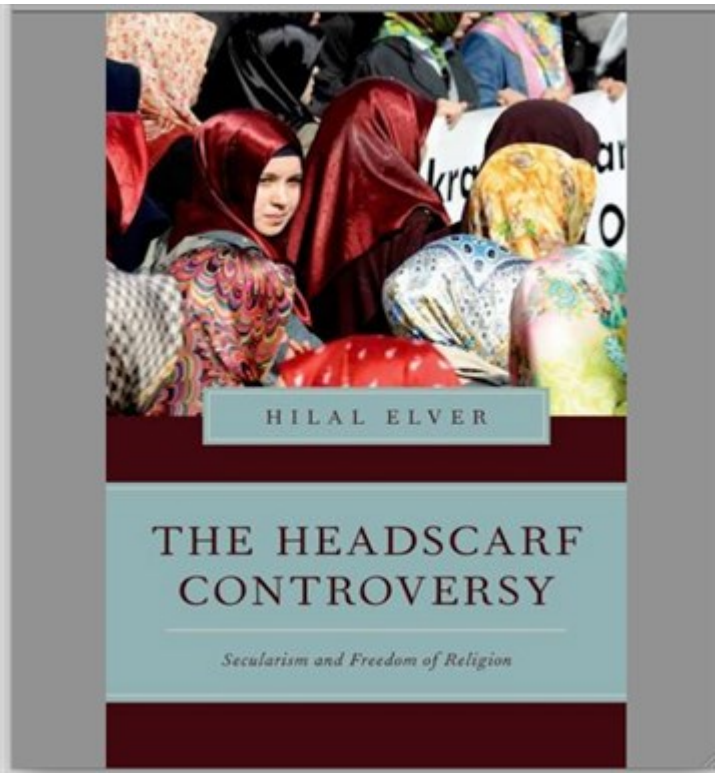
New Texts Out Now: Hilal Elver, The Headscarf Controversy: Secularism and Freedom of Religion

By : Hilal Elver

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[Cover of Hilal Elver, \"The Headscarf Controversy: Secularism and Freedom of Religion.\"]

Hilal Elver, *The Headscarf Controversy: Secularism and Freedom of Religion*. New York and Oxford: Oxford University Press, 2012.

Jadaliyya (J): What made you write this book?

Hilal Elver (HE): My experience in Turkey in relation to the headscarf is the main reason for writing the book. Turkey is very much a divided society: ninety-nine percent of the population is Muslim and it is a significantly religious society, yet it has also developed a secular legal order and social structure. I felt this duality even in my own family environment. My mother was an educated woman and a devout Muslim. For most of her life, at least when I was growing up, I witnessed the difficulty she experienced in trying to fit into the Turkish secular environment.

Then, in the early 1990s, while I was teaching at a law school in Ankara, I witnessed the strict implementation of the headscarf ban in universities. This gave me first-hand contact with how discrimination against devout Muslim women and girls seemed deeply wrong and unjust. It was emotionally very disturbing for

them, while devout Muslim men have no comparable problems associated with entering into professional and political life in the same country and same society. So unequal treatment between men and women, and among females in relation to religious practice, is very pronounced.

J: What particular topics, issues, and literature does it address?

HE: As a legal scholar, I particularly focused on legal barriers and court decisions. Additionally, I looked at the headscarf controversy from the perspective of its socio-political dimensions. Actually, the headscarf is a very good metaphor for uncovering the hidden agendas of various governments, as well as situating different forms of political and social competition, identifying gender inequality, and detecting emerging Islamophobia. Therefore, I analyze and discuss not only court decisions and legal battles, but also personal interviews and many secondary sources that have previously dealt with the issues from a variety of perspectives.

The book is not only about Turkey, although a significant portion is devoted to the country where the headscarf has been such a core issue of controversy. I also deal with influential decisions of the European Court of Human Rights, and discuss the headscarf controversies in some pivotal European countries such as France and Germany. Finally, I consider the relevance of these issues to the United States, especially in the post-9/11 environment in which Islamophobia impinged upon the daily life of Muslim Americans in a variety of ways. Looking at these different national settings gave me many useful insights, allowing me to see and interpret very different contextual situations in these very different countries, although the outcome of these inquiries was surprisingly convergent.

