

Seattle University School of Law Digital Commons

Faculty Scholarship

1-1-2014

Does Shari'a Play a Role in Turkey?

Russell Powell

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/faculty>



Part of the [Civil Law Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Russell Powell, Does Shari'a Play a Role in Turkey?, 41 *PEPP. L. REV.* 1101 (2014).
<https://digitalcommons.law.seattleu.edu/faculty/598>

This Article is brought to you for free and open access by Seattle University School of Law Digital Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.

Does *Shari'a* Play a Role in Turkey?

Russell Powell*

This essay introduces my empirical research exploring Turkish perceptions of law and religion.¹ I returned from Istanbul in the summer of 2013, having recently completed the data collection. I have studied Turkey for nearly thirty years and first lived there in 1990. Since then, I have visited regularly to teach and conduct research. On my most recent trip, I stayed in the Taksim district of Istanbul, where I often stay during my visits. However something was different this time. On May 31, 2013, in response to the use of police force against a small group of nonviolent demonstrators, massive protests broke out; it was not the first time in recent weeks that riot police used tear gas and water cannons.²

At 7:30 PM on May 18, I was walking to a café on Istiklal Avenue to meet with a graduate student I was mentoring. Hundreds of police blocked the street and thousands of people were trapped, trying to move away from the riot police. Like many locals with places to be, I used side streets to avoid both the mob and the police attempting to herd it. At one point, the police blocked every direction. Tear gas enveloped the crowd. People started to panic. I started to cough, and my eyes watered from the gas. I took shelter in a nearby restaurant. Locals were unsurprised by the riot tactics deployed against a Saturday evening crowd made up mostly of tourists, young people, and families. There were no reports of the incident in the local media, and I still do not know what prompted such an intense

* Dr. Russell Powell is a Professor of Law at Seattle University School of Law and serves as the Associate Provost for Global Engagement at Seattle University; his research is primarily in the field of Islamic jurisprudence.

1. The data discussed herein will be published in my forthcoming book, *SHARI'A IN THE SECULAR STATE: EVOLVING PERCEPTIONS OF LAW AND RELIGION IN TURKEY*.

2. See, e.g., Constanze Letsch, *Turkey Protests Spread After Violence in Istanbul Over Park Demolition*, *GUARDIAN* (May 31, 2013), <http://www.theguardian.com/world/2013/may/31/istanbul-protesters-violent-clashes-police>.

I ventured out for dinner on May 26 and stumbled upon hundreds of police lining Istiklal Avenue. I thought eating at home would be safer, so I bought takeout and returned to my apartment. At 7:15 PM, I heard explosions and screaming. From my apartment window just two blocks off Istiklal, I saw packs of police chasing civilians in the street. Tear gas seeped into my apartment through the closed windows. I retreated to the bathroom and ran hot water in an attempt to keep the gas at bay. For thirty minutes I held my position, hoping the gas would dissipate. My neighbors were irritated, but unsurprised. Again, no one knew what had prompted this intense response by police.

There are constant demonstrations of one variety or another in the Taksim area. In May 2013 alone, I saw Kurdish protests, anti-Russian protests, and a host of leftist and environmentalist demonstrations.³ Most were small and typical, frequently consisting of university students. This has been the state of affairs for decades, but the response this year lacked the restraint of the past. Once this type of police power exercised against earnest students and environmentalists (something more easily done in Gezi Park than the narrow paths of Istiklal) was documented in social media, it tapped into deep anger and frustration directed at the government.⁴ This massive and spontaneous grassroots reaction reflects a deep alienation of those who are likely to be the next generation of Turkish leaders.

I interviewed many people who expressed deep frustration at the ongoing consolidation of power by the ruling party. Even religious supporters of Prime Minister Erdoğan expressed concerns about the use of excessive police force, the concentration of wealth in the ruling party's supporters, the prospect of enforced religious norms, and constitutional reform. Although the protests that escalated on May 31 included religious individuals and supporters of the ruling party, the anger focused on Prime Minister Erdoğan and what some believe to be his agenda of "Islamization."⁵

3. See Ayse Bugra, *Turkey: What Lies Behind the Nationwide Protests?*, OPENDEMOCRACY (Aug. 6, 2013), <http://www.opendemocracy.net/5050/ayse-bugra/turkey-what-lies-behind-nationwide-protests>.

