

CHANGES IN LAW AND TECHNOLOGY IN TURKEY

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During the last four decades of the present century the bulk of social changes with which sociology is concerned centers around technological changes and the transformation affecting the social structure and together with it the juridical, which is the overt expression of the social. It may be observed that these transformations are given an important part in the colloquia and congress meetings held from time to time by the two sociological associations which exist at present namely the ISA and the IIS. Consequently, the fact that our Association devotes part of the meeting's time to the discussion of these problems, while discussing the juridical changes in a specific country during a specified period, and favours the examination of the technological aspects of this change, seems to be but the application of the same principle.

Both undirectional and two way relationships between technical and social changes, as we know, constitute the essence of Marxism which has its place among the socialist doctrines of the last century. All interpretations made later on, both in favour of and against the Marxist point of view, at the end, center around the relationship between the " *technicological* " and " *social* ".

Technological influences discussed in sociology and in the sociology of juridical facts are not supposed to prove the main issue in any specific doctrine, but they merely consist of the specification of the relationships which are observed in the realm of phenomena. During the process of specification, when it will be seen that technological changes do not always appear as cause, sociology, being a positive social science, must admit that technologi-

cal changes are a result of social transformations. In that way, the dogmatic and doctrine-like point of view that social transformations are a shadow of technical changes must be abandoned.

It is not easy to find another social phenomenon to demonstrate the relationship between technical and social changes and especially the "juridical" transformations within the "social" like the Turkish reception of European law which started during the second half of the XIXth century, continued rapidly during the XXth century and is still going on. However, we wish to concern ourselves only with the 1926 phase of the Turkish reception process which took place in various phases¹, which fills a bygone century and which is almost a treasure for a detailed sociology of law; and we propose to deal only with the *Civil Code* during this phase and with family law which in only one section of this Code.

The Turkish Civil Code of 1868, the *Medjelle*, codified only issues concerning to economic and commercial relationships which are called "Muamelât - Transactions" in Islamic-Turkish legal terminology. Many local jurists and foreign scholars conceived this as a shortcoming of Turkish Civil Code². In reality this phenomenon, e.g. only to consider "Transactions" that is the law of Obligations in the middle of the XIXth century, and not to consider Family which constitutes the second half of Civil Codes, is related to an important problem in Turkish sociology of law and thus with an important problem of the general science of law. It is that this era only "Muamelât - Transactions" e.g. the field of law concerned with debt relations, could be considered apart from religious law and even so subject to much indecision and timidity. Family was totally covered by religious law and since the *Koran* is considered a source of codification, it was impossible for it to become a separate topic of codification.

In order to understand this impossibility better, it is necessary to examine more closely why in course of the incomplete attempt at codification in 1868, family law was not considered. It is

13 **Hıfzı Veldet** : Kanunlaştırma Hareketleri, Tanzimat, İstanbul 1948 (Turkish) also : **Z. F. Fındıkoğlu** : Sociology of Law, İstanbul 1958 (Turkish) pp. 92.

2) **Planiol** : Traité Élémentaire du Droit Civil, Paris 1924 pp. 33

because Turkish society had not yet reached a stage of mental development suitable for *differentiation* between family law and the religious institution, but a kind of semi-secularization was in the process of happening in observing and understanding economical phenomena. In other words, a socio-psychological change started which was related to the juridical order.

Let us immediately point out that this partial change, this softening and connivance in the clerical law conception, was the result of the recent penetration of Western capitalism. On the one hand, the codification of a new and European Commercial Code necessitated the consideration of the recent penetration of Western capitalism and with it, of the technical changes. Turkey, which is located on a meeting point of Europe and the Near East and which is a kind of bridge, was gradually becoming a market for Western capitalism. On the one hand, the codification of a new and European Commercial Code necessitated the consideration of the transactions in the Civil Code. The following clauses in the Turkish Civil Code of 1868, i.e. Medjelle law proposal, explaining the reasons are rather meaningful from that aspect:— “ Many factories are being constructed and orders are placed and contracts are signed for many *cannons, rifles, ships* and if the entrepreneur is left on his own to breach the contract for the enterprise, this would derange many important matters since industrial enterprise is among the most important daily activities ”.³

These very important considerations definitely indicate the change in the juridical mentality brought about by the penetration of technological changes and their influences in Turkey.

