, a mid-ranking military officer and relatively unknown member of the CUP, as its leader. By the end of the war against the Greeks, which ended in August 1922, Kemal had gradually come to be the only leader of the movement by receiving the help of other CUP leaders and by eliminating his rivals within the CUP.[21]

In April 1920 the resistance proclaimed the opening of the Grand National Assembly in Ankara, which would be the center first of the movement and later, the Turkish Republic. The second Constitution[22] was thus prepared during the War of Independence by the leadership of the Turkish nationalist movement headed by Mustafa Kemal. The same meta-discursive strategy of deriving legitimacy from Is-

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[21] Jan Erik Zürcher, *The Unionist Factor. The Rôle of the Committee of Union and Progress in the Turkish National Movement, 1905-1926* (Leiden, etc.: Brill, 1984).

[22] This constitution was published in *Resmi Gazete* on February 7, 1921. See *Düstur*, 1:196; see also Erdem, *Anayasalar*, 27-30; Kili, *Türk Anayasaları*.

lam was applied throughout the text. In fact, Islam was emphasized even more here than in the earlier texts we have analyzed, due to warfare and the need to legitimize the nationalist movement (initially an insurgency) and to organize the resistance against occupation. The 1921 Constitution consisted of only 23 articles and was much less sophisticated compared to the earlier one. One of the reasons for this was the adoption of the principle of the unification of powers (Ar. nos. 2-3), including no separate sections on the executive and the judiciary, which also constituted an important difference between the two constitutions. The basic difference, however, was stated in the first article:

> *Article 1 – Sovereignty belongs, with no restrictions and no conditions, to the nation…*

Emphasizing this first article, some have claimed that this constitution completed the shift in the basis of sovereignty.[23] For them, it completely changed the basis of sovereignty by granting no authority to the Caliph-Sultan -even though the monarchy and the caliphate had not yet been abolished- but instead to the Grand National Assembly (GNA) that represented the "nation." Thus, the proclamation of the Constitution was an important corner stone in the process of secularization, for it curtailed the functions and power of the caliphate in practice, before this was officially done in 1924. However, this shallow and teleological view ignores both the uncontested dominance of the Islamic discourse in the rest of the text and the actual conditions upon which the new Parliament and Constitution were built. The Constitution was proclaimed in a context where Istanbul, the Ottoman capital, was under British invasion and the Caliph-Sultan and the FAP government were powerless – except that they had sent Mustafa Kemal to Anatolia and were actively supporting the resistance militarily and economically.[24] Despite the fact that the Palace had little political authority in Anatolia, the resistance leadership, including Mustafa Kemal, and members of Parliament were still loyal to the Caliph-Sultan until mid-1922: they conducted the war against the Greeks in the name of the Caliph.

The 1921 Constitution instead still maintained a partial change in the basis of sovereignty, a process that had been started with earlier reforms and made explicit in the *Kanun-i Esasi*. The underlying discursive strategy in the former was, unlike in the latter, which emphasized the inseparability of the Caliph-Sultan and Islam, that the "nation" and Islam co-existed as the two bases of sovereignty. In this configuration, the GNA represented the "nation" and the Caliph represented Islam. The Islamic character of the new Turkish state would later be reinforced when the Constitution was amended on the day the Republic was proclaimed (October 29,

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[23] See e.g. Berkes, *Development*; Ergun Özbudun *1921 Anayasası* (Ankara: Atatürk Araştırma Merkezi Yayınları 1992); Bülent Tanör *Osmanlı-Türk Anayasal Gelişmeleri (1789 – 1980)* (Istanbul: AFA, 1995).

[24] Zürcher, *Unionist Factor*; *Idem.*, *Turkey. A Modern History* (London – New York: Tauris, 1993), 141.

1923) by adding a new article to it that read: "The religion of the state is Islam" (Article no. 2). Moreover, in the text "the nation" was not defined on the basis of (secular) ethnicity, and did not exclude non-Turkish Muslims; the ethnic dimension would enter into the 1924 Constitution, though not in an anti-religious framework.