4. See Alex Fitzpatrick, *Turkey Protesters Take to Twitter as Local Media Turns a Blind Eye*, MASHABLE (June 3, 2013), <http://mashable.com/2013/06/03/twitter-turkey-protests>; Eric Pfanner, *Turks Angry over Dearth of Protest Coverage by Established Media*, N.Y. TIMES (June 6, 2013), <http://www.nytimes.com/2013/06/07/world/middleeast/turks-angry-over-dearth-of-protest-coverage-by-established-media.html>.

5. Tim Arango & Ceylan Yeginsu, *Peaceful Protest over Istanbul Park Turns Violent as Police*

Some viewed recent changes to laws regulating alcohol and the ban on public displays of affection as clear evidence of this program.⁶

My research has focused on the dynamic relationship between religion and law in contemporary Turkey. Many polls (including my own) indicate that a notable percentage of Turks want “*Shari'a*” (a term of art, the meaning of which I attempt to unpack and clarify in this study⁷) to be enforced by the state.⁸ However, my evidence shows that these people seldom consider what it might mean in terms of its effect on civil law. There is often a disconnect between supporting an adoption of *Shari'a* and supporting the regulation of everyday behavior through civil codes. It is clear from others’ research, and it is supported by my own, that even religious people do not want Turkey to transform into an Iran or Saudi Arabia. In fact, many of the religious people I interviewed believe that robust protection of religious freedom enhances their own religious experience by making it both more meaningful and more authentic. This attitude suggests that religious belief and individual choice are not only valued but may also enhance each other. I believe that changing Turkish law to conform to *classical* Islamic legal norms is likely to provoke far greater public opposition than the response evoked in June 2013, even from many people of faith.

Turkey is a very religious country in that polling consistently indicates that a significant majority of Turks identify as religious.⁹ In this regard, it is not so different from the United States: both countries are home to religious politicians who propose to bring state law into greater conformity with ethical and religious norms rooted in their faith. When their actions are viewed as overreaching, there is public outcry. The tradition of Kemalist secularism (*laiklik*) is often cited to distinguish Turkey as an exceptional

Crack Down, N.Y. TIMES (May 31, 2013), <http://www.nytimes.com/2013/06/01/world/europe/police-attack-protesters-in-istanbul-taksim-square.html>.

6. See Cinar Kiper, *Muslim Light: What's Behind Turkey's Islamization and the Protests Against It*, ATLANTIC (June 5, 2013), <http://www.theatlantic.com/international/archive/2013/06/muslim-light-whats-behind-turkeys-islamization-and-the-protests-against-it/276576/>.

7. See *infra* notes 16–22 and accompanying text.

8. See *infra* notes 13–15 and accompanying text.

9. See *Religion Loves Tolerance, but Is Not Tolerant*, HURRIYET DAILY NEWS (Nov. 17, 2009), <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=8216religion-loves-tolerance-but-is-not-tolerant8217-2009-11-17> (“Eighty-three percent of Turks identify themselves as religious . . .”).

case among predominantly Muslim countries.¹⁰ While it is true that the Turkish Constitution, laws, and legal opinions treat the relationship between the state and religion differently than Iran, Saudi Arabia, Egypt, and even Indonesia, it would be wrong to underestimate the role of religion in the formation of Turkish legal norms and citizens' understanding of those norms.¹¹

There is a wealth of literature describing the evolution and nature of Turkish secularism.¹² A number of quantitative and qualitative studies question and analyze Turkish voters' preferences for *Shari'a*.¹³ The typical question asks whether respondents favor the establishment of a *Shari'a* state.¹⁴ Over the past fifteen years, these surveys have received responses in favor of such a state ranging between 5% and 25%.¹⁵ However, these results are extremely problematic because they do not explore what respondents mean by "the establishment of a *Shari'a* state," either for those who favor it or for those who oppose it. This essay draws on two years of empirical research and begins to unpack the range of possible meanings attributed to *Shari'a* among Turkish voters as a framework for future empirical studies and as a basis for deeper understanding of the role of Islam within Turkish law and politics.

My broader empirical project is intended to describe contemporary

10. Russell Powell, *Evolving Views of Islamic Law in Turkey* 1 (Mar. 15, 2013) (working paper), available at <http://ssrn.com/abstract=2233550>.

