

VALUES, LAW AND “DISCURSIVE THEORY”: HOW THE POLITICIZATION OF VALUES TRIGGERS INDIVIDUALIZATION IN SOCIETY

MUSTAFA YAYLALI

*Department of Legal Philosophy and Sociology
İstanbul Şehir University
mustafayaylali@sehir.edu.tr*

Abstract: In this paper I want to claim that “politicization of values” will lead to individualization in society, in the long run, and further that this process will amount to a more personal form of legislation. Looking at the example of Turkey, I will employ Habermas’ theories of “communicative action” and “discursive law”, in order to explain how this process is taking place. My main claim is that the theory of communicative action explains how allowing values to be manifested in the public sphere leads to the rationalization of those values, and subsequently to individualization within the society.

Keywords: hybridity, Habermas, Turkey, values, rights.

INTRODUCTION

Economic processes in developing countries have not only lead to wealth-maximalization but also to a comprehensive social transformation within these societies. Accordingly, this social change has inevitable implications for the legal systems of the societies in question. Countries like Turkey, Brazil, India, and China, amongst others, are facing a rudimentary change in their social structures, and consequently experience a burden on their legal system.

What is more significant about this kind of development is that it seems to trigger a move towards individualization, which finds its recourse by way of personalization of the law, that is, by way of claims to *(human-)rights*.

In this paper I want to claim that, and enunciate how, a “politicisation of values”, or the manifestation of *values* in the *public sphere*, contributes to a process of individualization. Moreover, I want to show how this process affects the legal systems in question by bringing that system closer to the individual, endowing individuals with their *basic rights*.

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To this end it is interesting to see how Habermas' theory of "discursive legal theory" and "communicative action theory" is relevant today, in enunciating the process of "democratisation", in Turkey, which is taking place in with all its facets¹.

Before embarking on any analysis of progressive social change and its effect on the (Turkish) Legal system, I will first give a brief introduction to the Turkish political system and its historical development. In doing so I will emphasise certain issues that have become symbolic in Turkish politics regarding emancipation and participation of certain groups and communities in Turkish society. How do, for example, the liberalization of headscarves in "public sphere" and of the Kurdish language in public, contribute to individualization of Turkish society?

Accordingly, I will outline how the acceptance of certain *values* in the public sphere triggers individualization, through an analysis of Habermas's theory of "communicative action". I will claim that the discursive process leads to a rationalization of *values*, and is therefore a process of disenchantment of *values* as well as a process of individualization.

Finally, I will explain how these developments affect the Turkish Legal system in the long-term, in terms of individualization. I will claim that "communicative action", as an element of democratization, triggers individual awareness, leading to claims of *basic individual rights*. In this respect, I will emphasise on how "private autonomy" and "public autonomy" merge, according to Habermas, during the democratic process, by way of communicative action. Eventually, claims for individual rights will lead to a bridging of the gap between positive law, imposed by the government, and the individual, helping to establish a more personified legal system/law.

POLITICAL BACKGROUND

Turkey's first encounter with the modern concept of state dates back to 1923, when the modern Turkey was established on the remains of the Ottoman empire (Shaw, Shaw 1977). The main aim of Atatürk, Turkey's legendary founder, was to transform Turkish society from what he

believed to be a "backward" society, which relied for the most part on religious law. Conservative clergy held a monopoly on the interpretation and application of religious law, and their decisions and application were far from transparent. In order to lead to Turkey into the modern world, Atatürk knew that he had to transform the society not only by way of political institutions and policies, but also with the help of legal instruments. With these he believed he could transform Turkish society from a "backward society" to a modern society, enlightened by science and logical thinking.

However, this somewhat simple and naïve ideal of transformation has torn Turkish society apart, and into two: an official part and a non-official part. Turkey has adopted a kind of Janus Face, which looks modern from the outside, while inside we find the remains of its previous religious government and outdated cultural doctrines that still remained intact.

The measures taken alienated a large part of society from the ruling elite. Besides the distinction between official and unofficial practices, the measures introduced created different classes – those accorded fully with the modernization process and those who did not – leading to deep frictions with society.

