
ISLAMIC HEADSCARVES AND SLIPPERY SLOPES

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INTRODUCTION

The European Court of Human Rights surprised many with its decision in the case of *Leyla Şahin v. Turkey* that the ban in Turkey on female university students wearing the Islamic headscarf constituted no violation of the right to freedom of religion.¹ Even more surprisingly, the decision by the seven-judge Chamber that there had been no breach of Article 9 of the European Convention on Human Rights was *unanimous*. The debate over the Islamic headscarf had been raging in Turkey since the early 1980s, and, if anything, the vigor and doggedness of opposing positions revealed the seemingly intractable nature of the subject. There was, therefore, the expectation on the part of some that whatever the decision, the complexity of this fiercely debated topic would be reflected in the Court's judgment. When the Grand Chamber upheld the initial decision by an overwhelming majority of sixteen votes to one, it became clear that the Court was not at all divided in its treatment of the issue.² In one sense, though, the two judgments mirror an important aspect of the debate in Turkey; despite deep disagreement between defenders of the opposing positions, there is a remarkable degree of concord within each camp. With each side overwhelmingly convinced of the correctness of its stance, this debate, which has been going on for more than two decades, has only served to produce further entrenchment.

What is worth stating at the outset is that the "headscarf controversy" is never only, and sometimes not at all, about headscarves. It quickly transforms into a debate about the values of the Republic, the characteristics of the existing secular system, and the nature of Islam, not to mention the position of women in the Turkish society. To a great

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¹ *Şahin v. Turkey*, App. No. 44774/98, Eur. Ct. H.R. (2004) [hereinafter *Şahin I*].

² *Şahin v. Turkey*, 41 Eur. Ct. H.R. 8 (2005) [hereinafter *Şahin II*].

extent, it is this intermingling with many fundamental aspects of the regime in Turkey that renders the issue nearly insolvable. Somewhat paradoxically, however, this extreme political difficulty can also give rise to guarded optimism because a successful resolution of the headscarf issue promises to contribute to a comprehensive democratic transformation of the Turkish political system. As the problem of the headscarf is very difficult to address in isolation, it becomes all the more necessary to seek a solution as part of a broader endeavor to expand and safeguard existing rights and freedoms.

This paper will critically discuss one important, though often overlooked, aspect of the current debate over the headscarf. More specifically, it will focus on one of the arguments given in *defense* of the ban on students wearing the headscarf while on university premises. Though not usually fully laid out, this argument based on slippery-slope reasoning carries considerable strength for many defenders of the ban. As is typical of slippery-slope arguments, this pro-ban position derives its main force not from opposition to what has generally been called the “instant case”—university students being allowed to don the headscarf—but from aversion to the “danger case”—the objectionable future developments that the lifting of the ban is feared to bring about.³ This argument therefore fits the broad definition of a slippery-slope claim: Even though, when taken in isolation, A may be appealing or certainly not troubling, A is not supported because its adoption “ends up materially increasing the probability that others will bring about B,” which is opposed.⁴

Whatever their perceived strength, it must be said that slippery-slope arguments can provide significant support for attempts to protect the status quo, even if the existing situation is unjust.⁵ Their rhetorical force can often lead their proponents to all too easily ignore the current injustice by focusing on the likelihood of future (in their view) undesirable events. In this sense, the conservative role of slippery-slope arguments in resisting appeals for change should lead one to evaluate them with some caution. At the same time, as will be discussed here, such arguments should not be easily dismissed either, especially because they can often act as a “subterfuge for deeper concerns.”⁶ Particularly in a society deeply polarized over an issue such as the headscarf, reflecting on the “bottom of the slope” can enable us to properly understand the fears of a significant portion of the population.

³ For the use of these two terms, see Frederick Schauer, *Slippery Slopes*, 99 HARV. L. REV. 361, 365 (1985).

⁴ Eugene Volokh, *The Mechanisms of the Slippery Slope*, 116 HARV. L. REV. 1026, 1030 (2003).

⁵ See, e.g., Hugh Lafollette, *Living On A Slippery Slope*, 9 J. ETHICS 475, 488-89 (2005).

⁶ Eric Lode, *Slippery Slope Arguments and Legal Reasoning*, 87 CAL. L. REV. 1469, 1541 (1999).

As a controversy of this sort assumes symbolic value, it becomes all the more necessary to move beyond the limits of the “problem” under consideration and to try to see clearly its overall significance for many. It is in this respect that slippery-slope arguments can perform a constructive role, for their presence in the debate can compel all to recognize the broad political importance of the decision. By bringing into the discussion a range of related important considerations, slippery slope claims can help show that the best way to avoid the current impasse may be to try to reach a comprehensive solution.

Approaching the topic in this way, it may be possible to grasp the symbolic importance of the headscarf issue. The force, for some, of the argument that “a line needs to be drawn here” becomes apparent when it is understood that universities are seen as the battleground of a significantly wider political struggle. It is this broader context in which we see one central aspect of the staunch opposition to the headscarf. While it is difficult to determine the extent to which slippery slope reasoning played a role in the Court’s judgment, it is evident that fears of a slide toward further negative developments constituted an important portion of the government’s defense in the *Şahin* case.⁷ Even though it is not fully articulated in its judgments, this “systemic defense” seems also to be accepted by the Court.

