

**Legal Reforms in Turkish History  
ATA 524**

**(Fall 2015)**

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*Office hours: Thursday 13-16*

**Course Description**

This is an introductory course exploring and critically examining the theme and practice of legal reform with a particular focus on Turkey. We will examine a number of concrete instances of legal reform in Turkish history particularly as they relate to three key themes: modernity, property and constitution. An implicit comparative perspective (highlighting other contexts such as India, Egypt, etc.) will guide us in our analyses of legal reforms in Turkey.

Broadly speaking, our focus will be on the emergence of modern law as a domain of statehood and governance in the 19<sup>th</sup> century onwards and its global spread. Analyzing the features and contours of this emerging domain of practice, we will examine how (particularly in the Turkish context) the “import” has taken place, with what motivations, and through which discourses, and within which power dynamics (colonialism, incorporation of the societies in the world economy/ system, the making of the nation state, etc.). As we move closer to our day, we will discuss the current shape of the legal system as well as the continuities and discontinuities with the past.

Students are expected to keep up with the readings and be prepared to discuss them in class (15%). Aside from participation, there will be two writing requirements:

- 1) 7 (~2-3 page) memos critically reflecting on selected weeks' readings (35%);
- 2) a 15+ page final (research) paper (50%). A 5-6 page outline/plan of the final paper is required by Nov. 14 Friday. The paper is due by January 10.

**Schedule of readings (subject to revision):**

**1) Setting the Stage: Legality and Reform (Oct. 1)**

Duncan Kennedy (2006) "Three Globalizations of Law and Legal Thought" in Trubek, David and Alvaro Santos (eds.) The New Law and Economic Development: A Critical Appraisal (Cambridge), pp. 19-73

Benton, Lauren (2002) Law and Colonial Cultures: Legal Regimes in World History, 1400-1900 (Cambridge), *Ch. 1- Legal Regimes and Colonial Cultures (1-30)*

Darian-Smith, Eve (2013) Laws and Societies in Global Contexts: Contemporary Approaches (Cambridge) *Introduction (1-38)*

**-MODERNITY-**

**2) Modernity and Law (Oct. 8)**

Cotterrell, Roger (1995) Law's Community: Legal Theory in Sociological Perspective (Clarendon), Ch. 3 *Legality and Legitimacy: The Sociology of Max Weber (134-159)*

DeFlem, Matthew (2008) Sociology of Law: Visions of a Scholarly Tradition (Cambridge University Press) *Ch. 2 Max Weber on the Rationalization of Law*, pp. 37-55

Toprak, Zafer (2007) "From Plurality to Unity: Codification and Jurisprudence in the Late Ottoman Empire", in Anna Frangoudaki and Çağlar Keyder (eds.) Ways to Modernity in Greece and Turkey: Encounters and with Europe 1850-1950 (I.B. Tauris)

More readings TBA

### **3) Hegemony, Imperialism and the Early Foundations of Western Law in the Ottoman Empire (Oct. 15)**

Anghie, Antony (2004) Imperialism, Sovereignty and the Making of International Law (Cambridge), Ch 2- *Finding the Peripheries: Colonialism in Nineteenth Century International Law*

Horowitz, Richard (2004) "International Law and State Transformation in China, Siam and the Ottoman Empire during the Nineteenth Century," Journal of World History, 15(4): 445-486

Palabıyık, Mustafa Serdar (2014) "The Emergence of the Idea of 'International Law' in the Ottoman Empire before the Treaty of Paris (1856)," Middle Eastern Studies, 50(2): 233-251.

### **4) Between the "core" and the "periphery": Colonialism and law (Oct. 22)**

Merry, Sally (1988) "Legal Pluralism" Law and Society Review (v. 22, no 5 )

Cohn, Bernard (1989) "Law and the Colonial State in India" in June Starr and Jane F. Collier (eds.) History and Power in the Study of Law: New Directions in Legal Anthropology (Cornell University Press) pp. 131-152

Mitchell, Timothy (2002) Rule of Experts: Egypt, Technopolitics, Modernity (University of California Press), Ch. 2 - *Principles True in Every Country* (54-79)

Asad, Talal (2003) Formations of the Secular: Christianity, Islam, Modernity (Stanford), Ch. 7 - *Reconfiguration of Law and Ethics in Colonial Egypt* (205-256)