Besides the adoption of political measures like the "hat decree"², in order to sustain modern life in Turkey, the ruling Turkish government transplanted and enacted Swiss Civil Code in Turkey, in the hope that this would lead to modernization of Turkish society.

The problems that arose showed, however, that a process of modernisation cannot be achieved simply by a social engineering process, whereby law is used as a means of instrument to transform the society. Instead a more sophisticated approach is needed, since society is made up of human beings, and human beings do not simply change on a whim, but need a considerable amount of time in order to adjust themselves to the (social) developments that are going on.

This is why Pierre Legrand argues that law is more than mathematically constructed rules. According to Legrand, law only exemplifies, as part of the culture of society, which it tends to regulate. An example about



French law, that Legrand uses to support his argument, shows this:

French law is much more than a compendium of rules and propositions. Accordingly, to say that the study of French law consists in the study of legislative texts and judicial decisions is plainly inadequate. French law is, first and foremost, a cultural phenomenon, not unlike singing or weaving (Legrand 1998, 216; Legrand 1996, 232).

As mentioned earlier, the modernization process in Turkey lead to a division in society, between the society desired by the (nation-) state, and the society that Turkish society is acquainted with, namely that based on Islamic and cultural law. These distinctions have lead to an awkward situation, legally, whereby a dual legal system became applicable at the same time in one particular case. This situation is plainly depicted by Ihsan Yilmaz, who asserts that

in the case of marriage the attitude to the Code turns to one of outright conflict, between the official law and Islamic rules or, more accurately what the people regard as rules of Islamic law. There exist a number of fundamental differences between the secular civil law of Turkey and the unofficial Muslim local law. These differences include the secularization of the marriage ceremony. A legal marriage had to be registered with the civil authorities and concluded in their presence. Religious ceremony was made optional and carried no legal weight. A religious marriage without official registration was made a criminal offence. The adoption of the principle of monogamy meant that polygamy was under no circumstances allowed and became a criminal offence. The secularization of divorce proceedings was another key reform. The new law gave both parties an equal right to sue for divorce. Talaq (religious divorce) was no longer recognized. Divorce could only be granted by an official court (Yilmaz 2002, 121).

This has consequently lead to a legal reality, whereby the

People in Turkey after the reception and transplantation of the Swiss Civil Code have had three alternatives. Avoiding the official law, following the Turkish state law or following a combination of the requirements of the Muslim law and Turkish law. Evidence has shown that they preferred the third option. They have developed a new Hybrid Turkish Muslim law that amalgamates the rules of unofficial Muslim law and of the state law" (Yilmaz 2002, 121).

Likewise, politically, the new government put a curtain between what they called the "private and public" spheres, which meant that those who could not integrate

themselves into the public sphere were simply excluded. As Fuat Keyman has shown, quoting Michel Foucault, in the

concept of governmentality, secularism is used by the state as an 'effective technology of the government of the self' by creating a boundary between the public sphere and the private sphere, in which religious claims to identity are confined as private, individualistic and particular. Thus, the state attempts to prevent the claims to religious identity and group rights from entering into the public sphere" (Fuat Keyman 2007, 219).

The subsequent result is that

a Turkish state in which the collective identities and interests of these groups cannot find public representation cannot be a truly representative democratic state, even if it is founded on modern secular constitutional principles (2001, 1064–5) (Fuat Keyman 2007, 225).

Practically, this has meant that in Turkey, a great part of society was not fully represented by the political apparatus, and above all, they were prohibited from manifesting their own cultural and/or religious *values*. Despite the fact that there have been several attempts by right-wing parties to represent this un-represented section of the society, these parties have never achieved a comprehensive participatory result, as the current ruling AKP Government have done. While right-wing politicians like Adnan Menderes and Turgut Ozal paved the way for the current stage of participatory politics, they never achieved full emancipation. Full emancipation could only happen if such politicians were allowed to participate in the political apparatus, by employing their own value-systems in the "democratic procedure", as Habermas has contended.

In the quest for recognition of lifestyle and *values*, between the "un-represented" part of the Turkish society and the ruling elite, the headscarf has been utilized as a political symbol depicting this power struggle. This is why the headscarf issue can be seen as an indicator of the progress that has been made.