Close scrutiny of the slippery-slope arguments in the headscarf controversy reveals that they are likely to operate at two distinct, though interconnected, levels. On the one hand, such arguments are used to provide a basis for the claim that the matter is not likely to be confined to the headscarf. They are, therefore, relied upon to maintain that, following the lifting of the ban, it will be very difficult, first, to preclude more extensive covering, and, second, to resist further religious demands in universities. On a second level, slippery-slope arguments reinforce the conviction that the issue will not end with the universities. Accordingly, many fear that the end to the headscarf ban in universities will give force to the process of Islamization and rising social conservatism that is perceived to pose a significant threat to individual freedoms generally. By critically evaluating the effectiveness of such arguments at both levels, this paper will maintain that the issue of the headscarf can be successfully resolved only if it is part of a larger reform package. When slippery-slope claims come to occupy an important place in a debate, they can neither be dismissed nor defeated easily. Perhaps the most promising route may be to weaken them significantly, and this can be accomplished only if overall trust is instituted that the feared consequences will not materialize.

⁷ See DOMINIC MCGOLDRICK, HUMAN RIGHTS AND RELIGION: THE ISLAMIC HEADSCARF DEBATE IN EUROPE 167-68, 250-51 (2006).

I. HEADSCARF AND THE UNIVERSITIES

A. *More Extensive Covering*

The proponent of the ban will first argue that, once the ban is lifted, there will be no clear grounds to exclude more extensively covered students. Once covering “as a form of expression of religious freedom” or “as a practice of following religious dictates” is admitted, there will be no grounds to exclude, for instance, the wearing of jilbab (or “çarşaf”), a (usually black) garment which covers the whole body except for the hands and sometimes part of the face. While it is true that a small minority of women in Turkey don the jilbab and that, accordingly, the number of jilbab-wearing students in universities can be expected to be extremely small, this is clearly a possibility that cannot be left unaddressed in the debate. That the case of jilbab-wearing students may present itself as an issue in turn enables proponents of the ban to form a rhetorically very strong position, relying on the existing aversion to jilbab within a substantial section of the population. The jilbab is the *bête noir* of the secularist, but, for many, its symbolism is so powerful that it is perceived as a direct challenge to the values of the Republic. If a sizeable number of those who support lifting the ban would want to preclude the jilbab or more extensive covering in universities, the argument for the ban then gains considerable rhetorical strength. The supporter of the ban will rely on slippery-slope reasoning to argue that allowing headscarves on university premises will lead to the presence of more extensively covered students, a clearly objectionable consequence even for many current opponents of the ban.

One possible reply to this challenge may be that the prejudice underlying the aversion to the jilbab is in fact similar to the one that the proponent of the ban (sometimes implicitly) has with respect to the headscarf and that the former is no more morally defensible than the latter. Arguing that those opponents of the ban who would nevertheless object to the jilbab should not see the latter as objectionable, it may follow that no restrictions on religious clothing of any sort should be imposed in universities. While this reply may have some merit in convincing those who defend the headscarf but are against the jilbab to be consistent with respect to expression of religious belief, it is doubtful that those providing this reply will be pursuing a politically wise strategy.⁸

⁸ As Eric Lode points out, “[O]ne’s audience may think that if people are *already* arguing that the steps on the slope are not objectionable, allowing *A* could lead to immense pressures to

Setting aside the question of whether opposition to the jilbab reveals, in reality, an indefensible distaste for public visibility of religion, what also needs to be taken into account here is that there may be other grounds for opposing extensive covering, such as issues related to confirmation of identification, enforcement of certain rules during examinations, or observance of relevant rules (e.g., pertaining to hygiene), especially for medical students. Opponents of the headscarf ban may consistently argue that, for reasons like the ones mentioned above, any regulations allowing the headscarf to be worn on university premises should exclude more extensive covering, such as the jilbab. Some who oppose the ban on headscarves may still be against extensive covering, and this may be more due to practical concerns related to the administration of universities. One may therefore reasonably distinguish, the argument goes, between the headscarf and the jilbab, by relying on grounds that are of practical concern. Without going into a discussion of what type of clothing and covering religion requires, it may be argued that certain concerns can lay the grounds for a justified restriction on certain forms of religious expression. If such a reasonable distinction can be made, then there appears to be a way in which the fears of the defender of slippery-slope argument can be allayed. Explicitly including a specific exclusion of jilbab and more extensive covering into any regulations allowing the headscarf on university premises may block the feared slide down the slippery slope found to be objectionable by many.

Yet writing a specific exclusion of extensive covering into the regulations allowing the headscarf may not be as promising a solution as some hope. That is due to the difference between a reasonable and an effective distinction, first pointed out by Bernard Williams.⁹ The slippery-slope claimant will argue that even if a reasonable distinction can be made between the headscarf and the jilbab, it will be almost impossible to effectively implement it. First of all, it will be very difficult, if not impossible, to determine when a type of covering is (unacceptably) more extensive than the headscarf. For instance, wearing a long overcoat and dark glasses in addition to the headscarf may practically be similar to wearing a jilbab. When exactly does a covering become “extensive” enough that it disrupts the normal application of university procedures? There is bound to be introduced a grey area concerning clothing that, in practice, may be impossible to eliminate. More importantly for the slippery-slope argument, the

move down the slope. Thus, rather than convincing one’s audience that we should allow *A*, this line of argument may make them even more opposed to doing so.” See Lode, *supra* note 6, at 1524.

