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A BROKEN PROMISE: THE CONTINUED USE OF VIRGINITY CONTROL EXAMINATIONS IN TURKEY

*D. Christopher Decker**

There are over 500 million Muslim women in the world today.¹ Many of these women reside in countries like Saudi Arabia, Afghanistan and Iran where a rigid set of rules have been developed by custom, tradition, and theologians into the shari'a. The rules of shari'a in these societies can be very oppressive for women.² Conversely, women in Turkey have attained a great deal of

* J.D., University at Buffalo School of Law, 1998; B.A., Purdue University, 1995;. This work is the culmination of class work, personal interest, and field research. Many people and organizations have helped to make this work possible including Dilşah Deniz, Selim Okçuoğlu, Aysel Tuğluk, Ümmühan, Mustafa, Prof. Makau Mutua, Prof. Mark Gibney, Prof. Adrien Wing, and Prof. Estelle Lau. Special thanks to the Buffalo Public Interest Law Program and Toplumsal Hukuk Araştırmaları Vakfı (TOHAV), the Foundation for Social Jurisprudence Research in Istanbul, Turkey, without these two groups this work would not have been possible. The responsibility for the article is strictly the author's and does not reflect the opinions of either organization. I dedicate this article to Marcella Cavalier with great love, respect, admiration, and gratitude.

¹ Elisabeth Schemla, *Islam's Veiled Threat*, WORLD PRESS R., Jan. 1995, at 19.

² The shari'a is not interpreted the same in every sect, therefore not every Islamic country has limited the role that women play in those societies. Furthermore, there are scholars, such as Abdullahi An-Na'im that believe that:

[G]iven the historical context of both initial revelation and subsequent interpretations of the text of the Qur'an and Sunna, some texts are no longer applicable while others need to be interpreted differently. I believe the divine revelation must be understood and applied in historical context because it address us in our human condition and circumstances which change over time.

Abdullahi An-Na'im, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13, 13 n.1 (1990).

Furthermore, Professor An-Na'im believes that the principle of *qawama* that gives men guardianship and authority of women can now be re-interpreted because it was based on women's financial dependance on men and the physical superiority of men. Modern circumstances have made women's economic independence "more readily realizable," and since the rule of law rather than physical might reigns, the two conditions for this

autonomy, more than women in other Islamic countries. However, there is still much progress that needs to be made in Turkey to ensure that women's rights that are granted under domestic and international law are observed and enforced.

Turkey is a country at a crossroads in a number of different ways. For many years Turkey strived to become more Western. For instance, in 1923 Mustafa Kemal Atatürk³ founded the Turkish Republic based on the principles of democracy and secularism. Militarily, Turkey is the only Islamic member of NATO. Economically, the country has signed a major free trade agreement with the European Union.⁴ During this period of Western influence, there have been many cultural dilemmas and most recently there has been a backlash of religious conservatism.⁵

When Atatürk founded the Turkish Republic he placed a great emphasis on giving women a more equal role in Turkish society.⁶ He felt that the only way for Turkey to modernize and Westernize was for women to obtain equal education, jobs and status.⁷ This is an incredible vision for a leader who lived in the early twentieth-century, let only a Muslim man. In fact, Turkey adopted the Swiss Civil Code which granted equality on the basis of sex.⁸ One would think that with equality having been granted so long ago that the status of women would be similar to that of women in the West. Yet, this is far from the truth. Attitudes about women are closely tied to cultural values that are still dominated by conceptions of religion and tradition. Women have been caught in the middle

domination are no longer applicable. *Id.* at 37, 49.

³ After nearly twelve years as president of Turkey, the Grand National Assembly bestowed the title of Atatürk upon Mustafa Kemal. The title means "father of Turkey" and this is how he is known to all Turks.

⁴ See *Turkey to Revise Customs Union Accord with EU*, Agence France Presse, July 21, 1997, available in LEXIS, CURNEWS file.

⁵ I will refer to the rise of religious movements that seek stringent social controls placed on society in accordance with the Qur'an as "religious conservatism." The word "fundamentalism" has taken on a very negative connotation in American society. "Fundamentalism" conjures images of "crazy religious fanatics" screaming hatred toward the United States. As such this term will not be used in this paper.

⁶ See TAHIRE KOCTURK, A MATTER OF HONOR: EXPERIENCES OF TURKISH WOMEN IMMIGRANTS 29-32 (1992).

⁷ See *id.* at 29-30.

⁸ See CANAN ARIN, WOMEN FOR WOMEN'S HUMAN RIGHTS REPORTS NO. 1, THE LEGAL STATUS OF WOMEN IN TURKEY 9 (1996). See also KOCTURK, *supra* note 6, at 31.

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of a battle in Turkey, between groups wanting greater equality versus conservative religious groups.

Since attitudes about equality have been slow in taking root, the conditions of women lag behind men's in many important areas. Literacy rates for females are poor compared with males,⁹ and many women in rural areas often work for no pay.¹⁰ More importantly, the state still subjects women to degrading and inhumane treatment with the use of government virginity control examinations when women are incarcerated. The state allows families to force these examinations on young girls to ensure their purity.¹¹ The promise of equality that Atatürk gave to his Turkish "daughters" has not been realized and greater steps must be taken to promote equality and eradicate virginity control examinations.

This paper will explore how the evolution of the modern Turkish state and the role Atatürk intended women to play in society. It will further show how the Turkish Republic has failed to create equality between the sexes both in law and in fact, especially in the area of education. Lastly, the paper will show how Turkey has not adhered to international law by allowing practices such as virginity control exams that degrade women and keep them subservient to men.

I. THE ORIGINS OF THE MODERN TURKISH STATE

In 1839 the *Tanzimat* period began.¹² While the Ottoman Empire was in decline during this period, it marked the beginning of "political, social and cultural reforms."¹³ These reforms included unifying the legal code which previously had different standards depending on "social status, gender,

⁹ See U.S. Department of State, Country Report on the Human Rights Practices for 1997: Turkey, at § 5 (Jan. 30, 1998).

