THE IMPACT OF A LEGAL REVOLUTION IN RURAL TURKEY

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INTRODUCTION

This paper examines the impact of Turkey's radical introduction of Western law codes and secular courts[1] by analyzing a portion (1950-67) of the docket of a rural district court, located in Bodrum, Turkey. We are particularly interested in whether a transplanted formal legal system can influence the countryside, and we ask: (1) To what extent are rural district law courts being used, and is this use increasing? (2) In what domains are rural courts used, and to what degree do these coincide with domains formerly covered by religious and/or customary law? (3) How is the use of the courts distributed between settling disputes (including disputes between the state and citizens) and processing routine, undisputed formalities, and is this distribution changing? (4) To what extent are women and other non-powerful groups (rural, poor, ethnic minorities) using the courts, and has this use changed over time? (5) To what extent is the government using the courts for social control purposes, and how does this use compare with non-governmental use of the courts? (6) How does the use of the courts relate to abrupt shifts in political power and ideology?

Court records alone cannot provide exhaustive answers to questions about legal change. Nevertheless, suggestive patterns are apparent in the court docket. From them we can infer certain relationships and trends that might be underestimated if such records were ignored. Our data suggest that planned legal change over time does indeed affect populations and institutions at the local level.

Introduction of Western Law in Turkey

In 1926 the government of Atatürk introduced new civil and criminal codes in Turkey which were based on Western models. Western thought had earlier influenced, and in some arenas permeated, the otherwise Islam-inspired 19th century Ottoman law, first in the mixed commercial courts and later in criminal codes (Davidson, 1968: 82-83; Feroze, 1962: 131-32; Mardin, 1961: 189-96). But Western jurisprudence had hardly challenged the *Shari'a* — the sacred body of the Islamic law — in its control of betrothal, marriage, divorce, inheritance, and adoption. Thus, when the *Shari'a* courts were abolished in 1924 and the entire court system was transferred to the Ministry of Justice, the whole judiciary became legally independent of religious control for the first time in Turkish history. The replacement of the *Shari'a* by the Swiss civil code in 1926 abolished the jurisdiction of Islamic law in its sacred sphere of family relations and brought all legal aspects of family life under the domain of secular law.[2]

In addition to the new civil and criminal codes of 1926, committees of jurists produced new codes of obligation, commerce, maritime law, and civil and criminal procedure. Provincial administration had previously been reorganized, and the Village Law (*Koy Kanunu*) of 1924, which gave the Turkish village its first legal identity, created administrative and health standards which all villages were expected to meet within a reasonable period of time (Turkey, 1948). In short, the legal, administrative, and political basis of the Turkish state became, under Atatürk's reforms, so drastically different from the pre-1918 polity (even taking into account the previous Westernizing reforms) that Lewis (1961) and others have claimed that the Turkish Republic which emerged in the mid-1920's had made a revolutionary break with its past.

Yet even today the vast majority of the Turkish population continues to adhere to customs and beliefs which seem incompatible with numerous provisions of the new codes. Islam traditionally did not make distinctions between church and state. Islam was historically a "system of state, law, thought, and art — a civilization with religion as its unifying, eventually dominating factor" (Lewis, 1960: 133). The problem of the reception of Western law in modern Turkey is not merely the confrontation of European legal codes and prevailing practices — monogamy versus polygamy, equal divorce rights versus repudiation of unwanted wives. It is the assertion by a Western-

ized elite that matters relating to marriage, divorce, and family life are concerns of the state, and can be separated from their religious context.

The fact that Turkey could adopt and ostensibly follow Western law codes in the face of popular support for the Islamic religion may attest to Galanter's (1972: 66) proposition that "a legal system of the modern type may be sufficiently independent of other social and cultural systems that it may exist for long periods while maintaining a high degree of dissonance with central cultural values." It is essential, however, to examine actual interactions between the legal system and holders of these values to see how this dissonance is perceived and resolved.

Gaps between the New Code and Existing Social Practices

The introduction of a new and radically different civil code produced many problems for the new Republic of Turkey. Yet, surprisingly enough, there has been little attempt to assess empirically either the impact of the new code or the procedures used to enforce it.[3] In the early 1930's the government inquired into the "malajustment of the law to the facts of social life." Inquiries were sent to governors of *vilayets,* and replies from 24 of them, published by the Ministry of Interior, suggest that the adoption of the civil code was followed by a sharp rise in the number of irregular unions (*i.e.,* marriages not registered and therefore not recognized by the state) and illegitimate births resulting from these unions (Ulken, 1957: 51-52).[4]

We know that certain adjustments have been made to bring the new civil code and the customs of villagers more into harmony with each other. For example, in 1938 the Turkish legislature modified the code by reducing the age of marriage to 17 years for a male and 15 for a female, while in exceptional circumstances males could marry at 15 and females at 14 years (Velidedeoglu, 1957: 63). This was in response to couples, wishing to marry under civil procedure, but not yet of legal age, who had applied to the courts to change their ages, stating they were born before their registered birth dates. Judges had been treating these applications favorably, and public opinion did not regard false testimony of this kind as immoral. So this is one example of the adaptation of the law to social needs or circumstances, demonstrating that the new republic was in some respects sensitive to the response of the countryside to its new legal venture.

Another attempt to bridge the gap between code rules and existing social practices is in the domain of illegitimate birth. The new code required that marriages be registered with the state. Formerly, marriage had been a contractual relationship entered into with the consent of the parties and their families in the presence of two witnesses.[5] After 1926 many villagers continued to perform marriages in the traditional way and neglected to register the marriage with the state, creating a population of illegitimate offspring. In order to cope with this widespread violation of a law that at first was onerous and offensive to many villagers, the national legislature passed laws in 1932, 1934, 1945, 1950, 1956, and 1965, legitimizing children of all such unions (Timur, 1957; Velidedeoglu, 1957: 62-63).

