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Ataturk and Reza Shah
Evaluating Their Secular Reforms to the Civil Code

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To My Wife

For Her Love, Patience and Encouragement.

Without Her,

I could not finish This Work.

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Abstract

The current thesis evaluates the processes of modernization and secularization under the reigns of Reza Shah and Ataturk, their secularization attempts to the judicial system, civil code, in particular. This thesis offers valuable insights while addressing its fundamental concern that in a sharp contrast to Ataturk who was able to implement such reforms successfully, why Reza Shah was unable to reform his country's judicial system, particularly its civil code, based on his policy of secularization.

This study is based on 'state in society' theoretical framework. This theoretical framework is usually applied to study developing countries, where there is a constant struggle between the state and various social groups consisted of effendis, religious leaders, rich peasants, and landlords over social control. The strengths of these other social groups may influence the priorities of state leaders which may undermine their ability to enforce laws and implement state policies.

Using this theoretical framework in the present study I conclude that in a sharp contrast to Ataturk who had been able to briskly secularized, an already modernized Turkey, Reza Shah's efforts to modernize and secularize Iran were undermined by his inability to reform the civil code completely. This inability indicates a frail leadership which was resisted by resilient social groups i.e. highly influential Ulama and conservative segments of a strong society.

Key words: Iran, Turkey, Civil code, Secularization, Modernization, Strong states, weak societies

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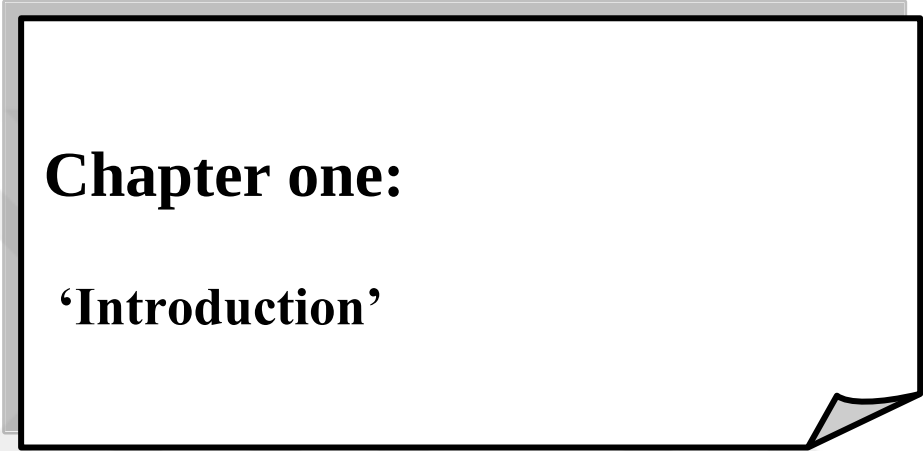
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Chapter one:

‘Introduction’

1. General Overview

Kemal Atatürk of Turkey and Reza Shah of Iran are often considered as architects of two modern nation-states in the early 20th century. Both served the military and rose to power through the support of military establishment. After comprehensively defeating the Allied forces in 1922, Atatürk consolidated all powers in present day Turkey and declared it a Republic in 1923 with himself at its helm, whereas Reza Shah came to power through a military coup in 1921 and then established a monarchy i.e. the Pahlavi dynasty in 1925. The distinctive character of their era was state-building.¹ Both were fascinated by the idea of a modern nation-state. In order to carve a modern state, both set out to implement wide-ranging reforms in their countries. These reforms were based on three underlying principles: Secularism, Nationalism and Statism.² In order to achieve the first two, they needed the third one, i.e., Statism which advocated interventionist state policies. Statism itself was based on the pillars of centralization and unification. Regarding Nationalism both Atatürk and Reza Shah attempted to create a new national identity by propagating a particular meaning of national identity in their countries. This new national identity was based on a modern western concept of nation-states while attaching itself with pre-Islamic ethnic dispositions (Turk or Iranian), culture and history. Similarly, Secularism was crucial for Atatürk and Reza Shah, because according to them, it was only through Secularization they would be able to create a modern-civilized state and society. Hence both placed secularism into the very core of their vision of modernization.³

It seems that as compared with Reza Shah, Atatürk's reforms were more sweeping.⁴ He followed a much more assertive plan for secularization. For instance, he came to power in 1923. Just one year later, in 1924, the caliphate was abolished. The religious educational system (madrasahs) was closed down.⁵ And the Sharia (religious) courts were completely abolished.⁶ In 1925, centers of various Sufi orders were also shut down. In 1926, the secular civil code was adopted. Finally, in 1928, the Arabic alphabet used throughout the Ottoman era

¹**Ervand Abrahamian**, *"A History of Modern Iran"*, Cambridge University Press, Cambridge, 2008, p.65

²**Touraj Atabaki**, *"the Caliphate, the Clerics and Republicanism in Turkey and Iran Some Comparative Remarks"*, in Atabaki, Touraj and. Zürcher Erik J (ed), *Men of Order: Authoritarian Modernization under Atatürk and Reza Shah*, New York: I.B. Tauris, 2003, p.46

³**Bahadır Çelebi**, *"The Failure of Assertive Secularization Project in Turkey"*, Turkish Journal of Politics, Volume 2, No. 1, summer 2011, p.91

⁴**Atabaki**, Op. Cit., p. 45

⁵**Birol Başkan**, *"what made Atatürk Reforms Possible?"*, Islam and Christian-Muslim Relations, Volume 21, Issue 2, 2010, p.4

⁶**Richard H. Pfaff**, *"Disengagement from Traditionalism in Turkey and Iran"*, the Western Political Quarterly, Volume 16, No. 1, Mar., 1963, p.87

was replaced with a modified Latin alphabet in 1928.⁷ In other words, Atatürk's reforms put an end to the dualist mentality in the political, educational and judicial systems of that time. Just within 3 years, till end of the 1926, Atatürk had eliminated all social groups like the Ulama, the Pashas and Kurdish Islamic-nationalists which opposed the new regime. Especially, he had eliminated the Ulama's power over political, judicial and educational system. But that was not enough for the Kemalist Elite, because they were well aware of the sway of religion over people particularly traditional groups. So, they opted to control religion by reorganizing its institutions. The Ministry of Shari'a and Pious Foundations was abolished and the Directorate of Religious Affairs was established instead.⁸ Unlike the *vakıfs* of the Ottoman times, this Directorate of Religious Affairs (*Diyanet*) was not an independent institution and was directly controlled by the Prime Minister, aiming to control organized religion directly by the State and making it as tool to propagate state's ideology regarding Islam.⁹ In other words, *Separation of religion and state was rhetorically the purpose; however, a firm state control was established on religion through the Directorate of Religious Affairs. The early Republican government did not separate the temporal and spiritual domains; instead, it strictly put the spiritual under the control of temporal.*¹⁰