¹⁰ See Gülten Kazgan, *Labour Force Participation, Occupational Distribution, Educational Attainment and the Socio-Economic Status of Women in the Turkish Economy*, in WOMEN IN TURKISH SOCIETY 131, 133 (Nermin Abadan-Unat ed., 1981)

¹¹ See HUMAN RIGHTS WATCH / WOMEN'S RIGHTS PROJECT V. 6, No 7, A MATTER OF POWER: STATE CONTROL OF WOMEN'S VIRGINITY IN TURKEY 2 n.2 (1994). [hereinafter A MATTER OF POWER].

¹² See A. AFETINAN, THE EMANCIPATION OF THE TURKISH WOMAN 37 (1962).

¹³ See *id.*

profession, religion or religious sect."¹⁴ These legal changes had little effect on marriage and divorce laws which most directly concerned women. Although there were no civil marriages, there was a special contractual arrangement that that was considered to be a valid form of marriage.¹⁵ Furthermore, only men were given the power to divorce.¹⁶

Toward the end of the 1860's, the Young Ottomans, a group of exiles together with the elite remaining in the Ottoman Empire, sought to influence government policy.¹⁷ Their movement was responsible, albeit indirectly, for the Ottoman constitution in 1876, and their writings became the foundation for the Ottoman constitutional movement.¹⁸ The Young Ottomans' political movement was significant because it was the first attempt to marry European liberalism (democracy) and Islamic tradition.¹⁹

Although a constitution was formed and a parliament was elected by 1877, both were ineffective because they allowed the sultan to rule by decree, thereby usurping the parliaments powers.²⁰ By early 1878 Sultan Abdülhamit II suspended the constitution and ruled as an absolute monarch for the next 30 years.²¹ Revolutionary groups began to emerge due to the economic problems at home and political problems abroad.²² The most important organization was the Committee of Union and Progress (CUP)²³ in the mid-1890's.²⁴ In 1908, CUP members, backed by two army divisions, forced Sultan Abdülhamit II to reinstall the constitution. This was known as the Young Turks Revolution and it

¹⁴ See PINAR ILKARACAN, WOMEN FOR WOMEN'S HUMAN RIGHTS REPORTS NO. 2, WOMEN'S MOVEMENT(S) IN TURKEY: A BRIEF OVERVIEW 9 (1996).

¹⁵ See *id.*

¹⁶ See *id.* The one exception to this law was the Islamic right of *tefviz-i talak* which was utilized only by the sultan's daughters. See *id.*

¹⁷ See FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, TURKEY: A COUNTRY STUDY, 23 (Helen Chaplin Metz eds., 5th ed. 1996) [hereinafter TURKEY: A COUNTRY STUDY].

¹⁸ See ERIK J. ZÜRCHER, TURKEY A MODERN HISTORY 73-4 (1993); see also See MERTIN HEPER, HISTORICAL DICTIONARY OF TURKEY 64 (1994).

¹⁹ See ZÜRCHER, *supra* note 18, at 74.

²⁰ See *id.* at 80; see also HEPER, *supra* note 18, at 64.

²¹ See TURKEY: A COUNTRY STUDY, *supra* note 17, at 26.

²² See M. ŞÜKRÜ HANIOĞLU, THE YOUNG TURKS IN OPPOSITION 33-78 (1995).

²³ The CUP was a political group that espoused a unified Ottoman state under Turkish language and culture. See MASAMI ARAI, TURKISH NATIONALISM IN THE YOUNG TURK ERA 45-46 (1992).

²⁴ See HANIOĞLU, *supra* note 22, at 3-6.

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marked the beginning of the second constitutional period.²⁵ The CUP counted among their ranks an ardent nationalist by the name of Mustafa Kemal, who would later found the Turkish Republic.²⁶

Between the *Tanzimat* period and the second constitutional period beginning in 1908, modernization was "identified with Western universality."²⁷ The prevailing thought was that Westernization could only be achieved "through the liberalization of women and their liberation from Islamic tradition."²⁸ Then, just as today in Turkey, Islamic conservatives resisted modernization and Westernization.²⁹ Modernists of the late nineteenth century "criticized arranged marriages, polygamy and gender segregation; and advocated the free access of women to education and 'free love.'"³⁰ Islamic conservatives interpreted these reforms as threats to the cultural identity of Turkey and tried to direct any attempts of reform at "technical, administrative and material domains," rather than social and cultural arenas.³¹

The period from 1909-1913 was marked by great instability, counterrevolutions, coups, and government upheaval.³² From 1913-1918, a political group known as the Unionist, who were closely tied to the CUP, ruled the Turkish parliament.³³ During this period the Unionist further strengthened the secular structure within the Ottoman Empire by bringing the religious courts under the auspices of the Ministry of Justice, the secular court system.³⁴ Furthermore, religious schools were brought under the control of the Ministry of Education.³⁵ These changes had a great effect on women by beginning to dismantle the traditional patriarchal structures that sought to keep women in an inferior position within Turkish society. It also marked the growing activity of

²⁵ See AYKUT KANSU, *THE REVOLUTION OF 1908 IN TURKEY* 2-3, 73-101 (1997).

²⁶ See ZÜRCHER, *supra* note 18, at 148; see also TURKEY: A COUNTRY STUDY, *supra* note 17, at 27.

²⁷ ILKKARACAN, *supra* note 14, at 10.

²⁸ *Id.*

²⁹ See *id.*

³⁰ *Id.*

³¹ *Id.* at 11.

³² See ZÜRCHER, *supra* note 18, at 101-17.

³³ See *id.* at 125; see also ARAI, *supra* note 23, at 93-94.

³⁴ See HEPER, *supra* note 18, at 65; see also ZÜRCHER, *supra* note 18, at 126; see also ARAI, *supra* note 23, at 93-94.