Another area of adjustment to social reality has been land ownership and registration. Stirling mentions (1957: 33) that a certain village *muhtar* (headman) was registering in his own name land which villagers previously held in common, thus using the new laws to promote his own interest at the expense of others. Velidedeoglu notes (1957: 64) that "even today, nearly 29 years after the civil code has come into force, the organization of the cadastre has not been completed, which means that in the absence of a cadastre or of a land register [in] certain regions . . . it [has become] an economic necessity to convey land on the strength of ancient documents or even without reliance upon any documents." He points out that "the continuation of sales and purchases of land without registration in a Land Register is a social and legal fact which has compelled the legislature and courts in Turkey to develop new rules in order to remedy this situation and sometimes even to discard rues and principles laid down by the Civil Code." He finds that the problems of land ownership and land registry are still immense, but that the laws have been innovative in this area (1957: 65):

> The lawful possession of unregistered land is now held to constitute a right of a proprietary nature which is *sui generis*. This practice is in keeping with the present social and economic situation in Turkey. A new rule has been created outside the Civil Code which recognizes ownership in non-registered land.

But, as Aktan has pointed out, neither the civil code nor modifications of it contained "provisions adequate to fulfill Turkey's needs with regard to agricultural land ownership and use" (1966: 319). Aktan continues (1966: 324):

> As time goes on, land disputes increase in number and become more complicated, each one wating for years to be solved, if

> ever. Numerous cases of armed struggle among people, or between the people of two villages, or even against government forces occur every year. An investigation carried out in many prisons some years ago revealed that in half the murder cases the cause of the crime was a land dispute. Plainly, in many instances, the farmers try to protect land by force.

Thus problems concerning land ownership and use, and laws and procedures relating to these problems, have been a continuing concern to both government and its critics. Despite considerable changes in land law, it is reported by Aktan (1966: 324) that "more than half of the more than four million annual court cases are related directly (and many others indirectly) to land."

THE SOCIAL AND HISTORICAL SETTING OF THE STUDY

The town of Bodrum (pop. 5,137) is located on the Aegean in the southwestern corner of Turkey. The modern town is the administrative center (*kaza*) for the surrounding thirty villages which are dispersed on the peninsula to the west of Bodrum, and in the higher plains to Bodrum's east. The district of Bodrum comprises 66 thousand square kilometers, and contains three natural resources that are often settings for illegal activities: mountains, a state forest, and coastal beaches (difficult to patrol, two hours by motorboat from Greek territory). The population of the villages in the district is about 25 thousand. Villages range in size from 293 to 2,019; they are essentially agricultural. Tangerines and vegetables are grown as cash crops on the peninsula to Bodrum's west. On the higher, more arid plateau to Bodrum's east, tobacco, camels, cows, donkeys, and horses are the major sources of income. The economy of Bodrum town in 1968 was based on fishing, tourism, and agricultural production. It is an important southern port and the major Turkish ship building center on the Mediterranean coast, as well as the center of Turkey's sponge diving industry.

As an administrative town, Bodrum contains numerous Turkish government bureaus. The *Kaymakam,* who is the administrative director of the district, has an office which can, among other things, hear land disputes. The *Kaymakam* is responsible directly to the administrative director (*Vali*) of the province (*vilayet* or *il*), who has offices in the provincial capital, Mugla, which in 1967 was roughly a five hour jeep drive from Bodrum. Bodrum is one of seven districts (*kaza* or *ilçe*) administered from Mugla. For administrative purposes *vilayets* are subdivided into *kazas* and *nahiyes* (or *bucaks*). The latter

is the smallest sub-unit of a district and is primarily a unit of control by gendarmes (rural police who are military personnel on special duty).

Bodrum has a number of institutions and offices of the central government as well as a municipal (*belediye*) adminis-istration. Those maintained by the central government include a post office (with telegraph and telephone), a customs bureau, a harbor authority, a maritime affairs office, a government agricultural cooperative, a forestry office, an immigration authority, a branch of the agricultural bank, a museum, a hospital (with a doctor and several nurses), schools (primary, middle, high), and a tourism bureau, plus directorates of finance, agriculture, religious affairs, village affairs, population, land registry, education, veterinary affairs, and health. The commandant of the gendarmes and the director of the (urban) police are both headquartered in Bodrum. The municipality is headed by a locally elected mayor (*belediye reisi* or *belediye baskani*), who is responsible for maintaining standards in respect to human and animal health, the conduct of business transactions (such as the use of scales in stores and markets), fire protection, marriage licenses, and the power and water supply.

In the private sector, Bodrum is the local center for a number of shops, garages, inns, and small-scale craft industries. It also boasts two transportation offices, out of which buses and trucks are run to Izmir and elsewhere, plus a number of individual operators who drive vehicles under contract.

In Bodrum town, law and order is the responsibility of the Bodrum police commissioner and his staff of five policemen. In the villages outside the town proper, law and order are maintained by gendarmes, who are responsible to the gendarme commander in Bodrum. A village gendarme captain, however, may by-pass the Bodrum gendarme commander to report a "criminal" case directly to the public prosecutor (*savci*).

National dispute-handling agencies in Bodrum are the *Kaymakam's* office (for land cases only) and the Bodrum law court.[6] The court has two judges and a public prosecutor. It is divided into four courts of law: *Sulh Hukuk Mahkemesi* (Lower Civil Court), whose jurisdiction is civil cases involving up to 1,000 liras (then about $100) worth of property; *Asliye Hukuk Mahkemesi* (Higher Civil Court), whose jurisdiction is all other civil cases; *Sulh Ceza Mahkemesi* (Lower Criminal Court), which hears minor criminal cases as defined by the

Turkish Criminal Code; and *Asliye Ceza Mahkemesi* (Middle Criminal Court), with jurisdiction over serious crimes up to and including involuntary manslaughter.

Informants reported that one judge presides over the Lower Civil and Lower Criminal Courts, and the other judge is in charge of the Higher Civil and Middle Criminal Courts. In actual practice, however, they often replace each other at the bench. The public prosecutor takes an interest in, and follows, all criminal cases, but he sits at the bench (to the right of the judge) only during the Middle Criminal Court hearings.

The courthouse is located on an unpaved side street in Bodrum, two blocks from the sea. It is housed in an old two-story, whitewashed building, once inhabited by a Greek family. A whitewashed wall with a wooden door separates the courthouse yard from the road, which in winter becomes a muddy ditch. The court is not connected with other government offices, but is in a residential neighborhood.

People waiting for their case to be called sit or squat outside the courtroom, while inside the courtroom a formal atmosphere is maintained. Judges and the public prosecutor wear black robes over pants and shirts, while lawyers wear ties and Western suits. Individuals giving testimony are required to stand; women are expected not to cross their legs in court (even though they wear long dresses and/or baggy pants); and witnesses and observers are required to be silent. Only rarely is someone asked to give sworn testimony; the two observed instances both involved old persons, one of whom swore on a Quran and the other on a loaf of bread.

