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# Competing frameworks of Islamic law and secular civil law in Turkey: A case study on women's property and inheritance practices<sup>☆</sup>

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## SYNOPSIS

The article stems from empirical research conducted with a group of women living in Istanbul who have conservative life styles bounded by an Islamic worldview. It attempts to illuminate the negotiation and contestation between the official civil law and Islamic law. The findings demonstrate that women inherit and bequeath property in a social setting where their gender roles are defined by their adherence to Islam. We argue that in Turkey women's inheritance practices are not determined solely in accordance with the secular civil law, but rather are the result of a complex and intertwined combination of legal sources, where an Islamic worldview often leads to the adoption of Islamic law. In other words, the application of the secular civil law in Turkey is limited by the common practice of Islamic law. Rather than follow the gender equality mandated by the civil law, the inheritance practices of many Islamic women are constituted with a deference to some aspects of Islamic law creating a situation of legal pluralism in Turkey.

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## Introduction

There is often a large gap between formal, legal norms and actual practice (Deere & Doss, 2006a: 12), which may result in a system where citizens appeal to other legal forms such as religious law, customary law and norms to resolve issues resulting in a situation of legal pluralism. Such situations of legal pluralism can lead to conflicts between sets of laws, systems operating in parallel as well as hybrid legal systems where citizens mix and match availing themselves of which regime best suits their needs and customs (Meinzen-Dick & Pradhan, 2002). In a similar vein, issues concerning women and property are often shaped by a number of sometimes

competing legal frameworks and systems (Benschop, 2004; Goodnow & Lawrence, 2010: 80; Scholz & Gomez, 2004).

Despite the attempts of the Turkish modernist project to establish a uniform legal reality, there exists, in Turkey, a similar situation of legal pluralism. Although Turkey rejected Islamic law and adopted an exclusively secular system of law in the early twentieth century, the state-sponsored secular system of law has not fully displaced much of the public's commitment to aspects of Islamic law. Within the secular framework many Muslims recreate, redefine and apply Islamic law, thus undermining the official secular laws that claim to be the sole arbiter of behaviors (Yilmaz, 2005). In the Republican era, women were promoted as the symbol of modernization and westernization in contrast to Turkey's Islamic heritage by the state-centric elite. Women were granted a number of rights and thereafter expected to take up a place in the public sphere. The Republican state prescribed certain characteristics for an ideal woman but the population held often quite different values and perceptions of ideal women's behavior (White, 2003: 145). For a small urban elite, the injunction was to leave

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the home, become educated and play a public role while, at the same time, many “other” Turkish women were expected to make their contribution to modernization through housewifery (Arat, 1997). Moreover, from its inception, state feminism focused on the public equality of men and women leaving the private sphere untouched and decidedly patriarchal.

While many urban elite women were moving into the public sphere, there were those women who did not. From the start of this state-sponsored project in feminism, rural–urban and class differences differentiated the “Republican women” from “others” in particular those women whose beliefs or adherence to custom prohibited them from joining their sisters in embodying the new female ideal (White, 2003). In some places, a more Islamic worldview prevailed particularly concerning women's role with regard to the headscarf, family life and loyalty to Islamic law (Çavdar, 2010: 350). As different groups resisted and redefined both secular and Islamic laws, new hybrid systems were created. This can be seen in a number of areas including marriage, sexuality and inheritance where some self-identified Islamists in Turkey choose to eschew the official civil code in favor of applying Islamic law.

This article examines the lived practice of inheritance among financially well-off Islamic women and their families in Istanbul. Our research seeks to understand the ways that these women operate and strategize within the constraints of Islam, civil law and patriarchy with regard to inheritance. Do these women inherit, what do they inherit, and what informs the means through which they do or do not receive an inheritance? We also examine the repercussions that these practices have for the women themselves as well as for the rule of law in Turkey. It should be noted that overall in Turkey very few women own property. Government statistics estimate that only 20% of women own property (T. C. Başbakanlık Türkiye İstatistik Kurumu & Aile Yapısı Araştırması, 2006). Given that inheritance is one of the primary means through which women accumulate wealth and property, it proves an important area for the examination of the ways that gender discrimination persists in a secular state that has routinely proclaimed its commitment to gender equality. The article examines women's relationship to property in the specificity of inheritance and tries to bring to light different practices of inheritance that illustrate women's acquisition of property within their particular social and familial realities.