However, in order that this juridical change brought about by technical changes in 1868 and in the following years, could penetrate into family law also, technological and industrial changes must have influenced the life of women in terms of the economic and social life of women, and in sociological terms this must have resulted in the modification of the semi-patriarchal structure peculiar to Turkish society as well as in the emergence of a psychology of women within this structure as an element of the future conjugal family.

3) Preface of Medjelle.

This occurred only at the end of wars which corresponds to morphological and geo-political changes in the structure of the Empire, e.g. 1911 Tripoli War, 1912 Balkan War, 1914 First World War and 1919 War of National Independence. Even though technical changes during the XIXth century led during the second half of the century to movements concerning women and although their influence could be observed in the realm of arts and thought and a kind of trend of feminism also arose at the beginning of the XXth century, the above mentioned wars had to take place in order to evidence an overt expression of these. Therefore, at that point it appears that technical transformations and external political events and their effects upon internal policy, are interrelated and almost a technical-political causation complex begins to exist.

The freedom movement which took place between 1908-1909 and immediately following it the several exhausting wars, in turn, had radical effects on Turkish womanhood. The conditions were maturing or codifying a Turkish family law which would complete the missing parts of the *Medjelle*, codification of 1868. In other words, the psychology of women who are about to become equal partners in the conjugal family has gradually developing, at least in some big cities. Finally the World War in 1914 was instrumental in making feminist representatives the leaders of a radical movement for juridical change. At the end of 1917, we evidence a separate codification of family law which completed the *Medjelle* but could not be included in its structure.⁴

The research conducted by a German, author Charles Lorenz,⁵ attracts our attention in this context, for he enlightens us in detail about a matter important not only in terms of Turkish law in general. He is the author, while giving on the one hand, an account of the impetus towards technological advance under the influence of the economic autarchy created by the First World War, offers on the other hand, an explanation of the introduction of women to industrial life under the influence of these changes.

4) Z. F. Fındıkoğlu : Essai sur la transformation du Code Familial en Turquie, Paris, 1935.

5) Ch. Lorenz : Die Frauenfrage im Osmanischen Reich, Berlin, 1919

Research monographs on one of the oldest Turkish Industrial enterprises confirm the results which Ch. Lorenz has reached.⁶

This phenomenon, which needs to be studied further by means of many monographs, led to a movement in 1917 aiming at the codification of family law, its purpose being to recognize the individuality of, and grant legal rights to, the Turkish family and to the female in the family, it was relatively successful after having to face many difficulties.

We do not find it necessary to explain in this report what kind of novelties this law introduced.⁷ Only as an example of the difficulties which had to be overcome, let us point out that "polygamy" was transformed into "conditional polygamy", i.e. polygamy was allowed with the consent of the wife. However, since it was incompatible with family life and feminine psychology in urban centers at the beginning of the XXth century, to give its consent to a condition of this kind, one may state that in practice "conditional polygamy" was equal to "prohibition of polygamy".

Rapid social changes in Turkey between 1917-1926; and the foundation of the homogeneous republic to replace the Empire lead to conception of a complete Civil Code which was not intended by the *Medjelle* of 1868 and the codification of "*Muamelât-Transactions*" its purpose was to re-organize and codify both branches of law - namely, Debts and Family. The reception of the Swiss Civil Code in terms of the reasons which we have explained during the 1955 Colloquium in Istanbul organized by the Association is a response to this consideration.

Now, the formulation of the problems to be considered in terms of a science of law and especially for a sociology of law, must be the following :

Both in the adaptation and adjustment of the civil code taken over from Switzerland and as a consequence in the other Codes which have become part of Turkish law, what kind of technical changes were influential ?

6) Z. F. Findikoğlu : Defterdar Fabrikası, İstanbul 1952 (Turkish)

7) D. Nizami : " Le Droit Musulman et la Religion ", La Revue de la Turquie, Nr. 3 Lausanne 1918. " C'est ainsi que la polygamie qui est permise par la Chériat est, par la loi de 1917, subordonnée à de nouvelles restrictions qui le rend presque impossible ".

Before answering this question, it is appropriate to explain what is meant here by "technical" or by "technological". Technical according to us is the sum total of the material means of which social institutions make use of to reach their goals. Among these "material means" which include also, the social organization are the transformation policy which is important in relation to rapid social changes in underdeveloped countries, mechanization in agriculture, industrialization and the urbanization process.

Therefore, before considering the relationship between "technical" and "juridical" one must consider some simple statistical data concerning the transformations which the technical means underwent in Turkey during the Republic.