One of the four male court stenographers sits at a table directly in front of the judge's bench during each court session. The judge questions the plaintiff, defendant, and witnesses, and after each testimony he dictates the answers himself to the stenographer, who types on a standard, manual Remington typewriter. Lawyers cannot directly cross-examine principals or witnesses, but must put their questions to the judge, who, when the question is considered relevant, asks it. After the first hearing, a lawyer may appear for a defendant in a civil case, but in criminal matters the defendant himself is required to appear each time.

One stenographer acts as head clerk, court treasurer, the only notary in Bodrum, and also the official debt collector who oversees seizure and sale of goods when a judgment is to be

executed. Another works mainly for the public prosecutor, who has his office in the courthouse. Another is associated with both civil courts, while the fourth works with both criminal courts. In times of illness or vacations, either of these latter substitutes for the other. Two other male employees are associated with the court: the younger, 23, acts as sergeant-at-arms during court hearings; the other, a man about sixty, prepares and processes warrants, summonses, and billings. Both are sent for coffee and run other errands. Gendarmes deliver summonses and guard prisoners. The only woman employed by the court acts as guardian of the Bodrum jail and prepares food for the prisoners; the job is not sex-linked, however, for before her employment a man held this job.

Bodrum itself had no lawyers (*avukat*) at the end of the period covered by our data. The nearest lawyers, of whom there were sixteen, lived in Milas, a city 90 kilometers away by unpaved road. Usually, therefore, lawyers appeared only in serious criminal cases and in cases with wealthy defendants. There were in Bodrum, however, four legal representatives (*vekil*), who lacked complete formal legal training but were allowed to represent clients in civil land cases.[7]

Court hearings are not continuous. The ideal form is for plaintiff and defendant to state their claims in the first hearing and name witnesses. The witnesses are heard about ten days to three weeks later and, ideally, a judgment is given in the third hearing. Many different events and problems prolong disposition, however, so that an average case has approximately six hearings and lasts three to six months, although certain types of crimes, such as those which threaten the security of the community (*e.g.*, smuggling, possession of dynamite), fall into a special category which requires them to be promptly heard to completion.

DATA ANALYSIS

The Data

The data for our analysis came largely from the Bodrum court docket. We have a complete record for the three year period 1965 through 1967. In addition, we have complete records for the Middle Criminal Court for the years 1950 and 1957. The total number of cases included in these records is 3,350. We also have yearly totals covering 1958 through 1967, and some prior years, from all four courts. These totals include information concerning the number of continuing, new, and

completed cases. The yearly totals are compiled in January for each preceding year.

The docket contains space for the following information for each case: case number, date of acceptance as a case,[8] names of all plaintiffs and defendants, village (or sometimes neighborhood) in which they lived, complaint, decision, date of decision, type and amount of penalty, if any, whether the case was appealed, and, if so, the outcome of the appeal. Normally an observer could also determine the plaintiffs' and defendants' sex from their names, and sometimes the docket contained notations about relationships among the parties; in such cases this information was also transcribed and coded for analysis.[9]

Access to records of the Bodrum district courts was granted only gradually and partially, even though permission to examine all records of any Turkish court had been given to one of the authors in writing by the Council of High Judges (*Yüsek Hakimler Kurulu*). The records which were made available had been in part kept inconsistently and incompletely, which may be attributable to the fact that the court personnel had all served there many years (minimum 8 years); the abbreviatedness and idiosyncracy of records in small town offices probably varies directly with the tenure of the recordkeepers.

Although the docket data we are analyzing are somewhat incomplete and inconsistent, they can still be used to draw inferences about the impact of the transferred legal system on the villages which fall under the jurisdiction of the Bodrum court.

Penetration across Time

Has the use of the court by the village population changed over time? Has the court gradually gained acceptance as a dispute-solving institution? Have victims become more willing over time to report crimes to law enforcement authorities and to act as complainants in court? Has the ability of the state to enforce its laws, at least to the point of bringing alleged offenders to court, been increasing?

In general, the data show that no substantial and consistent changes in the volume of cases took place during the 1950's and 1960's. The irregular fluctuations in the number of new cases from year to year were enough to obscure any major secular trend over the period for which data are available.

Thus it appears that the use of the courts by the gendarmerie, the police, government agencies, and private citizens was stable rather than growing during the last two decades. Whether this means that agencies and individuals had not yet learned to make much use of the courts, or whether it means that they had already learned to do so by the end of the 1940's, will be known only when future changes in the volume of litigation can be added to our data.

Second-order trends can, however, be found in the case volume data, confirming previous impressions of simultaneous political changes. One might expect to find that the prosecution of criminal cases rose after the 1960 coup, especially in areas like Bodrum where the victim of the coup, Premier Menderes, had received much support. The history of general pardons and our own conversations with party supporters led us to believe that members of the Republican People's Party (RPP) have in general been more legalistic and less lenient than members of Menderes's Democratic Party (DP) and of its successor, the Justice Party (JP). If we accept the years 1951 through 1959 as the period of Democratic Party control, the years 1961 through 1964 as the period of (greater, if not total) Republican People's Party control, and the years 1966 on as the period of Justice Party control, we can compare criminal prosecutions during the three periods.

When we look at criminal prosecutions in general, the differences among periods of different party control are small, inconsistent, and apparently explainable by the gradually rising case volume alone (see Table 3 below). Contrary to our expectations, the frequency of prosecution in general did not seem responsive to changes in the party in power. Even so, we had a strong expectation that the prosecution of certain sensitive and divisive types of cases would vary with the orientation of the party in power. The docket allows us to test this hypothesis for only one type of case, however, because most politically sensitive cases — *e.g.*, those involving subversion or violation of laws against religious indoctrination — never appeared in the docket. Either there were no such cases or the cases which occurred were heard in secret or in a higher court or other agency; it is most likely that such cases would be handled by local or national police and not be tried in the Bodrum court.