11. *Id.*

12. See, e.g., FERAZ AHMAD, *THE MAKING OF MODERN TURKEY* (1993); ZEYNO BARAN, *TORN COUNTRY: TURKEY BETWEEN SECULARISM AND ISLAMISM* (2010); SONER CAGAPTAY, *ISLAM, SECULARISM AND NATIONALISM IN MODERN TURKEY: WHO IS A TURK?* (2006); ALEV ÇINAR, *MODERNITY, ISLAM, AND SECULARISM IN TURKEY: BODIES, PLACES, AND TIME* (2005); ANDREW DAVISON, *SECULARISM AND REVIVALISM IN TURKEY: A HERMENEUTIC RECONSIDERATION* (1998); CARTER VAUGHN FINDLEY, *TURKEY, ISLAM, NATIONALISM, AND MODERNITY: A HISTORY, 1789–2007* (2010); Yael NAVARO-YASHIN, *FACES OF THE STATE: SECULARISM AND PUBLIC LIFE IN TURKEY* (2002); ESRA ÖZYÜREK, *NOSTALGIA FOR THE MODERN: STATE SECULARISM AND EVERYDAY POLITICS IN TURKEY* (2006); *RETHINKING MODERNITY AND NATIONAL IDENTITY IN TURKEY* (Sibel Bozdoğan & Reşat Kasaba eds., 1997); BRIAN SILVERSTEIN, *ISLAM AND MODERNITY IN TURKEY* (2011); BERNA TURAM, *BETWEEN ISLAM AND THE STATE: THE POLITICS OF ENGAGEMENT* (2007); M. HAKAN YAVUZ, *ISLAMIC POLITICAL IDENTITY IN TURKEY* (2003); ERIK J. ZÜRCHER, *TURKEY: A MODERN HISTORY* (2004).

13. See, e.g., ALI ÇARKOĞLU & BINNAZ TOPRAK, *RELIGION, SOCIETY AND POLITICS IN A CHANGING TURKEY* (Jenny Sanders ed., Çiğdem Aksoy Fromm trans., 2007).

14. *Id.* at 33.

15. *Id.*

Turkish understandings of *Shari'a*, to test a popular thesis that education best predicts views toward *Shari'a*, and to provide a more thorough description of Turkish views on law and religion than is currently available. It also challenges the modernist claim that personal religiosity is predictive of preference for a religious state. This research project includes two quantitative surveys as well as qualitative interviews. Many questions are based on studies by Pew,¹⁶ the World Value Survey (WVS),¹⁷ Ali Çarkoğlu,¹⁸ and Ersin Kalaycıoğlu¹⁹ in order to make valid comparisons with similar polling conducted in Turkey and in other countries. I conducted screening interviews with several hundred people, primarily in the Beyoğlu neighborhood of Istanbul, and detailed open-ended interviews with three groups of Turkish citizens, including two groups representing the range of independent variables,²⁰ and a third consisting of university students, recent university graduates, and six people active in the Hizmet Movement (also sometimes called the Gülen Cemaat or simply the Cemaat). This allowed me to develop a fuller description of religious experience relating to law, and to consider possible causal mechanisms.

This project explores the evolving understandings of *Shari'a* and the causal mechanisms that may influence individual attitudes toward the relationship between religion and the state in Turkey. The project employs multiple methodologies for the purposes of triangulation, with adult Turkish citizens as the target population. The first large-N survey was a thirty-seven question telephone poll using standard representative polling strategies. The questions probed for preferences and perceptions of *Shari'a*. Across the country, 935 random phone numbers were called, controlling for population distribution. A far more extensive survey in Turkish was posted online through SurveyMonkey.com. The online survey was completed by 301

16. *The World's Muslims: Religion, Politics and Society*, PEW RESEARCH (Apr. 30, 2013), <http://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-beliefs-about-sharia/>.

17. WORLD VALUES SURVEY ASS'N, <http://www.worldvaluessurvey.org/> (last visited Mar. 3, 2014).

18. Ali Çarkoğlu, *Religiosity, Support for Şariat and Evaluations of Secularist Public Policies in Turkey*, MIDDLE E. STUD., Mar. 2004, at 111.

19. ERSIN KALAYCIOĞLU, PARTY IDENTIFICATION, ISLAM AND SECULARISM IN TURKEY (2007), available at http://research.sabanciuniv.edu/8954/1/ISA_2008_ersin_k.pdf.