While modern Turkey inherited 6943 km. of paved roads in good condition from the Ottoman Empire, in the following years her road policy achieved the following results⁸:

Year	Length (in Km)
1923	6943
1932	10038
1955	29409
1957	33400

On the other hand, this progressive road policy together with the railroad policy which continued at the same rhythm, was strengthened by the movement for industrialization during the above mentioned 35 years⁹.

8) Dr. C. O. Tütengil : Unpublished dissertation, Istanbul 1959, "Karayolları İstatistik Bülteni", (Statistical Bulletin of the Turkish Highways) 1957 ; N. E. Ilts; The Highway Situation in Turkey, Ankara 1948 (A report of the U. S. Public Roads Mission to the Minister of Public Works in Turkey); R. W. Kerwin; Minister of Public Works in Turkey, "La Revue de la Faculté des Sciences Economiques d'Istanbul"

9. H. Cillow : La Situation Industrielle en Turquie, Ibid, Nr. 1-4, pp. 75.

Vedat Eldem : Les Progrès de l'Industrialisation en Turquie, Nr. 1-4

TABLE I — YEAR : 1913

Branches of industry	Nr of industrial plants
Food industry	74
Glass and ceramics	16
Forest industry	19
Textile	70
Paper	51
Chemical industry	10
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	252

TABLE II — YEAR : 1915

Food industry	75
Glass and ceramics	17
Leather	13
Forest industry	24
Textile	73
Paper	51
Chemical industry	11
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	264

TABLE III — YEAR : 1927

Industrial exploitations	556
Agricultural products	28.439
Textile	9.353
Forest industry	7.896
Paper	348
Metal industry	14.752
Construction industries	2.877
Chemical industry	697
Mixed	16
Other industries	311
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	65.245

TABLE IV — YEAR : 1950

Branches of industry	Nr of industrial plants
Food industry	10.756
Liquor ind.	.. 457
Tobacco ind.	88
Textile ind.	3.364
Clothing ind.	32.056
Forest ind.	5.924
Furniture ind.	1.108
Cellulose ind.	25
Printing ind.	703
Leather ind.	4.215
Caoutchouc ind.	267
Chemical ind.	1.028
Glass and ceramics ind.	1.635
Metal ind.	638
Mineral products ind.	12.385
Machinery ind.	2.634
Means of transport ind.	2.493
Other industries	1.387
	81.062

Between 1950-1959, as a result of a particular political party, namely D. P. coming to power, which stressed industrial investment to a far greater extent and continued this policy with the same rhythm in spite of foreign trade deficits and consequently was subject to criticism by some foreign and local economists, the number of industrial establishments as well as the workers they employ are continuously increasing. The number which was 16,975 in 1913, is 500,000 at the present. Developments observed after 1946 in the field of labor and labor Law must be related to this numerical increase.

It need not to be stressed here that, for centuries, Turkish agriculture depended upon primitive technics. However, beginning

10) F. H. Saymen : Paper submitted to the Colloquium in Session.

with the first decade of the XXth century, we see the first signs of a technological change¹¹.

But special importance was attributed to agricultural mechanization in Turkey after 1923. The table below will illustrate this point :

Year	Nr of tractors
1936	961
1949	9170
1950	16585
1951	24000
1952	31415
1953	35600
1957	44100

We should immediately point out here that this development was instrumental in widening and strengthening urban centers which constitute the most efficient milieu for adapting the principles of Western Law in Turkey. Phenomena which may be called "Escape from the village" and "being attracted by the city" and which are occurring due to various reasons, do not fail to increase the population of the city¹³. Thus, regardless of how minimal the reduction of the agrarian population may be, it partially helps to overcome the shortcomings of the juridical reception in its application, and paves the way in practice for article 12 of the Civil Code (Prohibition of Polygamy) and article 130 (Equality between sexes)¹⁴. Our scholars who concern themselves with a policy of law and who generally examine our laws, which are a product of reception, and in particular the shortcomings of our Civil Code during the 35 year period of application, continuously call our attention to the process of complete urbanization and/or

11) Toynbee : Turkey, 1923, pp. 35

12) " Karayolları İstatistik Bülteni " (Turkish) 1958, Nr. 5

13) Ö. C. Sarç : Change in the Rural-Urban Distribution of the Urban Population, " La Revue de la Faculté des Sciences Economiques " 1948, Nr. 1-2 pp. 46.