⁹ BERNARD A. O. WILLIAMS, *Which Slopes are Slippery?*, in *MAKING SENSE OF HUMANITY AND OTHER PHILOSOPHICAL PAPERS*, 1982-1993, 214 (1995).

university authorities will be given the difficult task of implementing the rules, a task they will be ill-equipped to carry out. More often than not, deciding in individual cases exactly when the new regulations exclude the type of covering in question will not be practicable in the normal operation of a university. Even more importantly, administrators may be reluctant to engage in such issues, especially if they work in isolated and sometimes hostile environments where they may be accused of unjustly interfering with religious freedoms.

In practice, therefore, it is argued that the exclusions in the new regulations allowing the headscarf cannot be implemented, as they will contain an important element of ambiguity. In the majority of cases, university administrators will be working in environments where they will need the force and guidance of a clear law or set of regulations. For the defender of the slippery-slope argument, the current ban on headscarves has, therefore, a crude effectiveness: By prohibiting the wearing of headscarves, it prevents in an effective way the feared slide down the slope. In this context, Williams' example of someone who quit smoking may be pertinent. As Williams points out, the difference between one cigarette a day and none is not very significant on its own, but, nevertheless, "the distinction between none and one is effective, while that between one and thirty is not, just because none does not lead to one, but one does lead to thirty."¹⁰ The proponent of the headscarf ban will similarly argue that by drawing the line at the wearing of headscarves, the current regulations place the restriction at the only place where it can be effectively implemented.¹¹

B. *Further Religious Demands*

Somewhat in connection with the above discussion, the proponent of the ban fears that allowing the wearing of headscarves in universities will be followed by efforts to establish a dominating presence of religion on campuses. The defender of the slippery-slope argument holds that, emboldened and energized by the "victory" of the lifting of the ban, certain groups will forcefully put forward incrementally stricter religious demands.¹² As a result, appeals, for example, for (bigger) prayer rooms on campuses, the scheduling of classes and examinations according to prayer times, exemption from certain educational practices (for instance in medical studies), and segregated use of university

¹⁰ *Id.* at 214-15.

¹¹ More generally expressed, the fear here is that "the effective barrier which now exists cannot be replaced by another effective one." Wibren van der Burg, *The Slippery Slope Argument*, 102 ETHICS 42, 60 (1991).

¹² See generally Volokh, *supra* note 4, at 1115, 1124.

facilities will be strongly voiced. Any amendment to the headscarf regulations will provide significant momentum to groups appealing for such changes, enabling them to put growing and more effective pressure on other students and university administrators. With the impetus provided by the lifting of the ban, these groups will gain a crucial advantage in their endeavor to shape the campus environment to conform with their interests. For its proponents, therefore, the headscarf ban denies these groups the significant first step that would allow them to vigorously pursue their religious agenda.

Now, one may say that many of the changes that the defender of the slippery-slope argument fears are not that objectionable, as they reflect a greater respect for freedom of religion. However, while the proponent of the ban considers even this premise to be questionable, the fear is that as they accumulate over time, the introduction of new measures will create an atmosphere that will be oppressive to many lecturers, students, and university administrators. As pointed out above, the administrators will find it extremely difficult to resist demands voiced by the increasingly emboldened religious groups. Especially on a local scale, the subtle (or, sometimes, overt) types of pressure that can be exerted will be extremely effective in influencing the decision-making process at universities. Particularly in isolated and hostile environments, university authorities will want to avoid the risk of facing, even when unjustified, the criticism of seeming to be “anti-religion.” On the other hand, the dominating presence of religion on university campuses is also feared to lead to intimidation of other students (as well as lecturers) who do not seem to conform. When the social scene changes in the universities, the concern is that what begins as a voluntary choice, such as the wearing of headscarves for female students or fasting during Ramadan, will quickly come to be seen as the only “responsible choice.”¹³ It will therefore be only a matter of time, the proponent of the ban fears, before what is seen as free choice becomes an expectation on the part of all and, then, an injunction.¹⁴ This would result not only in the disruption of educational activities but also in unrelenting pressure on those considered to be insufficiently pious.

¹³ As Lode points out, “[O]nce we begin to make use of a practice, our views on who *should* make use of it often begin to change.” Lode, *supra* note 6, at 1517.

¹⁴ See Yasmin Alibhai-Brown, *Turkey's Battle For Secularism Is Ours Too*, INDEP., May 7, 2007 (“Like the sceptical Turks, I see what comes next. A choice quickly settles to become a convention, then a tradition, then an injunction, then blackmail used against “lesser” believers, then an oppressive weapon to control the young and resisters. Cultural fluidity hardens.”).

C. *The Strength of the Argument*

This type of slippery-slope reasoning clearly demonstrates that what is generally considered to be its weakness can, at the same time, be what gives the argument considerable strength. The obvious weakness is that this argument for the ban tries to justify a current restriction on the freedom of headscarved students by pointing to the increased likelihood of future objectionable developments. The justification for the ban developed above contains a causal argument, but not one that links the headscarved students themselves directly to these future developments.