On the Other hand, in neighboring Iran, the Reza Shah government showed a dual tendency towards secularism.¹¹ His reforms were based on a dual structure, combining tradition and secularism. For instance, he established secular educational system but traditional religious schools were not banned. Secular courts were established while religious courts still existed. And some of reforms gave important concessions to the Ulama. For instance, they were exempted from the scope of compulsory military law and dress law.¹² And although, the principle of secularism was incorporated into the Turkish constitution in 1937¹³, that did not happen in Iran. The Pahlavi dynasty did not introduce a new constitution unlike Atatürk did in Turkey. And According to the first two articles of the Supplementary Fundamental Law of 1907, the government had to support the faith.¹⁴ While Reza Shah

⁷Seval Yildirim, "Aftermath of a Revolution: A Case Study of Turkish Family Law", Volume 17, Issue 2, Article 8, fall 2005, p.356

⁸Başkan, Op. Cit., p.22

⁹İştar B. Gözaydın, "A Religious Administration to Secure Secularism: The Presidency of Religious Affairs of the Republic of Turkey", Marburg Journal of Religion, Volume 11, No. 1, June 2006, p.6

¹⁰Nesim Seker, "Vision of modernity in the early Turkish Republic: an overview", Historia-Actual Online, 2007, p.52

¹¹Seyed Asadollah Athary, "Modernism and Pseudo- Modernism in the Reza Shah Era", An Iranian Quarterly, Volume 8, No. 3, spring 2009, p.80

¹²Mohammad H. Faghfoory, "The Ulama-State Relations in Iran: 1921-1941", International Journal of Middle East Studies, Volume 19, No.4, November, 1987, p.26

¹³Artun Unsal, "Atatürk's reforms: realization of an utopia by a realist", Paper presented to the Seminar on Nehru and Atatürk, New, Delhi, 28 November 1981, p.33, <http://dergiler.ankara.edu.tr/dergiler/44/685/8712.pdf>

¹⁴Athary, Op. Cit., p.8

ignored the constitutional role played by Islam in Iran, he never deleted it from the Iranian constitution. Atatürk, on the other hand, was the leader of a completely new Turkey, powered by a new constitution and ideology.¹⁵ Hence in Reza Shah's reign, Iran did not experience a complete separation of the state from religion. However, the state did extend its jurisdiction into areas formerly regulated by religious structures.

2. Significance and Purpose of the study

Till now many academic research projects have undertaken the comparison between Atatürk and Reza Shah's secular policies. However, none of the research has tried to compare and contrast their respective secular policies through exploring and analyzing the codification process of the civil codes in Turkey and Iran respectively. It is the first academic effort which compares the secularization attempts of Atatürk and Reza Shah pertaining to the civil code, and explains the reasons of Reza Shah's partial failure and Atatürk's decisive success in secularizing their countries.

This thesis has three objectives. Firstly, it will focus on the processes of modernization and secularization under Reza Shah and Atatürk and their respective effects. Similarities and differences of their policies will be emphasized. Secondly, Atatürk and Reza Shah's secularization attempts to the judicial systems of Turkey and Iran, especially, related to the civil code will be discussed in detail. Thirdly, in the last chapter, the secularization policies of both leaders and the state-society relations in Turkey and Iran will be compared.

3. Review of the Literature

Stephanie Cronin's book on title *The Making of Modern Iran: State and Society under Reza Shah, 1921-1941* is one of the prominent literature about Reza Shah's era. This book is consisted of 12 essays written by a distinguished group of specialists, offers a new interpretation of Reza Shah's Iran. These essays are about international relations, modernization of the state, culture and ideology, woman's challenges and Reza Shah's domestic policy towards the tribes between 1921 and 1941.

¹⁵Pfaff, Op. Cit., p.87

Another book on title: *Men of Order: Authoritarian Modernization under Ataturk and Reza Shah* was written by Touraj Atabaki and Erik J. Zürcher. In this book, the authors highlight that Ataturk and Reza Shah's rulings led to the introduction of European social models and secularist reforms. In both cases, this resulted in highly authoritarian, nationalist, and quasi-westernized states.

The book on title *the state and the subaltern modernization, society and the state in Turkey and Iran* is consisted of 11 essays written by different authors. In this book, the Ottoman legacy which was inherited by the Turkish Republic is explained. Main argument is that the secularization attempts had already been initiated in the Ottoman Era before Ataturk came to power. On the other hand, in this book, it is also emphasized that resistance of the Iranian society against the reforms was so strong. And that strong resistance made Reza Shah temper both the pace and character of his reforms.

Ervand Abrahamian wrote a book on title: *Iran: Between tow Revolutions*. In this book, author compared Reza Shah and Mohammad Reza Shah. He focuses on the policies of Reza Shah in the first part. Throughout Part one, the author focuses primarily on the interaction and conflicts which arose between the monarchs and increasingly cohesive opposition of merchants, tradesmen, religious leaders, intelligentsia and skilled work.

Ali Kazancigil and Ergun Ozbudun wrote a book on title: *Ataturk: Founder of a Modern State*. This book focuses on Ataturk's role as the founder of a modern state and a nation-builder. The book aims to represent the Kemalist experience as a universal significance which other modernizing societies can learn from it. And according to the book, one of the distinguishing features of the Kemalist revolution in the Islamic world is the emphasis on secularism: Turkey remains today the only Islamic country which has complete secular legal system.

4. Questions and Hypothesis

In this thesis, my main question is that in contrast to Ataturk, why Reza Shah was unable to reform the Iran's judicial system, especially, civil code based on his policy of secularization?

In this thesis, following minor questions also will be answered:

What are the secularism policies of Reza Shah and Ataturk and how they reformed the

judicial system?

Did Reza Shah have a comprehensive policy for secularization of Iran?

To what extent Reza Shah was successful; what are the factors involved in its failure?

How Ataturk was able to reform Turkey's civil code successfully; what are the factors involved in its success?

My hypothesis is that in a sharp contrast to Ataturk who briskly secularized, an already modernized Turkey, Reza Shah's efforts to modernize and secularize Iran were undermined by his inability to reform the civil code as opposed by highly influential Ulama and conservative segments of a strong society. In better words, the social ground in Turkey had been already prepared to digest Ataturk's offensive for secularization of the civil code, but such a ground was non-existent in Iranian society at the time of Reza Shah's rise to power.

5. Method

Beneath the theoretical framework of 'state in society', the method of comparative historical analysis has been employed in this study. This method offers explanations based on the examination of historical events. These explanations can be compared to other historical events which are not necessarily bounded by a specific time and place.

