Law No. 2004-228, enacted by the French government in March 2004 to ban conspicuous religious apparel in public schools, has given the headscarf new prominence on the front pages of the world’s newspapers and has rekindled debate within—and among—the world’s multicultural secular democracies. There is a certain irony in the headscarf’s emergence as a point of controversy. In principle, its purpose is to divert attention from the
woman beneath. Nonetheless, the headscarf sits at the center of numerous disputes, from the subordination of women and concerns about religious fundamentalism, to the protection of civil liberties and respect for multiculturalism.

Many of the issues raised by the headscarf are admittedly unconcerned with the women who wear them, just as many of the issues are beyond these women’s concern. But when state policies of strict secularism call for headscarves to be banned, the consequences extend further than the women who must choose between faith and participation in society. Often missing from the debate is consideration of strict secularism’s economic effects. Such policies have the potential to isolate orthodox communities from education and employment, which creates a subclass without an avenue for economic advancement. The despair and resentment that afflict stagnated communities provide an efficient breeding ground for fundamentalist demagogues and civil unrest and impose significant costs on the greater society.

This Comment examines these concerns as they are faced by two secular democracies: France, with the largest minority Muslim population in Europe; and Turkey, with Europe’s largest, and only, majority Muslim population. Although France and Turkey approach their secularist policies from quite different perspectives, the stakes are high for both. France is still coming to grips with a major cultural transformation that began with a wave of immigra-

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6 Turkey’s population is estimated at just under 69 million. CIA, supra note 5, at 547. Over ninety-nine percent of the Turkish population is Muslim, the majority of whom are Sunnis. Id.; see also David Shankland, Religion, in TURKISH TRANSFORMATION 79, 81 (Brian Beeley ed., 2002) (putting the Islamic population of Turkey “in the region of 99 percent”).

https://scholarship.law.upenn.edu/jil/vol26/iss2/3
tion from former colonies in North Africa over forty years ago.\footnote{See Cynthia DeBula Baines, Note, L'Affaire des Foulards – Discrimination, or the Price of a Secular Public Education System?, 29 VAND. J. TRANSNAT'L L. 303, 311-12 (1996) (describing France's policy of encouraging new immigrants to adopt French customs and noting that adherence to traditional Muslim female dress restrictions is "seen as opposition" to that policy).} Turkey, meanwhile, is struggling to join the advanced economies of Western Europe, despite a population that is largely uneducated and poor.\footnote{See Mina Toksöz, The Economy: Achievements and Prospects, in TURKISH TRANSFORMATION, supra note 6, at 141 (noting recent currency devaluations and economic crises in Turkey); The United Nations Children Fund ("UNICEF"), At a Glance: Turkey (listing education, especially of girls, among UNICEF's priorities for improvement in Turkey), at http://www.unicef.org/infobycountry/Turkey.html (last visited Mar. 15, 2005).} In both cases, governments have attempted to deal with these challenges through strict secularist policies, with mixed results.

Section 2 of this Comment looks at secularism's cultural and historical roots in Turkey and France. Section 3 examines the relationship between class and religion in order to understand who in society is affected by policies of strict secularism. Section 4 discusses the effects of headscarf bans and similar laws on access to employment and education. Finally, Section 5 questions whether strict secularism must be a cornerstone of each country's goals: cultural integration in the case of France; and economic advancement in the case of Turkey.
2. **The Roots of Secularist Policy**

2.1. **Clashes Between Secularists and Islamists in Turkey**

When General Mustafa Kemal "Atatürk" led Turkey through a nationalist uprising from within the crumbling Ottoman Empire at the close of World War I, he was convinced that a break from the sultanate past would be crucial to the new republic's success. The changes he imposed amounted to a cultural revolution, and central among them was an end to the unity of Islam and the state. More than an idealist, Atatürk was a pragmatist: the Ottoman Empire's defeat and occupation by the Allied powers were evidence of the West's rapid industrial and economic advancement in the last century, while in the East, the Sultans had ruled over a gradual decline. The cultural defeat of an Islamic empire was far more significant to Atatürk than the final military conquest; the Turks' reemergence would require Turkey to adapt to the superior culture of the West. Atatürk's design for the new country called

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10 "Atatürk," the name by which Kemal is remembered today, translates into "father of the Turks."


12 See id. at 60 (explaining that the Ottoman Empire had "raised Islamic law to a position of prime importance in state administration by combining the head of state, the sultan, and the highest religious leader, the caliph, in the personage of the padishah, who held the highest position in the Islamic view of world order.")

13 For an account of the Ottoman Empire's decline, see Jung & Piccoli, *supra* note 9, at 47-53.

14 Dokupil, *supra* note 11, at 65.

https://scholarship.law.upenn.edu/jil/vol26/iss2/3
for a secular Western European state, planted amongst the Ottoman ruins.\textsuperscript{15} Of his “six arrows of Kemalism”—secularism, republicanism, nationalism, populism, reformism, and étatism\textsuperscript{16}—none would be as conspicuous or resisted as secularism.\textsuperscript{17}

An old Turkish saying posits that government without religion is not possible,\textsuperscript{18} but Atatürk’s ambition in this regard may explain his enduring appeal among Turks. Islam played a central role in the direction and administration of the Ottoman Empire; the unity of mosque and state meant that both shared blame for the Ottoman decline. Atatürk’s new republic therefore deposed the caliph, as well as the sultan, abolished the sheri\textsuperscript{19}at courts, and adopted a Swiss-modeled civil code.\textsuperscript{20} Restrictive laws in the 1920s and 1930s were intended to prevent Islamists\textsuperscript{21} from posing a threat to the secularization. Atatürk insisted on abolishing religious schools and religious titles. His government placed restrictions on traditional religious dress; banned “religious societies” (although organizations for the purposes of prayer or religious practice were