Yet as we will see, it is precisely this lack of direct causality that makes the slippery-slope argument immune to some important criticisms often leveled against the headscarf ban. One such criticism is that no strong evidence is provided that the act of wearing the headscarf *by itself* leads to disruption of the university environment or to pressure on uncovered students.¹⁵ While this objection correctly points to the lack of a credible evidentiary basis on this matter, the slippery-slope defense of the headscarf ban does not rely on any such evidence. Its focus is not on the headscarved students themselves or their actions. Instead, it argues, first, that there cannot be a clear and effective dividing line between the headscarf and more extensive covering, and, second, that the new regulations allowing the headscarf will strengthen and embolden certain extremist groups, leading to an objectionable change in the learning environment. Similarly, the slippery-slope reasoning is not vulnerable to another strong criticism, that students wearing the headscarf cannot all be said to be religious extremists.¹⁶ Again, it need not endorse the questionable claim that headscarved students are religious extremists, since its main concern is with the gradual and cumulatively oppressive new steps that allowing the headscarf on university campuses will make materially more likely.

So, this argument for the ban does not need to refute either of the above-mentioned claims, as it can proceed without relying on the truth of these claims. In fact, it can concede both objections without losing its force. It may accept that there can be no strong evidence that the wearing of the headscarf by itself disrupts university education, and it can also grant that headscarved students do not form a homogeneous, extremist group, acting in concert to change the learning environment in universities. That is because it considers the wearing of the headscarf,

¹⁵ See *Şahin II*, *supra* note 2, ¶¶ 7-8 (Tulkens, J., dissenting).

¹⁶ See *Şahin II*, *supra* note 2, ¶ 10 (“Not all women who wear the headscarf are fundamentalists and there is nothing to suggest that the applicant held fundamentalist views.”).

as well as the characteristics and the actions of headscarved students, to be immaterial to the discussion. However, it must be pointed out that the aspect of the argument that makes it invulnerable to both objections comes with an important cost. By shifting the focus of the argument away from the headscarved students, it ends up treating them not as agents in their own right but as subjects of negligible importance in a political struggle. Especially in its second formulation, it views the headscarved students in exactly the same way it accuses the religious extremist groups in universities of treating them: as expendable pawns in a larger struggle with the university campuses as the initial battleground.

II. THE BROADER POLITICAL CONTEXT

This larger political struggle provides the context within which the controversy over the headscarf needs to be evaluated. That is because the slippery-slope argument derives its strength not only from the increased likelihood of certain developments in universities but also from the possibility that lifting the ban will lead to new (objectionable) changes in the society. The issue of the headscarf in universities assumes great significance precisely because the defender of the ban thinks that the matter will not end with the universities. Consequently, it is believed that allowing the headscarf in universities is only the first step in the process of introducing changes that will have consequences of systemic importance.

A. *Whose Freedom?*

In February, 2008, the ruling Justice and Development Party (AKP), with the support of two opposition parties in Parliament, passed a Constitutional Amendment, effectively lifting the headscarf ban in universities. This amendment was later struck down by the Constitutional Court for violating article two of the Turkish Constitution, which safeguards the principle of secularism. What is particularly important for our analysis is that in the rich and fierce debate that took place before and after the passing of the amendment, influential opinion-makers writing from the Islamic perspective began to strongly voice demands for the headscarf also to be free for middle-school and high-school students, as well as for state employees in government offices.¹⁷ It was argued that the freedom to wear the

¹⁷ For an important example, see Ali Bulaç, in the Turkish daily *Zaman*, on February 5 and 6,

headscarf in universities should not be “sandwiched” between two (for them, unjustified) restrictions. A consistent recognition of the right to live according to one’s religious dictates required the freedom to wear the headscarf to be extended to younger pupils and female public servants. These new demands, especially grounded on consistency arguments, were exactly what the defender of the slippery-slope reasoning had anticipated.

It may of course be argued that a reasonable distinction can be made between headscarved university students on the one hand, and pubescent (and even prepubescent) girls and government workers on the other. Concerning public servants, in the Turkish debate there have been efforts to introduce a distinction, derived essentially from the principle of state neutrality, between the status of those who use a public service and that of those who provide a public service. For example, in her dissenting opinion in the *Şahin* case, Judge Tulken wrote that government workers voluntarily choose to work in a neutral environment, implying that in this case, the restriction would be justified.¹⁸ Concerning the middle-school and high-school pupils, an argument may be made focusing on adulthood and the capacity for free choice of headscarf wearers. However, whether these and similar distinctions can be reasonably and convincingly defended is again of secondary importance for the slippery-slope claimant. In this context, the issue becomes whether such distinctions can be successfully and effectively implemented, even if they are reasonable. The main concern here is that as a matter of social and psychological fact, allowing the headscarf in universities will strengthen the position of those demanding similar freedom for pupils and state employees. Once the battle of the headscarf is won in the universities, movements demanding the expansion of this right will gain an important political advantage, enabling them to determine these new cases in line with their worldview. At the level of everyday practices, the political power and impetus that would be acquired as a result of the lifting of the ban is thought to render ineffective any attempt to enforce these distinctions.