HEADSCARF: FROM VALUE TO POLITICAL SYMBOL

In Turkey, the headscarf issue is a proxy for political struggle between secularists and Islamists. Covering constructs boundaries of identity and difference-boundaries between men and women, between

Turkish secular elites and political Islamic leaders, and between the global West and transnational Islam (Vojdik 2010; Cakiroglu 2010).

While the headscarf was considered essential in public life, not only as a religious duty, but also as a cultural symbol, the Turkish ruling class considered it a symbol of female oppression. However, behind the power struggle lay a disguised resistance, where the new ruling elite tried to maintain the political, and therefore economic, power. The headscarf issue was one of the elements in the struggle that they used in order to keep both the economic and political power in their hands.

The “dress code” was not only used to modernize Turkish society, in practice it was also used as a tool to exclude a certain group from the political and economic apparatus. This explains why, for example, in the nineties young female students protested against the prohibition on wearing headscarves at universities.

Because for those students, going to university was the only route out of their conservative environment. University provided not only an environment where they could freely develop themselves, but also provided the prospect of a future profession, which would provide them with financial and individual freedom to a certain extent.

The use of headscarf as one of the tools in this “disguised” power struggle between the ruling elite and the “un-represented” is clearly depicted by Vojdik. She argues that in this struggle, “These women challenged both the secular construction of the headscarf as a means of Islamic male oppression, as well as the Islamist masculinist construction of the veil as protector of women’s modesty and place in the *mahrem*, or domestic sphere”. (Vojdik 2010, 664) Moreover, “The phenomenon of Islam (...) geographically moved into urban settlements and (...) penetrated the central power apparatus where modern cultural values and symbols are created”. According to Vojdik,

Veiled women are not simply passive conveyors of the provincial traditional culture; they are, rather, active and self-asserting women who seek opportunities in modernism. They have come into the public scene not at the periphery, where traditions prevail, but in the urban settlements and the universities, where modernism flourishes. In this context veiling symbolizes radical Islamism, which is moulded on the tension between traditionalism and modernism (Vojdik 2010, 661).

Furthermore, "even though they might have acted in solidarity with members of their religious community, they were engaged in an act of *individuation* and political resistance as they confronted the gaze of the uncovered women who thought of them as different" (Vojdik 2010).

VALUES, COMMUNICATION AND RATIONALITY

In the previous paragraphs I have tried to portray the political situation from the beginning of modern Turkey up to 2002, and tried to illustrate how values, like those surrounding the wearing of headscarves, were used to exclude certain groups or communities from the political apparatus. In this section my aim is to explain how, on the contrary, allowing values to be manifested in the public sphere contributes to rationalization and therefore individualization and modernization. I will distil argumentation from Habermas's theory of "communicative action" and "discursive democracy" in order to illustrate my claim.

One element contributing to the process of individualization is, as explained above, rationalization. According to Habermas, values, as part of the lifeworld of society, can only be part of this form of transitory modernization if they are allowed to take part in the process of modernization through communication. "The rationality potential in action oriented to mutual understanding" according to Habermas,

can be released and translated into the rationalization of the lifeworlds of social groups to the extent that language fulfills functions of reaching understanding, coordinating actions, and socializing individuals; it thereby becomes a medium through which cultural reproduction, social integration, and socialization take place (Habermas 1987, 86).

Hence, modernization of Turkish society cannot just be successfully accomplished by the transplantation of foreign legal systems and modern lifestyles, but instead requires due patience and diligent direction. To recall the example of the headscarf, the headscarf not only functions as a religious or a political symbol, but also as a cultural and socially communicative symbol, in that it conveys signals of loyalty to the family and community. On

the other hand, since the headscarf has become a fashion symbol, it allows Muslim women to enter the public sphere³. Particularly since the ban on wearing headscarf at universities has been loosened a little, religious Turkish women have taken part in this process of individualization. Not only were they now able to go to university, but now they can also occupy positions in society that contribute to and assure their individual dignity.

Conclusively, changing the lifeworld, according to Habermas, entails a process of self-realization and self-determination of the individual (Habermas 1987, 41; MacCarthy 1995-1996, 1090-91)⁴. The individual develops himself into a fully-fledged citizen, whereby his value-system does not reside outside the political realm, but on the contrary is intertwined with the political apparatus itself.