20. Education and religiosity are the two main independent variables, each with a value of lower, middle, or higher, for a total of nine combinations.

participants. Significant correlations in the telephone poll and the online survey create a basis to explore causal inferences, in particular that level of education achieved is a more important factor than degree of religiosity expressed for producing particular views of *Shari'a*. The face-to-face interviews allowed me to ask follow-up, open-ended, and "why" questions that provided a much deeper understanding of Turkish views of law and religion.

The surveys established demographic status through background questions regarding age, gender, residence, ethnicity, religion, and other factors. The chief independent variables, education and religiosity, are based on self-reporting questions. The dependent variable, preference for *Shari'a*, is based on responses to the statement "I would like to have a *Shari'a*-based religious state founded in Turkey." Questions presented to respondents were formed using Turkish wording very similar to that used in prior studies in order to enable statistically significant comparisons with prior polling. One of the goals of this research was to provide a deeper understanding of the relationship between Islam and law in Turkey, which requires some understanding of the classical context of Islamic jurisprudence as well as contemporary Turkish approaches.

"Islamic law" is such a problematic term that some scholars refuse to use it. It is a broad, imprecise term. *Shari'a*, often translated as "Islamic law," refers to the ideal of God's law as understood within Islam, similar to the ideal of divine law in medieval Christian jurisprudence.²¹ Since divine law is not knowable with certainty, human attempts to apprehend it are subject to error. There are multiple approaches to understanding *Shari'a* within Islamic jurisprudence.²² The human exercise to ascertain *Shari'a* is referred to as *fiqh*, or Islamic jurisprudence.²³

Although there is sympathy for the traditional *fiqh* approach among many Turkish Muslims, the most influential approaches to jurisprudence are modern because they do not rely on *madhab* rules in a posture of *taqlid*.²⁴

21. See *The World's Muslims*, *supra* note 16.

22. See, e.g., ANDREW RIPPIN, MUSLIMS: THEIR RELIGIOUS BELIEFS AND PRACTICES 74 (John Hinnel & Ninian Smart eds., 2005).

23. Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law*, in 19 *STUD. IN ISLAMIC LAW AND SOC'Y* 11 (Ruud Peters et al. eds., 2006).

24. *Id.* at 41-46.

This might be more obvious within a civil law jurisdiction that is decidedly secular, but lack of *madhab* institutions and codification of *Shari'a* make most contemporary approaches to Islamic jurisprudence “modern” in some sense.²⁵ There is a range of views concerning Islamic law in Turkey, but it can be argued that the official state position plays a central role in shaping Islamic practice and understanding of religious jurisprudence. Although they have importance, I do not consider here the arguably more heterodox approaches of the Naqshbandiyya, the Mevlevi, or the Alevi.

The Turkish government plays an active role in shaping the structure of religious institutions and the content of religious teaching—unlike in the U.S. under the doctrine of nonestablishment. According to the Turkish Constitution, “The Directorate of Religious Affairs [*Diyanet*], which is within the general administration, shall exercise its duties prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas, and aiming at national solidarity and integrity.”²⁶ To American readers, this section of the Turkish Constitution is challenging. It belies their completely different understanding of the relationship between religion and the state.

The Directorate (sometimes translated as Presidency) of Religious Affairs (*Diyanet*) controls religious education, ordination and licensing, the construction of mosques, the appointment of Imams, and even dictates the specific content of Friday sermons throughout the country.²⁷ It represents the highest Islamic religious authority in the country and is in some sense the successor to the Sheikh ul-Islam.²⁸ *Diyanet* has a budget of nearly one billion dollars (USD) and plays an important role in—and for—Turkish society.²⁹

Although there is no official content or method attributed to *Shari'a*, the position of *Diyanet* implies a particular approach to law and theology, suggesting it can be interpreted as an alternative to traditional *fiqh*. *Diyanet*

25. *Id.*

26. THE CONSTITUTION OF THE REPUBLIC OF TURKEY Nov. 7, 1982, art. 136 (as amended).

27. THIJL SUNIER ET AL., *DIYANET: THE TURKISH DIRECTORATE FOR RELIGIOUS AFFAIRS IN A CHANGING ENVIRONMENT* 51–52 (2011), available at http://www.fsw.vu.nl/nl/Images/Final%20report%20Diyanet%20February%202011_tcm30-200229.pdf.