### **5) Legal Modernity, Ottoman Style? (Nov. 5)**

Rubin, Avi (2011) Ottoman Nizamiye Courts: Law and Modernity (Palgrave MacMillan)

*Recommended*

*Bingöl, Sedat (2004) Tanzimat Devrinde Osmanlı'da Yargı Reformu: Nizamiye Mahkemelerinin Kuruluşu ve İşleyişi (Anadolu Üniversitesi)*

## - PROPERTY -

### **7) Law, Economics and Coercion (Nov. 12)**

Cohen, Morris (1927-8) "Property and Sovereignty" Cornell Law Quarterly (v. 13, pp. 8-30)

Collins, Hugh (1982) Marxism and Law (Oxford University Press), pp. 1-123

### **8) The Ottoman Land Code of 1858 (Nov. 19)**

Barkan, Ömer Lütfi (1980) "Türk Toprak Hukuku Tarihinde Tanzimat ve 1274 (1858) Tarihli Arazi Kanunnamesi" in Ömer Lütfi Barkan, Türkiye'de Toprak Meselesi Toplu Eserler 1 (Gözlem Yayınları) (excerpts)

Aytekin, Atilla A. (2009) "Agrarian Relations, Property and Law: An Analysis of the Land Code of 1858 in the Ottoman Empire" Middle Eastern Studies (v. 45, n. 6, pp. 935-951)

İslamoğlu, Huricihan (2004) "Introduction" and "Politics of Administering Property: Law and Statistics in the Nineteenth Century Ottoman Empire" in İslamoğlu, Huricihan (ed.) Constituting Modernity: Private Property in the East and West (I.B. Tauris), pp. 3-35, 276-320

### **9) Sovereignty, Property, Violence: Foundations of the Republic (Nov. 26)**

Akçam, Taner ve Ümit Kurt (2012) Kanunların Ruhu: Emval-i Metruke Kanunlarında Soykırımın İzini Sürmek (İletişim)

Üngör, Uğur Ümit and Mehmet Polatel (2011) Confiscation and Destruction: The Young Turk Seizure of Armenian Property (Continuum), Chs. 2-3- "Ideological Foundations: Constructing the Turkish Economy" & "Legal Foundations: Using the Justice System for Injustice" (15-60)

Poggi, Gianfranco (1978) The Development of the Modern State (Stanford), Introduction

## - CONSTITUTION -

### 10) Constitutionalism (Dec. 3)

Thornhill, Chris (2013) A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective (Cambridge), Chs. 3-4- "States, Rights and the Revolutionary Form of Power" & "Constitutions from Empire to Fascism" (158-326)

### 11) Constituting the Republic (Dec. 10)

Erozan, Boğaç (2005) Producing Obedience: Law Professors and the Turkish State (Unpublished PhD. thesis, University of Minnesota), Chs. 1, 3-6

Bourdieu, Pierre (1998) Practical Reason: On the Theory of Action (Stanford) Ch. 3 - *Rethinking the State: Genesis and Structure of the Bureaucratic Field* (35-63)

### 12) The Republican Legal Space (Dec. 17)

Parslow, Joackim (2014) "The Ambiguous State of Jurisprudence: Jurists and the Authoritarian Legality of Turkey's Single-Party Period (1923-1950)", unpublished dissertation thesis, University of Washington. (Chs. TBA)

Belge, Ceren (2006) "Friends of the Court: The Republican Alliance and the Selective Activism of the Constitutional Court of Turkey" *Law and Society Review* (v. 40, n. 3)

Bali, Aslı (2012) "The Perils of Judicial Independence: Constitutional Transition and the Turkish Example" *Virginia Journal of International Law* (v. 52, n. 2, pp. 235-320)

### 13) Constitutional Reconstruction in Turkey?

Arjomand, Said (2007) "Constitutional Development and Political Reconstruction From Nation Building to New Constitutionalism", in Said Arjomand, ed. Constitutionalism and Political Reconstruction (Brill) 3-46

Arato, Andrew (2009) "Redeeming the Still Redeemable: Post Sovereign Constitution Making" *International Journal of Politics Culture and Society* (v. 22, pp. 427-443)

Arato, Andrew (2011) "Multitrack Constitutionalism Beyond Carl Schmitt"  
Constellations (v. 18, n. 3, pp. 324-351)

Kalyvas, Andreas (2008) "Popular Sovereignty, Democracy and the Constituent  
Power" Constellations (v. 12, n. 2, pp. 223-244)