14) Muhaddere Taşcıoğlu : Kadının Sosyal Durumu, Ankara 1948 (Turkish)

incomplete urbanization generally observed in under-developed countries¹⁵. For those who have considered the problem which may be formulated as "the radical difference between Turkish Civil Code and Turkish social structure" beginning of the date of reception, agree that complaints of this kind stem not from differences in principle but from the lack of technical instruments to facilitate the application of the laws. For instance, indifference towards the modern marriage institution does not stem from any religious or juridical frame of reference and outlook to life, but it stems from a lack of administrative organization reaching to the villages and/or roads connecting the regions where there is a Municipal organization, namely districts and towns, with the villages; and from the lack of designated room for village administrators (*Muhtars*) who are authorized to register the marriages in the villages; and also from a deficiency of qualified personnel to carry out a physical examination of those who should apply for marriage licences. These matters have been considered in great detail in a collective book published in 1942 by Turkish jurists and sociologists¹⁶.

At the same time, in a report on the application of the Civil Code, published by the Ministry of Justice, a considerable amount of data is included which sheds light on the relationship between "technical" and "juridical change". Regions lacking in roads, industrial investment and an urbanization policy are at the same time regions where juridical maladaptations are frequently observed¹⁷. Conflict between monogamy and polygamy can be observed; worthwhile observations on the relationship between legitimate and illegitimate children can be made to a greater extent in the Eastern and Southeastern regions of Turkey. The lack and insufficiency of technical instruments is a characteristic of these areas¹⁸.

15) Z. F. Fındıkoğlu : La Réception du Droit Etranger en Turquie, " Bulletin International des Sciences Sociales " 1957, Vol. IX, Nr. 1, pp. 14

16) S. S. Onar : Medeni Kanunumuzun İçtimai Bünyemiz Üzerindeki Tesiri ve İçtimai Kıymeti, " İş — Aktion — Revue Turque des Sciences Sociales " 1942 Nr. 31 pp. 185.

Z. F. Fındıkoğlu : Report of Ministry of Justice in 1942, Sociology of Law Istanbul 1958. pp. 420

17) Ibid, same report pp. 421.

18) Ibid, pp. 422

Now we come to a point of importance: In investigating the influence of the road and transportation system, industrialization policy, and the urbanization movement on the juridical changes, i.e. the most important one among social changes in Turkey, we are confronted with a shifting of sequence between the technical factor and the juridical result. For, whereas technological transformations are "spontaneous" "organic" and "originating from lower strata of people" during, for instance, the XVIIIth and the XIXth centuries in Europe and in U.S.A., in Turkey, similar transformations have opposite characteristics. We are confronted with a policy of adapting technology under the leadership of Etatism which has the Xish to adapt technology in a sense which may be expressed as "artificial" "mechanic" and directed "from above"¹⁹. The philosophical expression of this difference is as follows: it is appropriate to establish a causal relationship between the tendency of political-ideological change and the necessity of adapting technology, and as it is often said, the feeling and realization of this necessity by "a handful of intellectuals", instead of establishing a causal relationship between technical change and social-juridical change. Technical changes which are the product of a political purpose, later on facilitate the occurrence as well as the continuation of social and juridical changes. The problem after that is centered around the State gradually helping to assimilate tendencies of industrialization and in face of the appearance of this, to minimize its administrative functions.

Can there be observed in Turkey at the present a continuation of a process of industrialization and of adapting technology, and as stated by an English author, "the melting of ice"?²⁰ Although the change in power in 1950 and the liberal D.P. taking the place of Etatist C.H.P. (Democratic Party and Republican People's Party) would lead us to give an affirmative answer to this question, a close observation of economic reality and the present events indicate that D.P. continued the same Etatist policy after a short period of indecision. In that way "the political intent — adapting tech-

19) Orhan Conker : Redressement Economique et Industrialisation de la Nouvelle Turquie, Paris 1937.

20) M. P. Price : A History of Turkey, London, 1956 pp. 166-167.

nology — juridical adaptation ” sequence continues to have the same importance. Positive results may be deduced from this in favour of juridical changes and these changes become deep-rooted leading to the formation of traditions.

However, can industrialization and adaptation of technology in Turkey, which developed by virtually starting from nothing, constitute a guarantee for juridical reception becoming deep-rooted? As regards the problem of the Civil Code which is our case Turkey between the years 1956-59, experienced certain interesting events and tendencies as follows : in 1916 the Ministry of Justice intended to make some modifications of the Civil Code as a whole - namely, both on Debts and on the Family. This plan is still in the stage of study, and the public is not aware of the essence of the modifications to be made. A Turkish parliamentarian at the end of 1918 proposed a law to the effect that conditional polygamy in the family law of 1917 should be re-instituted²¹. But in face of the reactions of the press and some Women's Organizations - both the press and these women's organizations are located in Istanbul which is the main cultural center - the proposal was ordered to be returned back to the individual who submitted it.