³⁵ See ZÜRCHER, *supra* note 18, at 126.

women's groups which lobbied for women's right to divorce, to work, and laws forbidding polygamy and arranged marriages.³⁶

The role of urban upper and middle class women changed significantly during World War I. Women gained the right to divorce and the age requirement for marriage was raised to sixteen.³⁷ Women were allowed to be seen in public socially, which went against established custom. Women accompanied their husbands to theaters and other entertainment.³⁸ Political participation among women was encouraged. Some political groups not only encouraged women to attend their meetings, but even went so far as to allow women to give speeches to the membership.³⁹ In 1913, primary education became mandatory for woman and in 1914 some courses were opened to women at the University of Istanbul.⁴⁰

After World War I, the Ottoman Empire was carved up among the victors.⁴¹ Greece pressured Great Britain to allow it to enforce the Ottoman terms of surrender.⁴² The Greeks were to occupy the city of Izmir under the Treaty of Sèvres. However, the Greeks occupied additional areas that were not provided for under the treaty.⁴³ In mid 1922, Atatürk led Turkish troops against the Greeks outside of Ankara. To avert another war, negotiations began between the Entente⁴⁴ and the Ottoman Empire about revising the terms of the Treaty of Sèvres. This period of history was a very turbulent and confusing time for the empire, in part due to the fact that there were two different governments, one in Istanbul and another in Ankara.⁴⁵ It was amidst this turmoil that Atatürk came to power. Towards the end of 1923, Atatürk submitted a

³⁶ See İLKKARACAN, *supra* note 14, at 11-12.

³⁷ See *id.* Even though women were afforded these rights the practice of polygamy was not outlawed and magistrates could make exception to the age limit. See *id.*

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See TURKEY: A COUNTRY STUDY, *supra* note 17, at 32.

⁴² See ZÜRCHER, *supra* note 18, at 153.

⁴³ See TURKEY: A COUNTRY STUDY, *supra* note 17, at 34.

⁴⁴ These nations included only those that had direct influence or interests in the area, Great Britain, France, Italy and Greece. In addition, the Soviet Union and a number of its future satellite countries were invited to represent themselves only when certain issues pertained to them. See ZÜRCHER, *supra* note 18, at 168.

⁴⁵ See *id.* at 163-71.

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proposal to the national assembly to create a republic and it was accepted.⁴⁶ On October 29, 1923 Atatürk was proclaimed president of the new Turkish Republic.⁴⁷

II. THE KEMALIST REFORMS AND THEIR INTENT

Even before Atatürk's rise to power the seeds of change had been planted by groups like CUP which funded periodicals that questioned the traditional position of women in society.⁴⁸ Articles in these publications advocated women's suffrage and equality.⁴⁹

Women's roles in the new Turkish Republic were a pressing issue to Atatürk both on a personal level and as a national issue. It appears that Atatürk was a man well before his time, but it has been argued that when looking more closely at some of his statements about women, his motives were not entirely altruistic.

Once Atatürk consolidated his political power in the mid-1920's he set out to enact a number of social reforms. Many of these reforms were similar to those undertaken during the second constitutional period.⁵⁰ Atatürk believed that in order for Turkey to progress it had to become more Western. To further this goal Turkey adopted the European calendar, the Swiss Civil Code and the Italian Penal Code.⁵¹ Religious traditions such as the wearing of fezzes were outlawed and family law was completely secularized.⁵² Women were granted suffrage in 1934 and they began to take on roles of typical western women as

⁴⁶ See TURKEY: A COUNTRY STUDY, *supra* note 17, at 36.

⁴⁷ See *id.*

⁴⁸ See ARAI, *supra* note 23, at 81, 92-93.

⁴⁹ See *id.* at 92.

⁵⁰ The Kemalists abolished the caliphate, the office of Şeyülislam, the Ministry of Shari'a, the shari'a courts and the religious school system. See TURKEY: A COUNTRY STUDY, *supra* note 17, at 35, 38.

⁵¹ See ZÜRCHER, *supra* note 18, at 181; see also Ümit Cizre Sakallıoğlu, *Parameters and Strategies of Islam-State Interaction in Republican Turkey*, 28 INT. J. MIDDLE EAST STUD. 231, 234 (1996); and see Amy Schwartz, *Atatürk's Daughters*, Aut. 1995, WILSON Q. at 72.

⁵² See ZÜRCHER, *supra* note 18, at 181.

professionals.⁵³

As in most countries, although the laws changed regarding women's rights, people's beliefs did not. As one author has framed the lag between legal rights and their realization:

The approach to the question of women's liberation in Turkey has been influenced by . . . misconceptions about the nature of the modernization process. Since the inferior status of women in the Ottoman Empire is attributed to the impact of Islam on Ottoman society, it is assumed that women have gained an equal status with men as a result of modernization which, in the Turkish context, is equated with Westernization. The problem with this assumption is that although urban educated women may be Westernized, it is questionable that they are liberated. To be sure, there has been a significant change in the status of women in Republican Turkey, both legally and *de facto*, as compared to the Ottoman period. However, I think that such change is more apparent than real if we talk about liberation rather than the formal guarantee of rights.⁵⁴

While laws affecting Turkish women have been liberalized, women have not in fact been liberated by these reforms. Women's sexuality is still greatly repressed because *namūs*, a family's honor, is based on moral codes that place a high value on virginity prior to marriage.⁵⁵

Atatürk was adamant that many traditional religious and cultural practices that had kept women relegated to second class citizens must be abolished including child marriage and arranged marriages.⁵⁶ Bride-price and veiling were discouraged, and compulsory primary education for girls and boys was

⁵³ See Binnaz Sayari Toprak, *Religion and Turkish Women*, in WOMEN IN TURKISH SOCIETY, *supra* note 10, at 281, 288.

⁵⁴ *Id.* at 282.

⁵⁵ See Kelly Couturier, *Suicide Attempts Fuel Virginity Test Debate*, WASH. POST, an. 27, 1998, at A18; Interview with Canan Arin, Lecturer of Women's Studies at Istanbul University, in Istanbul, Turkey (July 28, 1997).