\textsuperscript{15} Id.
\textsuperscript{16} Id.
\textsuperscript{17} See generally JUNG \& PICCOLI, supra note 9, at 72-81 (looking at Atatürk’s “iconoclasim and the pivotal role of secularism in the Kemalist project”). The secularization of the Turkish state was monumental, especially when one considers that the Ottomans had been accustomed to ruling an empire that spanned several religions and cultures. Turkey, by contrast, is composed almost exclusively of Muslims, many of whom could not understand why the new state should not reflect their newfound Islamic homogeneity. In fact, many of Atatürk’s revolutionary followers believed they were fighting on behalf of Islam against the West, certain that despite the necessary end to the sultanate, the caliphate would remain a principal foundation of government. Dokupil, supra note 11, at 67-68.
\textsuperscript{18} See Shankland, supra note 6, at 83 (observing that many of Turkey’s modern Islamists continue to support this assertion). On the other hand, the fervor with which the state supports secularism suggests that it may have evolved into a faith in its own right. See ÖZDALGA, supra note 2, at 1-2 (describing secularism as the “official ideology” of the Turkish state).
\textsuperscript{19} Dokupil, supra note 11, at 68-69.
\textsuperscript{20} The Islamist position has traditionally sought to re-establish an Islamic state in Turkey, although the term is sometimes used today to describe even moderate political parties that embrace a Muslim identity. See Turkey: Social Conditions, THE PRS GROUP, Oct. 1, 2004, available at LEXIS, News Library, Turkey Country Files (citing tensions between Islamists, who favor an Islamic regime, and the secularist followers of Atatürk); An Islamist Facing Islamic Terrorism, ECONOMIST, Nov. 29, 2003 (describing Prime Minister Tayip Erdoğan as an “Islamist at heart” who has pledged support for Turkey’s secularist orientation in the wake of Islamic extremism).
\textsuperscript{21} Dokupil, supra note 11, at 68-69.
still permitted); criminalized the teaching of Arabic script; and prohibited political parties from conducting religious activities or making religious propaganda. Kemalist secularism, however, did not necessarily mean a sharp separation of church and state; rather, the state learned to keep its hand in religion in order to control it.

The successes of Atatürk’s legacy also created new problems for the secularists. The post-1945 industrialization, urbanization, and education of millions of Turks helped to develop a new, more sophisticated class of Islamists. With improved literacy came greater demand for Islamic publications; the maturing democracy sprouted organized supporters of popular Islam, no longer dismissible by secularists as a declining characteristic of rural life. Since Atatürk’s death, the Turkish military has remained an enforcer of Kemalist policy, and the rise of Islamist influence in government has been a constant concern. Numerous times (in 1960, 1971, 1980, and 1997) the military intervened in government, either directly or through heavy pressure, but always with the purpose of “sav[ing] democracy.” More than once, the military claimed it was protecting the vulnerable secular state from a religious political party that had come to dominate the government.

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22 Perhaps Atatürk’s most staggering accomplishment was the complete recasting of the Turkish language into a Roman alphabet within the span of a few generations. See Jung & Piccoli, supra note 9, at 60, 189 (noting several changes in the cultural transformation of Turkish society and discussing the change to Latin script in detail).

23 Dokupil, supra note 11, at 69.

24 See Jung & Piccoli, supra note 9, at 78 (“The introduction of secularism did not separate state and religion, but was rather a move to take religion out of politics, while keeping the state involved in religious affairs.”); Dokupil, supra note 11, at 69 (citing the establishment of a President of Religious Affairs to administer mosques and appoint imams as evidence of state involvement in religion); Shankland, supra note 6, at 94 (explaining that the government began overseeing religious teaching in schools and mosques in the 1980s).

25 Özdalga, supra note 2, at 35.

26 Id.

27 Clement Dodd, Democracy and the European Union, in Turkish Transformation, supra note 6, at 241–42. But cf. Özdalga, supra note 2, at 89 (arguing that popular Islam in Turkey has never seriously challenged the modern polity).

28 See Erik Cornell, Turkey in the 21st Century: Opportunities, Challenges, Threats 71–74 (2001) (citing self-description by the Turkish military as “the representatives of a moral and self-sacrificing elite with a special responsibility for the destiny of the country and the people”).

https://scholarship.law.upenn.edu/jil/vol26/iss2/3
Despite the long shadow cast by Kemalist generals, the new political reality required compromise of Atatürk's restrictions on religious expression, even if at a very delicate pace. No act of legislature has ever directly prohibited the use of headscarves in public settings, but regulation by universities and civil agencies has become commonplace with the resurgence of Turkish Islamicism in recent decades.\(^{29}\) In 1982, the Turkish Council of Higher Education prohibited headscarves in all universities in response to pressure from the military following the 1980 coup.\(^{30}\) The policy proved difficult to implement and became the subject of negotiation and concession between secularists and Islamists for years until the parties ultimately agreed to leave the decision to the universities.\(^{31}\) The ban was eventually reinstated in 1997 after the most recent military intervention, following attempts by the Welfare Party and the nation's first Islamist prime minister, Necmettin Erbakan, to rapidly liberalize secular policy.\(^{32}\) Although the Welfare party and its immediate successor were both disbanded by the Turkish Constitutional Court, the current government, controlled by the Justice and Development Party ("AKP"), is considered a more moderate reincarnation of the failed Islamist parties.\(^{33}\) Prime Minister and AKP leader Tayip Erdoğan has made no attempt to downplay his own religiousness, nor the fact that his wife wears a headscarf.\(^{34}\) On the other hand, Erdoğan has announced that he will proceed cautiously regarding a possible lifting of the headscarf ban—a reminder that despite his party's popularity, the secular military re-

\(^{29}\) ÖZDALGA, supra note 2, at 39.

\(^{30}\) Id. at 41.

\(^{31}\) Id. at 43.

\(^{32}\) See Firdevs Robinson, Turkish Headscarf Ban Questioned, BBC NEWS, Nov. 7, 2002 (citing the fact that a member of parliament had worn her headscarf in the assembly as a reason for the Welfare party's censure by the Constitutional Court), available at http://news.bbc.co.uk/1/hi/world/europe/2416007.stm.

\(^{33}\) The 2002 elections, which swept the Justice and Development Party ("AKP") into power, were considered "a historical break in terms of providing to a socially Muslim party an opportunity to restructure the political landscape and expand the public sphere." YAVUZ, supra note 9, at 256. But despite winning popular favor on Islamic cultural identity, the new government is more moderate than Islamist: "The 2002 election thus was not about establishing an Islamic state or instituting Islamic law, but rather about redrawing the boundary between the state and society ... and reconstituting everyday life in terms of a shared vision of 'the good life.'" Id.