According to Habermas,

corresponding to the ideal communication community is an *ego-identity that makes possible self-realization on the basis of autonomous action*. This identity proves itself in the ability to lend continuity to one's own life history. In the course of the process of individualization, the individual has to draw his identity behind the lines of the concrete lifeworld and of his character as attached to this background. The identity of the ego can then be stabilized only through the abstract ability to satisfy the requirements of consistency, and thereby the conditions of recognition, in the face of incompatible role expectations and in passing through a succession of contradictory role systems (Habermas 1987, 98).

These so-called autonomous actions are part of the totality of social actions. Actions are always aimed at a certain goal in the future and are therefore ordered in a certain framework called *value*.

These so-called ultimate-ends or ultimate values, as Talcott Parsons calls them, depict a certain belief in the outcome when certain values are striven for. Religious values, cultural values, or business values all depict a certain trust and belief that if one strives for a certain result, one has to take on these values. "An end" according to Parsons,

is thought of as a logically formulated anticipation of certain elements in a future state of affairs, and the relation of means to end is thought of as based on knowledge of the inherent connections of things. This is, in its type form, a scientific statement couched in the conditional, or, as



it is sometimes put, the virtual form. That is, if I do certain things, bring about certain conditions, I will achieve my end (Parsons 1935, 286).

Since values are not commensurable, they denote a certain communicative signal to the social environment. Because values are (in the main) not individually oriented but collectively administered, being in a collectivity, with shared values, will eventually benefit the members who abide by the values of their own social unit.

For example, the value of helping your neighbours is not just a single value, but is based on a system of values, whereby this value is just a part of the bigger system. Values, therefore, do not relate to rational mind as such, but mainly to the instinctive mind, which somehow indicates a kind of reciprocity.

In other words, values or value-systems are not just rule-oriented; there are modes of communication, which can only be comprehended when one takes part in the whole value system as such. It is the totality of the value system and the implicated lifestyle that reveals the communicative character of values. As Habermas contends,

evaluative expressions, or standards of value, have justificatory force when they characterize a need in such a way that addressees can, in the framework of a common cultural heritage, recognize in these interpretations their own needs (MacCarthy 1995–1996, 1088).

DISENCHANTMENT OF VALUE AND LAW

In this section I will examine how disenchantment of values take place in a political system that allows values or value-systems to be manifested in public (the public sphere). Since values have a communicative function, the majority of Turkish society did not have the opportunity to transform themselves into so-called "modernity". They were excluded by their own cultural and religious system of values, which resembled a rural, collective lifestyle, as opposed to the modern urban ideal with its more individualistic emphasis.

Following Max Weber, values have to be disenchant-ed, or rationalized, before one can talk about moderniza-tion (individualization of citizens) (Weber 1958). And this can only happen if values are allowed, in the public

sphere, to interact with other rational minds. Only in this way can the process of disenchantment occur.

Disenchantment of values also constitutes the foundation of Habermas' theory of "deliberative democracy". However, in contrary to Weber, Habermas asserts that the relationship between the political apparatus and law, which together generate the process of disenchantment, are not rigidly but dynamically related to each other. This entails that,

the relation between law and political power is reciprocal. Not only does law presuppose political power; political power, at least in a constitutional state, presupposes law. The system of state offices, through which political power is exercised, is organized through law. And political power is exercised largely through the form of law.

"Political decisions", Habermas maintains, "owe their collective bindingness to the legal form in which they are clad. Law and political power thus reciprocally perform functions for one another" (Schneider 2000, 264).

In other words, the legal apparatus, according to Habermas, changes with the political (discursive) participation of the individual, when he expresses his values. Moreover, in this discursive democratic political apparatus of communication, the individual develops his rational part, while taking part in the communicative discourse. Communication, according to Habermas, elevates the rational part of the individual, eventually leading to a consensus. Taking part in this political discourse (carousel) is a form of "public autonomy", in which the individual expresses itself.

However, once free to express their values in the public sphere, and to claim public autonomy, individuals will demand "individual liberties", according to Habermas. As Cornelia Schneider has shown, "individuals will only participate in democratic procedure (for which they need public autonomy), if they have been granted individual liberties to develop their own personalities and convictions (private autonomy)" (Schneider 2000, 109)⁵.