One sensitive kind of case that did appear in the docket,

however, was the prosecution of parents for failure to send their children to school. Traditional parents often have resisted sending their children, especially their girls, to school in Republican Turkey, for both economic and religious-cultural reasons. By the same token, one of the main goals of Turkey's modernizing leaders since Atatürk has been to get the whole school-age population into schools, where they can be taught an "enlightened" world view. Where the obstacle to reaching this goal has been resistant parents rather than the lack of schools and teachers, coercion has been considered an appropriate remedy. But as a result of policy differences between the parties, we expected to find prosecutions of such parents more frequent during periods of RPP dominance than during periods of greater DP or JP power. There was, in fact, a sudden and remarkable increase in the growth rate of elementary school attendance in rural Turkey, especially among girls, taking place as of the academic year which began a few months after the 1960 coup (Turkey, 1967). How did such a change come about? Did it coincide, as we hypothesized, with criminal prosecution of parents who withheld their children from school?

Our data cover too limited a time span and locale to be anything more than suggestive, but prosecution of parents in Bodrum for not sending their children to school does indeed seem to have varied with party control. The Bodrum docket shows no school attendance cases in 1950. This year was one of partial DP control, and in any case may have been a time when not enough local schools existed to make prosecution for withholding from school a realistic approach. By 1957 the DP was in full control, and there were still no prosecutions for school withholding. Our next data are from the tail end of the period of renewed RPP influence. In 1965, the year of the turnover election, there were 13 school attendance prosecutions, all in the Middle Criminal Court. The following year, when the JP was back in control, this figure sank to just two. And one year later there were three such cases, but they were all prosecuted in the Lower, not Middle, Criminal Court, presumably reflecting a reduction in the legally defined seriousness of the offense. Thus changes in school attendance prosecution rates reflecting the changing policies of the parties in power seem to have been not only major, but also rapid.

Penetration across Space

How far into the countryside does the judicial system make

an impact? We hypothesized that the volume of cases from a community would vary directly with the proximity of the community to the district (and hence court) seat. For the villages, our hypothesis was clearly disconfirmed. There was no or next to no association between distance from the town of Bodrum and the number of cases per capita from the village.[10] Both very central and very remote villages were represented among those with unusually high, unusually low, and about average per capita case volumes. The village with the lowest per capita case volume was, in fact, the second closest village to the town of Bodrum. Modifying the hypothesis to take into consideration the nearness of villages to gendarme stations did not rescue it. In fact, villages within about two kilometers of a gendarme station had a combined case volume of 0.084, while other villages had one of 0.133 — opposite from the hypothesized direction and suggestive, instead, that gendarme presence keeps some disputes from becoming court cases.

We do not mean to imply that all villages had roughly similar case volumes; on the contrary, they varied wildly. The villages' per capita case volumes ranged from 0.15 down to 0.02. We have not yet investigated the social and historical variables which might explain this variation, except for the fact that village size was found to be practically unrelated to per capita case volume. What is important for the purposes of this analysis is that the variation which occurs gives no evidence that the impact of the judicial system in contemporary Turkey fades away with distance from courts or law enforcement agencies.

Even the town of Bodrum did not have a substantially different case volume from the villages in its district. It is true that the heaviest village case volume (0.15) was less than that of Bodrum town, 0.17 per capita. It is to be expected, however, that Bodrum would have the largest relative number of cases, as here defined, since in many cases the defendant was a government agency, and it was usually listed in the docket as being from the town, where its district headquarters were. When we adjust for this distortion, Bodrum looks fairly similar to the surrounding villages. Subtracting from the analysis all cases in which the principal defendant was a government agency gives us a Bodrum town case volume slightly lower than the aggregated case volume for all villages: 0.099 as opposed to 0.118. Bodrum's volume of cases involving physical violence was equal

to the average volume of such cases for the villages of the district. The volume of physical violence cases aggregated for all villages near gendarme stations was 0.017, scarcely higher than that of the town (0.014) or of villages not close to gendarme stations (0.016).[11] And even those cases in which the Population Administration was being petitioned to "correct" someone's official age — a device to enable one to get married before the legal age — were filed with nearly identical per capita frequency by town and village dwellers. While residents of Bodrum town constituted 20% of the district population, they filed 23% of these cases.[12]

Our data suggest, then, that the new judicial system has a fairly uniform impact on urban and rural residents of the district. The substantial variations in case volume that occur seem not to indicate any center-periphery gradient in impact. On the other hand, cases from the town and from the country did differ in kind, as we shall presently see.

Penetration across Social Arenas

Cases in the docket were classified by content or issue into about three hundred different categories. We collapsed these for analysis into five unambiguous[13] categories forming a scale of intensity of disputation. These categories range from "routine," in which parties make an agreement and then apply to a court to give the agreement legal sanction (change of age or name, or presenting financial records kept by a minor's guardian, for example), to "physically violent," in which physical force or stealth is (allegedly) used or threatened with the intent or willingness to harm or take property.[14] Of the unambiguous categories, nonviolent disputes occupied 60% of the cases. Eighteen per cent of the cases were "routine," 16% were physically violent, and 5% were verbally violent (*e.g.*, slander).

When we survey the distribution of cases using these rough divisions, we see that Bodrum town's case volume is notable for its numerous "routine" cases. The routine case volume for the villages ranged from 0.012 down to zero, with an average of 0.0025 per capita. Bodrum town, however, had a routine case volume of 0.02, eight times higher than that of the villages.

Related to the scale of disputational intensity is the question of disputant proximity. We hypothesized that the more closely acquainted or related the disputants, the more alternative (and probably prior) mechanisms of resolution would be available to them. Perfect strangers, on the other hand, might

have no commonly acknowledged means of settlement other than courts of the state. In this context it is not surprising that the docket contains *more* cases in which plaintiff and defendant are from different places (usually different villages) than cases between parties from the same place (1,059 vs. 968 cases). Given the relative infrequency of inter-village contacts, the ratio of actual disputes must be in just the opposite direction, so it is clearly the *intra*-village disputes, not necessarily the disputes between those from different villages, which are most likely to be settled without court involvement. This result confirms Starr's finding that villagers in "Mandalinci" preferred to settle most disputes among themselves by informal village mechanisms, and took to court primarily disputes with outsiders or disputes over scarce resources (land, boats).[15]

The lower incidence of intra-location cases is especially notable because we have reason to believe that disputes between residents of the same place are not only more numerous, but also more intense. Earlier we noted that many routine cases take place between individual villagers and town-based government agencies. In addition to these, some disputatious but still nonviolent cases are of the same sort.[16] Violent cases would not normally involve villagers against agencies. Relying on the further assumption that violence is more likely between those closely acquainted or related, we hypothesized that the more intense the dispute, the more likely it would be that the disputants were from the same place. In other words, intra-location cases would involve disputes closer to the violent end of the scale than would inter-location ones. Table 1 shows that disputant proximity and disputational intensity were related in Bodrum as hypothesized.