The proponent of the headscarf ban in universities feels justified in the fear that the slide down the slope will inevitably occur, especially because a substantial group among those supporting the lifting of the ban seem to employ a particularly moralized conception of freedom. Defending rights on very selective grounds and adopting what may be called an à la carte understanding of freedom, these opponents of the ban have usually not opposed restrictions on the exercise of certain other rights. Their muted response to, and sometimes open support for,

2008. The views of Bulaç were echoed by two members of Parliament from the ruling party. Bulaç also argued that girls younger than twelve should be encouraged to cover.

¹⁸ See *Şahin II*, *supra* note 2, ¶ 7 (Tulken, J., dissenting).

the refusal by certain local authorities to grant or renew alcohol licenses to restaurants and bars, the creation of “red-zones” for drinkers outside city limits, as well as the attempts to criminalize adultery only served to reinforce the conviction that what was pursued was freedom for the headscarf and not protection of individual freedoms generally.¹⁹ It is this selective support for certain freedoms that leads the slippery-slope claimant to conclude that calls for lifting the headscarf ban in universities will, in time, contribute to oppression of many other individual freedoms considered to be “unworthy” of protection. Now, while it may be true that interest groups will inevitably accord different degrees of importance and priority to freedoms they deem to be more significant, the fact that the endorsement of freedom for the headscarf is expressed with simultaneous support for restrictions on other individual freedoms is deeply disconcerting to many.

To a certain extent, therefore, the position in favor of the headscarf ban is influenced by the overall stance of some of those in the opposing camp. The defender of the ban notes that among those arguing for freedom for the headscarf is a group that favors strict adherence to religious values.²⁰ Consequently, through the adoption of what Volokh calls “ad hominem heuristics,” the position for the ban is reinforced by an unfavorable assessment of some of those in the group advocating the lifting of the ban.²¹ Seeing that this particular group holds values that are deeply in conflict with her own, the defender of the ban feels justified in embracing a position opposed by those with (in her view) an objectionable worldview. As a result, it becomes important not to give this group a “political inch,” as it is feared that to do so will make it very difficult to block a process that could, over time, lead to the introduction of further (negative) changes.²² In this way, the fact that the headscarved students are in unsavory company plays a crucial role in the reasoning of the slippery-slope claimant. The issue of the headscarf becomes inexorably tied to hostility toward some of its

¹⁹ See, e.g., Christopher de Bellaigue, *Turkey at the Turning Point?*, N.Y. REV. BOOKS, Oct. 25, 2007; see also Pelin Turgut, *Veiled Hostility*, TIME, Feb. 14, 2008 (pointing out that Prime Minister Erdogan “seized on the chance to lift this ban with an enthusiasm that he hasn’t shown for any of the many other democratic reforms Turkey needs”); Steven Kinzer, *Head On*, GUARDIAN, Feb. 28, 2008 (suggesting that “Turkish leaders must make protecting choice their top priority, not protecting the headscarf”).

²⁰ See the discussion in Ersin Kalaycioglu, *The Mystery of the Turban: Participation or Revolt?*, 6 TURKISH STUD. 233, 240-42 (2005).

²¹ “[I]f proposal A is being championed by a group that you know wants to go beyond A to a B that you dislike, you should oppose proposal A even if you mildly like it or have no strong opinion about it.” Volokh, *supra* note 4, at 1075-76. Similarly, La Follette argues that “you fear that if the group is given a political inch, then they will, over time, gain more power, and begin to institute significant and severely negative changes.” Lafolette, *supra* note 5, at 491-92.

²² As Lafolette points out, “The issue is whether giving a group you dislike a political victory, however small, empowers them to make more substantial and unwanted changes.” Lafolette, *supra* note 5, at 496.

advocates and is sacrificed in a strategy that aims to deny empowerment to the opposing camp. As is clearly noted by Volokh, however, the adoption of ad hominem heuristics can have harmful social consequences. First of all, it fosters “a culture in which more time is spent demonizing a proposal’s supporters than debating a proposal’s merits.”²³ As a consequence, the existing *Kulturkampf* in society is further deepened, with two opposing camps engaging in a struggle that fails to address the real issue under consideration. Partly in relation to this, the “social cost” of not taking a step that many view as desirable is also often overlooked. Being obsessed with certain elements within the opposing group, the defender of the ban all too easily ignores what a majority sees as an important injustice. Moreover, this focus by the proponent of the ban on a group with extreme religious values leads to ignoring the diversity within the relatively large majority that opposes the ban.

It is worth emphasizing here that support for lifting the headscarf ban is not limited to those who favor the adoption of strict religious values. There is a relatively broad consensus in the society on the need to end the ban, with about 71% of the electorate opposing the current regulations that do not allow the headscarf to be worn while on university premises.²⁴ While it is certainly significant that there is a relative consensus on the lifting of the ban in universities, the slippery-slope claimant finds it equally significant that there is no similar consensus on what, if anything, should follow it. For example, it would be correct to say that public opinion is much more divided on an issue such as allowing the headscarf for pupils. It is this lack of a clear position on what new steps, if any, should follow the lifting of the ban that makes the university headscarf decision so politically important. For the defender of the slippery-slope argument, the fear is that powerful or influential segments of the society, though not constituting the majority, will still succeed in ensuring that subsequent steps down the slope will be taken.²⁵ Once the ban is lifted in universities, this lack of consensus in the society on the new steps will be exploited by a strong and motivated minority. That the debate is currently restricted only to the situation of headscarved university students and does not address the cases of pupils or female government workers is thought to create conditions that will make the attainment of these further (objectionable) aims politically feasible. Claims that these other cases are not really on the public agenda and that there are no current widespread demands in the society are not convincing to the slippery-

²³ Volokh, *supra* note 4, at 1076.