However, the insertion of "the nation" into the Constitution was still a step towards secularization, though this relatively radical change in practice was smoothly materialized at the discursive level. For, the 'strategic' discourse employed in the text was again that of serving Islam and the *Sharia*. For instance, article no. 7 regulated the GNA's authority over the "implementation of the rules of the *Sharia*" as well as the way of making, implementing and abolishing other laws, and declaring war. The same article maintained that all laws and regulations must be "in accordance with the rules of the *fıkh* [Islamic jurisprudence] that are compatible with the needs of the time and practices of the people." This article is illustrative of the main theme of this study as well as an important element of the secularist ideology in Turkey. As in the CUP's programs and Ziya Gökalp's writings,[25] this text, too, employed two different discursive techniques at the same time – that of implementing the Islamic *sharia* and of 'the needs of the time and of the people'. The discursive strategy underlying these techniques was the idea that Islam and modern civilization were compatible and that Islam only needed to accommodate modernity. It thus referred to Islam as a source of legitimation but also limited its domain. It maintained that all laws and regulations would be in accordance with the Islamic Sharia *insofar as* it was compatible with the requirements of modern life.[26] Within the intra-discursive realm, therefore, these two techniques, which were employed frequently not only by politicians but also by intellectuals, and not only by secularist actors, but by modernist Islamists as well, are in what Foucault calls a "relationship of complementarity," as part of the same "discursive strategy."

c – The 1924 Constitution (Teşkilat-ı Esasiye)

After the independence movement had defeated the Greeks, the GNA separated the caliphate from the sultanate and abolished the latter in November 1922; signed the Lausanne peace treaty in July 1923 with Western powers, including Greece, wherein they all recognized Turkey's independence ; then Mustafa Kemal and his newly-founded party, the Republican People's Party (RPP), proclaimed the

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[25] Cf. Ziya Gökalp, *Turkish Nationalism and Western Civilization*: Selected Essays of Ziya Gökalp, transl. and ed. by Niyazi Berkes (London: George Allen and Unwin, 1959).

[26] Mustafa Kemal would later (in 1927) claim that he had influenced the content of the Constitution and that the direction of the developments in his mind at that time was towards the secular West; cf. M. Kemal Atatürk, *Nutuk*, 3 vols. (Istanbul: Milli Eğitim Basımevi, 1961), 2:445ff.

Republic on October 29, 1923; they also abolished the caliphate, and together with it, the Office of the *Şeyhulislam* and all religious schools, on March 3,1924 – though a Faculty of Theology and the Department of Religious Affairs were founded in place of the latter two – and sent the Ottoman dynasty into exile.

The 1924 Constitution[27] was adopted six months after the declaration of the Republic and only three weeks after the abolition of the caliphate. By that time Mustafa Kemal had succeeded in becoming the leading power actor in Turkey, a status he later consolidated by first crushing the Kurdish opposition in 1925 and then completely eliminating his political rivals (ex-members of the CUP and his old friends) in 1926. His party, the RPP, had established a single-party system and controlled every state institution in the country, including the GNA by eliminating the pre-1923 opposition, and then proclaimed a new constitution in 1924.

The basic difference between this constitution and the earlier ones concerns the regime of the new state, which is stated in the very first article:[28]

> Article 1 – *The State of Turkey is a Republic.*

This dictum was in fact a confirmation of the existing situation, where the monarchy had already been abolished and the Republican regime was declared by Mustafa Kemal and his party, but also referred to a breakaway from the earlier regime by implying the upcoming radical secular reforms in the way of Westernization. However, as in the 1876 Constitution, it explicitly and immediately referred to Islam as the official religion of the State (Ar. no. 2).[29] The next article stated again that "sovereignty belongs, with no restrictions, to the nation" signifying the (partly) secular basis of it. These two articles revealed the underlying discursive strategy employed: that Islam and "the nation" co-existed as the two bases of state sovereignty, which implied, as in the previous (1921) Constitution, that the state had not yet been completely secularized – this would be gradually achieved through amendments during the late 1920s and 1930s.

In addition, like the first constitution and unlike the second one, the 1924 Constitution adopted the principle of the separation of powers (Ar. nos. 4-8), devoting separate sections to the legislative, which was maintained to belong to the

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[27] See *Düstur*, 5:576-585; see also Erdem, *Anayasalar*, 31-45; Kili, *Türk Anayasaları*.

[28] This sentence had already been added, though in a slightly different form, to the 1921 Constitution with the declaration of the Republic in 1923.

[29] This sentence would, however, be removed from the Constitution in 1928 and the principle of secularism would enter it in 1937. Secularism was one of the six principles of Kemalism, which are also called the "six arrows of the RPP," and it entered the Constitution together with others including Republicanism, Nationalism, Populism, Etatism, and "Revolutionism." That the article stating the official religion of the Turkish State was replaced by Atatürk's (or the RPP's) principles is another indication of the fact that Kemalism was perceived among the state elite as a "secular religion" with its own sacred book (*The Speech*), its various rituals and sacred sites, such as the *Anıtkabir* in Ankara, and a savior (Kemal Atatürk). This is also evident in the RPP's programs; see, for example, *CHP Tüzüğü, 1935* (Ankara: Ulus Basımevi, 1935).