TABLE 1: TYPE OF CASE AND LOCATIONAL RELATIONSHIP BETWEEN PRINCIPAL PARTIES IN THE FOUR BODRUM COURTS

A. Likelihood of Being from the Same Place by Case Type

Plaintiff (complainant) and defendant from same or different places?	Type of Case			
	Routine	Non-violent	Verbally violent	Physically violent
Same	23%	44%	75%	79%
Different	77%	56%	25%	21%
N	154	891	119	352

B. Case Type Distribution by Whether Parties from Same Place

Type of Case	Same	Different
Routine	4%	16%
Nonviolent	49%	69%
Verbally violent	11%	4%
Physically violent	35%	10%
N	790	726

It is plausible that transplanted legal systems are most successful in winning acceptance, and hence being used, in those arenas where codified or customary law did not apply before and where there is thus no competition between old laws and new ones. It has been claimed (Stone, 1966: 733) that European commercial law is more widely accepted in Turkey than is European family law. The most commonly mentioned arenas of persisting custom in resistance to new laws are those of inheritance, creditor-debtor relations, and divorce. The absorption of European law has been seen as a problem because of its departures in these arenas from Turkey's previous law and/or customs. It has been asserted, specifically (Belgesay, 1957; Stirling, 1957; Timur, 1957), that Turkish villagers rarely use official agencies or courts to legitimate marriages, that Turks prefer to settle estates informally and slowly by themselves, and that creditors find the new law hopelessly debtor-biased.

Do people in fact avoid seeking solutions through the new legal system to problems in these arenas? Or do they, on the contrary, apply to the courts especially often in precisely these arenas, where the new system offers a (by some, perhaps) preferred alternative to, or escape from, custom? The Bodrum court docket shows that three of the most common types of cases deal, indeed, with these three arenas of law-custom disparity. These cases are:

(1) Those brought by persons requesting permission to have a mariage performed without waiting the required fifteen days after registering their marriage (*evlenmenin ilansiz icrasi*);[17]

(2) Those brought for the purpose of settling the estate of a deceased (*veraset*); and

(3) Those brought by creditors against alleged debtors (*alacak*).

These cases constituted one-fifth of all cases heard from 1965 through 1967 (see Table 2).[18]

The docket provides suggestions as to why some of these cases are so common. There need be little fear that a petition to waive the premarital waiting period will be denied, since our data show that of the 166 cases of this sort heard to completion in 1965 through 1967 permission was granted in all but one case. This conforms strikingly to Velidedeoglu's (1957: 63) observation noted earlier and justifies us in classifying cases of this kind in the "routine" category. Decisions rendered in

TABLE 2: MAJOR CASE TYPES IN THE FOUR BODRUM COURTS

Type of Case	Number of Cases of this Type	Percentage of All Cases
Veraset (Inheritance)	295	8.8%
Arabaya cok yolcu almak (Driving a vehicle with excessive passengers)	196	5.9%
Evlenmenin ilansiz icrasi (Permission to waive the 15-day waiting period before marriage)	168	5.0%
Alacak (Debt collection)	167	5.0%
Orman kanununa muhalefet (Forestry law violation)	155	4.6%
Bosanma (Divorce)	138	4.1%
Men'i müdahale (Trespassing)	116	3.5%
Ehliyetsiz vasita kullanmak (Driving without a license)	106	3.2%

NOTE: All types exemplified by 100 or more cases are included.

debt cases have tended to go against the debtor, not against the creditor. In 61% of the cases at which the creditor appeared on which the judge had rendered a decision, he made the defendant pay money to the plaintiff.

Our data does confirm the presence of a factor supposedly underlying the reluctance of Turks to settle estates through the courts: the undue speed with which the courts are felt to handle what ought to be a gradual matter (Stirling, 1957: 26-27). Inheritance cases, as reflected in the Bodrum docket, were indeed handled faster than — more than twice as fast as — all cases put together. The median inheritance case lasted 29½ days from first hearing to disposition, while the median of *all* cases lasted 68½ days. (About 15 to 20 days usually passed between hearings in a case.) Nevertheless, inheritance cases were by far the most numerous.

It is a departure from Turkish custom for disputing spouses to turn outside their (extended patrilineal) families for help. Yet, in addition to the cases mentioned above, there were 138 divorce and 27 adultery cases heard by the Bodrum courts out of the 3,350 cases in our records. Given the extreme dishonor males suffer from wives' adulterous behavior, and given the custom of dealing with such behavior directly (Starr, n.d.), even this number of adultery cases (of which about 80% were brought against wives) must be considered substantial.

Whom Do the Courts Serve?

One of the most common complaints about transferred institutions is that they fall into the control of special interest groups or those who have the scarce expertise and resources

needed to manipulate these institutions. What can we infer from our district court docket about the biases of the transferred legal system as applied to Bodrum? Let us briefly consider the conflicts of interest between three pairs of groups — government and citizen, rich and poor, male and female.

If the courts are mainly an instrument of governmental control over citizen behavior, most cases will be criminal prosecutions. In fact, however, from 1958 through 1967 there were more cases each year in the two civil courts of Bodrum than in the two criminal courts, as can be seen in Table 3. Thus, given the predominant uses to which these two branches of the court are put, it seems reasonable to infer that citizens were using the court to a substantial degree as an instrument to achieve their purposes; it was not merely a tool of governmental control.

Another indicator of governmental control vs. citizen influence may be the variation of penalties. According to our observations, Turkish bureaucracies are characterized by legalistic norms and insensitive inspectors. If central control is tight, we think that in the Turkish environment prosecutors will be encouraged to request, and judges to dispense, fairly uniform penalties. But if local influentials can (or must) be paid attention to, or if prosecutors and judges take local-level variables into account, then penalties for a given offense can be expected to vary substantially. The docket shows that judges' decisions in identically described cases were by no means all alike.[19] Fines levied from 1965 through 1967 in the Lower Criminal Court against those convicted of assault and battery and insult, for example, varied from 83 to 700 Turkish liras (one lira equaled approximately 10¢), and the 25 fines were of 14 different total amounts, with no single amount levied more than four times. Fines charged in cases of overloading passengers in a motor vehicle were more concentrated, with just over half of them being 30 liras and most of the remainder being 50 liras. But larger fines, up to 600 liras, were also imposed in a few cases. The distribution of penalties was thus great, suggesting that judges may have been dependent on local forces or may have been independent enough of central guidance to exercise discretion based on the particular characteristics of each case.