In order to illustrate this idea let me use the example of a protest in Taksim Square, in November 2012, against crimes against women – which I witnessed first-hand.

The protesters were mostly Kurdish women carrying banners, written in Kurdish, claiming their basic individ-

ual right to protect their bodily integrity. Even a couple of years ago this would have been completely impossible – we would never have seen women on the streets claiming their individual rights, especially not in Kurdish. As Kurdish women undergo a great amount of physical harm, it is interesting to see how the liberation of values –and languages – contributes to the participation of Kurdish women in their struggle, not only for equal treatment, but also for the protection of their physical integrity.

If we return to Habermas, we see that the democratic process of deliberation and the subsequent outcome on the legal system is a long and enduring process. The way in which individual rights will be fully reflected in the legal system depends on the democratic process whereby the individual himself, who participates as part of the "public sovereignty", transforms himself from a part of the collective into an individual, thereby reaching private autonomy. In other words,

individuals need political liberties to participate in democratic procedure (which will grant them public autonomy), but they will only be willing to participate if they have been granted individual liberties to develop their own personalities and convictions (i.e. if they have private autonomy). Each form of autonomy is required to explain the other; they are 'co-original' (Habermas 1987).

Moreover, according to Habermas, allowing values to enter the public discourse allows people to rationalize their values, thus reaching a fully individual "personhood" (in the words of Hegel), through this communicative rationalization process. This process is conceived as a process of "self-realization" (Habermas 1987, 97-98).

Self-realization is a process whereby a person reaches complete fulfilment. As such, a full person is someone who is able to communicate on a rational level, i.e. universally. As Habermas explain,

let us imagine individuals being socialized as members of an ideal communication community; they would in the same measure acquire an identity with two complementary aspects: one universalizing, one particularizing. On the one hand, these persons raised under idealized conditions learn to orient themselves within a universalistic framework, that is, to act autonomously. On the other hand, they learn to use this autonomy, which makes them equal to every other morally acting subject, to develop themselves in their subjectivity and singularity. Mead ascribes both autonomy and the power of spontaneous self-



realization to every person who, in the revolutionary role of a participant in universal discourse, frees himself from the fetters of habitual, concrete conditions of life. Membership in the ideal communication community is, in Hegelian terms, constitutive of both the I as universal and the I as individual (Habermas 1987, 97).

Hence, the discursive process brings together different people with different value systems, and, ultimately, through the “communicative action” (process) they meet each other at the common rational denominator.

But what then is the role of communication in this process, that is, communication through values? How does, for example, wearing headscarves paradoxically lead to individualization of among women? Was not the headscarf the symbol of male oppression of women? (Vojdik 2010, 664).

Once you allow women to wear headscarves in the public domain, while at the same time allowing them the advantages of the familial or societal comfort-sphere, it means paradoxically that they enter an intermediary phase of disenchantment or rationalization of values. In other words, if a father allows his daughter to go to school on condition that she wear a headscarf, this constitutes a vast intermediary step in the process of individualization. A woman who is somehow able to get education, and is therefore able to manifest herself in public, will eventually reach a situation where she is able to stand up for herself and demand her individual rights. Education, therefore, constitutes an essential part in this process of individualization, and banning the wearing of headscarves can be interpreted in no other way than a hampering of a certain class of people from entering the “political apparatus”.

But if a value-system, either religious or cultural, is driven out of the public sphere, according to Habermas, that part of society will not be able to take part in the process of rationalization. Banishing certain value-systems from the public sphere means, in other words, erasing the existence of a certain group within the political apparatus.

The public sphere, however, provides these groups the communicative means to develop and transform themselves and their values. According to Habermas,

the members of a communication community demarcate the one objective world and their intersubjectively shared social world from the

subjective worlds of individuals and (other) collectives. Thus, both the spheres or cultural subsystems and the lifeworld are rationalized in modern life" (Modak-Truran 1997, 468).

Hence, the conclusion we can draw from the above is that values incur a communicative function in Habermas's theory of discursive democracy.