28. *Id.* at 9–20.

29. See 2006 *Maly Yili Butcesi*, MUHASEBE KİTAPLARI (Oct. 18, 2005), http://www.alomaliye.com/ekim_05/2006_mali_yili_butcesi.htm.

issues legal opinions that typically, but not always, reference the Qur'an, *hadith*, and Hanafi texts.³⁰ However, its opinions are not limited by Hanafi *fiqh*. For example, in 2005, the head of Diyanet appointed two women as vice-muftis, an action which is arguably inconsistent with the traditional Hanafi position.³¹

In regard to the range of approaches to Islamic jurisprudence described above, Diyanet clearly manifests three. It relies on traditional *fiqh* rules and tends to refer to the Hanafi school for legitimacy.³² Even so, it is modern in its attempts to harmonize tradition with Turkish republicanism and secularism, and to provide religious counsel to Turkish citizens. This sometimes manifests itself in the selection of alternative classical rules (e.g., non-Hanafi rules). In other cases, rulings are based on new interpretations of texts or broad public policy arguments. Diyanet officials are very careful to acknowledge the legitimacy of the Turkish Republic and its secular constitution. Thus, Islam tends to be imagined as a religious and moral system that speaks to all aspects of life, but which is not imposed on the legal system. Although official Islam in Turkey (as understood by Diyanet officials) is not private per se, it is viewed as existing in a sphere insulated from politics and separate from civil law.

Turkey has moved closer to Europe under the leadership of a party rooted in Turkey's Islamist politics, despite early republican efforts to cut Turkish ties to Islam and separate the politics of the new regime from religion. The approach to secularism in Turkey has evolved since the founding of the Turkish Republic in 1923 (though it has roots in the structural reforms of the Tanzimat period),³³ but the 2001 constitutional amendments increased the textual importance of strict secularism. Secularism (*laiklik*) is a core principle of Kemalist ideology from the founding of the Turkish Republic and appears throughout the Turkish Constitution. The Preamble prohibits religious interference in state affairs and politics.³⁴ The Constitution defines Turkey as democratic and secular,

30. Diyanet maintains a collection of its fatwas and even offers a phone service to answer religious questions. See <http://www.diyamet.gov.tr>.

31. See the Diyanet website, <http://www.diyamet.gov.tr>, for a discussion of clergy and Islam.

32. See SUNIER ET AL., *supra* note 27.

33. See, e.g., FINDLEY, *supra* note 12, at 91–106.

34. THE CONSTITUTION OF THE REPUBLIC OF TURKEY Nov. 7, 1982 pmbl. (as amended) (“[N]o protection shall be accorded to an activity contrary to Turkish national interests, Turkish existence

with the strength of its language indicating the importance of secularism to its drafters.³⁵ The establishment of state organs to control religion is consistent with French secularism, while incorporating authority over religion within the state apparatus is patently inconsistent with the U.S. tradition of separation of church and state.³⁶

There are numerous sources of popular religious views in modern Turkey. Television has become perhaps the most influential and ubiquitous, but print media and traditional publishing remain important.³⁷ In this study, Fethullah Gülen was the single most mentioned influence, but outside of communities inspired by his work, those interviewed had deep reservations regarding his followers, if not the man himself.³⁸ Yaşar Nuri Öztürk was also mentioned by a significant number of those interviewed, and is worth considering in depth.³⁹ Other religious scholars mentioned were Nihat Hatipoğlu, Zekariya Beyaz, Sait Nursi, and Mevlana Jelaluddin Rumi.⁴⁰ Several writers were mentioned in the interviews, including poet İsmet Özel and writers Ömer Tuğrul İnançer, Halit Ertuğrul and Düccane Cündioğlu.⁴¹ Political leaders also seem to provide some degree of religious inspiration of guidance, particularly Prime Minister Erdoğan and President Gül. *Today's Zaman* newspaper⁴² and *Samanyolu TV*,⁴³ along with a plethora of religious media publishers and broadcasters, have perhaps the greatest influence in shaping views related to religion and law.⁴⁴

Although the nineteenth century saw significant developments in Islamic law, it generally continued within the *fiqh* tradition. The Sunni community in the Ottoman Empire was led by the Sultan, who had the title

and the principle of its indivisibility with its State and territory, historical and moral values of Turkishness; the nationalism, principles, reforms and civilization of Atatürk and that sacred religious feelings shall absolutely not be involved in state affairs and politics as required by the principle of secularism . . .”).