Comparative historical analysis consists of three defining features. First, a comparative historical inquiry tries to identify causal configurations to create explanations. In comparative historical studies, the causal argument is central to the analysis.¹⁶

Second, comparative historical research analyzes historical sequences and the unfolding of such sequences and processes over time. *The events that engage comparative historical researchers – such as social revolutions, state formation – are not static occurrences taking place at a single, fixed point; rather, they are processes that unfold over time and in time.*¹⁷

Finally, it is distinctive as its practitioners engage in systematic comparison of analogous and contrasting cases.¹⁸

¹⁶James Mahoney and Dietrich Rueschemeyer, "Comparative Historical Analysis in the Social Sciences", Cambridge University Press, 2003, p.11

¹⁷Ibid., p.12

¹⁸Ibid., p.13

6. Theoretical Framework: “State in Society Approach”

The modern state system emerged in Europe between the start of the 12th century and the end of the 17th. But it reached its real form by the beginning of the twentieth century. This model stipulates the state, as a dominant, integrated, autonomous entity.¹⁹ According to this model, the state is the only agency to set and enforce binding rules among its citizens.²⁰ In other words, the image of the state claims to be the chief and appropriate rule maker within its territorial boundaries²¹ which are consisted of two parts: 1) territorial boundaries between the state and other states, and 2) social boundaries between the states – its public actors. *That representation distinguishes the state from all other entities. The point is the state is not only separated, it is elevated.*²²

On the other hand, According to Migdal’s Theory, “State in Society Approach”, for some of the developing countries, especially, the countries which emerged after the first world war, that model is not working. So, in practice, the state had to cope with other social organizations to reinforce its entity. It can be said that *the routine performance of state actors, their practices, may reinforce the image of the state or weaken it.*²³

Hence, it can be inferred that society is one of the key elements whose effects on the State cannot be ignored or underestimated. Till today, many of the prominent approaches have attempted to explain the state-society relations.

For instance, the Center-Periphery Model analyzes the state and society as a two different entity consisting of the Center and the Periphery. And this model locates on its periphery all segments of the society vis-a-vis the state. According to this model, the state dominates society. The state decides and then coerces the Periphery to accept its decisions. On the other hand, the Marxist and structuralist approaches claim that the state’s actions were nothing more than a reflection of social patterns of power.²⁴ Contrary to the statist claims, they believe that society dominate the state.

On the other hand, “State in Society Approach” is telling us a different story. It depicts society not as a monolithic entity but as “a mélange (mixture) of social

¹⁹Joes S. Migdal, “*State in Society: Studying How States and Societies Transform and Constitute One Another*”, Cambridge University Press, 2001, p.12

²⁰Daniel Lambach, “*State in Society: Joel Migdal and the limits of state authority*”, p.49
https://www.uni-due.de/imperia/md/content/politik/debiel/lambach_copenhagen_2004.pdf

²¹Migdal, Op. Cit., p.16

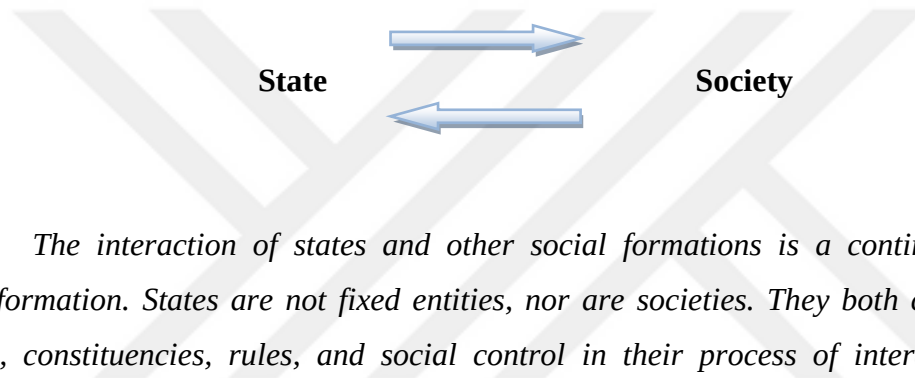
²²Ibid., p.18

²³Ibid.

²⁴Lambach, Op. Cit., p.3

organizations".²⁵ And it does not distinguish the state from all other entities. Instead Migdal sees the state as a part of society. It is just one of many organizations, but it is a distinct part of society, and it plays a special role.²⁶ *The state is a sprawling organization within society that coexists with many other formal and informal social organizations such as families, clubs, companies or clans.*²⁷

The State-in-Society Model says that there is a constant interaction between the political (state) and social (society) organizations. In fact, both entities influence each other, even where one is weak. *States mold societies, but they are also continually molded by the societies within which they are embedded.*²⁸ In other words, both states and societies are not static formations.²⁹



*The interaction of states and other social formations is a continuing process of transformation. States are not fixed entities, nor are societies. They both change structure, goals, constituencies, rules, and social control in their process of interaction. They are constantly becoming.*³⁰

The question is that if the state is just one of many social organizations, what distinguishes the state. The answer is that the state just plays on a large scale and its social control is determined by the number of people who accept its authority by following its rules. *Since the state is a social organization it plays by the same rules, only on a grander scale. Just like social associations, it seeks social control by having the people incorporate its rules into their strategies of survival, or even by monopolizing individual strategies of survival.*³¹

According to Migdal, the state, by its very nature, also seek predominance over other organizations and to authorize them.³² That aim locates the state against all social organizations.³³ On the other hand, leaders of other social organizations such as the clerical

²⁵Lambach, Op. Cit., p.4

²⁶Ibid., p.3

²⁷Migdal, Op. Cit., p.63

²⁸Lambach, Op. Cit., p.3

²⁹Migdal, Op. Cit., p.50

³⁰Ibid., p.57

³¹Lambach, Op. Cit., p.5

³²Migdal, Op. Cit., p.63

³³Lambach, Op. Cit., p.5

establishment or the tribes reject the state's claim to predominance, and they also seek social control.³⁴

So, According to Migdal's model, there is a crucial battle in a society over social control. A society is composed of various social groups who are involved in an ongoing, never ending power struggle with each other. They continually compete for social control. And, in the modern world system, the state is at center in this struggle.³⁵ Importantly, nature and results of these power struggles determine the structure of societies as well as the character of the state. *The mélange of social organizations is marked by an environment of conflict, an active struggle for social control of the population.*³⁶

The question is why 'social control' is so important.