In this discursive democracy, values will not only be used as a means of communication, but, more essentially, the value transforms itself into its disenchanted form. The importance of discursive democracy is that it generates a process of individualization, whereby the values possessed by an individual go through a process of rationalization. Values lose their incommensurable elements, and in this way are disenchanted.

This is because "the unity of rationality", according to Habermas, resides

in the multiplicity of value spheres rationalized according to their inner logics is secured precisely at the formal level of the argumentative redemption of validity claims. Validity claims differ from empirical claims through the presupposition that they can be made good by means of arguments. And arguments or reasons have at least this in common, that they, and only they, can develop the force of rational motivation under the communicative conditions of a cooperative testing of hypothetical validity claims. Of course, the differentiated validity claims – to propositional truth, normative rightness, sincerity and authenticity, as well as the claim to well-formedness or intelligibility related to symbolic construction in accordance with rules – call not merely for reasoning in general, but for reasons in a form of argumentation typical of each (Modak-Truran 1997, 468).

Hence, values, according to Habermas, contain a rational element that unfolds itself through the process of communication. Through this process of communication, different value systems will meet each other on the level of rationality, which serves as common denominator. Then the question becomes how this process will be reflected in the legal system? Or, in other words, how do the process of rationalization and individualization, and the legal system, reflect each other?

According to Habermas, law (or the legal system) constitutes one of the elements of the lifeworld of the individual. Moreover, within the process of "communicative action", law has become reflexive to the transformation of values and the subsequent process of individu-

alization and rationalization of society. As Habermas asserts, “from the vantage point of the theory of communicative action, we can say that the subsystem ‘law,’ as a legitimate order that has become reflexive, belongs to the societal component of the lifeworld” (Habermas 1996, 80).

RATIONALIZATION, “PRIVATE AUTONOMY” AND THE DISCOURSE OF “RIGHTS”.

The importance and relevance of Habermas’s “Discursive Democracy”, in explaining the current social transition in developing countries like Turkey, is that it illuminates the interrelations between economic progress, the social-political dimension, and the effects on the legal system. As shown in the above example, Turkey experiences a gap between transplanted, foreign, positive law and society. But due to vast economic growth, it has seen foundational change and transformation of the social-political dimension. The example of the Turkish women’s protest in Taksim Square signifies this trend, in which the gap between legality and popular sovereignty is being bridged by Habermas’s communicative action or discursive theory.

The women’s protest at Taksim Square had reflective recourse on the legal system in Turkey. Moreover, accepting values in the public sphere amounts to a process of rationalization, individualization, and subsequently leads to claims of rights.

Before I continue with outlining the “discursive law”, I want to examine how economic development, power relations, values, communicative action, rationalization, and individualization might affect the legal system. Habermas explains the process in the following way:

These basic concepts and definitions explain why modern law is especially suited for the social integration of economic societies, which rely on the decentralized decisions of self-interested individuals in morally neutralized spheres of action. But law must do more than simply meet the functional requirements of a complex society; it must also satisfy the precarious conditions of a social integration that ultimately takes place through the achievements of mutual understanding on the part of communicatively acting subjects, that is, through the acceptability of validity claims. Modern law displaces normative expectations from morally unburdened individuals onto the laws that secure the compatibility of liberties (Habermas 1996, 103)⁶.



Individuals, so Habermas claims, are equipped with reason, and are therefore able to take part in a process of "discursive legal action". The process of so-called "discursive law", takes place simultaneously with the individualization process explained above. The main feature of this process of discursive law is the way that *private autonomy* merges with *public autonomy*. While the first is characterized by claims for individual rights, the latter is characterized by popular sovereignty.

The merging of these two poles will only succeed through "opinion – or will formation", constituting the foundation of claims for basic rights. Through the process of communicative action (discursive democracy), individuals will be able to reach a consensus on a rational level, which enables them to develop a rational, reasonably formulated opinion or will. Habermas contends that

the sought for internal connection between popular sovereignty and human rights lies in the normative content of the very mode of exercising political autonomy, a mode that is not secure simply through the grammatical form of general laws but only through the communicative form of discursive processes of opinion and will-formation (Habermas 1996, 103).