35. *Id.* at art. 2.

36. Kim Shively, *Taming Islam: Studying Religion in Secular Turkey*, 81 *ANTHROPOLOGICAL Q.* 683, 684 (2008).

37. *See infra* App. A.

38. *See infra* App. A.

39. *See infra* App. A.

40. *See infra* App. A.

41. *See infra* App. A.

42. TODAY'S ZAMAN, <http://www.todayszaman.com> (last visited Mar. 7, 2014).

43. SAMANYOLU TV, <http://www.samanyolu.tv> (last visited Mar. 7, 2014).

44. *See infra* App. A.

and authority of Caliph, Sunni jurisprudence was taught in *Madrasas*, and the Sheikhs al-Islam advised the Sultan and issued legal opinions. Consistent with the jurisprudential tradition, the state played a central role in interpreting and enforcing norms identified with *Shari'a*.

In 1877, Islamic legal rules were codified with the enactment of the *Mecelle*, which integrated a number of European civil law traditions.⁴⁵ As a result of the Revolution of 1923, Turkey adopted a policy of “modernization” by abolishing the Caliphate, dismantling *madhabi* institutions, founding the Turkish Republic based on a secular constitution, and enacting civil codes. Three particularly notable approaches to adapting the Islamic tradition of jurisprudence in Turkey and promoting secularism are evident in Turkey today: Diyanet, Öztürk, and Gülen. Of these three approaches, Diyanet and Gülen are the most influential—they continue to maintain mosques, schools, and civil society networks throughout Turkey. While Öztürk rejects the tradition of *fiqh* altogether, Diyanet and Gülen seem open to recontextualizing the rules of *fiqh* while continuing to appreciate their importance and value to Turkey. It is still unclear which approach to Islamic jurisprudence will ultimately capture the popular support needed for large-scale adoption, if any. As this study shows, the approach favored by the people of Turkey remains ambiguous. Recent tension between the AKP government and Gülen-affiliated institutions is likely to have a significant impact on views of religion and law going forward.

Islamic law in the nineteenth century Ottoman Empire continued to develop, but still operated within the context of traditional *fiqh*. *Madrasas* trained scholars in *Sunni* schools of thought, the state enforced *Shari'a* rules, a Caliph led the community, and a *Sheikh al-Islam* answered complex legal questions. The attempt to integrate European code traditions into Islamic law in the enactment of the *Mecelle* in 1877⁴⁶ was consistent with other early modernist attempts at legal reform. This led to a more complete disconnect from tradition upon the founding of the Turkish Republic, the dismantling of *madhabi* institutions, the abolition of the Caliphate, the adoption of a secular constitution, and the enactment of civil codes.

45. See *Report of the Commission Appointed to Draft the Mejelle*, 1 ARAB L. Q. 367, 367–72, (1986); see also FINDLEY, *supra* note 12, at 94.

46. See *Report of the Commission Appointed to Draft the Mejelle*, 1 ARAB L. Q. 367, 367–72, (1986); see also FINDLEY, *supra* note 12, at 94.

Within the contemporary secular milieu, *Diyanet*, Öztürk, Gülen and others developed new approaches to Islamic law in Turkey. All three of these approaches incorporate elements of modernism. Although Öztürk remains an interesting and important voice, *Diyanet* and Gülen are more influential because they have extensive networks of institutions (mosques, schools, and civil society networks). *Diyanet* and Gülen both acknowledge the importance of traditional *fiqh* even though they diverge from its rules (unlike Öztürk, who rejects the tradition). The ultimate success of these approaches to jurisprudence depends largely on popular support. However, the landscape of understandings among Turkish citizens remains unclear and potentially misunderstood. This uncertainty invites more empirical studies on the meaning attributed to *Shari'a* or Islamic jurisprudence by Turkish citizens.