### Legal pluralism: civic law vs. Islamic law in Turkey

While legal pluralism can take place on many planes, the primary example in Turkey involves the secular civil law and Islamic law. In 1926, with the introduction of a secular civil code adopted from the Swiss, a conflict arose between the secular law and the traditional Islamic law that had previously governed people's lives, especially in the area of family matters (Starr, 1989). The Turkish state expected that with modernization and westernization, people would replace customs and religious law with adherence to the official secular law. However, many have resisted the assimilation attempts that accompanied the modernization project and instead continue to maintain their religious customs, regardless of whether the state and its legal system recognize them (Yılmaz, 2005). Despite Turkey's

attempts to replace one legal system with another, evidence reveals that there is a third option. Many Turkish citizens have developed a new hybrid rule system that amalgamates the rules of unofficial Muslim law and those of the official Turkish law. For example, the Turkish state only recognizes civil marriages performed by a government official and registered with the appropriate office. Yet, the most widely practiced form of marriage ceremony consists of both a civil and a religious ceremony (Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü, 2009: 8).

Despite the Turkish state's insistent ideology of secularization and its attempts to relegate religion to the private sphere, it is now evident that Islam retains an influential place in Turkish social life, and the presence of Islam is felt strongly in various spheres of societal relations (Yılmaz, 2003: 27). Islam has and continues to play an integral part in the identity formation of many Turkish citizens (Öniş, 1995). What is more, since the 1980s, Turkey has witnessed a resurgence of Islam by which more and more Islamic-minded groups and communities have begun to assert themselves as political, economic and cultural actors (Keyman, 2007: 224).

Since the establishment of the Republic in 1923, the Turkish state has attempted to subordinate Islam to its will and, to this end, has attempted to create a sort of official Islam. One of the state's main instruments in this struggle is the General Directorate of Religious Affairs (Diyanet İşleri Başkanlığı). The General Directorate has been charged with fashioning a form of Islam which fits within the boundaries of a modern, secular nation state (Yılmaz, 2005). As such, the Directorate of Religious affairs maintains a supposedly apolitical position separate from politics. Yet it also maintains a central role in both controlling and creating a form of Islam which serves the state. To achieve this, the Directorate is in and of itself an extensive bureaucracy and exercises control over muezzins, muftis and imams who are all official government employees and serve as interlocutors between the state and the observant. As a result of the continued widespread practice of Islam and the reluctance of citizens to fully submit to secularization, the Turkish state felt the need to respond to this plural socio-legal reality through the establishment of an *ijtihad* (*icthad*—jurisprudence) committee, under the control of the Directorate of Religious Affairs Higher Committee of Religious Affairs (Diyanet İşleri Başkanlığı Din İşleri Yüksek Kurulu). The Committee issues decisions based on Islamic law and sources, despite their lack of legal standing, and attempts to offer guidance that bridges the gap between the official civil law and religious law (Yılmaz, 2005: 173).

Inheritance issues in Turkey are governed legally by the Turkish Civil Code. Adopted in 1926 and thoroughly revised in 2002, the law provides for strict gender equality. The legal regime of inheritance in Turkey is strictly tied to blood lines and gives priority to children through a system of protected shares. Yet, the surviving spouse is also accorded one-fourth of an estate if there are children. Due to the system of forced shares, only one-half of an estate may be disposed of through a will, and the remaining portion is reserved for any legal inheritors that may exist. Alternatively, within Islamic law, while women are guaranteed the right to inherit, the right is not necessarily equal. In general, Islamic doctrine prescribes that a woman's share of any inheritance is only half that of a man. Islamic law

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