²⁴ ALI ÇARKOĞLU & BINNAZ TOPRAK, RELIGION, SOCIETY AND POLITICS IN TURKEY 71 (2006).

²⁵ See Lode, *supra* note 6, at 30.

slope claimant. If it is believed that these demands will be forthcoming once the first step is made, the ambivalence of public opinion subsequent to the lifting of the ban then gains great political significance. It is in this way that the focus shifts from the agreement in society on the need to lift the ban in universities to the lack of a consensus on what should follow it.

B. *Whose Evidence?*

It is usually suggested that in a controversy such as the headscarf issue, evidence concerning the likelihood or otherwise of a slippery-slope can play a constructive role. Even a heated debate about such an issue is argued to benefit from a close scrutiny of the relevant evidence as to whether the feared consequences will follow. The seemingly insurmountable problem here is that, when a society is deeply polarized, the position that one occupies in the debate colors one's evaluation of the evidence. As de Burg points out, in such cases "[b]oth sides can point to facts which fit their positions, and therefore, whether one accepts the argument largely depends on one's fundamental outlook."²⁶ While one side argues that there is no concrete or credible evidence to suggest that a slide down the slope is desired or demanded, the other camp argues that examples abound revealing the true agenda promoted by the opposing group. Certain statements and actions that one side regards as very important are usually dismissed as insignificant by the other side. Similarly, evidence that is thought to be revealing and important by some is considered to be not representative of their position by others. As a result, the evidence that is introduced in the debate itself becomes highly contested and serves only to deepen the disagreement. Consequently, while one side sees itself as providing plenty of evidence, this is usually met with the charge that those convinced of this evidence must only be succumbing to paranoia.

What is more, the deadlock in such a case is reinforced when one party to the debate accuses the other of engaging in double-talk. As is all too familiar in the discussions in Turkey, when there are doubts about the sincerity of the opposing camp, it becomes all but impossible to engage in a constructive and helpful dialogue. Those who put forward the charge of double-talk accuse the other side of hiding their

²⁶ See van der Burg, *supra* note 11, at 64. Lode also argues that empirical slippery slope arguments "may be highly convincing to people with one set of views and values and extremely implausible to those with another." See Lode, *supra* note 6, at 1532; see also Lafollette, *supra* note 5, at 488 ("Once we step back and understand these arguments' function, we see that they persuade (or fail to persuade) people based almost entirely on the listener's current beliefs about what is right and wrong.").

true intentions in order to achieve their ultimate goal. So, any statement or action contrary to the alleged overall position of the opposing group is viewed as only serving their strategy of keeping a hidden agenda. Therefore, once others' insincerity is assumed, any evidence conflicting with the position attributed to the other camp is either discarded or serves paradoxically to reinforce suspicions about the hiding of true intentions. However, this charge of double-talk clearly necessitates not only attribution to the opposing group of homogeneous views but also the assumption of a unity of purpose and ability to act in concert. It is also clear that those who lay the charge of double-talk must be facing two contradicting sets of views, one of which is presumed to reflect the "true intentions" and the other assumed to exist ultimately to hide the real agenda. The charge of double-talk therefore gives primacy to actions or statements that conform to the overall monolithic position attributed to the opposing group while dismissing any view contradicting this supposed uniformity. Consequently, the denial that the opposing group may have any real internal differences goes hand in hand with the assertion that the expression of any position indicating this difference is insincere. This assumption of insincerity then serves to pick out those views that reinforce the fears of the defender of the slippery-slope reasoning.

C. *The "Horrible Result"*

For the defender of the slippery-slope reasoning, the issue of the headscarf needs to be evaluated against a background where two competing worldviews try to influence the way in which society evolves. It is this larger context of a political struggle that most clearly brings out the aspect of argument that is called the "horrible result slippery slope."²⁷ Although it is frequently mentioned in the debate, the "horrible result" feared by the slippery-slope claimant need not be the specter of Iran or of Afghanistan under the Taliban. What is found equally objectionable, and what the lifting of the ban is thought to give force to, is the creeping Islamization of the society. When it is noted that demands for the greater prominence of religion in public life as well as rising moral conservatism are part of the context within which the dispute over the headscarf takes place, the debate quickly transforms into one about the nature of the regime in Turkey, with the focus on individual freedoms and the freedom of women in particular. For many, the advance of the process of Islamization is accompanied by a moral

²⁷ See Williams, *supra* note 9, at 213.

vigilantism that poses a threat to existing civil liberties.²⁸ The proponent of the ban fears that allowing the headscarf in universities, to borrow a characterization by Lode, “would move us further away from being the sort of society that we claim to be and closer to being the sort of society we profess to deplore.”²⁹ It may perhaps be objected here that, along with greater democratization, it is inevitable that religion will become more pronounced in the Turkish society. Yet at the same time, it cannot be denied that demands for greater visibility of religion have included requests that are perceived to threaten values that are important to a significant segment of the population.