The reason for this, he explains, is that

the system of rights can be reduced neither to a moral reading of human rights nor to an ethical reading of popular sovereignty, because the private autonomy of citizens must neither be set above, nor made subordinate to, their political autonomy (Habermas 1996, 104).

In practice this calls, for example, for citizens in Turkey to develop their individuality according to political settings or habits, and to develop an opinion that reflects both the universal rational system as well as their particular background. Claiming a right to bodily integrity, as in the example above, is a manifestation of this "bottom up" formation of will, in which a certain group, through rational discourse (communicative action) reaches an opinion. This opinion eventually represents itself as claim for basic individual rights, in this case for the protection of bodily integrity.

This is process is the beginning of another one, whereby the gap between legislation, or in this particular case, Turkish law, and (Turkish) society, will be bridged. Indi-

viduals become “authors of their rights”. Because “the co–originality of private and public autonomy”, according to Habermas, “first reveals itself when we decipher, in discourse-theoretic terms, the motif of self–legislation according to which the addressees of law are simultaneously the authors of their rights” (Habermas 1996, 104)⁷.

In sum, the process of rationalization, and thus individualization, as described in the previous sections, also contributes to personalization or individualization of legal systems, through the acknowledgement of basic individual rights within those systems. This is not a singular, isolated, distinct development, but is instead a result of the process of communicative action, which eventually leads to the gap between society and the legal system being bridged.

CONCLUSION

How do values lead to the individualization of society, and what kind of implications will this individualization have on the legal system? I have argued, first of all, that values contain communicative elements, and that they therefore serve as a communicative tool in social relations. As such values are essential for the progress of a society.

I have used Turkey as an example, and I have tried to portray how Turkey has disregarded the importance of values by excluding them from the public sphere. I have shown how this, paradoxically enough, hampered the development of (a part of) the society.

By examining the issue of the headscarf, which is used as a political symbol in Turkey, I wanted to enunciate how important the headscarf was for the emancipation and individualization of Muslim women. Moreover, I have tried to show how the headscarf was used a means of communication between the community and the family of Muslim women and the public.

Habermas’ theory of communicative action and discursive legal theory illustrates succinctly how the manifestation of values in the public sphere brings about individualization in society. Allowing values to be manifested in the public sphere leads to a rationalization of values, by way of communicative action. “Disenchanted values”,



or rationalized values, will enable individuals to claim their rights and to bridge the gap between the legal system and society, in the long run.

NOTES

¹ I like to note that at the moment of the presentation of this paper, at the Annual Conference of ALSA in Boston on July 1st 2013, the so-called Gezi Park protests at Taksim Square were reaching their climax. Though it is too early to make any kind of assessment as to the extent of any contribution to the (discursive-) democratization process in Turkey, still, I did not want to let it go unmentioned.

² The Hat Law of 1925; See also Nereid 2011.

³ See above.

⁴ Hugh Baxter calls this a "normative self-understanding" (Baxter 2001–2002, 481).

⁵ See also H. Baxter: "And yet on the other hand, Habermas's linking of legitimacy to genuine democracy leads him to certain 'activist' conclusions. Courts, Habermas says, are to 'keep watch over' the 'system of rights that makes citizens' private and public autonomy equally possible.' This task, Habermas allows, requires 'a rather bold constitutional adjudication.' Securing 'the implementation of democratic procedure and the deliberative form of political opinion – and will-formation,' he suggests, requires checks not just on the administrative power of the state apparatus, but checks also on the 'social power' generated by social inequality and on the mass media's control over public discussion" (Baxter 2001–2002, 488).

⁶ See also R. Alexy: "The result is a theory of the democratic constitutional state whose basic idea is the association and self-determination of free and equal consociates under the law" (Alexy 1995–1996, 1027).

⁷ See also, C. Schneider: "Habermas argues even more eloquently than Dworkin that democracy will only work if the addressees of laws feel like the authors of those laws. Roughly, his argument is that individuals will only participate in democratic procedure (for which they need public autonomy), if they have been granted individual liberties to develop their own personalities and convictions (private autonomy). They will then be willing to accept laws passed through the democratic process, because they have had their say in it. Each form of autonomy is required to explain the other; they are 'co-original'" (Schneider 2000, 109).

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