J: How does this work connect to and/or depart from your previous research and writing?

HE: I would say it represents something of a departure from my earlier works, as I have been mostly teaching and writing on international environmental law. However, lawyers have more freedom than other social scientists to pick different issues and examine them from a legal point of view. I relied partly on my knowledge of and interest in international human rights law. I also had professional experience in the 1990s, while in Turkey, working on women rights issues, but in this book I look beyond the horizons that I had been exploring before.

J: Who do you hope will read this book, and what sort of impact would you like it to have?

HE: First, I hope judges and law makers in Turkey and in Europe will read this book—not that I am expecting them to change their minds, but because I have a hope that my approach will lead them to better understand what a tremendous impact on people's lives their court decisions can have. I try to show that court decisions are not simple settlements of particular disputes about the meaning of a law. They have a longer and wider impact, especially in this period of globalization. Cross-cultural influences have become very important. And we should not forget that judges are human beings and they are very much conditioned in their outlook by their social environment. So it is always good to listen to "others" before making a judgment.

I also hope that people who have no special knowledge about, but do have an interest in, Muslim women would get from the book some idea about how this seemingly simple headscarf gives rise to an intense political storm of opposing opinions. I also think that it is difficult to determine the motives of headscarf use from any single perspective. It is a complex issue that reflects a range of factors. Overall, I hope my book helps readers obtain a more balanced and humane understanding of the headscarf controversy and its effects on women.

J: How would you like to see this book affect current discussions of the headscarf controversy outside Turkey?

HE: I am not expecting the book to have an immediate impact on current discussions, especially outside of Turkey, where the political environment has taken a more positive turn, yet maybe not in a sustainable manner. In practice, since 2002, the Turkish government (under the Justice and Development Party) has taken positive steps to ease the headscarf ban in universities, but still there is no legal clarity in relation to headscarf use in universities and public institutions.

There is a significant misinterpretation that exists regarding issues of secularism and religiosity in Turkey and elsewhere. Having a secular system does not mean that religious practices should not be allowed. Individual freedom of, and freedom from, religion should be equally respected in democratic and secular societies. If secularism and modernity are interpreted in a more flexible manner, considering civilizational differences, especially in non-Western societies, many of the clashes in relation to the place of religion in modern societies would be resolvable, I assume. I tried to emphasize this issue in the book, albeit in a limited way, as I had to struggle with the word limit given by the publisher.

One of my intentions in this book is to give voice to women who wear the headscarf, and to present their grievances, rather than simply repeating secularist views that have been widely reported in a series of previously published books. This might make some readers feel that the presentation in the book is somewhat unbalanced. Therefore, I can imagine that I will receive some hostile comments. I am prepared for this. Eventually readers who believe that human rights should be cherished by all and should be protected for all, no matter how much such persons may be different than “us,” will not only accept the presence of “others,” but also will celebrate their presence as “full participants.” I hope this will lead most readers to have more sympathetic feelings about pious women struggling to have fulfilling lives. This is the effect I am most hoping for.

J: What other projects are you working on now?

HE: I am working on two projects. The first is an analysis of the judgments of the European Court of Human Rights on exhibiting a crucifix in an Italian high school classroom (*Lautsi and Others v. Italy, 2011).* It is important to compare the Court’s view on secularism in the crucifix case and in previous headscarf cases. The Court took a different view in the *Lautsi* case than its earlier jurisprudence on headscarf cases, accepting the view that the crucifix is not only a religious but also a cultural symbol of Italy; therefore, the displaying of a crucifix should not be considered a violation of freedom from religion or of secularism. This will give an understanding about the European court’s interpretation of the same principle in a very different manner when addressing issues involving

Christianity and when dealing with Islam. My second project is about the relevance of human rights law to climate change, and closely related issues associated with protecting the environment and upholding human security.