A further suggestion of pro-official bias in the courts would be a tendency for decisions to be more lenient in cases with

TABLE 3: CASE VOLUMES IN THE FOUR BODRUM COURTS

Courts	1950	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967
Lower Civil	*	168	211	172	177	164	166	233	186	207	201	181
Upper Civil	348	*	312	306	297	278	322	326	361	374	409	474
Civil: total	*	*	523	478	474	442	488	559	547	581	610	655
Lower Criminal	*	249	240	257	287	270	295	309	225	364	329	322
Middle Criminal	64	85	77	76	78	98	96	71	104	115	137	88
Criminal: total	*	334	317	333	365	368	391	380	329	479	466	410
Civil and Criminal: total	*	*	840	811	839	810	879	939	876	1060	1076	1065
Civil as % of total	*	*	62%	59%	56%	55%	56%	60%	62%	55%	57%	62%

*Data not available.

officials and civil servants as defendants than in cases against private citizens. Unfortunately we have data about only a few cases with known decisions and with defendants whose official or private status is known. Of the 18 criminal cases against officials with decisions by the judge that we can tabulate, seven resulted in acquittals or dismissals by the judge (dismissals due to failure of the plaintiff to appear are excluded from the 18 cases).[20] This is an only slightly higher ratio of pro-defendant decisions than the ratio for all cases heard by these courts, and the difference is insignificant in view of the small number of cases. There are, however, strong forces that prevent private persons with grievances from complaining against public officials. Judges, who are non-locals and can be transferred elsewhere by the center, tend to identify themselves with their fellow government officials and do their best to disqualify such cases from their courts, or to send them elsewhere (Starr, 1970). Thus those cases that do reach a hearing may well be stronger ones than if such a selection bias did not operate. Still the data, while limited, suggest that, when civilians persist in making such cases heard, the probability of conviction is not grossly less than it is in cases against private persons.

If the Bodrum courts are not controlled by officials to regulate the citizenry, are they controlled by the rich to keep down the poor? This is a question that the docket gives little help in answering, for there is no information recorded about the wealth of the litigants, even though direct observation revealed a large number of poor and uneducated persons appearing as both plaintiffs and defendants. It has already been mentioned that the court was frequently used to collect debts, and that decisions usually went against the debtors. On the other hand, between 1965 and 1967 there was a precipitous change: the proportion of all debt collection cases in which the judge ordered the defendant to pay money to the plaintiff dropped from 46% in 1965 to 30% in 1966, and from there down to 9% in 1967. Simultaneously — and understandably — the number of debt collection cases that creditors brought to court also dropped sharply: from 97 to 37, and thence to 33. Of course, this drop in the number of cases presumably implies that creditors increased the threshhold of "tightness" they applied to cases in deciding whether to file suit, and this trend in turn makes the continued reduction in the rate of pro-creditor decisions even

more remarkable. Since the judges presiding over the courts of Bodrum remained the same throughout this 1965-67 period, discretion may have been limited by external influences, including, perhaps, the same change in national leadership that we mentioned in connection with the drop in school attendance prosecutions. If real or anticipated party pressure was responsible, then we can conclude that the Justice Party favored debtors against creditors and by comparison the Republican People's Party favored creditors against debtors. This conclusion would be interesting in the light of the RPP's generally accepted location on the left side of the JP. It would give more credence to the claim that the two parties differ more importantly in terms of the RPP's elitism and the JP's populism.

In addition, if a change in the party in power results not only in a quick change in prosecution policy (as with the school attendance cases), but also in a sudden change in decision ratios (*e.g.,* in debt collection cases), then the penetration of central administrative control into the periphery is all the more complete because it is not counterbalanced by a politically independent judiciary. On the other hand, it is obvious that such a complete command over the institutions of government by the party in power, if true, implies that a change of party will have enormous effects and the stakes of electoral politics will be very high, hence making more difficult the management of peaceful governmental change[21] and the survival of a competitive party system altogether.

Let us finally turn to the part played by the district courts in struggles of the sexes. Are the courts providing greater access for women to their legally granted but often withheld rights and privileges? The limited inferences we can draw from the docket data point to an affirmative answer to this question.

Women filed twice as many "routine" suits in the Bodrum courts as did men; thus it cannot be said without additional evidence that women are backward in their use of the court. While only 4% of the women filing such suits failed to appear when their suits were scheduled, 8% of the men filing routine suits failed to appear. Women not only filed more, but they won more. Of "routine" suits which reached decisions, 98% of the ones brought by women were won, as opposed to 93% of those brought by men.[22] Also, of the 138 divorce cases heard from 1965 through 1967, almost half were brought by wives. Only on the extremely emotional issue of adultery did court records reflect the tradition of male supremacy: as mentioned

above, women were accused about four times as often as men. Otherwise, the types of cases brought by women against men did not differ greatly from those brought by men against women or between members of the same sex (except that women sued men much more often for child support).

If these statistics suggest for the most part that women recognize the courts as one of their few protections, it is also evident from the data that this recognition, or at least the willingness to act upon it, has been growing gradually over the last two decades. As we can see in Table 4, cases in the Middle Criminal Court involving complaints by women of alleged offenses by men constituted twice as large a proportion of all cases in 1967 as in 1950.[23] If we assume that actual offenses by men against women did not appreciably increase during that period as a percentage of all cases, then the docket clearly shows an increasing assertiveness among women in using the court against male offenders.

TABLE 4: SEX OF PRINCIPAL COMPLAINANT AND PRINCIPAL DEFENDANT IN MIDDLE CRIMINAL COURT CASES

Cases involving:	1950	1957	1965	1966	1967
M against F	5	4	11	8	4
M against M	12	24	37	40	32
F against F	2	3	4	9	5
F against M	3	9	12	21	16
F against M, as % of all above	14%	23%	19%	27%	28%
Total of above cases	22	40	64	78	57

CONCLUSION

The Turkish revolution in legal codes and legal institutions was ambitious. At one and the same time, it had to overcome the traditional resistance of the rural masses to dealing with agents of the central government, and the deep commitment of the population to the rule of the *Shari'a* and/or local customary law, which were suddenly disestablished.