⁵⁶ Nermin Abadan-Unat, *Social Change and Turkish Women*, in WOMEN IN TURKISH SOCIETY, *supra* note 10, at 5, 5.

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instituted.⁵⁷ Women were allowed to run for office and serve in the military.⁵⁸

In his personal life, Atatürk broke most cultural and religious standards regarding women. He insisted that his wife be present at their marriage, breaking with Islamic custom, and he danced with his wife at parties.⁵⁹ Atatürk made the plight of women not just a pressing issue, but he made women's issues the focal point around which many other reforms were built. He was so opposed to women veiling themselves that in 1925 he said:

In some places I see women who hide their faces and eyes by throwing a piece of fabric, a scarf, or something like that over their heads, and when a man passes by, they turn their backs to him or close up by sitting on the ground. What is the meaning and explanation of this behavior? Gentleman, would the mothers and daughters of a civilized nation assume such an absurd and vulgar pose? This is a situation that ridicules our nation. It has to be corrected immediately.⁶⁰

Regardless of his strong feelings towards liberating women from their traditional dress, Atatürk visioned the women of Turkey as mothers of the republic not as partners.

When Atatürk used women as the means to the end of modernizing, Westernizing, and secularizing Turkey, he set women up to be the center of many political fights in Turkey.⁶¹ For example, one of the largest cleavages in Turkish society is between secularists and religious conservatives.⁶² This fight is not relegated to just social or religious spheres, but it has spilled over into a fight for political leadership of the Republic of Turkey.⁶³ Women have been placed at the center of a fight between the government (in which the military plays a

⁵⁷ See Schwartz, *supra* note 51, at 72.

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ Zehra F. Arat, *Kemalism and Turkish Women*, 14 *WOMEN & POLITICS* 57, 61 (1994).

⁶¹ See İLKKARACAN, *supra* note 14, at 13-14.

⁶² See *id.* at 7-8.

⁶³ The Islamic party, Refah, was forced to resign under pressure from the military which is the real political power "behind the scenes." See Andrew Borowiec, *Army Runs Turkey Behind Scenes; Generals Eager to Stifle Islamists' Social and Political Clout*, *WASH. TIMES*, July 18, 1997, available in LEXIS, CURNEWS file.

large role in directing domestic and foreign policy)⁶⁴ and the Refah Party.⁶⁵ While the government believes that women should not be allowed to veil themselves, Islamic conservatives want women veiled.⁶⁶ When groups discuss women's rights they are really addressing fundamental aspects of Turkish politics, culture, and religion.

If we oversimplify the current debate in Turkey, we can say that the main themes of the present discourse are support for, or opposition to Kemalism and different perspectives on gender roles. I believe that the present discourse has its roots in earlier discourses about modernism and westernization, Islamism (sic) and nationalism of the nineteenth century and that the women's movement in Turkey has not yet succeeded in freeing itself from the hindering consequences of these discourses.⁶⁷

Moreover;

[I]t seems that the official Kemalist position is restricted to the framework of secularism and reform of the Islamic way of life instead of the actual liberalization of women in real life. Thus, women were instrumentalized once more, this time in line with the Republican ideology, as the "protectors" of secularism and the "new Republic" just as they have been instrumentalized by the conservatives, for whom the women have served as the "protectors" of family values and the social status quo.⁶⁸

⁶⁴ The military sees itself as the defenders of the constitution and protectorate of the secularist nature of the state. See *id.*; see also Eric Rouleau, *Turkey: Beyond Atatürk*, 103 FOREIGN POL'Y 70, 77 (1996).

⁶⁵ Refah is the Islamic party that was the lead coalition partner in the previous government that was brought down when the military forced the government to resign amid heavy pressure and threats of a military coup. See Borowiec, *supra* note 63.

⁶⁶ Tom Hundley, *Combat Zone in the Gender War; Women Caught in the Middle Where East Meets West*, CHI. TRIB., Mar. 29, 1998, available in LEXIS, CURNEWS file.

⁶⁷ ILKKARACAN, *supra* note 14, at 8.

⁶⁸ *Id.* at 14.

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Therefore, the use of virginity control examinations is not just a repugnant practice, but it represents a tug-of-war between forces that want to hold onto tradition and family honor versus secular and Western conceptions of women's sexual freedom.

Atatürk clearly believed that a woman's primary role was to raise good Turkish men to lead the country. In 1923 he stated:

History shows the greatest virtues shown by our mothers and grandmothers. One of these has been to raise sons of whom the race can be proud. Those whose glory spread over Asia and as far as the limits of the world had been trained by highly virtuous mothers who taught them courage and truthfulness. I will not cease to repeat it, *woman's most important duty, apart from her social responsibilities, is to be a good mother.* As one progresses in time, as civilization advances with giant steps, it is imperative that mothers be enabled to raise their children according to the needs of the century.⁶⁹

This statement tends to demonstrate that Atatürk advocated women's rights because it suited his goal of creating a modernized and Westernized Turkey.⁷⁰

⁶⁹ Ayşe Kadıoğlu, *Women's Subordination in Turkey: Is Islam Really the Villain?*, Aut. 1994, 645, at 652.

⁷⁰ Atatürk stated in 1923 that:

If it is found to be sufficient to have only one of the two sexes that compose a society equipped with the contemporary needs, more than half of that society would remain weak. . . . Therefore, if knowledge and technology are necessary for our society, both our men and women have to acquire them equally.

Z. Arat, *supra* note 60, at 60.

Furthermore, Atatürk stated that, "it is the woman who gives a man the earliest words of advice and education, and who exercise on him the initial influence of motherhood." When taking all these statements together, the fact that he never acknowledges women's rights as individuals within the Turkish society, perhaps the image of Atatürk as a great emancipator of women is overstated. *See generally id.* (how Atatürk did not intend his reforms to make equality between the sexes).

It is important to keep in mind the time period in which Atatürk made these changes. Furthermore, no matter how much Atatürk pushed for reforms, he faced serious religious pressures that opposed any changes in the status of women.⁷¹ Although some believe that his reforms did not go far enough, Atatürk deserves a great deal of credit for initiating wide sweeping changes that were unpopular with the majority of rural, conservative Turks.