\(^{34}\) See Robinson, supra note 32 (reporting on Mr. Erdoğan's efforts during the 2002 campaign to "steer clear of controversial issues" raised by the headscarf).
mains entrenched in Turkish politics.35

2.2. French Secularism and the Citizen

Although the modern French secular state has existed only since 1905, just two decades before secularism arrived in Turkey, the French struggle with religion had been ongoing since the 16th century. Protestants were slaughtered at the hands of Catholics at the massacre of Saint Barthelemy in 1572, and Catholics at the hands of secular revolutionaries during the post-revolution Reign of Terror.36 Secularization in France progressed under pressure from two fronts. On one hand, there was a contest for political power, first between the Pope and the King, and later between Catholic loyalists and republicans.37 The republican mobilizations in France and Turkey to strip the clerics of their political influence are in some ways retellings of the same tale. But while the Turkish version might end there, with secularism held forcibly in place by the military, French separation of church and state was buoyed further by popular acceptance. Enlightenment-era principles on the inherent rights of individuals suggested that liberté and laïcité were tightly intertwined.38 The right of the citizen to have an identity separate from the Church sought its guarantees alongside freedom

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35 Erhan Ozturk, The Turban from Past to Present, TURKISH DAILY NEWS, Dec. 25, 1999, available at http://www.turkishdailynews.com/oldEditions/12_25_98/feature.htm. It remains to be seen how far the prime minister can pursue this policy. His popularity remains high, but the reforms required for European Union membership talks, as well as the current European political atmosphere in general, favor commitment to a secularist agenda. See Vincent Boland, AKP Poised for Easy Victory in Turkish Local Elections, FIN. TIMES (London), Mar. 3, 2004, at 8 (discussing the government's first test of popularity since coming to power).
36 See Alain Gresh, Aux origines des controverses sur la laïcité [On the Origins of the Controversy over Secularism], LE MONDE DIPLOMATIQUE, Aug. 2003, at 18 (citing the Catholic church as an ally of royalists in oppressing French protestants, as well as the Pope's desire to affirm his own sovereignty).
37 See Henri Pena-Ruiz, Principes fondateurs et définition de la laïcité [The Founding Principles and Definition of Secularism], OBSERVATORIE DU COMMUNAUTARISME, June 9, 2004 (drawing parallels between laïcité—a term that roughly translates to "secularism," but which emphasizes complete independence from the church, rather than mere separation—and fundamental human rights), at http://www.communityarisme.net/index.php?action=page&id_art=81736. Pena-Ruiz was a member of the Stasi Commission appointed to make recommendations regarding secularism to the French government. Id. See also infra text accompanying notes 48 and 49 (charting the evolution of French policy on headscarves in schools).
of expression and equality before the law. And where the Church had for centuries made distinctions between Catholics and all others, emerging republican ideals required that distinctions be set aside, lest they confuse one's paramount status as citizen.

Secularist policy became increasingly important to the French government by the second half of the 19th century, while the church's continued opposition to liberal values guaranteed that a formal break between church and state would be imminent. With the Separation Law of 1905, the government guaranteed free (if limited) exercise of religion, and announced that the Republic would neither recognize any state religion nor fund any religious activity. Leading up to the law were other major reforms that legalized divorce, secularized cemeteries, and established mandatory, non-religious public schooling. By the end of World War II, laïcité had become part of the French national identity, enshrined in the Constitution of 1946, assuring equality to all citizens regardless of belief. The gradual post-war decline of faith in France and elsewhere in Europe, however, meant that the Law of 1905 now rarely needed to flex its muscles.

However, with the influx of Muslim immigrants since decolonization and growing numbers of veiled women in schools and at the workplace, French complacency regarding the principle of secularism has ended. Schools and local governments have attempted to resolve the headscarf debate on their own for many years. Regional prohibitions on the headscarf in schools have been imposed sporadically since 1994, when the French education minister permitted schools to ban "ostentatious" religious symbols, although it was left to school principals to interpret the scope of the

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39 Id. See also Baines, supra note 7, at 310–311 (citing tolerance, universalism, and reason as the philosophical roots of French secularism).

40 Pena-Ruiz, supra note 38.

41 See Gresh, supra note 37 (describing pro-secular advances since 1870).

42 Dionne, supra note 3.


44 Gresh, supra note 37.


46 See Shankland, supra note 6, at 79 (citing as an example the decline of the Church of England).

In 2003, with the appointment of the Stasi Commission on Laïcité, the French government decided to look for a singular policy. President Jacques Chirac embraced the Commission’s recommendations, and quickly pushed forward a law that banned all headscarves, yarmulkes, large crosses, and other ostentatious displays of religion from classrooms. Prime Minister Jean-Pierre Raffarin rallied to support the law, proclaiming that headscarves are “a political challenge to the French republican ideal of freedom and equality.”

2.3. Contrasting Perspectives

Both Turkish and French policies of secularism developed from a mistrust of religion’s power to manipulate government, and both countries had been heavily influenced by religious institutions until the point of their respective republican revolutions. A key distinction, however, may be the nature of the populations upon which secularist policies are imposed. In France, as in most of Western Europe, the church’s influence is waning, but for most Turks, the mosque is still quite important and relevant. Turkish scholar David Shankland frames the question in Turkey as “how may the expansion [of faith] . . . be channeled, controlled and led so

48 Id.

49 The Commission was formed on July 3, 2003 by President Chirac, who appointed Bernard Stasi as its president. See Lara Marlowe, Saving Muslim Women from a Piece of Cloth, IR. TIMES, July 12, 2003, at 13 (reporting on the Commission’s headscarf investigations).


53 Shankland, supra note 6, at 79.
as to satisfy the twin necessities of the freedom of religious belief and the prevention of the dominance of their version of religion over other, less numerous or less forceful forms of faith?"  

By comparison, in France, the intensity of faith has noticeably shifted to the Muslim population, often raising the concern of the increasingly skeptical, or at least the unpracticing, majority. While Turkish secularist law extends from a minority (the government and the military) over the majority, French secularist law extends from the majority over a minority. But both countries have agreed that when the principle of secularism is not voluntarily adopted by their respective Muslim populations, it must be imposed by force for the sake of national integrity. This position of strict secularism may present its own dangers.