Too few analyses of this revolution have sought out evidence from the countryside, where most of Turkey's people have always lived, to learn whether changes in legal codes and institutions lead to changes in popular legal behavior. Too often studies of legal change, whether in Turkey or elsewhere, simply assume that formal changes are followed by behavioral changes, that formal changes are *not* followed by behavioral changes, or that formal changes per se are a worthy subject of study regardless of what behavioral consequences they have.

For many investigators a resort to the first or second as-

sumption, or to a mixture thereof, may be unavoidable, since, as this study demonstrates, reliable data are difficult to acquire. Given the fact that useful data *can* be gathered, however, we choose to go beyond the third assumption and pay attention to actual behavior at the lowest level of the national judicial system.

Our data, limited though they are, suggest that the Turkish legal revolution is a revolution in more than form. Rural Turks are using the courts, not just being brought into court by the government— most cases, in fact, are civil ones. The use of the courts by citizens extends to arenas formerly within the sphere of religious law alone — to such an extent that these are now among the most common kinds of cases. Women, possibly the most traditionally deprived group of all, are increasingly turning to the court to redress at least some of their grievances — in some ways they already use the courts even more efficaciously than men. At least in its treatment of women and debtors, we find evidence that the court is not merely serving to reinforce the traditonal power structure. Nor is the court just an instrument for governmental control of the population.

The government, however, does use the courts for control, and the extent of this downward penetration is our second main finding. If Bodrum and the school attendance cases are not exceptions, our findings give credence to Frey's (1965: 40-43) description of Turkey as being in the second stage of a two-stage revolution: no longer are Westernized intellectuals merely extending and consolidating "a precarious beachhead" and thus "making Turkey safe" for themselves, but they have, as our experiences there confirm, largely bridged the center-periphery control gap with their centralized administrative apparatus. At this time, Turkey has little difficulty keeping its borders reasonably secure and maintaining a state presence in the countryside. How much of a head start Turkey got in this respect as a result of its Ottoman inheritance may be debated (Ward and Rustow, 1964: 460-61). But the village case volume data in the Bodrum docket support our impression (gained from other observations) that, from the Aegean coast to the remote mountains of Hakkâri, judicially as well as administratively the problems of reasonably uniform territorial authority and quick center-periphery communication are no longer great. As a result, rural Turkey quickly feels the effects of major political changes in Ankara.

What is a serious question is whether this central control is state control or party control. Turkey has not had a one-party system, technically speaking, since 1950, but it has often appeared to be a country with two major parties competing for the right to rule a one-party state until the next election. This impression is supported by Payaslioglu's (1964: 424) description of

> the relentless effort of the parties to infiltrate associations and institutions of every sort. Politically motivated changes in the high military ranks, transfers of the provincial and subprovincial administrators before and after every general election, and partisan appointments to governmental agencies have become common practice. Student organizations, labor unions, bar associations, and chambers of commerce and industry have become the targets of infiltration.

Our evidence on this score is meager and tentative, but there seem to be abrupt shifts in governmental prosecution and judicial decision patterns. The precipitousness and the timing of these changes suggest that Turkish courts are subject to, and are transmitters of, changing influences as national transfers of political power take place.

NOTES

[1] For some of the literature concerning the reception of foreign law in Turkey, see Balta (1957), Belgesay (1957), Elefteropulos (1963), Fahri (1936), Feroze (1962), Findikoglu (1935), Gokturk (1939), Jaschke (1953), Kubali (1957), Mardin (1961), Onar (1955), Stirling (1957), Timur (1957), Ulken (1957), and Velidedeoglu (1957).

[2] Customary law, heavily influenced by the *Shari'a* but molded to some degree by local traditions, had flourished outside of formal Islamic institutions during Ottoman times and continued to do so even after Islamic law had been superseded, but its regional and local variations can only be surmised, since little information is recorded. Schacht (1970: 540) has summarized pre-Islamic Arab customary law; Gibb and Bower (1950: vol. 1, 127) describe the village *Imam* (religious leader) and *Seyh* (landowner) as local mediators, while *Kadis* and *Müftis* (both religious judges) flourished as arbitrators in the market towns. Tribal customary procedures for dealing with female unchastity and adultery, as well as the law of vengeance and blood-feuds, are also mentioned by the latter authors.

[3] At a conference held in Istanbul in 1955 concerning the "Reception of Foreign Law in Turkey" only two of approximately 15 papers, those by Timur and Stirling, used empirical data as the basis of their analysis; these were concerned mainly with marriage and divorce practices, although Stirling (1957) does briefly consider land and inheritance issues. There was no attempt to look at law enforcement practices or at methods of educating the rural population so that their behavior would be more in accord with legal requirements. The most critical comment was the mild and simplistic suggestion of Ulken (1957: 52) that some individuals feel an investigation of the country's mores and customs should be undertaken with the view of amending the law to meet the needs of social life, while others felt that Turkey's effective assimilation of a foreign legal system would only be successful after the country's modernization.

[4] Cf. Massell (1968) regarding Soviet Central Asia. This survey of marriage and divorce practices in Turkey is one way the Ministry of Justice studied the new code's effectiveness (Ulken, 1957: 51-52; Timur, 1957). A different Ministry of Justice inquiry revealed that of

the 937 articles of the Turkish Civil Code only 335 had so far become effective, that is, that circumstances to which the other two-thirds of the articles applied had not yet emerged during the 1930's (Ulken, 1957: 52). For further discussions of how changes in codes have affected family life in Turkey in the 20th century, see Elefteropulos (1963), Fahri (1936), Feroze (1962), Findikoglu (1935), Goktürk (1939), and Jaschke (1953).

[5] Turkish marriages were never dependent upon the presence of an *Imam,* although the assistance of an *Imam* was usually a part of the village wedding ceremony.

[6] For convenience, we shall use the term "Bodrum court" or simply "the court" when referring to the collectivity of four courts jointly housed and administered in the district center.

[7] We are not able to investigate here the impact on decisional outcomes of the use or non-use of attorneys, and the advantages that this impact might give to those wealthy enough to employ them. Cases observed by Starr, however, were coded as to the roles played by lawyers (*avukat*) and by legal representatives (*vekil*). In a later paper we plan to analyze these cases to evaluate the effects of their participation on outcomes.

