

**Legal Reforms in Turkish History**  
**ATA 524**

**(Fall 2014)**

*Z. Umut Türem*  
*Ataturk Institute, Boğaziçi University*

**(tentative draft, subject to revision)**

**Course Description**

This is a 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 four key themes: territory, property, legal organization and constitution. An implicit comparative perspective (highlighting other contexts such as India, Latin America, Egypt, Japan, 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 language of statehood and governance in the 19<sup>th</sup> century onwards and its global spread. Analyzing the features and contours of this emerging 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.).

Students are expected to keep up with the readings and be prepared to discuss them in class. Aside from participation, there will be two writing requirements: 1) 6 (~2-3 page) memos critically reflecting on selected weeks' readings; 2) a 15-20 page final (research) paper. A 5-6 page outline/plan of the final paper is required by the 10th week.

## Outline

### 1) Introduction (Sept. 24)

### 2) Situating Modern Law (Oct. 1)

Kennedy, Duncan (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)*

### 3) Modern Territoriality and Legality (Oct. 8)

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

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

### 4) Re-organizing the Legal Machine: Ottoman Nizamiye Courts (Oct. 15)

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

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

#### *Recommended*

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

Ewing, Sally (1987) “Formal Justice and the Spirit of Capitalism: Max Weber’s Sociology of Law” Law and Society Review (v. 21, n. 3), pp. 487-512

## **5/6) Property: from past to present (Oct. 22/Nov. 5)**

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) "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. 276-320

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

Gülöksüz, Elvan (2004) "Negotiation of Property Rights in Urban Land in Istanbul" in İslamoğlu, Huricihan (ed.) Constituting Modernity: Property in the East and West (I.B. Tauris), pp. 248-275

Kuyucu, Tuna (2013) "Law, Property and Ambiguity: The Uses and Abuses of Legal Ambiguity in Remaking Istanbul's Informal Settlements" International Journal of Urban and Regional Research

### *Recommended*

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), pp. 291-375

## **OCTOBER 29 - HOLIDAY/ NO CLASS**

## **7) Nation State, Property and Violence (Nov. 12)**

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

Bayır, Derya (2012) Minorities and Nationalism in Turkish Law (Ashgate), *Sections TBA*

## **8) Constitutionalism in the Ottoman Empire and Beyond (Nov. 19)**

Arjomand, Said (2003) "Law, Political Reconstruction and Constitutional Politics" International Sociology (v. 18, n. 1, pp. 7-32)

Sohrabi, Nader (2011) Revolution and Constitutionalism in the Ottoman Empire and Iran

(Cambridge), Chs. 1-2

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

*Recommended reading*

Zarinebaf, Fariba (2008) "From Istanbul to Tabriz: Modernity and Constitutionalism in the Ottoman Empire and Iran" Comparative Studies of South Asia, Africa and the Middle East (v. 28, n.1, pp. 154-169)

### **9) Constituting the Republic (Nov. 26)**

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)

### **10) The Legal Complex in the Republic (Dec. 3)**

Özman, Aylin (2010) "Law, Ideology and Modernization in Turkey: Kemalist Legal Reforms in Perspective", Social and Legal Studies (67-84)

Joackim Parslow (2014) The Ambiguous State of Jurisprudence: Jurists and the Authoritarian Legality of Turkey's Single-Party Period (1923-1950)

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)

Koğacıoğlu, Dicle (2012) "Hukukçu Otobiyografileri ile 12 Eylül Yasallığının Dinamiklerini Düşünmek" European Journal of Turkish Studies (v. 15)

### **11) Authoritarianism vs. Democratization? (Dec. 10)**

Ginsburg, Tom and Tamir Moustafa (2008) Rule by Law: The Politics of Courts in Authoritarian Regimes (Cambridge), *Introduction*, 1-22

Rajah, Jothie (2012) Authoritarian Rule of Law (Cambridge), *Ch. 1, "Law, Illiberalism and the Singapore Case"*

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)

**12/13) Power, Violence and Law (Dec. 17/ 24)**

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

Hunt, Alan (1993) Explorations in Law and Society: Toward a Constitutive Theory of Law (Routledge), Chs. 2, 11 (17-35, 249-266)

Özdemir, Ali Murat and Gamze Yücesan Özdemir (2008) "Social Regulation under Neo-Liberalism: New Forms of Labour Contract and Labour Flexibility in Turkey" South East Europe Review (v. 3, pp. 63-78)

Urhan, Betül and Seydi Çelik (2010) "Türkiye'de Sistemin Milli Güvenlik Algısı ve Bunun İşçi Hareketleri ve Sendikacılık Faaliyeti Üzerindeki Etkisi" Çalışma ve Toplum (v. 2010, n. 2, pp.110-139)

*Recommended*

Metin Özüğürlü (2011) "The TEKEL Resistance Movement: Reminiscences on Class Struggle" Capital & Class (v.35: pp.179-187)