3. **CLASS AND RELIGION: WHO IS AFFECTED BY SECULARIST POLICIES?**

It would be too great a simplification to assume that only those who are religious orthodox must reconcile with secularist restrictions, or even that they are necessarily affected at all. The intersection of orthodox observance and economic standing draws a basic grid on which we can begin to plot the impact of secularist policies. First, not all members of a religious community practice in the same way or for the same reasons. Second, citizens depend

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54 *Id.*

55 This Comment assumes that headscarves are worn because of a personal and voluntary faith. This is not always the case, particularly in families and communities where women have little autonomy. *See generally* Kathleen Miller, *The Other Side of the Coin: A Look at Islamic Law As Compared To Anglo-American Law – Do Muslim Women Really Have Fewer Rights Than American Women*, 16 N.Y. INT'L. L. REV. 65 (2003) (discussing women's autonomy in Muslim countries around the world). However, there is also evidence that today in France, many Muslim women who wear headscarves are choosing to do so despite their mothers' efforts to integrate without wearing it. *See* Jeremy Landor, *Unveiling France*, AL-AHRAM WEEKLY, Dec. 25-31, 2003 ("Their father . . . has tried everything to dissuade his daughters from wearing headscarves."), at http://weekly.ahram.org.eg/2003/670/in13.htm. Turkey is seeing a similar phenomenon. *See* Feride Acar, *Women and Islam in Turkey*, in *WOMEN IN MODERN TURKISH SOCIETY* 46, 60-64 (Sirin Tekeli ed., 1995) (describing the "incomprehensible anomaly" of educated women from less conservative families choosing to adopt the headscarf and Islamist values despite familial concern). Protesting secularist policies may be evolving into a new form of feminism. *See* Yeşim Arat, *Feminism and Islam: Considerations on the Journal Kadin ve Aile*, in *WOMEN IN MODERN TURKISH SOCIETY* 66, 75 (Sirin Tekeli ed., 1995) (arguing that in modern Turkey, where there is no imminent threat of an Islamic state, "women's religious activism can open new avenues of power and vistas beyond the familial realm.").
on state social services, such as education or employment, to varying degrees. Therefore, in one quadrant of our grid we find those for whom social services are dispensable but religious observance is not. For this group, secularist laws such as a headscarf ban do not require a change in behavior or the sacrifice of faith, but simply enrollment in private school or employment in the unregulated private sector. Another quadrant of the grid hosts citizens who value social services above religious observance, and would show little grief in removing their headscarf to enter a university building or a courtroom. The quadrant that hosts citizens indifferent both to religion and social services need not concern us at all. But the last quadrant is the most troubling, home to those citizens who are inflexible along both the religious and economic axes. Countries must identify this segment of the population when considering the impact of secularist policy: people for whom faith mandates orthodox observance, but have few or no other alternatives when the state mandates compliance.

3.1. Religion and Class Patterns in Turkey

Although 60% of Turkey’s population now lives in urban centers, the rest—nearly thirty million people—live in largely rural and economically depressed areas.\textsuperscript{56} Turkey’s GDP per capita in 2003 was $6,700, but this data is somewhat misleading given the concentration of wealth.\textsuperscript{57} By some estimates, average annual incomes have remained stagnant at $2,500–$3,000 for the last decade,\textsuperscript{58} with roughly 16% of families living below the poverty line.\textsuperscript{59} Forty percent of the population still derives its income from agriculture,\textsuperscript{60} and there is an abundance of unskilled labor.\textsuperscript{61} In the eastern part of the country, which remains quite rural and poor,

\textsuperscript{56} UNICEF, supra note 8. See also EROL ÇAKMAK, AGRICULTURAL POLICY REFORMS AND RURAL DEVELOPMENT IN TURKEY (Sept. 3, 1998) (citing the statistic that in 1994, rural average income per household was 42% lower than urban households), available at http://www.worldbank.org/mdf/mdf2/papers/econdev/cakmak.pdf.


\textsuperscript{58} Toksöz, supra note 8, at 141.

\textsuperscript{59} Çakmak, supra note 56.

\textsuperscript{60} Toksöz, supra note 8, at 143. The Political Risk Services ("PRS") Group estimates the figure is closer to 45%. Turkey: Labor, THE PRS GROUP, Oct. 1, 2004, available at LEXIS, News Library, Turkey Country Files.

\textsuperscript{61} Turkey: Labor, supra note 60.
birth rates are double that of Turkey's western region, and infant mortality rates are also higher. 62 Unemployment for 2003 is estimated at 12%, 63 with underemployment at 6%. 64 Inflation rates, while dropping from peaks in the high double digits to 18.4% in 2003, 65 remain problematic.

Formal education in Turkey still lags behind European standards, particularly for girls. According to a United Nations Children Fund ("UNICEF") report, one in eight girls is out of school. 66 "The tradition of placing low values on girls and women—especially those from poorer families in urban settlements and rural areas—coupled to a high rate of illiteracy are primarily to blame." 67 The national government has recognized that the public education system needs major improvement in order for Turkey to reach its economic goals. Initiatives passed in 1997 and 2002 68 aimed to build more classrooms, encourage attendance, and extend the years of compulsory schooling from the fifth grade to the eighth grade. 69 Still, one million children are working rather than attending school, and most of the country's rural villages still do not have a school that goes beyond grade five. 70

The lack of a large and influential middle class is an obstacle to Turkey's economic progress. 71 As a result, there is a "cultural divide between a ruling westernized elite and the deeply religious masses in the countryside and in the small towns [that has] estab-

62 Brian Beeley, People and Cities: Migration and Urbanization, in TURKISH TRANSFORMATION, supra note 6, at 40.
63 Turkey: Labor, supra note 60.
64 CIA, Turkey, supra note 57.
65 Id.
66 UNICEF, supra note 8.
67 Id.
69 Id.; see Douglas Frantz, As Turkey’s Schools Open, a Million Are Left Out, N.Y. TIMES, Sept. 15, 2002, at A4 (discussing the numerous factors that contribute to the decline of school attendance throughout Turkey).
70 Frantz, supra note 69.
71 See Toksöz, supra note 8, at 143 (explaining that despite the recent presence of a middle class, political influence has remained elusive because of the large number of agricultural laborers who maintain influence on most legislation).
lished . . . one of the most outstanding societal cleavages of Turkish society and polity." 72 In rural areas, where family and community are social pillars, religion has proved much more resistant to government attempts to secularize and modernize the population. 73 Even as the population continues to shift toward urban centers, ties to religion remain strong. Turkish political divides reflect this phenomenon: "The Islamist-secularist divide reflected the traditional centre-periphery one . . . [but now] parts of the cities themselves have become culturally and socially ruralized with the influx of immigrants from the countryside." 74 Cities are becoming increasingly populated with poorer Islamists, 75 while the more secular middle class remains politically weak. 76

The lack of an influential middle class is not uncommon among developing countries; but in Turkey the phenomenon may have historical as well as economic roots. Democracy in Turkey was largely the vision of Atatürk, with its protection entrusted to his faithful in the military. While the political dialogue has involved the secular generals and popular Islamists, the secular bourgeoisie has been able to rely on the military without itself shouldering the burden of Atatürk's legacy.