III. TURKISH LAW AND WOMEN TODAY

The Turkish Constitution is a stunning document that guarantees many rights for both men and women. Although the Constitution appears to be similar to many other Western constitutions that grant equality, numerous articles of the penal and civil codes seem to abrogate the rights of women that the constitution guarantees.⁷² Throughout the 75 years since the establishment of the Turkish Republic, conservative religious forces have been trying to overturn these reforms.⁷³ Over the past six years there has been a resurgence of conservative religious parties in politics whose goal has been to reduce or eliminate many of the state's secular policies and reestablish religious practices that were discouraged or outlawed during Atatürk's presidency, such as veiling.⁷⁴ Some scholars believe that this conservative backlash is the reason for women's equality not having been achieved.⁷⁵ Others argue that because Atatürk did not envision true equality between the sexes, his political followers, the Kemalists, subsequently have not committed themselves to continue passing reforms that would ensure equality.⁷⁶

⁷¹ See Abadan-Unat, *supra* note 56, at 10-11.

⁷² See ARIN, *supra* note 8, at 7-8.

⁷³ It is important to note that there is a huge distinction between the rural and urban areas of Turkey along with class distinctions. The upper-class tends to live in the cities and are less religious than those in the vast country side of Turkey. The majority of the Turkish population is rural, conservative and under educated. See Lynda P. Malik, *Social and Cultural Determinants of the Gender Gap in Higher Education in the Islamic World*, J. ASIAN & AFR. STUD., Dec. 1995, 181, at 192.

⁷⁴ See ILKARACAN, *supra* note 14, at 7-8.

⁷⁵ See generally Schwartz, *supra* note 51.

⁷⁶ See generally Z. Arat, *supra* note 60.

A. The Turkish Constitution and Women's Rights

Atatürk took great steps to ensure that the Turkish state would remain secular. Secularism and equality appear to be directly tied. Islamic countries that have secular constitutions and laws seem to provide more opportunities for women than those countries that are based solely on Islam.⁷⁷ Article 2 of the Turkish Constitution declares that the state is democratic, secular and social governed by the rule of law. This is one of three articles of the Turkish Constitution that can never be amended.⁷⁸ Because the Constitution is not based on Islamic law it can assure certain rights and privileges that other non-secular countries cannot. For example, the Turkish Constitution grants equality on the basis of sex, religion and sect.⁷⁹ None of these rights would be recognized in many other Islamic countries.⁸⁰

Interestingly, the Turkish Constitution also evokes duties upon its citizens. For example, "Everyone posses inherent fundamental rights and freedoms which are inviolable and inalienable. The fundamental rights and freedoms also include the duties and responsibilities of the individual towards society, his family, and other individuals."⁸¹ The Constitution further states, "[t]he family is the foundation of Turkish society. The State shall take the necessary measures and establish the necessary organization to ensure the peace and welfare of the family, especially the protection of the mother and children and for family planning education and application."⁸² While the Constitution grants all these inalienable rights for women, the civil and criminal codes seem to take away some of these rights.

⁷⁷ Compare Egypt, Jordan and Syria (secular Islamic states) to Iran, Saudi Arabia and Afghanistan (Islamic law based states).

⁷⁸ See TURK. CONST. art. 4.

⁷⁹ See *id.* art. 10.

⁸⁰ See, e.g., IRAN CONST. art. 19-21 (granting equality to women only in accordance with Islam); see, e.g., KUWAIT CONST. art. 2, 18, 29 (granting rights which are limited by Islam); see, e.g., OMAN CONST. art. 2, 10, 11, 17 (demonstrating the central place of shari'a).

⁸¹ TURK. CONST. art. 12.

⁸² *Id.* art. 41.

B. The Civil and Penal Codes' Unequal Treatment of Women

Whereas the civil code in general appears to hold men and women as equals, it still has a number articles which place men in a superior position. "This approach, that limits the decision-making abilities [of women] to a great extent, is the fundamental legal basis for the women to be in a secondary status. This gender discriminatory approach, is also regarded as the source of violence against women."⁸³

Article 152 of the Civil Code provides that the man is the head of the marriage, he has the right to determine the place of residence and he has the responsibility to provide for his wife and children.⁸⁴ Even though the wife is responsible for taking care of the household, she is not allowed to take a lead or an equal role, so that she "serves as the assistant and consultant of her husband to pursue in the happiness of the family," according to Article 153.⁸⁵ Article 154 states, "[t]he family union is represented by the husband. Irrespective of the property division principles accepted by both partners, the husband is personally responsible for the taken action."⁸⁶ Until 1992, Article 159 required a woman to have the permission of her husband before she could work.⁸⁷ Under Article 170, marital property laws favor men because the Turkish property system is based on separate ownership, rather than community property and because of tradition, property is most often deeded by the husband.⁸⁸

⁸³ *Second and Third Periodic Reports of States Parties: Turkey*, Committee on the Elimination of Discrimination Against Women, 16th Sess., at 37, U.N. Doc. CEDAW/C/TUR/2-3 (1996) [hereinafter *Second and Third Periodic Report*]. On December 23, 1996 Turkey withdrew the *Second Periodic Report* from consideration by a letter to the Committee. See CEDAW/C/TUR/2/Corr.1. Turkey then submitted a combined second and third report which was considered on January 17, 1997. See *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Turkey*, Committee on the Elimination of Discrimination Against Women, 16th Sess., ¶ 151, U.N. Doc. A/52/38/Rev.1, paras.151-206 (1997).

⁸⁴ See Z. Arat, *supra* note 60, at 64.

⁸⁵ *Id.*

⁸⁶ *Second and Third Periodic Report*, *supra* note 83, at 122.

⁸⁷ See *id.* at 10.

⁸⁸ See *id.* at 4-5. There is a current draft proposal for the amendment of Article 170 that would create a system of shared property and develop a means to liquidate property upon "termination of the marriage by divorce, death or other reason." *Id.* at 17.