GNA (Ar. nos. 9-30); to the executive that maintained the institution of a government and also – different from the first constitution – the presidency as the head of the executive branch (Ar. nos. 31-52), rather than the office of the *Sadrazam*; and to the judiciary, abolishing the system of legal bifurcation (Ar. nos. 53-67). (Bifurcation in higher education had already ended on March 3, 1924 with the abolition of religious schools by the 'Law of the Unification of Education'.) Another indication of the incorporation of Islamic elements in the constitution is a familiar discursive practice: that the President and deputies would take their oaths "on my honor and in the name of God [*Vallahi*]" promising "loyalty to the principles of the Republic" (Ar. nos. 38, 16). Unlike the first constitution, however, there was no mention of loyalty to "the rules of the *Sharia*." Moreover, the clause "in the name of God" would, together with Article no. 2, be removed in 1928 and replaced by that of "I promise." Similarly, another Islamic element, the clause "the application of the rules of the *Sharia*" as one of the exclusive duties of the GNA (Ar. no. 26) was kept in the original version, and removed in 1928.

Another important trend that went hand in hand with secularization emerged in the 1924 Constitution: nationalization. Nationalism had already been underway since the Balkan War of 1912, which caused the loss of the Balkan lands occupied by Christian – and some Muslim – peoples, and accelerated with the struggle for national independence during 1919-1922. As a discursive strategy, 'nationalization' contributed to the separation of 'the nation' from Islam, implying the secularization of the new Republican elite's mentality. The first *Teşkilat-ı Esasiye* of 1921 had used the word "Turkish state," and mentioned the 'Grand National Assembly' as well as 'the nation' but never specified their 'Turkishness' due to the fact that 'the nation' was not yet independent and the country was still under invasion. It was only after independence that the second *Teşkilat-ı Esasiye* (1924) could include articles on Turks, and qualified the name of the GNA as the '*Turkish* Grand National Assembly'. It also stated that "the official language [of the Turkish State] is Turkish, and its capital is Ankara" (Ar. no. 2). Moreover, unlike the *Kanun-i Esasi* (1876), it exclusively spoke of 'the Turks' in the section devoted to individual rights, which was entitled "the Public Rights of Turks" (Ar. nos. 68-88). Article no. 88 maintained that "[t]he inhabitants of Turkey, regardless of religion and race, are called Turks," which indicated the contrast between the cosmopolitanism of the first constitution, which recognized the multiplicity of religions among the citizens, and the nationalism of the last constitution, which denied the different ethnicities among the inhabitants of the country, a stance that has been a problem to this day. In addition, as a further step towards secularism, the definition of citizenship on the basis of Turkishness caused religion to lose its status as a basis of the classification of identity. In fact, this is another indication of the project to replace religion with secular nationalism as the main source of identification for the people. Unlike the *Kanun-i Esasi*, in which 'the citizens of the Empire' were classified on the basis of their religious affiliation,

and were granted autonomy accordingly, this constitution not only made nationality the basis of the categorization of citizens, which is an important strategy of instilling in them a 'national consciousness', but also denied the diversity of nationalities among the country's inhabitants.

Therefore, this new discursive technique – of replacing Islam with ethnicity as the basis of identity and citizenship – that belonged to a non-Islamic (Western) framework is a reflection of the gradual influence of Western discourses, which became increasingly more effective after World War I, particularly after the abolition of the caliphate in 1924. Moreover, defining citizenship on the basis of nationality constitutes another dimension of the project of state formation and nation building in modern Turkey; and this process was intensified with the incorporation in 1937 of Nationalism into the Constitution as one of the basic principles of the state.

A comparative analysis of these three constitutions indicates, therefore, that they played an important role in the process of the modernization of Turkey. They were significant developments that both reflected and contributed to the constitution of an increasingly secularized state that gradually evolved into a nation-state. An important trend that we observe in the three constitutions is the fact that Islam, as in all other attempts at modernization in Turkey, was present as the fundamental source of justification – the main discursive strategy modernizing actors employed in their projects. The secularist discourses employed in the modernizing reforms always incorporated various Islamic elements; and the underlying strategy was to better serve Islam by replacing the old institutions with new ones. We also observe, however, a discursive pattern that involves a gradual decrease over time in the extent to which Islamic elements were incorporated in the constitutions, though legitimation by Islam was always there: the three constitutions share a "relationship of presence," as the same discourse is present in all. Whereas the 1876 Constitution gives priority to serving Islam and to the rights of the Caliph-Sultan, the Constitution of 1924 involves much less reference to Islam and certainly no reference to the caliphate in particular, because the caliphate had already been abolished. Also, it would later get rid of most of the Islamic elements in 1928 in a period during which the most radical secularizing reforms, from the famous 'Hat Revolution' to the adoption of the Latin alphabet, took place. Finally, I have argued that these important texts not only contributed to the 'constitution of reality' but also are a reflection of it. The adoption of various articles in these constitutions, such as the institution of a modern government, and bifurcation in the legal and educational systems in the Constitution of 1876, and their unification in that of 1924, indicates the evolution of a discursive strategy reflecting the changes in the current socio-political conditions. However, I also argue that these texts instituted and implicated certain actual developments as well, including the separation of powers in the Constitutions of 1876 and 1924, and their unification in the Constitution of 1921, the institution of a parliament