3.2. The Muslim Minority in France

Precise data on the economic situation of Muslims in France is difficult to come by. The government does not collect information on ethnic or religious minorities, in part because it offends the republican ideal of equality of the citizen; and in part because of residual sensitivity related to the uses to which both occupying Nazis and the Vichy Government put the records collected on French Jews during World War II. 77 Most reports are anecdotal or assem-

73 Id.
74 William Hale, Democracy and the Party System in Turkey, in TURKISH TRANSFORMATION, supra note 6, at 179.
75 See Turkey: Social Conditions, supra note 20 (citing Turkey's widening income disparity and the success of Islamists in gaining supporters among the poor in Ankara and Istanbul).
76 Toksöz, supra note 8, at 143.
77 See HAUT CONSEIL À L'INTEGRATION [HIGH COUNCIL ON INTEGRATION], L’ISLAM DANS LA REPUBLIQUE [ISLAM IN THE REPUBLIC] 25 (Nov. 2000) (observing methodological difficulties due to the fact that "France does not authorize produc-
bled by nongovernmental organizations.

According to a report prepared by the Franco-British Council, Muslim immigrants in France “tend to be found at the most disadvantaged levels of society” both in terms of socioeconomics and education.\textsuperscript{78} Muslim communities often show signs of distress familiar to struggling minorities: crime, unemployment, broken families, and abuse of women.\textsuperscript{79} For many Muslims in France, however, the situation has an added burden: the cultural demands of the internal and external communities are at odds. One woman, a 24-year-old daughter of Moroccan immigrants, explained,

[In my community] I feel safe, because everyone is Arab. But the France outside is a France of racism, and the racism has gotten worse since Sept. 11 . . . . If you dress with a veil, no one here bothers you . . . [but] the French, when they see a woman who wears the veil, they think “terrorist.”\textsuperscript{80}

Many new or recent immigrants find themselves isolated in public housing high-rises that are plagued by crime, and it is often in these communities that fundamentalist Islamic leaders look for young followers.\textsuperscript{81} Unemployment in these projects is frequently double the national average, at nearly 20%.\textsuperscript{82} This is not to suggest that Islam and poverty are co-dependent; rather, it explains why many immigrants see little incentive to embrace the French government’s policy of integration, and with it, secularism. Religion becomes an identifying cultural tie amongst those facing similar challenges.

For second- or third-generation immigrants, there is the additional burden of feeling distanced from both the old and the new culture. Here, too, religion plays an important role. Many of the young women in headscarves are the French-born children of im-

\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Neo Hui Min, Integrating the Migrants, STRAITS TIMES (Singapore), Mar. 2, 2004, available at LEXIS, News Library.
migrant parents, facing an identity crisis unique to their generation: their parents' values have become foreign as the family settles into a new country; but acceptance from their classmates remains elusive.\textsuperscript{83} Islam offers them both identity and a sense of belonging.\textsuperscript{84} Others are frustrated that the nation is slow in turning its attention to the plight of many of its Muslim citizens and residents. “For some second-generation migrants, wearing a headscarf or turning to militancy is a way of expressing anger over poverty and unemployment.”\textsuperscript{85} Unless conditions improve, religious militancy, even if only expressed through traditional Muslim dress, will likely gain appeal.

4. \textsc{Socioeconomic Impacts of Strict Secularism}

4.1. \textit{Access to Education and Professions in Turkey}

In a report on Turkish education for an Islamist news magazine, Yusuf Progl\textsuperscript{er} offers the case study of Nuray, a student at Yildiz University in Istanbul, for whom the consequences of the government’s secularist policies are plain: “If I cover myself they won’t let me go to school, and I will not be able to get a job. . . . Even though my academic numbers are high, if I continue to wear my scarf, I will not be able to continue my education.”\textsuperscript{86} Nuray, however, is in a relatively strong situation. She has already completed secondary school; and thus far she has found ways to allow her religious beliefs and the state’s secularist requirements to coexist.\textsuperscript{87} This is characteristic of women from middle-class families in Istanbul or other cities.

Poorer, rural, or more strictly orthodox families are affected by the state’s secularist regulations in more profound ways. For thousands of women, headscarf prohibitions require abandoning hopes for joining professional-class careers in medicine, science or educa-

\textsuperscript{84} Id.
\textsuperscript{85} Min, \textit{supra} note 82.
\textsuperscript{87} See id. (reporting that many Turkish schoolgirls wear their headscarves outside of school, thus only observing the prohibition while attending class).
Some families choose to send their daughters to schools in other countries. For Prime Minister Erdoğan, this means institutions in the United States or Great Britain. Other families are not so fortunate. Recent investigations into the November 2003 terrorist attacks in Istanbul led Turkish investigators to a Turkish Islamic theological school located in Syria. Many of the detainees picked up by the investigation, and later released without charges, were schoolgirls whose families sent them abroad to study so that they could wear the Islamic headscarf and otherwise avoid the constraints of Turkey’s strict secularist regime. The concern among nongovernmental organizations watching the situation is that many families choosing to send their children abroad to maintain religious practices cannot afford the options available to their Prime Ministers and are forced to turn to less costly, more local, and perhaps more radical alternatives. Studying abroad in impoverished Islamic countries, children from such families will find greater contact with zealots and other radical elements. Families who send their children to Turkey’s own state-run religious imam hatips schools face another barrier: graduates are barred altogether from entering public universities. Although imam hatips schools do not show signs of Islamic militancy among their pupils, there is the fear that the discrimination against them may prompt parents to send their children to what Turkey’s Foreign Minister Abdullah Gul called “radical, underground establishments.” But attempts by the Erdoğan government to ease the restrictions on religious school graduates met stiff resistance.