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Due to these articles of the Civil Code which are contradictory to principles of the Convention on the Elimination of Discrimination Against Women (CEDAW), Turkey has made a number of reservations to the convention.⁸⁹ Turkey has made reservations to Article 15(2), (4) and Article 16 (1)(c), (d), (e), (g).⁹⁰ These articles of CEDAW conflict with Turkey's Civil Code

⁸⁹ Turkey signed the Convention on the Elimination of Discrimination Against Women (CEDAW) on January 19, 1986. See *id.* at 7.

⁹⁰ Article 15 states:

2. States Parties shall accord to women, in civil matters, a legal capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

...

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16 states:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

...

c. The same rights and responsibilities during marriage and at its dissolution;

d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

...

g. The same personal rights as husband and wife, including the right to choose a family name profession and an occupation;

...

Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; see also

articles that deal with marriage and family relations.⁹¹

In addition, the Turkish Criminal Code is highly sexually biased in the areas of adultery, abortion and sex crimes. Moreover, many of the crimes that are directed at women fall under the heading of "Crimes Against Public Decency and Family Order"⁹² or "Crimes Against General Morality and Family Order."⁹³ By labeling a crime such as sexual assault to be a crime against morality rather than under "Section 9 entitled 'Crimes Against the Person,' [sic] thus the legal interest of the 'individual' is neglected."⁹⁴

There are also separate definitions of adultery for men and women in the Turkish Criminal Code. If a woman engages in one extramarital act of sexual intercourse, it meets the criteria of adultery under Article 440.⁹⁵ Article 441 states that a man must engage in a relationship that is continuous and it must resemble a relationship between a husband and wife.⁹⁶ Additionally, the female must be single for the husband's conduct to be considered adulterous.⁹⁷

Abortion was legalized in 1983, however it may only be conducted within the first ten weeks of pregnancy.⁹⁸ If the woman's health is in jeopardy, abortions may be performed later in the pregnancy.⁹⁹ However, even for legal

Second and Third Periodic Report, supra note 83, at 9 n.1.

⁹¹ Turkey has been attempting to amend parts of the Civil Code that conflict so that the reservations may be removed. Some of the issues that are being addressed are;

[I]ssues relating to legal domicile, determination of the residence, surname of the women, representation of the unity, responsibility, restriction or abolishment of the right to represent, restitution of the right to represent, legal procedures of the spouse, custody, descent, recognition, divorce and alimony, [and] securing the family sustenance.

Second and Third Periodic Report, supra note 83, at 16.

⁹² *See id.* at 17.

⁹³ *See id.* at 38.

⁹⁴ *Id.*

⁹⁵ *See Z. Arat, supra note 60, at 66.*

⁹⁶ *See id.*; *see also Second and Third Periodic Report, supra note 83, at 38.*

⁹⁷ *See Z. Arat, supra note 60, at 66.*

⁹⁸ *See id.* n.18

⁹⁹ *See id.*

abortions, women must receive the husband's permission.¹⁰⁰

The importance of virginity can be seen in two particular articles of the Criminal Code. "Articles 414 and 415 differentiate between rape and rape attempt. Article 423/1 sets forth 'the violation of virginity' as a condition, thus the crime depends not on the act of rape but on the virginity of the victim."¹⁰¹ The notion of honor being comprised of virginity is further enforced in the Criminal Code under Article 453. It states that a woman who murders her infant to protect her honor should receive four to eight years in prison. Furthermore, any family member found guilty of murdering an infant to protect a woman's honor receives only five to ten years in prison. In addition, Article 462 states that a person convicted of murder or attempted murder of a "relative involved in adultery or an illegitimate affair shall receive [a] 1/8 reduction in his penalty."¹⁰²

Prior to 1990, Article 438 of the Turkish Penal Code reduced by one-third the sentence of a man convicted of abduction and rape if it was committed against a prostitute. While there are numerous discrepancies in the treatment of men and women there have been positive changes.¹⁰³ However, this disparity in the treatment between men and women under the law enforces the social and cultural inequalities that keep the majority of Turkish women subservient to men. Nowhere is the distinction between men and women so pronounced as in the education of Turkish children.

C. Turkish Education Law and Policy and Women's Educational Opportunities

There is no dispute that the percentages of women in higher education are similar to numbers of many Western countries.¹⁰⁴ The large gap in education is horribly apparent when looking at the margin between male and female students in rural and urban areas. Although primary education is required for both males and females and is free,¹⁰⁵ many girls are never allowed to attend

¹⁰⁰ See *id.*

¹⁰¹ *Second and Third Periodic Report, supra* note 83, at 38.

¹⁰² *Id.*

¹⁰³ See generally *Second and Third Periodic Report, supra* note 83.

¹⁰⁴ See Malik, *supra* note 73, at 192; see generally Necla Arat, *Women's Studies in Turkey*, WOMEN'S STUD. Q., Spr.-Sum. 1996.

¹⁰⁵ See TURK. CONST. art. 42.

school and the law was not strictly enforced in the rural areas of Turkey.¹⁰⁶ Furthermore, in 1990 68% of the female population over the age of 6 years old was illiterate.¹⁰⁷ This figure is astounding considering that from 1981-87 a campaign was established to combat the illiteracy of women and through this program 2.9 million women became literate.¹⁰⁸

Female illiteracy translates into women not being able to attain secondary or even higher education in large numbers. Ten percent of girls do not go to primary school, this amount to approximately 3 million girls.¹⁰⁹ Only 19% of girls went on to lycee, which is comparable to a college preparatory level.¹¹⁰ These numbers are striking when broken into regional statistics. In the large cities like Istanbul, Ankara and Izmir, between 40-50% of the female populations attend lycee.¹¹¹ Conversely, in the smaller eastern cities of Hakkari and Agri less than 5% of the female population attend lycee.¹¹²

Yet, women that attain university education seem to receive good professional jobs. Women accounted for 32% of those employed in various academic fields.¹¹³ Furthermore, 25% of Turkish lawyers are women and 20% of judges are women.¹¹⁴ The fields of banking, finance and pharmaceuticals have also been opened up to women.¹¹⁵ As evidenced by these statistics, women in the urban areas are receiving the benefits of state education and are obtaining professional jobs with real earning potential. While these women enjoy their rights and benefits, their rural counterparts are subjected to continued illiteracy

¹⁰⁶ See Committee on the Elimination of Discrimination Against Women, Summary Record, 9th Sess., at 7, CEDAW/C/SR.165 (1990).