The political context within which the headscarf debate takes place is, to an important degree, influenced by contrasting evaluations of the ruling AKP. For the slippery-slope claimant, the Islamist-rooted AKP is instrumental in the slow Islamization of the Turkish public life, and its efforts for the lifting of the headscarf ban in universities represent a crucial step in the process of conforming the society to religious values. The earlier-mentioned attempts to criminalize adultery and the introduction of regulations to create alcohol-free zones in certain cities lead many to fear that a “political, social and cultural roll-back” is taking place.³⁰ It may, perhaps, be argued that such cases should not be decisive in evaluating a movement that has, over a decade, transformed itself in many important ways along democratic lines. However, it is also the case that, with the AKP’s roots in Islamist politics, historical context becomes extremely important for the slippery-slope claims. As Lode points out, the “context in which someone invokes a [slippery slope argument] . . . can have a large influence on the argument’s strength.”³¹ Accordingly, certain policies sometimes proposed by the fringes of the party occupy center stage in political discussions and reinforce the stance of the slippery slope-claimants. As a result, persistent fears about the AKP and a perhaps excessive focus on some of its policies play a decisive role in the hardening of the reaction to its efforts to lift the headscarf ban. To borrow an analogy made in the debate in Turkey, just as an act that would not be alarming under normal circumstances, such as having a single drink, becomes a serious cause for concern in the case of a recovering alcoholic, so it is with the AKP. Any proposal that could be regarded as marginal comes to be

²⁸ For an observation along these lines, see Roger Cohen, *The Fight for Turkey*, N.Y. TIMES, June 23, 2008, available at http://www.nytimes.com/2008/06/23/opinion/23cohen.html?_r=1&scp=3&sq=roger%20cohen%20turkey&st=cse (“I’m confident that in the medium-term, Turkish women will win the right to wear headscarves wherever. I’m less confident that the creeping Islamization fostered by the AKP is accompanied by an unshakeable commitment to secular democracy . . .”).

²⁹ Lode, *supra* note 6, at 1535.

³⁰ See Kinzer, *supra* note 19.

³¹ Lode, *supra* note 6, at 1493.

seen as an expression of oppressive religious conservatism.³²

In addition to being seen to be “under probation” by some, the fact that the AKP came to hold significant political power lends support to the fears that objectionable future developments will be very difficult to correct. Thanks to its considerable electoral success, the AKP’s ability to control “nearly every lever of power, from Parliament to town halls”³³ leads many to doubt that the checks and balances in the system will prove effective in safeguarding certain individual freedoms.³⁴ With the powers of patronage that the party enjoys, the staffing of bureaucratic levels with its supporters, and its success in ensuring the election of a “pious” President, the dominating presence of the AKP in the Turkish political scene leads to concerns that systemic mechanisms that would help curb the AKP’s excesses are becoming increasingly weak. It is this concentration of power, coupled with the perceived failure of the government to address the fears of some of its citizens, that causes many to believe that the means of checking the slide down the slope to the “horrible result” are no longer in place. The weakening of trust in the political system and the apparent lack of determination by the government to show that the slope is opposed therefore results in the suspicion that lifting the headscarf ban will be the precursor of new developments that will be impossible to prevent or reverse.

As the democratic success of the AKP suggests, the demand for allowing the headscarf to be worn on university campuses may simply be the manifestation of a greater social change reflecting a rising conservatism and more pronounced religious identity. In this sense, the government’s policies can be said to satisfy the new demands of a sizeable portion of the Turkish society. However, it is also clear that this rising social conservatism has the potential to create a moral vigilantism that will be oppressive to many who do not share the AKP’s interpretation of Islam, are non-practicing Muslims, or belong to other sects of Islam or, indeed, to other faiths. While at one level, the adoption of a religious lifestyle becomes increasingly necessary for government employment or for receiving government contracts,

³² “If you see a normal person in a bar having a beer, you think, ‘So what?’ But if that person is a recovering alcoholic and has sworn never to take another drink, you think, ‘There he goes again. I told you he wasn’t cured. Maybe this will be his only beer, but maybe he’ll have a second and a third, and not stop until he winds up in the hospital.’ Because people have not been able to get over our fears about [Prime Minister] Erdogan, we reacted very strongly against what he proposed. This republic is based on a particular vision, which more than anything else means a secular state.” Steven Kinzer, *Will Turkey Make It?*, N.Y. REV. BOOKS, July 15, 2004 (quoting political commentator Haluk Şahin); see also Lode, *supra* note 6, at 1493.

³³ Vincent Boland, *In Ataturk’s Shadow*, FIN. TIMES, May 2, 2007, available at <http://www.ft.com/cms/s/2/d11bc366-f8ef-11db-a940-000b5df10621.html>.