As Migdal points out, it is not only who make the rules but also successful in making others to adhere to them. He says that *question of who makes the rules for how others behave, who forces his or her will on others.*³⁷ Because, authority not always rests with the state as such, it rests with a social group who has the power to make rules pertaining to other social groups and make them to abide those rules.³⁸

Migdal provides the following example: *Mustafa Kemal of Turkey locked horns with religious organizations over whether men should wear hats with brims or without. As with so many other skirmishes, the issue was not as inconsequential as it may first appear; over 70 people were hanged for wearing the wrong hats. In reality, the conflict was over who had the right and ability to make rules in that society.*³⁹

Although, Reza Shah's unveiling law represents us a similar example just like Ataturk's hat law, The Dress unification law of the Pahlavi dynasty represents an opposite example. According the law, all citizens of Iran who do not wear the uniform dress of government employees are required to adopt the new uniform dress. On the other hand, contrary to Turkey, in Iran, the clergy was exempted from the scope of the dress law.⁴⁰

Now examples above lead us to ask the question what the difference is between the strong and weak states.

According to Migdal, a strong state is identified as the constant and overwhelming social control and presence in the most remote places. In their words, strong states have a high level of social control. Conversely, a weak state is defined by ineffective social control and

³⁴Migdal, Op. Cit., p.53

³⁵Lambach, Op. Cit., p.5

³⁶Migdal, Op. Cit., p.50

³⁷Ibid., p.4

³⁸Lambach, Op. Cit., p.5

³⁹Migdal, Op. Cit., p.50

⁴⁰Faghfoory, *The Ulama-State Relations in Iran*, p.426

the lack of presence in society. In order to gain strength, state has to show its ability to mobilize people, penetrate the majority of social groups, extract resources and then manage them properly. Strong states are those who are capable to complete such goals while for weak states it is quite difficult if not impossible.⁴¹

The question is why some of the states are weak and some of them are strong. The reason for the weakness of these states, Migdal then theorizes, lies in the particular structure of their societies. Some are “weblike societies” effective locally with ‘strongmen’ leading each locality. A strongman is the one who has local authority in a weblike society. This includes *effendis, religious leaders, rich peasants, and landlords*.⁴²

Under such circumstances, struggle for social control is between the state and the strongmen heading those social organizations. More importantly, *the strength of these other social organizations may influence the priorities of state leaders and ultimately the ability of state agencies to enforce laws and implement policies*.⁴³

There is an important point which should be noted that in weblike societies, although social control appears to be fragmented and heterogeneous, but one should not infer that people are not being governed; they most certainly are.⁴⁴ Similarly, the State can still have a major presence even in societies where various social groups assert significant control.⁴⁵ And can be influential in numerous aspects of social life.

In brief, all societies are in an ongoing struggle among different social groups within them. It is these struggles that make societies distinct. States are no different from any other social group in this regard.⁴⁶ Like all social groups, a state does not exist outside or above the society. It influences a society by being a part of it and similarly other social groups influence the state.⁴⁷ The structure of society has an important indirect effect on policy implementation.⁴⁸ Hence to understand a state, and its leaders and their ability to make rules for their population and various social groups influencing the state and its leaders – one must start with social structure.⁴⁹

⁴¹Migdal, Op. Cit., p.53

⁴²Lambach, Op. Cit., p.6

⁴³Migdal, Op. Cit., p.64

⁴⁴Lambach, Op. Cit., p.7

⁴⁵Migdal, Op. Cit., p.56

⁴⁶Ibid., p.12

⁴⁷Lambach, Op. Cit., p.12

⁴⁸Ibid., p.8

⁴⁹Migdal, Joes S., p.93

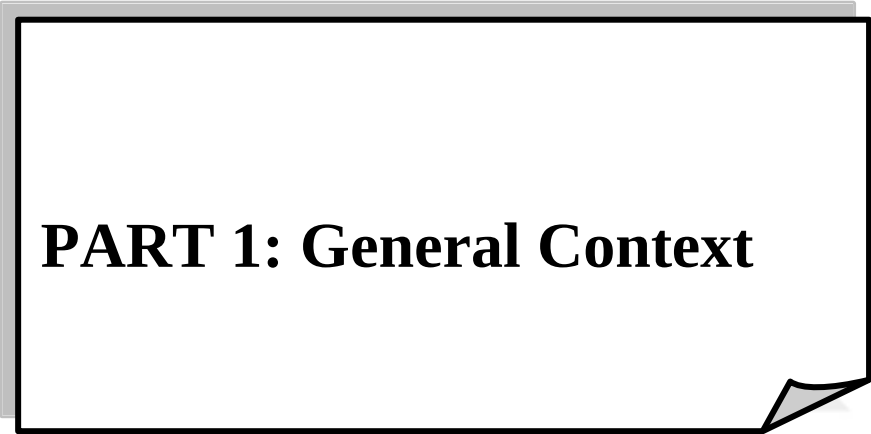
7. Chapter Review

The current thesis contains seven chapters. The first chapter is the introduction part where purpose of this study, its significance, methodology and theoretical framework are presented.

The second and third chapters will give general information about process of secularization and modernization of Iran and Turkey.

In the fourth and Fifth chapters Ataturk and Reza Shah's secularization attempts to the judicial system, especially, the civil code will be explained. In these chapters, discussion about the civil code in the parliaments of Turkey and Iran will be also analyzed.

In the sixth chapter the state-society relations in Turkey and Iran will be compared. And the reasons of Reza Shah's failure and Ataturk's success to reform the civil code will be explained. Finally, in the last part of the Sixth chapter the conclusions which are the results of the discussions in previous chapters will be summarized.



PART 1: General Context

Chapter Two:

‘Modernization and secularization in Turkey’

1. Atatürk's Rise to power: "Turkish War of Independence"

After several defeats in a much destructive First World War, Ottomans finally accepted to sign the Armistice of Mudros with the Allied Powers on 30 October 1918. However, within months, Greeks occupied Izmir in May, 1919. This occupation ignited the spark of the Turkish war of independence. A few days later, Mustafa Kemal went to central Anatolia from Istanbul. The Erzurum Congress commenced from July 23 till August 7, 1919 which culminated in the "Declaration of Independence" (Misak-i Milli). According to this declaration, *the people and territory of Turkey should form an indivisible and complete whole, mandates and foreign dominance were unacceptable, and the National Will of the people was to be the only valid power.*⁵⁰