¹⁰⁷ See *Second Periodic Reports of States Parties: Turkey*, Committee on the Elimination of Discrimination Against Women, at 28, U.N. Doc. CEDAW/C/TUR/2 (1996) [hereinafter *Second Periodic Report*].

¹⁰⁸ See *id.* at 27. What is unbelievable about this statistic is that currently there are about 58 million people in Turkey (and that figure was probably lower 10 years ago), roughly 51% are women. Taking all these factors together, in this literacy drive nearly 10% of all women became literate. Had it not been for this campaign almost 80% of Turkish women would be illiterate.

¹⁰⁹ See *id.* at 28.

¹¹⁰ See *id.*

¹¹¹ See *id.*

¹¹² See *id.*

¹¹³ See *id.* at 24.

¹¹⁴ See *id.* at 23.

¹¹⁵ See *id.* at 25.

and under-education which will relegate them to second class status with little or no hope of advancing. Only with education will women be able to begin to exert their independence and advocate for continued liberalization of women's rights. Unfortunately, even women and girls that receive an education are still subjected to cultural and religious practices which degrade and liken them to chattel.

IV. THE USE OF VIRGINITY CONTROL EXAMINATIONS

It is easy for Westerners to look at a country like Turkey and denounce it for its human rights record concerning its treatment of women. Turkey has made an earnest attempt to create equality between the sexes. In fact, when one examines the number of programs and proactive steps that the government has taken to establish equality it is hard to fault the government. Then, a report is released about a practice that is so inhumane, so sexist, so degrading that it makes one question how far Turkey has really come in the struggle for equality. For that matter, it make one question whether things will ever really change in Turkey. This practice is known as a "virginity control examination" and while it is illegal under Turkish law, the state sanctions the practice by allowing it to take place in state hospitals and to have the exams performed on detainees.

A virginity control examination is a gynecological examination performed by a doctor to ascertain whether a female's hymen is intact.¹¹⁶ These examinations are carried out to confirm whether the hymen has been broken due to sexual intercourse and when it was broken.¹¹⁷ There are numerous medical problems with this type of examination. First, an expert must be used because they are the only doctors that can conclusively identify a hymen.¹¹⁸ Moreover, the hymen is soft tissue and it heals within seven to ten days.¹¹⁹ Lastly, the hymen can be broken during physical exertion such as sports or bike riding, and it is nearly impossible to tell how it is broken.

Turkey is not the only country which places such importance on the virginity of women. Many other societies, especially those with strong Catholic

¹¹⁶ See A MATTER OF POWER, *supra* note 11, at 2 n.2.

¹¹⁷ See *id.*

¹¹⁸ See *id.*

¹¹⁹ See *id.*

roots place a great moral importance on virginity.¹²⁰ In Turkish society the virginity of a woman translates into the honor of the family, *namūs*.¹²¹ Moreover, the loss of a woman's virginity can mean a life of hardship.¹²² Because the loss of a woman's virginity may mean the loss of her family's love and support, some women and girls have committed suicide rather than submit to the virginity control exam. In 1992, two high school girls killed themselves when the principal ordered the girls along with a number of others to submit to a virginity control examination.¹²³ In another town, a girl ran away from home when school officials requested that the father take her to have a virginity control exam performed.¹²⁴ The girl turned up dead a few days later and her father had a virginity exam performed on the body.¹²⁵ According to a counselor at a women's shelter in Istanbul, a former resident had been raped when she was a teenager and her family forced her to undergo a virginity control examination.¹²⁶ The exam revealed that she was no longer a virgin and her family subsequently starved and beat her for damaging the families honor.¹²⁷

When a woman loses her virginity for any reason, prior to marriage, she loses the ability to marry.¹²⁸ This has a tremendous impact on women in Turkey, since so much importance is placed upon families. Under the Turkish Constitution "[t]he family is the foundation of Turkish society."¹²⁹ Moreover, noting statements made by Atatürk about the venerable role that women play as the mothers of Turkish society, if a woman is unable to marry because she is not a virgin she becomes less of a woman. Therefore, because of the stigma attached to the loss of a woman's virginity and the consequences that accompany that loss, women are pressured to "prove themselves innocent." If a woman's virginity is questioned by members of her family, even women that are past the

¹²⁰ See Sarah Y. Lai & Regan E. Ralph, *Female Sexual Autonomy and Human Rights*, 8 HARV. HUM. RTS. J. 201, 210-211 (1995).

¹²¹ See A MATTER OF POWER, *supra* note 10, at 5; see also Interview with Canan Arin, *supra* note 55.

¹²² Interview with Canan Arin, *supra* note 55.

¹²³ See *id.* at 1.

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ See *id.* at 5.

¹²⁷ See *id.*

¹²⁸ See *id.*

¹²⁹ TURK. CONST. art. 41.

age of majority, more often than not they will undergo a virginity exam. Although women that are the age of majority have the right to refuse virginity control exams, to refuse one is seen as an admission of guilt.¹³⁰ This "guilty until proven innocent" standard disempowers women from making choices concerning their bodies.