Excerpts from *The Headscarf Controversy: Secularism and Freedom of Religion*

From Chapter One: Point of Departure

Religious pluralism is one of the essential principles for constitutional democracies. Yet the ways in which Western democracies deal with Islamic practices raise a variety of issues that appear to erode religious pluralism. In recent years, there have been major public debates in several European countries about the acceptability of Islamic practices, specifically of the wearing of a headscarf or "*hijab"* by women and girls.

In the midst of a resurgence of religion, the challenge to accommodate Muslim practices seems greater and more urgent than ever before. It pervades virtually every aspect of modern life, from culture to civil society, from politics to identity, from security to conflict and discrimination. These issues are now being discussed with particular intensity in the United States, Europe, and almost all non-Muslim, liberal societies.

The emphasis is on determining how to accept, accommodate, and tolerate Muslim religious observance in countries where secularism (or in France and Turkey, *laicité)* and civil liberties are held to be as important as religious freedom. There are serious restrictions and exclusions of the rights of devout Muslim women, not only in Western countries where Islam is a minority religion, but also in Muslim countries, particularly in Turkey, and to a lesser extent in Azerbaijan, Tunisia, and Albania**.** In this book, legal, political, and social aspects of the headscarf controversy in constitutional democracies will be discussed from a comparative perspective.

Upholding freedom of religion or belief involves the complex task of protecting religion and its impact on public and private life, while establishing certain restrictions so as to avoid religion's potential for negative impact. Such balancing necessarily bridges the universal and the particular, the public and the private, and explores the relationship between secularism and religiosity. Any adequate implementation of the freedom of religion or belief needs to consider these polarities. Added to these challenges is the safeguarding of freedom of religion in the context of gender claims and Islamic political culture. Therefore, the articulation of this specific problem in relation to Muslim women needs to address highly complex arguments about the supposed incompatibility between women's rights and Islam.

Following the 9/11 attacks on the United States, the stereotyping of Islamic societies became widespread, and the fear of political Islam became a preoccupying concern for mainstream, and especially right wing, American and European public opinion. Discussions about whether the liberal Western democratic model is compatible with Muslim societies, and whether such societies are inadequate with respect to women's rights gained much attention. The

significant differences among Islamic societies regarding democracy, human rights, and the rule of law are well known. Moreover, many Islamic countries in one way or another follow the principles of Sharia, the laws of Islam, in their legal systems, and do not incorporate the Western version of secularism in their constitutions. Whether or not the principles of Sharia Law and Islam are compatible with universally accepted principles of human rights, with secularism and with Western-style democracy, is a highly complex question whose answer requires sophisticated theological knowledge about Islam, its relation to various cultures, and the character of Islamic thought as it ranges from fundamentalist to moderate/reformist. The evaluation of Islam vis-à-vis democracy, secularism, and human rights lies beyond the scope of this book, other than when societal/cultural Islam is at stake.

In this book, the position of women in Islam and the issues of Islam and democracy will not be discussed, except when these issues relate directly to the headscarf controversy. Instead, religion and law will be crosscutting themes, and will provide the framework for a comparative approach to secularism and human rights in the headscarf controversy as it is manifested in several constitutional democracies. The core disagreement in the headscarf battle occupies the contested terrain of secularism and freedom of religion. At first glance, secularism and human rights seem to be the compatible and necessary elements of constitutional democracies. Nevertheless, it is never easy to balance the concepts of secularism and human rights, especially religious freedom and freedom of speech, without sacrificing one to the other. In the headscarf controversy, where these concepts travel cross-culturally, it is not surprising that contradictory results are encountered. This book does not claim to answer this fundamental question of our time; rather it intends more modestly to offer analytical case studies of this complex phenomenon. Whenever basic legal principles encroach on social and cultural values and try to change or impose them, success and failure may be highly volatile and subject to divergent interpretations, and results may vary dramatically in different settings.