Approval of *Misak-i Milli* ("National Pact") by Ottoman Parliament resulted in the dissolution of the Parliament by British forces on 18 March 1920. It came as an opportunity for Atatürk to establish a new Turkish parliament based in Ankara so he called for a national election. On 23 April 1920, a new GNA (Grand National Assembly) was formed and Mustafa Kemal Pasha was elected as the chairman of the Grand National Assembly.⁵¹ Meanwhile on 10 August 1920, the Ottoman Empire signed the Treaty of Sèvres. According to this treaty, Ottomans agreed to cede the Arabian Peninsula and Mesopotamia (Iraq) to Great Britain, Syria and the south-eastern Anatolian provinces to France and eastern Thrace to Greece. Establishing an independent Armenian state was also stipulated by the Treaty Sèvres leaving only a small part of Anatolia and Istanbul to the Turks.⁵²

The Treaty of Sèvres was unacceptable for the Turks. With the support of some members of the Ottoman bureaucracy and the last Ottoman parliament a new national army was formed by the GNA.⁵³ A crucial advantage of the Turkish war of independence was the withdrawal of Russia who withdrew its territorial claims over Anatolia and Istanbul. *Russian withdrawal from the war secured the Kemalists' eastern front and made it possible to concentrate their forces against the Greek forces in western Anatolia.*⁵⁴

The final war between the Turkish National Forces and the Greek forces took place in August 1922 and it ended with a Turkish victory. Two month later, on October 11, 1922, both sides signed the *Mudanya Armistice*.

⁵⁰D. Ali Arslan, "A different modernization experience: Turkish modernization and the army", International Journal of Human Sciences, Volume 1, No: 1, 2004, p.8

⁵¹ Hakan Yılmaz, "The Kemalist Revolution and the Foundation of the One-Party Regime in Turkey: A Political Analysis," in Serap Yazıcı (ed), Ergun Özbudun'a Armağan (Ankara, Turkey: Yetkin Yayınevi, 2008), p.5

⁵²Ibid., p.6

⁵³Ibid.

⁵⁴Ibid.

Three weeks after the Mudanya Armistice, on November 1, 1922, Grand National Assembly accepted to discuss a revolutionary proposal which aims to put an end to the rule of the Ottoman dynasty.⁵⁵ However, certain traditional groups particularly the Ulama were reluctant to discuss this issue.⁵⁶ During the committee meetings in the Turkish parliament, Mustafa Kemal said:

*Gentlemen, Sovereignty and Sultanate are not given to anyone by anyone because scholarship proves that they should be; or through discussion or debate. Sovereignty and Sultanate are taken by strength, by power and by force. It was by force that the sons of Osman seized the sovereignty and Sultanate of the Turkish nation; they have maintained this usurpation for six centuries. Now the Turkish nation has rebelled, has put a stop to these usurpers, and has effectively taken sovereignty and sultanate into its own hands. This is an accomplished fact. The question is not whether or not we should leave Sultanate and sovereignty to the nation. That is already an accomplished fact -- the question is merely how to give expression to it. This will happen in any case. If those gathered here, the Assembly, and everyone else could look at this question in a natural way, I think they would agree. Even if they do not, the truth will still find expression, **but some heads may roll in the process.***⁵⁷

This speech turned out to be decisive and silenced the opposition. A proposal to separate the Caliphate from the Sultanate and to abolish the Sultanate was accepted by National Assembly on November 1, 1922. Two weeks later, on November 17, 1922, the last Ottoman Sultan, Mehmet VI, left the country.⁵⁸

Three weeks after that the abolition of the sultanate, on November 20, 1922, negotiations between Turkey and the Allies began in Lausanne in which Ataturk aimed to make peace as soon as possible. At the end of the negotiations, Lausanne Treaty was signed on July 24, 1923.⁵⁹ It was a turning point in the Turkish war of independence as *It was with Treaty of Lausanne that the great powers of the world recognized the Kemalist state as the legitimate authority within Turkey's current boundaries.*⁶⁰

Following the Treaty of Lausanne, the Kemalists formed the Republican People's Party (RPP), and elected Mustafa Kemal as the party's chairman on September 9, 1923. It was

⁵⁵Ibid., p.7

⁵⁶Ibid., p.8

⁵⁷Bernard Lewis, "the Emergence of Modern Turkey", Oxford University Press, London, 1965, p.258

⁵⁸Yılmaz, Op. Cit., p.8

⁵⁹Arslan, Op. Cit., p.9

⁶⁰Yılmaz, Op. Cit., p.16

the beginning of the one-party regime with no opposition. Ankara was declared as the new capital of Turkey on October 13.⁶¹ Then Grand National Assembly proclaimed Turkey as a republic and elected Mustafa Kemal Pasha as the republic's first president on October 29. The new ruling elite denied any legacy of the Ottoman period, claimed a new republic completely and clearly breaking away from their past.⁶²

One of the important consequences of the Turkish war of the independence was an emergent new state legally and formally different from that of the Ottoman Empire. The aftermath of World War I, losing major territories, was the bedrock of unprecedented political and social developments for modern Turkey. The Arab provinces, along with southern Balkan ('Rumelian') provinces had been lost and losing such important areas clearly was a traumatic affair.⁶³ Warfare and large-scale migration significantly altered the population composition. The changes in population meant that culturally Anatolia in 1923 was a completely different place from what it had been in 1913. For instance, *according to an estimate by Kemal Karpat, an Ottoman historian, 18 percent of the Muslim population in Anatolia was wasted in wars from 1914 to 1922.*⁶⁴ In 1913, population of Anatolia was 15.3 million which was reduced to 13.6 million based on an official census in 1927. And with the migration of large Christian communities, Muslim became 98 percent as against 80 percent before the war.⁶⁵

In brief, *Ataturk's Turkey was really a new Turkey. Its geographical boundaries were different from those of the Ottoman Empire. The political system of the new Turkey was different. Even the capital of Turkey was different, and the deliberate selection of Ankara as the new capital served to differentiate this new Turkey clearly from the old.*⁶⁶

Ataturk, holding extra ordinary powers at its helm, turned out to be a 'savior' and a revolutionary leader for modern Turkey. *One important characteristic of the Kemalist regime was the extraordinary powers of the president, Mustafa Kemal Ataturk, much greater than the party and the parliament.*⁶⁷ An extraordinary Ataturk, invested with great power was the essential ingredient behind reforms which transformed Turkey into a modern, western, industrial, and secular nation-state.⁶⁸

⁶¹Arslan, Op. Cit., p.9

⁶²Başkan, Op. Cit., p.2

⁶³Erik J. Zürcher, 'The Ottoman Legacy of the Kemalist Republic', in Touraj Atabaki(ed), The State and the Subaltern: Modernization, Society and the State in Turkey and Iran, London: I.B.Tauris Publishers, 2007, p.96