[8] Not all civil and criminal matters which come to the attention of the court meet requirements for acceptance. A plaintiff cannot merely come to court with a complaint. A legible letter, stating the problem briefly, must also be addressed to the court. Sometimes even letters are rejected, such as when the complaint is not presented in an appropriate manner or format. In criminal matters, the Public Prosecutor interviews all parties to the dispute, including arresting officers and eye-witnesses, to discover whether there is sufficient indication that a law has been violated and enough evidence to bring the matter to court. In each year from 1965 through 1967 between 87 and 120 alleged criminal offenses were not heard because of failure to meet these criteria. The Public Prosecutor is required to keep records of each rejected criminal case and to place in the book the reason for rejection. The party bringing the suit is able to open a case if more evidence appears or, if it fits civil court, to open it there. We do not know to what extent political bargaining affected the cases accepted or the severity of the charges.

[9] Most important ethnic and religious affiliations cannot be inferred from names in Turkey.

[10] Case volumes were calculated by aggregating all the cases for which we have complete records, as described above. Thus they are not per annum case volumes. The docket did not include information about the location of the dispute or alleged offense, so the location of a case is defined throughout this paper as the place of origin or home of the (principal, if more than one) defendant, since many criminal case entries lacked information about a complainant. Distance comparisons were made in the light of both distance by road and road quality, both of which affected the quality and ease of transportation. Comparisons between two villages' distances to the town were made conservatively, *i.e.,* a comparison was made only if (1) one village had to be passed through on the way from the other, or (2) a common junction had to be passed through from both villages and was closer to one village by a better road than to the other.

[11] As can be seen, there were minor differences between averaged and aggregated case volumes. The villages differed not only in case volume, but also in their predominant types of cases. The per capita rate of physically violent cases among villages of the district ranged from 0.023 to zero. But the village with the largest *total* per capita case volume was the one village with the zero rate of physically violent cases. Additional research would be necessary to determine whether these facts have anything to do with each other. It might be that a certain civility syndrome includes both lower violence and higher court use, or that a high probability of adjudication deters severely punishable offenses. On case volume and several other points (*e.g.,* litigation by women) touched on in this paper, the reader might profitably compare Abel (1970).

[12] Of course, it may well be that this parity arises from a greater tendency of villagers to marry early, counterbalanced by a lesser tendency to obtain legal sanction therefor.

[13] There were also some ambiguous categories, but they are ignored here because they cannot be reasonably scaled together with the others and because they include only a small number of cases.

[14] The intermediate categories were: agreements to let a court arbitrate, nonviolent (principally economic) disputes, and verbally violent disputes. In cases with multiple charges, the most violent category was used. It is noteworthy that a high proportion of all docket entries in multiple-offense cases included insult (*hakaret* — which in turn includes libel and slander) as one of the alleged offenses. This is the most common of our "verbally violent" categories.

[15] Starr (1970). Black (1971:1107-8) states this as the following proposition, that the "relational distance between the adversaries affects the probability of formal litigation." Black reports this finding in studies by Kawashima (1964:45, 54, 58), Grace (1970), Clebert (1963), and Prucha (1962). See also discussions of this question by Nader (1965: 395-6), Felstiner (1971), Hall (1952), Macaulay (1963) and Abel (1970:50-1).

[16] Cases between citizens and the Forestry Directorate over forest boundaries and forest misuse are an example.

[17] *E.g.*, by villagers who have planned a wedding and neglected to register, or by soldiers on short-term leave.

[18] As can be seen in Table 2, three of the eight most common types of cases dealt directly with land questions (inheritance, forestry, and trespassing). The fact that these three types constitute only 17% of all cases does not disconfirm our earlier statements about the importance of land in dispute generation, since the docket conceals the origins of such disputes as insult, assault, and battery.

[19] However, cases described identically in the docket could have included different degrees of an offense, with different prescribed penalties.

[20] Of the eleven convicted officials, five were punished and six were not.

[21] *Cf.* Pye (1963). Of course, we refer mainly to the stakes of party politics for judges and other political and civil officials, whose attitudes have disproportionate effects on political stability.

[22] Non-routine case decisions were classified in such a differentiated and ambiguous way that we could not confidently assign them to "plaintiff won" and "plaintiff lost" categories.

[23] It will be remembered that this is the only court for which we have data extending into the 1950's.

APPENDIX

All papers connected with a case, including the typed record from hearings, are stapled into a dossier, with the earlier papers in the back sections. Dossiers of current cases are filed in a wooden cupboard with four compartments; each compartment does not represent a court, however, and the system is complex enough that only the stenographer associated with that court could find a dossier. A walk-in closet on the entrance floor is the repository for finished and dropped cases.

The quality of the records can be shown by some examples from the court docket. As mentioned above, the docket for each of the four courts contained information about the substantive content (the complaint or accusation) of each case. This information was far from uniform, however. In some cases, the number of the law whose violation was alleged was given. In others, a legal term was used. In still others, an ordinary language expression described the matter. Whether legal or ordinary language was used, the issue was described in ab-

breviated form, but the abbreviation for the same issue might vary from case to case. The abbreviation in one case was sometimes *more* abbreviated than in another, or in one case the old (Ottoman) Turkish words would be used, while in another case their translation into purified (*Oz*) Turkish would appear. The crime of entering a private dwelling without permission, for example, was variously given as:

Konut dokunulmazligini ihlâl
Mesken masuniyetini ihlâl
Eve girmek
Meskene girmek
Konak dokunulmazligina ihlâl
Mesken masuniyet ihlâl
Eve gelmis

Violation of the social security law was recorded in the following ways:

Sosyal sigorta k.
506 Sayili
Isçi Sigortalari

Not only was the information recorded inconsistently, but it was also written by hand, and sometimes contained substantial omissions. In 19% of the cases, for example, the address of the defendant was not recorded.

The inconsistencies in the docket appear to be due more to casual behavior, or to alternations in the record-keeping personnel, than to manipulation. Hence the reluctance of court personnel to release records for inspection by an outsider could be due to the typical bureaucratic belief that in the absence of precedent or routine it is safer to say no, or to reluctance to reveal the imperfections in the records, to suspicion of outsiders, or to more than one of these reasons. We have observed similar behavior in small town offices in the United States.

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