The data supports a number of important findings. First, there is a trend of increasing support for *Shari'a* within Turkey, and education appears to correlate (inversely) with this preference more than religiosity.⁴⁷ Still, the study indicates that Turks under thirty are more likely to be religious than those between thirty and fifty and that those under thirty who identify as religious are more likely to have a university education.⁴⁸ It is clear that interpretations of *Shari'a* in Turkey differ from those in other predominantly Muslim countries. The influence of the Justice and Development Party (in Turkish, *Adalet ve Kalkınma Partisi*, or AKP) in combining commitments to Islamic ethics, center-right politics, neoliberal economics, and Kemalist republican values has likely accentuated this distinction by validating the consistency of secular constitutionalism and Islam.⁴⁹

Turks who desire the enforcement of *Shari'a* are more likely to have a modernist understanding of how rules are derived and to conceive of a sphere of *Shari'a* within a constitutional legal system that applies mainly to issues of personal status. It is also clear that Turks increasingly want a legal system that reflects their values. To the extent that Kemalist secularism is in tension with broadly held Islamic values in Turkey, it is likely to be unsustainable—as in the case of the prohibition against head-coverings in

47. See *infra* App. A.

48. See *infra* App. A.

49. See *Party Programme*, AK PARTI, <http://www.akparti.org.tr/english/akparti/party-programme> (last visited Mar. 7, 2014).

universities.⁵⁰ This may be especially true for the case of limits on individual liberties. Enforcing new limits on liberty in the name of values (or Islam) is likely to evoke strong opposition, as it did in Gezi protests against limits on public displays of affection and the sale or use of alcohol.⁵¹

One surprising result from the interviews is the apparent similarity between the experience of religious conservatives in Turkey and religious conservatives in the United States. Both groups are employing similar strategies and tactics to advance an agenda. Both groups have intentionally invested in specialized education, generated their own press infrastructure and supply of entertainment, and created multiple layers of civil society organizations, all serving as a basis for political mobilization.

The rise of private evangelical schools and homeschooling in the United States parallels the establishment of *imam hatip* schools and religiously inspired high schools in Turkey. The rise of Fox News is analogous to the growth of *Zaman*. In the 1990s, religious conservatives in the U.S. supported cable networks including TBN, PTL, and The Family Channel and programs like *The 700 Club* and *Touched by an Angel*. Only a decade later, Turkish religious conservatives supported *Samanyolu*, *Kanal 7*, and *Dost*, with programs ranging from Qur'an classes to *The Fifth Dimension*. The similarities are striking. It is probable that politicians and business leaders were aware of the success of American religious conservatives and actively adopted their strategies. The profound influence of organizations inspired by Fethullah Gülen in Turkey may have made the deployment of these strategies more consistent and effective. To their credit, religious conservatives have presided over important democratizing reforms and laudable economic growth in Turkey.⁵²

Although there is increasing support for *Shari'a* in Turkey, it is unlikely that religious leaders would risk losing political or economic influence by proposing constitutional reforms that require conformity with *Shari'a*. Prohibitions on interest or limiting rights to divorce—*Shari'a* rules enforced by a number of predominantly Muslim states—would compromise economic

50. See Jonathan Head, *Quiet End to Turkey's College Headscarf Ban*, BBC (Dec. 31, 2010), <http://www.bbc.co.uk/news/world-europe-11880622>.

51. See Kiper, *supra* note 6.

52. See Murat Somer, *Moderate Islam and Secularist Opposition in Turkey: Implications for the World, Muslims and Secular Democracy*, 28 *THIRD WORLD Q.* 1271, 1272 (2007), available at http://www.bc.edu/content/dam/files/centers/boisi/pdf/f09/Moderate_Islam.pdf.

stability and political support for religious politicians in Turkey. It is more likely that *Shari'a* in Turkey will mean expanding religious freedom. Periodic attempts to enforce religious norms may occur, but if the Gezi Protests provide an example, this type of legal reform is likely to be met with significant resistance. This dynamic seems to indicate that, in terms of state law, *Shari'a* has been largely privatized. That is, it has become an issue of personal moral conviction. Even in terms of personal status (family law, inheritance, etc.), a province of law where some vision of *Shari'a* has been codified in most Muslim-majority countries,⁵³ the traditional rules and methods of Islamic jurisprudence are not enforced in Turkey.

53. See, e.g., Laura M. Thomason, *On the Steps of the Mosque: The Legal Rights of Non-Marital Children in Egypt*, 19 HASTINGS WOMEN'S L.J. 121, 137 (2008) (citing article 875 of the Egyptian Civil Code, which subjects inheritances to the provisions of *Shari'a* law).

[Vol. 41: 1101, 2014]

Does Shari'a Play a Role in Turkey?
PEPPERDINE LAW REVIEW