However, the proposition to modify the Civil Code as a whole and the polygamy proposal which did not lead to any result can be sociologically considered as important because they indicate certain social tendencies which are as important as the phenomena.

We wish to indicate the following point : Both when polygamy and when the problem of children of unknown parents are discussed, as we have explained in another report, one has to conceive of a *sui generis* reality leaving aside illegitimate unions and the problem of illegitimate children generally considered among juridical phenomena²². In face of Turkish juridical reality, one has to differentiate between illegitimacy and illegality. Success in measures of juridical policy to be facilitating influence of the technical changes²³.

21) Z. F. Fındıkoğlu : "Geri Alınan Bir Teklife Dair, Yeni İstanbul, 1958. Dec. 1958 (Newspaper)

22) See ref. 15

23) See ref. 16

We can make the following assertion as a result : A brief consideration of the codification scheme in Turkey will indicate fluctuation of some major trends :

I. Areas of codification which began in the middle of the XIXth century and which were considered partly in terms of original creation and partly in terms of reception and adaptation :

a. By way of original creation (Land, Penal code, Civil Code " *Medjelle* ")

b. By way of reception and adaptation (Commerce on and at Sea) This first codification trend is the result of contact with Western technology. Without a contact of this kind, juridical changes of this sort could not be conceived of at all.

II. A trend of juridical conceptions starting at the end of the first decades of the XXth century : This trend abolished the causal relationship between technical and juridical changes and, in reality, technical changes became the goal of a political-national idealism and thus another factor entered into the causal process of technical and juridical development .

III. Juridical conceptions in the era during 1923 - 1926 : This last trend occurred at a time when, sociologically speaking, the political-national cause during the second Constitution (1908) continued to exercise its influences to a greater extent, and when it became even more influential and active. In terms of this era : Islam propagating publication and propaganda instruments having an influence from time to time until 1923, that is, the proclamation of the Republic, especially SEBİLÜRREŞHAD (Road of Liberation) *İslam Mecmuası* (Journal of Islam) and publications propagating Turkism, especially *Türkyurdu* (Turkish Land), *Yeni Mecmua* (New Journal), *Bilgi* (Knowledge) and codification attempts which were inspired by Islamic and racial moves were opposed by an active and leading Occidentalist juridical trend. The Westernization indecisive up to then, has minimized the importance of the other two juridical codification trends. This was the trend of Westernisation in the Turkey of Mustafa Kemal, became more rapid between 1926-1959. Among processes which make up the technical factor: 1) The transportation system and road system 2) Industrialization 3) Agricultural mechanization, and facilitating the application of laws inspired by the West 4) Urba-

nization, function as means to pave the way for major technical changes. These changes, which are a consequence of a political idealism, function as causes later on.

The problem of the foundation of the laws taken over from the West and subjected to different codification mechanisms by means of technical changes in Turkey as a unit represent a special macroscopy. It is possible to argue from this angle that *receptions* have led the way to a gradual achievement. Although we find it desirable for a Turkish sociology of law that a Turkish juridical system should be established as a domestic product and by way of *original creation* like the Land Law in the past, the *Medjelle* in 1858 and even the Family Law in 1917, we do not see any harm in accepting the Turkish receptions which took place under the influence of certain very rapid political and social changes, as social facts. In short, these receptions are a *fait accompli*. In face of this, the following way can be suggested and it has been suggested : As stated by a foreign jurist who is an authority on the subject and who has been a professor of law in Turkey for the last 25 years, in terms of social microscopy these laws should be considered as " *Rahmengesetz - Loi cadre, Frame setting law* " and their content should be checked continuously²⁴. In case the relation between technical and juridical changes is the consequence of a sociological outlook in this sense, Turkish juridical policy will greatly benefit from it. A move towards codification of the kind which merges Turkish law in Western law can only thus find its expression in social reality. The strengthening of juridical policy trends in Turkey by means of International Congresses and Colloquia on law is, on the other hand, a very pleasing experience in itself.

24) A. B. Schwartz. : *Medeni Hukuk Dersleri*, İstanbul, 1956.