Another serious effect of the headscarf ban, particularly in rural

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89 See Robinson, supra note 32 (remarking that the Turkish prime minister chose to send his daughters abroad for their education).
90 Veiled Threats, ECONOMIST, Dec. 6, 2003, at 46.
91 Id.
93 See id. (describing boys and girls mingling freely, studying the same subjects as in secular school, and spending their free time watching music, television, or surfing the Internet).
94 Id.
95 Id.
areas, may be that many families will simply choose not to send their daughters to school at all. In one case study, a Turkish woman recalls that her family never wanted her to go to primary school; she had to struggle to get their permission at each step of her educational advancement.\(^{96}\) When she finally reached university, she faced opposition from the school’s administration due to her headscarf.\(^{97}\) Another woman profiled in the same study highlights the relationship between religion and economics: “I would rather take any kind of job [than remove the veil], like looking after children or working as a cleaner. Believe me, I have very honestly considered such simple occupations as [a way] out.”\(^{98}\)

Turkey’s secularist policies are not limited to schoolgirls and university students. The headscarf is banned in all public institutions, from courthouses to the parliament building.\(^{99}\) Perhaps the most sensational clash of secularism and religion involved former Istanbul Member of Parliament, Merve Kavakci, who in 1999 arrived for her swearing-in wearing a headscarf. When she refused demands to leave the chamber, she was aggressively escorted outside by other members of parliament.\(^{100}\) In another example, a lawyer was dismissed from the Turkish Bar for wearing her headscarf to trial.\(^{101}\) Neither of these women has suffered irreparable harm as a result of their defiance,\(^{102}\) but the policies’ effects do not stop at women who would seek to become lawyers or politicians. By one estimate, 65% of Turkish women wear the headscarf.\(^{103}\) The Islamist organization Mazlumder, which supports women impacted by the government’s secularist policies, claims that since the ban was reinstated in 1997, 10,000 women in Istanbul have been excluded from universities.\(^{104}\) The result is that opportunities, or at

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\(^{96}\) ÖZDALGA, *supra* note 2, at 55.

\(^{97}\) See id. at 52-54 (describing a university’s practice of barring women in headscarves from taking final examinations).

\(^{98}\) Id. at 72.

\(^{99}\) Ozturk, *supra* note 35.


\(^{101}\) Ozturk, *supra* note 35.

\(^{102}\) See id. (noting that Merve Kavakci has since moved to the United States, while the dismissed lawyer, Emine Aykenar, began writing for a national newspaper).


\(^{104}\) Id.
the very least incentives, for economic advancement through education are reduced. Islamist women who are prepared to enter university often come from families where the parents have little education beyond primary school.\textsuperscript{105} Their fathers are frequently workers, shopkeepers, or low-ranking civil servants.\textsuperscript{106} For these women, the failure of the government to respect their identity is more than merely frustrating; it impedes the social advancement of the lower classes and the expansion of a broad-based Turkish middle class.

Although the headscarf is the most commonly attacked symbol of religious expression, secularist policies do not affect women exclusively. One report found that 18 officers and NCOs had been purged from the Turkish military on account of their "excessive religious zeal."\textsuperscript{107} Members of the armed forces are also under significant pressure to ensure their wives do not wear headscarves, or at least, are not photographed wearing them.\textsuperscript{108} The Supreme Military Council issued this notice to an army major: "Although you were informed on the change concerning modern dress . . . [in] the lodgings' zone, we determined your wife was not modernly dressed both in the entrance and in the area of the lodgings. I am warning you on the issue. If you repeat, we will take the necessary action."\textsuperscript{109} A number of similar cases were reported by the Turkish Daily News in 2003, many of them ultimately resulting in the soldiers' dismissals. According to the author of the report, the dismissals had negative impacts on the soldiers beyond the loss of their jobs; they also lost community status and the right to receive social aid.\textsuperscript{110}

4.2. Reinforcing Minority Isolation in France

In France, the effects of secularist policies are less widespread because they touch a much smaller population. But as this population grows, and as new laws are more actively enforced, the con-

\textsuperscript{105} Acar, supra note 55, at 54–55.
\textsuperscript{106} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
frontation could be significant. The effects are additionally complicated because of the often-tense relationship between the Muslim and non-Muslim cultures in France. This became apparent when a bank security guard in Paris refused to allow a customer to enter because she was wearing a headscarf.\textsuperscript{111} Although the guard believed he was simply enforcing an anti-robbery bank regulation that required removal of all head coverings, the incident sparked outcry from Muslims already frustrated by the recommendations of the Stasi Commission.\textsuperscript{112}

Tension regarding the headscarf has been building for years. In 1997, twenty girls from Lille were expelled from school for wearing headscarves. In response, their parents opened the country’s first private Muslim school, although they faced significant administrative hurdles and scrutiny.\textsuperscript{113} In 2003, a French-Algerian woman was suspended from her government job for wearing a headscarf.\textsuperscript{114} She sued the government to be reinstated, declaring at a tribunal hearing, “I like my profession and I am a Muslim. I don’t want to have to choose between the two.”\textsuperscript{115}

Until 2004, state policies of secularism had been enforced on a case-by-case basis, with particularly zealous secular teachers or local government administrators leading the charge against the headscarf. The new law, however, requires teachers in all regions to enforce the ban.\textsuperscript{116} The result may be that a number of orthodox Muslim schoolgirls and families will be faced with a sudden and difficult choice: whether to forgo the headscarf or the public school system. Because the French national education system is so closely identified with cultural integration, its abandonment by a large number of conservative Muslims would be a significant set-


\textsuperscript{112} Id.

\textsuperscript{113} See Laurence Peter, Headscarf Row Vexes Lille Muslims, \textit{BBC News}, Dec. 19, 2003 (noting that the director of the school believes more Muslim schools may open elsewhere in France as a result of the new law), available at http://news.bbc.co.uk/1/hi/world/europe/3333047.stm.

\textsuperscript{114} Marlowe, \textit{supra} note 49.

\textsuperscript{115} Id.

