

ATA 524 (Fall 2020)

Legal Reforms in Turkish History: Modernity, Constitution and Justice in the (Semi) Periphery

Z. Umut Türem

This is an introductory course exploring the intersections of law and society around selected themes. Major lines of socio-legal inquiry will be introduced to capture the place of legality in the history of modern Turkey.

The basic requirements of the course are:

- 1) (Attendance and) participation in class discussions (20%)
- 2) Five short response papers (30 %)
- 3) A final research paper (50%)

Schedule

1- Introduction (October 7)

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

2- Rationality, Legitimacy, Legality (October 14)

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

Trubek, David (1972) “Max Weber on Law and the Rise of Capitalism” Wisconsin Law Review, (v. 1972, n. 3, pp. 720-753)

Peter Baehr (2001) “The “Iron Cage” and the “Shell as Hard As Steel”: Parsons, Weber, and the Stahlhartes Gehäuse Metaphor in the *Protestant Ethic and the Spirit of Capitalism*” History and Theory 40: 153-169

James Whitman (1996) “The Moral Menace of Roman Law and the Making of Commerce: Some Dutch Evidence”, Yale Law Journal 105: 1841-1889

3- Re-organizing the Ottoman Legal Domain? (October 21)

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

4- Imperial Powers and (Semi?) Peripheral Legal Formations (November 4)

Antony Anghie (2004) Imperialism, Sovereignty and the Making of International Law (Cambridge), Ch 2- *Finding the Peripheries: Colonialism in Nineteenth Century International Law* (excerpts, pp. 32-65)

Mustafa Palabıyık (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

Michael Christopher Low (2016) “Unfurling the Flag of Extraterritoriality: Autonomy, Foreign Muslims and the Capitulations in the Ottoman Hijaz”, Journal of the Ottoman and Turkish Studies Association, 3(2): 299-323

Mostafa Minawi (2020) “International Law and the Precarity of Ottoman Sovereignty in Africa at the End of the Nineteenth Century”, The International History Review (forthcoming)

Recommended:

Turan Kayaoğlu (2010) Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China (Cambridge), pp. 1-65

5- Deeper Works of Law? (November 11)

Bernard Cohn (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

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

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

6- Ottoman Legalism? (November 18)

Saba Mahmood (2016) Religious Difference in a Secular Age: A Minority Report (Princeton), Introduction 1-30

Avi Rubin (2018) Ottoman Rule of Law and the Modern Political Trial- The Yıldız Case (Syracuse University Press)

7- Law, Property, Violence (November 25-December 2)

Karl Marx Debates on the Law on the Theft of Wood
Karl Marx The Secret of Primitive Accumulation

Mark Neocleous (2012) “International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization”, European Journal of International Law 23(4) 941-962

Brenna Bhandar (2014) “Critical Legal Studies and the Politics of Property” Property Law Review 3: 186-194

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

Huricihan İslamoğlu (2004) “Politics of Administering Property: Law and Statistics in the Nineteenth- Century Ottoman Empire”, in Huricihan İslamoğlu (ed.) Constituting Modernity: Private Property in the East and West (I.B. Tauris), 276-319

8- Foundations? (December 9)

Taner Akçam & Ümit Kurt (2012) Kanunların Ruhü: Emval-i Metruke Kanunlarında Soykırımın İzini Sürmek (İletişim), Intro (11-30), Ch. 1 (31-47), Ch. 3 (81-105), Chs. 6-7-Conclusion (179-257)

Ayşe Parla & Ceren Özgül (2016) “Property, Dispossession and Citizenship in Turkey; Or, the History of the Gezi Uprising Starts in the Surp Hagop Armenian Cemetery” Public Culture 28: 617-653

9- Constituting the Republic (December 16-23)

Boğaç Erozan (2005) Producing Obedience: Law Professors and the Turkish State (Unpublished PhD. thesis, University of Minnesota), *Chs. 1 & 3-6* (pp. 1-18 & 49-236)

Jothie Rajah (2012) Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore (Cambridge), *Ch. 1, Law, Illiberalism and the Singapore Case* (pp. 1-53)

Joakim Parslow (2016) “Theories of Exceptional Executive Powers in Turkey, 1933-1945” New Perspectives on Turkey, 55: 29-54

Tamir Moustafa (2008) “Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt” in Tamir Moustafa and Tom Ginsburg, eds. Rule by Law: The Politics of Courts in Authoritarian Regimes (Cambridge), pp. 132-155.

10- Cold Legalities and the Origins of Our Times (December 30)

David Trubek, Richard Abel, Bryant Garth Afroditi Giovanopoulou, Duncan Kennedy and Boaventura de Sousa Santos (2021) “The Short Happy Life of the Yale Program in Law and Modernization: From Cold War to Comparative Legal Sociology and Critical Legal Studies” Revista Estudos Institucionais 7(2)

11- The Republican Legal Space (January 7)

İdil Elveriř (2014) Barolar ve Siyaset: Türkiye’de Barolar ve Devlet Kurumları (İstanbul Bilgi Üniversitesi Yayınları)

Ceren Belge (2006) “Friends of the Court: The Republican Alliance and the Selective Activism of the Constitutional Court of Turkey” Law and Society Review, 40(3)

Dicle Koğacıođlu (2012) “Hukukçu Otobiyografileri ile 12 Eylül Yasallığının Dinamiklerini Düşünmek” European Journal of Turkish Studies (v. 15)

Dicle Koğacıođlu (2004) “The Tradition Effect: Framing Honor Crimes in Turkey” differences: A Journal of Feminist Cultural Studies, 15(2) 119-151

12- The (More) Authoritarian Present? (January 14)

Saygun Gökarıksel & Umut Türem (2019) “Banality of Exception: Law and Politics in Post-Coup Turkey” South Atlantic Quarterly, 118(1): 175-187

Deniz Yonucu (2018) “The Absent Present Law: An Ethnographic Study of Legal Violence in Turkey” Social and Legal Studies, 27(6): 716-733

Mert Arslanalp & Deniz Erkmen (2020) “Mobile Emergency Rule in Turkey: Legal Repression of Protests During Authoritarian Transformation” Democratization, 27 (6): 947-969

Joakim Parslow (2018) “Lawyers Against the Law: The Challenge of Turkish Lawyering Associations”, Anthropology of the Middle East, 13(2) 26-42