⁶⁴Başkan, Op. Cit., p.17

⁶⁵Zürcher, 'The Ottoman Legacy of the Kemalist Republic', p.98

⁶⁶Pfaff, Op. Cit., p.86

⁶⁷Yılmaz, Op. Cit., p.15,

⁶⁸Pfaff, Op. Cit., p.85

2. Kemalism: A Mandate to Modernize Turkey:

The set of reforms implemented by Atatürk can be seen as the continuation of reforms initiated by the Young Turks in the late Ottoman period. One of the important goals of these new elite was to catch up with the contemporary, ‘civilized’ world.⁶⁹ On 29 October 1923, the day the Turkish Republic was founded, Atatürk told the press:

*Our object now is to strengthen the ties that bind us to other nations. There may be a great many countries in the world, but there is only one civilization, and if a nation is to achieve progress, she must be a part of this one civilization.*⁷⁰

It is interesting to note that for Atatürk there was only one civilization i.e. a modern Western civilization. Such a concept of ‘civilization’ which was essentially a Western construct became the cornerstone of his state-building policy. For the new ruling elite, *European civilization was indivisible and should be adopted in toto. There was no attempt to harmonize European civilization with Turkish culture.*⁷¹

To implement such an unprecedented plan to modernize, the ruling elite needed an ideology which was postulated under the ideology of *Kemalism*. (Some scholars argue that Kemalism is not an ideology, instead it can be described as a set of opinions.⁷²) The ideology of the new Turkey was articulated by the party in 1931 and the Six arrows (or principles) of Kemalism namely republicanism, nationalism, secularism, populism, statism and reformism were adopted by this modern nation-state.⁷³ These principles were later incorporated into the Turkish constitution in 1937.⁷⁴

It can be argued that, among the six principles of Kemalism, Nationalism and Secularism played a far more significant role in transmuting Turkey. Secularism was employed to separate religion from the State, its politics and the mundane worldly affairs.⁷⁵ Then, Nationalism was used to fill the gap left by secularization and the removal of a social religious identity. This new Secular Turkish nationalism *emphasizes the Turkish ethnicity as*

⁶⁹Aylin Özman, “Law, ideology and modernization in Turkey: kemalist legal reforms in perspective”, Social and Legal Studies, Volume 19, 2010, p. 70

⁷⁰Yucel Bozdaglioglu, “Turkish Foreign Policy and Turkish Identity: A Constructivist Approach”, Routledge, London, 2003, p.52

⁷¹Zürcher, “The Ottoman Legacy of the Kemalist Republic”, p.108

⁷²Unsal, Op. Cit., p.33

⁷³Seker, Op. Cit., p.50

⁷⁴Unsal, Op. Cit., p.33

⁷⁵Yilmaz, Op. Cit., p.13

*master of the country and dismissing Islam from being a component of the Turkish identity.*⁷⁶ In other words, secularist nationalism was introduced to provide a cultural base for the new society.⁷⁷

However, it can be further emphasized that apart from republicanism, the other five guiding principles of Kemalism had their roots in the Ottoman Empire. Modernization, not as a doctrine or principle but as a process was already a part of the Ottoman polity. Similarly, Secularization was embedded in the Ottoman process of modernization and Turkish nationalism turned into a major vehicle for political thought and was wide spread among the Turkish intellectuals. Statism was also emerged as a practical and pragmatic policy in Ottoman times during the First World War.⁷⁸ However, it was Atatürk who managed to implement this "grand design" which had started decades earlier i.e. during the late 18th and 19th centuries, and was able to realize the vision of his precursors.⁷⁹ *That is to say, Mustafa Kemal was not the creator of these principles; instead, he was the political leader that systemized them as a political program to be implemented for the transformation of Turkey into a modern state.*⁸⁰

In order to disseminate Kemalist ideology to all fragments of society, the "People's Houses" were established by the Republican People's Party. The number of such organizations reached 4,500 in 1950.⁸¹

3. Atatürk's Secularism and Reforms

According to the new elite, secularism was the only way to create a modern-civilized state and society. Hence the process of Turkish modernization placed secularism into its core.⁸² This notion of Turkish secularism was based on the French model of *laïcité* which was assertive secularism where the state had to play an assertive role in excluding religion from the public sphere.⁸³ In Turkey it turned out to be a state-centric project as the Kemalist elite strongly believed that an assertive secularization project can only be realized by the state.⁸⁴

⁷⁶Zürcher, "The Ottoman Legacy of the Kemalist Republic", p.109

⁷⁷Özmen, Op. Cit., p.71

⁷⁸Seker, Op. Cit., p.51

⁷⁹Unsal, Op. Cit., p.38

⁸⁰Seker, Op. Cit., p.51

⁸¹Ibid., p.53

⁸²Çelebi, Op. Cit., p.91

⁸³Patrick G. Rear, "Atatürk's Balancing Act: The Role of Secularism in Turkey," Global Tides: Vol. 8, Issue 1, Article 9, 2014, p.1

⁸⁴Çelebi, Op. Cit., p.93

Ataturk's own perspective on the relation between religion and the new Turkish Republic speech was highlighted in his speech on 30 August 1925 in Kastamonu:

*In the face of knowledge, science, and of the whole extent of radiant civilization, I cannot accept the presence in Turkey's civilized community of people primitive enough to seek material and spiritual benefits in the guidance of sheiks. **The Turkish republic cannot be a country of sheiks, dervishes, and disciples.** The best, the truest order is the order of civilization. To be a man it is enough to carry out the requirements of civilization. The leaders of dervish orders will understand the truth of my words, and will themselves close down their lodges [tekke] and admit that their disciplines have grown up.*⁸⁵

However, one should not ignore the subtlety of the argument here, *the basis of Kemalist policy was laicism, not irreligion; its purpose not to destroy Islam, but to disestablish it- to end the power of religion and its exponents in political, social, and cultural affairs, and limit it to the matters of belief and worship.*⁸⁶ What became crucial for Ataturk was to subordinate religion to the [Republican] revolution in order to impose a new ideology on traditional groups. Therefore, immediately after the proclamation of the Turkish Republic; Ataturk introduced a series of laicizing reforms⁸⁷ which targeted mainly three areas; state, education and law.⁸⁸

Ataturk's reforms in chronological order: in the spring of 1924 the caliphate was abolished (3 March) along with the *madrasahs* (3 March), the office of Sheikh al Islam (3 March), the ministry of religious affairs (3 March); and a few days later shari'a courts (8 March) were closed down.⁸⁹ A year later, in 1925, reforms on hat and dress code were introduced (25 November) and centers of various Sufi orders were shut down. (30 November). In October of 1926, the Swiss civil and the Italian penal codes were adopted. Finally, in 1928, the Arabic alphabet used throughout the Ottoman era was replaced with a modified Latin alphabet in 1928.⁹⁰

Talip Kucukcan divided the reforms into three phases: (1) institutional secularization, (2) functional secularization and (3) symbolic secularization.⁹¹

⁸⁵Yildirim, Op. Cit., p.347

⁸⁶Çelebi, Op. Cit., p.91

⁸⁷Özkan, Op. Cit., p.71

⁸⁸Seker, Op. Cit., p.52.