\textsuperscript{116} See French Senate Votes Ban on Religious Insignia in State Schools, \textit{Agence France Press}, Mar. 3, 2004, LEXIS, News Library, AFP File [hereinafter AFP] (discussing the passage of the bill as well as the support and opposition surrounding the legislation).

https://scholarship.law.upenn.edu/jil/vol26/iss2/3
back to goals of integration.\textsuperscript{117} Although there have been large demonstrations in response to the legislation,\textsuperscript{118} there is no clear indication of what the long term effects of its passage will be on France’s Muslim population. But to the extent that the law resembles a broad backlash against Muslims by the majority,\textsuperscript{119} even integration-minded, progressive French Muslims will find it harder to promote compromise amidst growing resentment and militancy.\textsuperscript{120} If Turkish experience serves as a guide, it may not be realistic for the French government to assume that Muslim women will remove their headscarves rather than seek alternatives outside the mainstream social structure. And if predictions that the new regulations will soon be extended to hospitals and public offices hold true,\textsuperscript{121} the burdens on those who refuse to comply will mount.

5. DO STRICT SECULAR POLICIES DO MORE HARM THAN GOOD?

The conventional wisdom in both Turkey and France is that requiring populations to secularize will allow them to fully participate in modern society, while keeping in check the more extreme forces that tend to push for Islamic law or further isolate pockets of the population. In Turkey, as recent terrorist attacks have demonstrated, the opposition to the secular government is quite real.\textsuperscript{122} In France, the concern is not that fundamentalist or radical Muslims would begin to pressure the national government, but rather that they would displace local governments in the administration of isolated communities, essentially halting efforts to integrate immi-

\textsuperscript{117} See Sciolino, supra note 79, at 59 (citing integration as a prime objective that must be pursued).

\textsuperscript{118} See Henley, supra note 51 (reporting that 30,000 to 40,000 Muslims took part in demonstrations against the ban in cities around France).

\textsuperscript{119} See AFP, supra note 116 (estimating that nearly 70 percent of French people support the new law favoring strict separation of state and religion in public institutions).

\textsuperscript{120} See Astier, supra note 47 ("[M]odernisers . . . say a ban would only strengthen the militants, and point out that the principles of secularism are not set in stone and can accommodate exceptions."); see generally, FARHAD KHOSROKHAVAR, L’ISLAM DES JEUNES [ISLAM OF THE YOUTH] (1997) (discussing the indoctrination of young Muslims in the French suburbs).

\textsuperscript{121} See The War of the Headscarves – Integrating Minorities, ECONOMIST, Feb. 7, 2004 (predicting that such laws will follow given the popularity of the school regulation in parliament).

\textsuperscript{122} However, radical opposition does not appear mainstream. See An Islamist Facing Islamic Terrorism, supra note 20 (reporting that few moderate Turks approve of al Qaeda, which claimed responsibility for the Istanbul bombings).
grant populations. It is not obvious, however, that applying policies of strict secularism necessarily helps either country address these concerns.

To many critics, such policies have the opposite result— isolating religious populations in economic and cultural exile. As one editorial proclaimed against French schools that had independently decided to expel veiled Muslim students, "[t]he punitive approach of some schools can only 'accentuate the injustices which working class youth suffer in the districts where they live, especially those who are children of post-colonial immigration.'" Another criticism levied against secularist policies is that they address the wrong issue, attacking neutral—but conspicuous— displays of faith, while ignoring the real problems facing the people who wear them. Attacking the proposed law, French activists wrote in an open letter to the government:

Veiled pupils . . . are a scapegoat for the problems in French schools: bad behaviour, a high level of truancy and sexist and racist insults and graffiti. . . . 'The main problems are socioeconomic and political: liberalisation of the economy, mass unemployment, instability of employment, growing social control and security-driven policies, racial discrimination and social inequality between men and women . . . .' Following the street protests, French Muslim leader Karim Bozid declared, "'The headscarf question is political manipulation' . . . 'The real issues for us are high unemployment in the Muslim community, violence and harassment, discrimination in

123 There is also the concern that the growing radicalism found in poverty-stricken Muslim communities, if left unchecked, could provide a source for terrorist recruitment. See Sciolino, supra note 52 (reporting that some French politicians claimed that the law was necessary to "staunch the spread of radical Islam from outside"). But it was the law's passage that has caught the eye of militant Islamic organizations. See AFP, supra note 116 ("French anti-terrorism experts were taking seriously a warning from bin Laden's right-hand man Ayman al-Zawahiri who said . . . that the headscarf ban was in the same league as 'the burning of villages in Afghanistan, the destruction of houses over the heads of their inhabitants in Palestine, [and] the massacre of children and the theft of oil in Iraq.'").

124 Landor, supra note 55 (quoting an open letter opposing the ban published by a group of intellectuals and activists).

125 Id. (quoting the same open letter).
jobs and housing. The strife is only just beginning, believe me.’’

Students who feel pushed away by secularist policies may not be without alternatives, but these alternatives do not further the government’s goals. Foreigners have shown themselves willing to finance Islamic education in both France and Turkey. But foreign-supplied education cripples the government’s role in overseeing educational standards. And in France, where integration depends on individuals placing their identity as French citizens above any ethnic or religious classification, secularist policies may strengthen distinct nonintegrated identities. This possibility has not been missed on some French politicians debating the proposed law. François Bayrou of the centrist party UDF declared, “I had my reservations, and I still have them, about a law that can only pour oil on the fires of extremism . . . . In the aim of fighting extremism, we are in fact abandoning the field.”

French supporters of strict secularist policy believe that the headscarf ban will do more to prevent the splintering of society than critics realize. They cite the demands by some Islamic leaders for additional accommodations, notably single-sex sessions at public swimming pools and other forms of state-sanctioned gender segregation. But these arguments ignore the fundamental importance of public education in both integrating diverse populations and in reducing the likelihood of economic isolation. Like Turkey, this point is particularly important because the risks are significant. If Islamic communities do not feel that the government is making an attempt to meet them halfway, what incentives do they have to sacrifice other tenets of their faith in order to integrate?