There are a wide range of policy outcomes and various degrees of tolerance towards and/or discrimination against Muslim women because of disparate domestic political settings, cultural differences, and diverse constitutional orders in various countries. We need to articulate these differences and similarities among countries when discussing freedom of religion in relation to the integrity of a constitutional order. They are also relevant when evaluating the extent of the country's commitment to religious diversity and international human rights principles. In examining headscarf controversies in many countries, I have come to the conclusion that the uneasy relationship between religiosity and modernity has unintended adverse consequences for Muslim women. These include forms of social and legal segregation in modern societies that are responsible for serious human rights abuses. Domestic constitutional order and international human rights remedies are not being adequately implemented to protect Muslim women who wear headscarves from the abuses they experience in many countries. There are several reasons for this failure to implement universal standards to protect Muslim women's right to manifest their religious identity, including a lack of sufficient understanding, tolerance, and acceptance; the interpretation or misinterpretation of religious and cultural motives; and the overwhelming forces of political resentment and hostility. To protect the rights at stake, it is important to diagnose the problems accurately and act effectively before tensions on both sides produce a chronic disorder that can produce profound societal tension. This is what happened, unfortunately, in Turkey.

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From the Conclusion

In its multiple dimensions, the global headscarf controversy touches fundamental issues of our time. Beyond questions of secularism and freedom of religion, vigorously invoked by both sides of the argument, the implications of the debate go well beyond posing a problem for Muslim pious women. The headscarf controversy has a profound symbolic value in its connotations for various conceptual issues such as patriarchy, feminism, gender equality, women's rights, multiculturalism, racism, cultural relativism, religion's place in democratic societies, modernity, secularism, liberalism and constitutionalism.

Decision makers are influenced by these concepts and the societal stereotypes and political events of their particular countries. Therefore, very often, women's specific conditions are undermined when state interests prevails. Global politics, the state interest, constitutional values and the philosophy of a nation-state become stumbling blocks for woman. A woman becomes an entity released from her particularity, no matter which country she lives in and whether she is a student of elementary school or university, or a civil servant or teacher. As the significance and relevance of her subjectivity are lost on decision makers, these issues are often concealed behind one another, and the headscarf controversy ends up the hands of legal systems. Judiciary or legislative bodies make decisions about women's acceptability in schools or workplaces based on what they wear. This is itself enough to raise questions of gender inequality, injustice and discrimination against Muslim women who chose to wear headscarf in democratic societies of the twenty-first century. Is a legal system the right venue for making such important decisions? This question has been raised throughout this book, and each country has its own response to it.

It is remarkable that the real victim of this legal and socio-political battle, the woman who chooses to wear a headscarf or is allegedly forced to wear a headscarf, has kept pretty much silent throughout the ongoing controversy. Decisions, either for or against her, are made on her behalf, and policies that affect her are discussed without her participation. This is true in countries where the headscarf debate is taking place. Male and female politicians, scholars, intellectuals and national elites play the roles of debater, decision maker or player, while headscarf-wearing women have for the most part occupied the role of silent victims in this debate. This furnishes enough support for the view that there is a fundamental injustice about this debate, no matter what kind of policy is enacted or will be enacted in various countries in the future.

Taken all together, domestic policies, legislation, and court decisions on the Muslim headscarf in different countries, including the jurisprudence of the ECHR [European Court of Human Rights], raise important questions about religious exposure in constitutional democracies. Moreover, considering the interaction between national courts and international tribunals on one hand and the policies of individual countries on the other, the headscarf controversy reflects a strong connection with the political conditions existing in any given country. Even though each country has very different political, sociological, cultural, and legal responses to the headscarf controversy, this study indicates that there is a global trend: the headscarf controversy seemingly and gradually is heading in the same direction throughout the West, while subject to some insignificant variations. Unfortunately, this trend does not offer much hope of achieving peaceful

coexistence, and tolerance among the citizens of today's multicultural societies. Rather, the trend exhibits tendencies toward a new sort of racism, segregation, and intolerance, especially in Europe and the United States, and even to a degree in Turkey.

[Excerpted from *The Headscarf Controversy: Secularism and Freedom of Religion*, by Hilal Elver, by permission of the author. Copyright © 2012 by Oxford University Press, Inc. For more information, or to purchase this book, please click here.]