⁸⁹Başkan, Op. Cit., p.4

⁹⁰Yildirim, Op. Cit., p.356

⁹¹Talip Kucukcan, "State, Islam, and Religious Liberty in Modern Turkey: Reconfiguration of Religion in the Public Sphere", BYU Law Review, Volume 2003, Issue 2, p. 486

3.1. Institutional secularization

To circumvent the legitimacy provided by Islam⁹² to the Ottoman Empire, Institutional secularization was implemented to reduce the institutional strength of Islam in the political affairs of the country. *The basic goal of the Kemalist elite was to completely free the polity from religious considerations. Islam was not going to provide a transcendent goal for the political life.*⁹³

Abolishing the caliphate on March 3, 1924 was a first step towards institutional secularization.⁹⁴ The members of the Ottoman house were banished from the Turkish territory. The last Caliph Abdülmecit Effendi and members of the Ottoman were deported on March 17.⁹⁵

Followed by the abolishment of caliphate, activities of various Sufi orders were outlawed in 1925. The Tekkes and Zaviyes of widespread Sufi orders such as the Mawlawi, the Bektashi, the Nakshbandi, and the Qadiri were closed down.⁹⁶ These Sufi orders had served significant religious, social and political functions throughout Ottoman history. But now Mustafa Kemal wanted a community of ‘free’ individuals seeing themselves as the source of legitimacy. Islam, on the other hand, binds people and society with an overarching religious code. Certainly a modernizing aggressive secular agenda can spare no space for religion. Hence, in spite of their support for the nationalists and their struggle, the Sufi orders were bound to be abolished.⁹⁷

In the 1924 constitution, Islam was stipulated as the religion of the Turkish state however, in April 1928, Article 2 of the Constitution of 1924 was annulled.⁹⁸ The final step in the institutional secularization of the state was taken in 1937 by the law which explicitly incorporated principles of secularism into the Turkish constitution.⁹⁹

Perhaps in the institutional secularization of Turkey abrogating the institution of Şeyhülislam and establishing the Directorate of Religious Affairs instead, can be considered a critical step with far reaching consequences.

⁹²Pfaff, Op. Cit., p.91

⁹³Yılmaz, Op. Cit., p.9

⁹⁴Kucukcan, Op. Cit., p.487

⁹⁵Yılmaz, Op. Cit., p.9

⁹⁶Kucukcan, Op. Cit., p.487

⁹⁷Hülya Küçük, ‘‘Sufi Reactions against the Reforms after Turkey’s National Struggle’’, in Touraj Atabaki (ed), The State and the Subaltern: Modernization, Society and the State in Turkey and Iran, London: I.B.Tauris Publishers, 2007, p.124

⁹⁸Unsal, Op. Cit., p.33

⁹⁹ Donald E.Webster, ‘‘state control of social change in republican Turkey’’, American Sociological Review, Volume 4, No. 2, April, 1939, p.252

3.1.1-- The foundation of the Directorate of Religious Affairs

After the abolition of the Ministry of Islamic Law and Foundations, the new elite faced three options towards religion; to be indifferent to religion, to leave religious affairs to the Islamic groups or to control religion by reorganizing its institutions. Because the Kemalist elite were well aware of the sway of religion over people particularly traditional groups, they opted to control religion by reorganizing its institutions.¹⁰⁰

Ahmed Hamdi Basar, one of the financial advisers to Mustafa Kemal, during a journey, told Mustafa Kemal:

*Religion should not be ostracized; on the contrary it is necessary to keep the religion alive and subordinate it to the [Republican] revolution. We will never be able to reach our goals by destroying mosques and building the People's Houses in their stead. It is possible to make our sound audible to the people, who are gathering in mosques, to make these places [mosques] modern community centers, to abolish clergy, and to make everyone talk about religion and the world.*¹⁰¹

The law numbered 429 abolished the Ministry of Shari'a and Pious Foundations, and established the Directorate of Religious Affairs instead.¹⁰²

Unlike the *vakıfs* of the Ottoman times, this Directorate of Religious Affairs (Diyanet) was not an independent institution and was directly controlled by the Prime Minister. And the President of Religious Affairs was appointed by the President upon the proposal of the Prime Minister.¹⁰³

The administration of all mosques, appointments and dismissals of imams, preachers, callers to prayer, sextons are among the main duties of the Directorate of Religious Affairs.¹⁰⁴ The point is the Directorate of Religious Affairs had an absolute control over the places of worship. The topic was going to be covered by *imams* during the Friday prayer was decided by the Directorate of Religious Affairs. It paid the salaries of *imams* (the directorate of prayers), *vaiz* (preacher), and *muezzin* (caller of prayer and assistant of imams) who are all the civil servants of the state.¹⁰⁵ Nowadays, this administration regulates the operation of more

¹⁰⁰Ufuk Ulutas, 'Religion and Secularism in Turkey: The Dilemma of the Directorate of Religious Affairs', Middle Eastern Studies, Vol. 46, No. 3, May 2010, p.392

¹⁰¹Ibid., p. 398

¹⁰²Başkan, Op. Cit., p.22

¹⁰³Gözaydın, 'A Religious Administration to Secure Secularism', p.2

¹⁰⁴Ulutas, Op. Cit., p. 392

¹⁰⁵Çelebi, Op. Cit., p.93

than 85,000 registered mosques and employs more than 117,000 people who are imams, Quran instructors, muezzins, and other religious workers, all of whom are civil servants with regular salaries.¹⁰⁶

On the other hand, The Directorate of Religious Affairs had no authority related to the education of its employees. According to the Law for the Unification of Instruction, all types of the educational activities came under control of the Ministry of Education. That law ensured that all religious employees were to be trained in the national schools. In order to train those employees, Faculty of Divinity was established in Istanbul University.¹⁰⁷

*Those Ottoman religious scholars and Sufi Sheikhs who were willing to cooperate were employed in this directorate.*¹⁰⁸ Most of these projects were undertaken between 1928 and 1947 by famous religious scholars. For example, first Qur'an commentary was written and published in 1936.¹⁰⁹

One of the important aims of the foundation of the Directorate of Religious Affairs was to give the control of organized religion in the hands of the state.¹¹⁰ Directorate of Religious Affairs was used by the state as an administrative tool to propagate state's official ideology regarding.¹¹¹

