

TURKEY'S HEADSCARF BAN

Suppressive rulings

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May 17 was a bloody Wednesday for Turkey's anti-scarf secularism. A lawyer charged into Turkey's Supreme Administrative Court and opened fire on a panel of five judges. One judge died of a bullet in his head. Four others were wounded. The assailant was purportedly acting as God's soldier to punish the panel for upholding a ban on Islamic headscarves.

Slaying judges is odious. No judiciary can function with dignity if judges are attacked for interpreting the laws. Judicial independence requires that judges be safe from retribution, particularly from practicing lawyers who appear before them. When licensed lawyers begin to kill judges for their judicial opinions, the judiciary is jolted at its core. The bloody Wednesday will leave a terrorist scar on the Turkish judicial system.

Terrorism must not be rewarded by a change in the policies it targets. Yet violence, despicable though it is, does provide insights into the morality of laws. When a system is suppressive, the people resist laws and the cost of law enforcement skyrockets. No legal system must ignore this simple truth. "Tell me how much they spend on law enforcement," I say to my students, "and I will tell you how good their laws are." Suppressing laws are inherently expensive.

Ignoring cost calculations, Turkey may respond to bloody Wednesday by fortifying courtrooms, buying helmets for judges and scanning lawyers before they enter judicial centers. Worse, Turkey may begin to spy on citizens to snare scarf terrorists. Some protective measures will inevitably be taken to deal with extremists who converse in the language of bullets. But Turkey must also analyze its costume obsessions. Turkey is a Muslim nation in which conservative citizens cannot be suppressed to abandon traditional Islamic clothes.

Costume obsessions have haunted the Turkish legal system ever since the Islamic Ottoman Empire was dissolved in 1923 and the new republic was mounted on the twin pillars of modernity and secularism. The Headgear Act of 1925 initiated the process of costume modernization on the erroneous presumption that traditional Fez caps, headscarves and beards had prevented Turkey from entering the modern world. The Dress Act of 1934 banned religious attires outside mosques and religious ceremonies.

Imposition of Western dress

Imitating European fashions, Turkey's secular modernity launched a campaign of imposing Western clothes on its conservative Muslim population. The Turkish army and

judiciary, the two most Westernized national institutions, have assumed the primary responsibility of enforcing the costume campaign.

In the 1980s, the costume campaign turned its eyes to the institutions of higher education. A new set of regulations banned Islamic headscarves in lecture theaters. The Supreme Administrative Court upheld the ban, declaring that the politics of Islamic headscarves are "contrary to the fundamental principles of the Republic." The court feared that any state concessions to Islamic dress would embolden religious forces to be even more assertive in politics. In 1988, a new law made it compulsory for students to wear "modern dress or appearance in the rooms and corridors of higher education, preparatory schools, laboratories, and multidisciplinary clinics." The law, however, introduced a small exception for stylish headscarves that students may choose to wear out of religious conviction. The Constitutional Court struck down that exception, declaring that no choice of dress may be exercised to undermine sexual equality, which only scarfless institutions can protect.

This past March, a panel of the Supreme Administrative Court, the same panel that was attacked on bloody Wednesday, ruled that a teacher who wore a headscarf outside the school could be denied promotion. "I condemn the decision," Prime Minister Recep Tayyip Erdogan said in his reaction to the ruling. But Erdogan is a religious man. He and his party have been accused of undermining the scarf ban.

The Islamic headscarf embodies a controversy that divides many European countries. But whereas non-Muslim European countries consider banning the headscarf in primary and secondary schools, Muslim Turkey is determined to oust the headscarf from colleges and universities. The contrast is stark. Several European states place no restrictions on the wearing of the Islamic headscarf.

In a recent case, the European Court of Human Rights upheld Turkey's laws that prohibit the headscarf in universities. But the court's jurisprudence is tricky. It does not mandate the ban: It simply defers to Turkey in Turkey's choice of its costume laws. Turkey has every right to repeal its obsessive dress laws, without offending the court.

It is to be hoped that Turkish superior courts and Turkish armed forces will let up on the costume secularism that undermines the freedom of religion but paves no easy road to modernity. Scientific development has little to do with dress codes. And a head without a scarf is not necessarily smarter.