In Turkey, where the distribution of income is already among the most imbalanced within Europe, strict application of secular policy does little to bridge the gap between the classes. Backlash

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126 Henley, supra note 51 (quoting Muslim leader Karim Bourgid).
127 See Le Breton, supra note 78, at 4 (reporting that in France, 95% of imams come from abroad, with theological training of “dubious quality”); Veiled Threats, supra note 90 (discussing the foreign presence of Islamic support in these nations).
128 See Le Breton, supra note 78, 4–6 (describing the French approach to integration that avoids multiculturalism and focuses instead on individual endeavor).
129 Henley, supra note 51.
130 See Marlowe, supra note 49 (quoting Alain Juppé, head of Jacques Chirac’s political party, as supporting the ban in order to prevent “apartheid”).
131 Id.
132 CIA, Turkey, supra note 57.
against the current regime is a valid concern, given the support for a more Islamic (or Islamist-sympathetic) government among the population. Turkey’s reliance on military-backed hardliners to enforce the secular agenda in Ankara has been effective, but groups like Human Rights Watch have declared that Turkey’s flat prohibition on headscarves violates principles of human rights no less than the forced adoption of headscarves in Iran or Saudi Arabia.\(^{133}\) Furthermore, the military backstop may no longer be an option. In 2004, constitutional reforms passed by the Turkish Parliament included the removal of military representatives from the Council of Higher Education.\(^{134}\) As a European Union candidate, Turkey is expected to further reduce the military’s capacity for intervention in government.\(^{135}\)

Whether Turkey’s current policies against religious expression would satisfy Atatürk’s expectations is difficult to judge. During the fall of the Ottoman regime, radical westernizers believed that a wholesale importation of European civilization was the only path for a return to prosperity. Secularism was an integral part of early-twentieth-century Western Europe; to exclude secularism from the package was inconceivable.\(^{136}\) This perspective contrasts with modern-day concerns about growing fundamentalism in Turkey and elsewhere in the Muslim world. There is no Ottoman Empire to return to; the fundamentalist threat, therefore, is a different one. Modern demands by extremists for an Islamic state are not simply echoes from the sultanate past. But while the world has changed, Turkish policies on religion have been surprisingly stubborn. Modernization and economic advancement cannot continue if

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133 Human Rights Watch, supra note 88, at 23–24. The current Turkish constitution, written after the 1980 military coup, protects human rights such as freedom of expression, but states that such rights cannot be used to violate the integrity of the state or impose a system of government based on religion. Prohibition on headscarves has long been considered protected under that clause. Turkey: Government & Political Conditions, THE PRS GROUP, Oct. 1, 2004, available at LEXIS, News Library, Turkey Country Files.

134 Human Rights Watch, supra note 88, at 5.

135 See European Union: Turkey’s Entry into the EU, INT’L HERALD TRIB., Oct. 29, 2003 (citing far-reaching reforms to reduce the military’s day-to-day management of the country), available at http://www.iht.com/articles/115573.html.

136 See ÖZDALGA, supra note 2, at 9 (quoting one Ottoman westernizer as saying, “[C]ivilization means European civilization and it must be imported with both its roses and its thorns.”). But see N.S. RAJAMAN, SECULARISM: THE NEW MASK OF FUNDAMENTALISM 5 (1995) (criticizing the importation of secularism by non-European countries because secularization was Europe’s answer to Church tyranny and not necessarily an appropriate response for other cultures or regions).
much of the country feels isolated by secularist policies, particularly when there is a fundamentalist movement at home and abroad that is happy to receive them.

To ensure that future governments remain moderate, Turkey's best insurance will be to soften its secularist policies, reducing the political ammunition available to radical parties. Traditionally, hawkish generals have led the charge that laws such as the headscarf ban must be enforced "to curb the religious militancy that the headscarf symbolizes." But if the 2003 suicide bombings jolted awareness that Turkey is a target of al Qaeda-style fundamentalism, there is much to remind Turks that they have achieved relative stability as a democracy. The widely popular AKP government has strived to present itself as a moderate Islamic party, thus far able to bridge gaps between Islamists and the military, as well as between proreform EU supporters and their skeptics. But the government's popularity may have less to do with its centrism than with its perception as less corrupt and more concerned with the welfare of the Turkish population than more secular rivals. The Political Risk Services ("PRS") Group predicts a stable economic and political outlook for Turkey, describing AKP as "fairly competent at managing the country's economy, and [receiving] generally high marks from international institutions such as the IMF." The return to positive economic growth and lower inflation is more than a sign of stability; the data suggest that a loosening of some secularist policies may do much to ensure that future growth touches the breadth of the population. In the current climate, it is unlikely that the headscarf would symbolize much at all—perhaps conservatism, but hardly militancy. And easing the ban would help to unite the millions of Turks who embrace their own country's brand of moderate Islam against more radical ele-

137 Veiled Threats, supra note 90.
138 See An Islamist Facing Islamic Terrorism, supra note 20 (calling the bombings Turkey's "worst-ever terrorist attacks").
139 See Turkey: Most Likely Regime Scenario, supra note 107 (citing the strengths of a centrist coalition in leading a stable Turkey and making forecasts over the short-term as to the probabilities of political unrest).
140 Id.
141 Id.
6. CONCLUSION

Both France and Turkey claim to recognize the delicacy required of secularist policies. But the headscarf is more than a politically sensitive issue. Strict secularist policies disproportionately upset the weakest communities: recent immigrants and members of the lowest socioeconomic bracket, who must choose between faith and basic participation in society. Proponents of these policies assume those affected will choose school or employment over faith, but there is much evidence that suggests otherwise. Alternatives available to these communities, particularly foreign or mosque-run schools that are beyond state observation, may only aggravate the problems. The result may be economically isolated communities that pose severe liabilities for the larger society.

Of course the hope in both countries is that moderate Muslims will help bridge the cultural and political gap between secularists and Islamists. Unfortunately in France, the headscarf ban and the accompanying debate in the run-up to its passage, has undercut the ability of moderates to support the government. In Turkey, Erdoğan's government has more potential, but with pressure on one side from the secular military, and on the other side from European political opinion, the headscarf ban will likely remain in force for the near future.

143 See An Islamist Facing Islamic Terrorism, supra note 20 (noting that most Turks embrace a moderate Islam and that few approve of al Qaeda terrorism).

144 Pushing for the bill's passage, Raffarin claimed it would "send a powerful and quick signal," while not discriminating against religions. AFP, supra note 116. But it has been hard for politicians to sway the growing opinion in Muslim communities that the government is "Islamophobe." Id. Raffarin, in particular, has used rhetoric that appeared both patronizing and unsympathetic to France's Muslims. See Sciolino, supra note 52 (quoting the prime minister referring to France as "the old land of Christianity," urging French Muslims to "behave like good citizens," and advising them, "[f]or the most recently arrived—I'm speaking here of Islam—secularism is a chance, the chance to be a religion of France").