³⁴ More generally, see van der Burg, *supra* note 11, at 64 (“Someone who trusts in the checks and balances of a democratic society in which he lives usually will also have confidence in the possibility to correct future developments.”).

pressure at the local level to conform gains strength from the ideological stance of the ruling party. In a culture that does not highly value individual freedoms, the actions of the government only serve to further encourage a socially conservative environment where pressure on those who are not seen to be pious enough is exacerbated.³⁵ Therefore, the defender of the headscarf ban can argue that even if it is granted that the demand for freedom to wear the headscarf is only a symptom of a larger social change, the headscarf has nevertheless assumed a crucial symbolic importance in the endeavor to resist the process of rising social conservatism. When a certain issue becomes a symbol in a broader political struggle, “it becomes the focus of symbolic crusades.”³⁶ While Islamization as a broad process may be very difficult to fight, the issue of the headscarf in universities represents a clear area where resistance to the process can be formed. As pointed out by van der Burg, “factor A may not be the only factor, not even the main factor leading to B, but sometimes it is the only factor we can influence or the factor that is most easily influenced.”³⁷ It is this aspect of the headscarf issue that helps explain why it is so heavily fought by the slippery slope claimant.

CONCLUSION

As this paper tried to show, slippery slope arguments can provide considerable strength to the position in favor of the ban on the headscarf. By drawing attention to the larger context, they help articulate an important argument in defense of the ban. Moreover, once they come to occupy a substantial position in the debate, it becomes very difficult to defeat them. They make significant use of the fears of some concerning the likelihood of further undesirable steps, and successfully challenging that fear turns out to be an almost impossible task. Declarations by opponents of the ban that no further steps down the line are desired are not considered credible. Even worse, any view that some of the developments that the lifting of the ban may entail in its wake need not be objectionable immediately fuels existing fears that a “horrible result” is becoming inevitable. This in turn has the unfortunate consequence of impoverishing the democratic debate about an important decision faced by the society. It is therefore impossible not to concur with Volokh’s view that “[t]he slippery slope is in some ways a helpful metaphor, but as with many metaphors, it starts by

³⁵ Indeed, some incidents of pressure recounted in a recent research make for sober reading. See BINNAZ TOPRAK, *BEING DIFFERENT IN TURKEY* (2008).

³⁶ van der Burg, *supra* note 11, at 57.

³⁷ *Id.* at 58.

enriching our vision and ends up by clouding it.”³⁸

As mentioned earlier, the dominance of slippery-slope arguments in a controversy such as the one over the headscarf serves to justify the status quo, thereby helping to legitimize the existing injustice to headscarved university students. What is more, when fear about possible further developments greatly influences a position in such an important debate, the possibility that slippery-slope arguments can actually play a counterproductive role is easily overlooked. For one, the ban clearly risks further marginalizing headscarved women by denying them higher education and blocking their successful integration into society on their own terms. In addition, it undeniably frustrates citizens of faith and risks their alienation from the democratic process. By focusing on the larger political struggle and the deep division in the society, the slippery-slope thinking actually risks deepening that division and exacerbating the existing *Kulturkampf*.

In view of the capacity for slippery-slope arguments to diminish the quality of democratic dialogue, it is important to hold them to critical scrutiny. Having noted this, however, it is also necessary to heed Volokh’s other warning that “[w]e can’t just dismiss slippery slope arguments as illogical or paranoid.”³⁹ When a significant segment of the population has fears about further undesirable developments that a particular decision is thought to bring about, it is imperative that those fears are addressed. Admittedly, if trust in a sincere dialogue is eroded as a result of societal polarization, defeating slippery-slope arguments may seem impossible. The most politically promising strategy in such a situation may then be to change the whole framework of the debate and to move the discussion to a platform where such arguments are, at least, considerably weakened. Typically, this can be accomplished when a fiercely debated issue is resolved in such a way that it is seen by neither side as a clear victory.⁴⁰ By approaching the topic in a more comprehensive way, so that the headscarf decision is one part of a larger reform package, fears of a slippery slope can be significantly assuaged. More particularly, if the lifting of the ban is accompanied by other steps to enlarge and safeguard the freedoms of all, the belief that religious freedoms are expanded at the expense of (future) restrictions on certain other civil liberties will lose much of its grounds. It seems that, in this way, further recognition of the rights of religiously sensitive citizens will not create in time conditions that may jeopardize the existing diversity in the society.

More generally, it is when the decision about the headscarf is seen as an opportunity to reevaluate the existing relationship between

³⁸ Volokh, *supra* note 4, at 1137.

³⁹ *Id.* at 1136.

⁴⁰ *See, e.g., id.* at 1037, 1126-27.

religion and the state that a promising and sustainable solution can be found. Slippery-slope arguments, therefore, not only force us to consider the larger problem that the headscarf symbolizes but also show that successful resolution of the issue is only possible through a reconciliation of Turkish secularism with religious freedoms within a liberal democratic framework. This in turn suggests that public visibility of religion needs to be evaluated along with a reexamination of, for example, the role of the state-controlled Directorate of Religious Affairs, the status and content of the currently compulsory religious education in middle and higher education, and the position of the Alevis, a non-Sunni minority that comprises 15% of the population. As discussion of each of these topics is clearly beyond the scope of this paper, it must suffice for our purposes here to make the general point that the decision concerning the headscarf ban needs to be seen by all to result in a *general* expansion of individual freedoms. After a quarter of a century in this ongoing debate, it may be time now to ask not *whether* but *how* the current ban should be lifted.