The state has condoned the practice by allowing it to continue in the private realm. More importantly, the state itself has subjected women to virginity examinations on an ongoing basis. The state has forced women that have been detained to submit to virginity exams. In early 1993, a 21 year old journalist and her co-worker were detained and taken to a state hospital.¹³¹ When the woman realized that they were going to subject her to a virginity control exam, she asked to speak to her lawyer.¹³² The police officer stated that it was being done to protect the officers from accusations of rape.¹³³ The doctor told her that she had better submit or the police would pull her legs apart.¹³⁴ The doctor preceded to pull her apart and conduct the exam.¹³⁵

Even though laws have been changed to create some equality, women are still subject to this invasive type of sexual repression, while their male counterparts are spared. These acts are clearly in violation of Turkish law and international norms concerning the treatment of women.

V. ILLEGALITIES OF VIRGINITY CONTROL EXAMINATIONS

While "states are not responsible for the actions of private persons or agencies," the state must meet their international obligation.¹³⁶ A state is not responsible for the private acts of abuse against women, but the state must, "exercise due diligence to eliminate, reduce, and mitigate the incidence . . ." ¹³⁷ This is true in the case of virginity control examinations. In failing to remedy

¹³⁰ See A MATTER OF POWER, *supra* note 11, at 6.

¹³¹ See *id.* at 16.

¹³² See *id.*

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ See *id.*

¹³⁶ Rebecca J. Cook, *State Responsibility for Violations of Women's Human Rights*, 7 HARV. HUM. RTS. J. 125, 151 (1994).

¹³⁷ *Id.*

these violations against women, the state has actually facilitated the wrong and is an accomplice in its commission because it allows the practice to persist.¹³⁸ By giving conflicting views,¹³⁹ and by allowing the practice to continue in state run hospitals, the state has given its tacit consent to the practice and therefore has legitimized the procedure.

While there is no question that as a societal principle Turkey is well within its right to promote the importance of virginity. However, Turkey persists in violating numerous domestic and international laws by allowing the practice of virginity control exams to take place. Virginity control exams violate many rights including those of children, freedom from discrimination, right to privacy and protection from cruel, inhumane and degrading treatment.

When state sponsored schools encourage families of girls in high school and younger to have them undergo virginity examinations it violates many of the girls freedoms. In particular, the Convention on the Rights of the Child¹⁴⁰ (CRC) states that no child should "be subjected to arbitrary or unlawful interference with his or her privacy."¹⁴¹ Furthermore, children have the right to be free from interference and attack.¹⁴² By allowing school officials to encourage or allow the virginity examinations performed, it seems to be a form of punishment and as such, states parties to the CRC are required to ensure that child are disciplined "in a manner consistent with the child's human dignity."¹⁴³

Since there are no examinations or inquisitions into the sexual practices of males in Turkish society, virginity control exams trample on women's freedom from discrimination. Under the Universal Declaration of Human Rights¹⁴⁴ (UDHR), all people are entitled to equal protection from discrimination.¹⁴⁵ This principle is also enumerated under the CEDAW.¹⁴⁶

¹³⁸ See *id.*

¹³⁹ See Couturier, *supra* note 55 (discussing Minister Saygin's support of virginity control examinations while the Minister for Human Rights wants them banned).

¹⁴⁰ G.A. Res. 44/25, 44 U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), 28 I.L.M. 1448 (entered into force Sept. 2, 1990).

¹⁴¹ *Id.* art. 16.

¹⁴² See *id.* art. 16.

¹⁴³ *Id.* art. 28 (2).

¹⁴⁴ G.A. Res. 217 A(III), at 71, U.N. Doc. A/810 (1948) [hereinafter UDHR].

¹⁴⁵ See *id.* art. 7.

¹⁴⁶ See CEDAW, *supra* note 84, art. 2.

A woman's right to privacy is preserved by Article 17 of the Turkish Constitution which states that, "[t]he physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law." The police continually use these examinations on detainees and female prisoners. Even though the practice is illegal the government allows the practice to continue at its state hospitals. Virginity control exams are in violation of international norms set forth in the UDHR; the right to privacy is protected under Article 12.¹⁴⁷

The practice of virginity control exams is also in violation of the standard of treatment of persons detained or arrested. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴⁸ prohibits the treatment of people in this regard.¹⁴⁹ In addition, the International Covenant on Civil and Political Rights¹⁵⁰ (ICCPR) prohibits the inhumane and degrading treatment of individuals.¹⁵¹

It is clear that the use of virginity control exams is against numerous norms set forth under international law. The virginity control examinations are also in violation of the Turkish Constitution, yet the practice continues. It is time for the Turkish Republic to take active steps to abolish the examinations. Subjecting women to these exams is tantamount to having property appraised. Women that no longer have their virginity have become damaged property, worth less or nothing at all. In a country where there is such a large focus on creating equality between the sexes, these exams perpetuate the degrading, cruel and inhumane treatment that women have received in the past and it is time that the use of virginity control exams cease.

VI. CONCLUSION

When looking at a number of roles and responsibilities that are placed upon women in Turkish society, including religious, legal and cultural, it appears

¹⁴⁷ See UDHR, *supra* note 144, art. 12.

¹⁴⁸ G.A. Res. 39/46, Annex, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987).

¹⁴⁹ See *id.* art. 16.

¹⁵⁰ G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).

¹⁵¹ See *id.* art. 5.

as though women are not equals in any sphere. Furthermore, women seem to be the glue that holds Turkish society together and because of this they bear an increasingly large burden. They are expected to be pious, educated, good obedient wives, modern and modest.¹⁵² This is a standard that no person could live up to. Women's rights in Turkey have taken on a double meaning. When people are debating women's rights in Turkey they are really arguing about freedom of religion and the struggle to retain their Islamic traditions and culture from being swallowed by their bothers and sisters who believe that the countries future lies in the Western world. Turkey is truly at a crossroads, while the government crawls forward with a few reforms, the conservative religious parties seem poised to repeal many of the freedoms women have attained. Instead of the government fortifying women's rights, it still allows ugly practices such as virginity control exams to continue. Atatürk's promise of equality between the sexes has been broken by his progeny and until the government takes a more active role in stopping this inhumane practice women will perpetually be equivalent to property and completely unequal to men.

¹⁵² See Kadioğlu, *supra* note 69, at 660.