and an election system in 1876 and various modifications in the constitutions, which shaped reality in different ways. They were all justified with reference to the 'exigencies of time' as well as to the Islamic *Sharia*, the main discursive strategy applied in modernizing reforms.

Conclusion

As many prominent scholars have demonstrated,[30] Islam was one of the most important social forces that penetrated not only the cultural life but also the political institutions of the Ottoman Empire, playing an important role in the modernization of Turkey during the 18th and 19th centuries. This article has argued that at the discursive level the secularism of modernization in Turkey did not take the form of an explicit confrontation between the sacred and the profane, an open struggle between Islam and modernity; but rather that secularization was presented as a way of serving Islam, helping it better function, and of placing it in its proper place to protect its authenticity. To demonstrate this argument, I have analyzed various important texts including the Reform Decree and the Reform Edict, as well as debates over the 1876 Constitution, and the texts of the Constitutions of 1876, 1921, and 1924. I have also briefly touched upon the fact that the discourse of accommodating Islam with modernity was also employed in the early attempts at military and educational reforms by Selim III and Mahmud II. I have subsequently shown that the Islamic *Sharia* was resorted to as a basic source of justification in both the *Tanzimat* Decree (1839) and the *Islahat Edict* (1856), both of which aimed at limiting the authority of the *Sharia* and the sovereignty of the Sultan. The *Kanun-ı Esasi* of 1876 marked a partial change in the basis of sovereignty and further limited the respective domains of the authority of the Sultan-Caliph; nevertheless its purpose was stated as "making the laws in accordance with the *Sharia*." It also enjoyed strategic support from some members of the traditional *ulema*, the only social group that could make an effective use of Islamic elements in legitimizing the first Ottoman constitution and other 'secular' reforms. The 1921 Constitution still marked a partial change in the basis of sovereignty and involved the notion of the separation of the temporal and religious authorities. It utilized, however, the discourse of "serving Islam" by applying its rules more effectively. The 1924 Constitution, which firmly established the notion of popular sovereignty and brought the regime change (from monarchy to

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[30] See e.g. Şerif Mardin, *Din ve İdeoloji*, (Istanbul: İletişim Yay., 1983), Idem, *Religion and Social Change in Modern Turkey: The Case of Bediuzzaman Said Nursi*, (Albany & New York: SUNY Press, 1989), Mümtaz'er Türköne, *Siyasi İdeoloji Olarak İslamcılığın Doğuşu* (Istanbul: İletişim Yay., 1991), Ahmet Davutoğlu, "Philosophical and Institutional Dimensions of Secularization: A Comparative Analysis" in A. Tamimi and J. Esposito (eds.) *Islam and Secularism in the Middle East*, (New York: NYU Press, 2000), İsmail Kara, *Din ile Modernleşme Arasında*, (Istanbul: Dergah Yay., 2003).

republic), maintained Islam as the official religion of the new state, and required the President of Turkey and the deputies to take an oath in the name of God. (These regulations were, however, removed later in 1928, and the secular character of the new Republic was formalized in 1937.) This text also marked the beginning of the process in which the Turkish secularists tried to replace Islam as the fundamental frame of reference and source of identity with Turkish nationalism (the Kemalist ideology), by defining citizenship on the basis of nationality (Turkishness).

Therefore, it is safe to argue that, due to the centrality of Islam, the Turkish case offers an example of a different path to secularization. It differs from the Western cases where, as David Martin[31] and others describe, despite the regional differences, there was mostly an open conflict between religion and politics, unlike in Turkey where the discursive secularization of the public sphere did not involve an explicit challenge posed by the secular forces against Islam. The Turkish case can thus be explained by means of the "accommodation paradigm" (which also includes a degree of 'conflict'), rather than the "confrontation paradigm," of the relationship between religion and modernity.

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[31]   David Martin, *A General Theory of Secularization* (Oxford: Blackwell, 1978).