For instance, after the appointment of Borekcizade Rifat Efendi, the mufti of Ankara, as the first Director of Religious Affairs, he supported Mustafa Kemal with his fatwas. It can be said that *the Directorate of Religious Affairs was not a policy maker. It existed solely to implement reforms proposed by the Republican elite.*¹¹²

*So, separation of religion and state was rhetorically the purpose; however, a firm state control was established on religion through the Directorate of Religious Affairs. In other words, the aim of secularization/laicization became removal of religion from certain spheres of governance without separating its institutions and personnel from the state. In that, the early Republican government did not separate the temporal and spiritual domains; instead, it strictly put the spiritual under the control of temporal.*¹¹³

¹⁰⁶İştar B. Gözaydın, “Religion, Politics and the Politics of Religion in Turkey”, the Liberal Institute, Occasional Paper 121, 2013, p.14

¹⁰⁷Ulutas, Op. Cit., p. 392

¹⁰⁸Başkan, Op. Cit., p.22

¹⁰⁹Gözaydın, “Religion, Politics and the Politics of Religion in Turkey”, p.17

¹¹⁰Çelebi, Op. Cit., p.93

¹¹¹Gözaydın, “A Religious Administration to Secure Secularism”, p.6

¹¹²Ulutas, Op. Cit., p. 393

¹¹³Seker, Op. Cit., p.52

3.2. Functional secularization

The second phase of the secularization program in Turkey was Functional secularization in two stages: legal and educational. Ultimate goal of the functional secularization was to unify the school system and the court system under state-controlled secular organizations.¹¹⁴

In the educational system functional secularization was implemented by the Law for the Unification of Instruction (*Tevhid-i Tedrisat*) in 1924. Traditional Islamic educational institutions i.e. the madrasahs, were abolished in Turkey and a Faculty of Theology at University of Istanbul was established instead.¹¹⁵ According to this law, primary education until the age of 12 was made compulsory at a secular school ran by the state.¹¹⁶ And all educational establishments came under the strict control of the state (under the supervision of the Ministry of Education.)¹¹⁷

3.3. Symbolic secularization

Symbolic secularization enforced changes in various aspects of national culture or societal life that had a symbolic identification with Islam by transforming the perception regarding Islamic symbols from sacred to profane.¹¹⁸

In this phase, reforms began with the law that banned traditional gown in September 1925. In November, Grand National Assembly passed the hat law banning traditional headgear of the Ottomans ‘fez’ while wearing of western headgear compulsory.¹¹⁹

Perhaps the most significant secularization reform symbolically was the conversion of Turkish alphabet from Arabic to Latin script that took place in 1928. *Because the new regime regarded language as a connection with history, culture, and sacred scripture, changing the alphabet was an effective step towards breaking old religious traditions and weakening the link with the past.*¹²⁰ In addition, courses in Arabic and Persian were removed from the high school curriculum.¹²¹

¹¹⁴Yılmaz, Op. Cit., p.9

¹¹⁵Pfaff, Op. Cit., p.88

¹¹⁶Nicole A.N.M. Van Os, ‘Polygamy Before and After the Introduction of the Swiss Civil Code in Turkey’, in Touraj Atabaki(ed), The State and the Subaltern: Modernization, Society and the State in Turkey and Iran, London: I.B.Tauris Publishers, 2007, p. 181

¹¹⁷Kucukcan, Op. Cit., p.487

¹¹⁸Ibid., p.486

¹¹⁹Pfaff, Op. Cit., p.88

¹²⁰Kucukcan, Op. Cit., p.475

¹²¹Pfaff, Op. Cit., p.88

Other reforms of the Symbolic secularization phase include the adoption of the Gregorian calendar (1926), and the substitution of Sunday for Friday as a day of rest (1935)¹²² and the banning of religious nicknames and titles, such as, *haci*, *hafiz*, *hoca*, *molla*.¹²³

¹²²Unsal, Op. Cit., p.33

¹²³Başkan, Op. Cit., p.5

Chapter Three:

'Modernization and secularization in Iran'

1. Rise of Reza Shah

With the advent of the 20th century, land of the Aryans witnessed strong competition between Bolshevik Russia and British Empire. Large areas of Iran had been occupied by Russian and British troops during and immediately after World War I.¹²⁴ In this situation Iran had to pick a side and signed an agreement with the British shortly after the end of the war, in August 1919 in Tehran.¹²⁵ When the Agreement was announced, Bolshevik Russia violently denounced it. Bolshevik Russia's strong opposition encouraged Iranian Bolsheviks who occupied Rasht together with their Soviet advisers, declared the Soviet Socialist Republic of Iran.¹²⁶

In this chaotic situation, On February 21, 1921, Reza Khan, together with Sayyed Ziya al-Din Tabatabai overthrew the government in Tehran. Sayyed Ziya became prime minister and Reza Khan became a Minister of war and commander in chief of the armed forces. 2 years later on November 1923, Reza Khan became prime Minister in addition to Minister of War and chief of the army.¹²⁷ Early years of Reza's rise, 1921-26, were crucial to Iran's survival as an independent state. During his rise to power, he succeeded in establishing internal stability in Iran. He suppressed revolts in Gilan, Khorasan, and Azerbaijan. In order to prevent a resurgence of tribal revolts, the most troublesome tribes, Lurs, Baluchis, Bakhtiari and Qashqais, as well as Kurds were disarmed. And they were forcibly settled.¹²⁸

On the other hand, as the state was weak vis-a-vis the society, Reza Khan attempted to have good relations with the clergy. According to Samiei, *Reza Khan was aware of the events of the Constitutional Revolution, he understood the critical role of the Ulama in Iranian society. He knew well that before he consolidated his power he would need the support of the Ulama.*¹²⁹ So, between 1921 and 1925 can be considered as the first stage of the Ulama-Reza Khan relationship which based on mutual dependence and friendship.

For instance, because of their opposition to the British mandate, Ayatollahs Abul-Hasan Isfahani and Muhammad Husayn Na'ini were expelled from Iraq and came to Qum. In order to gain their friendship, Reza Khan arranged their return to Iraq. After arriving to Iraq, Na'ini wrote a letter which expressed gratitude for the military escort. Na'ini also sent Hazrat

¹²⁴M. Reza Ghods, 'Iranian Nationalism and Reza Shah', Middle Eastern Studies, Volume 27, No. 1, January 1991, p.35

¹²⁵Homa Katouzian, 'State and Society under Reza Shah', in Atabaki, Touraj and. Zürcher Erik J (ed), Men of Order: Authoritarian Modernization under Ataturk and Reza Shah, New York: I.B. Tauris, 2003, p.15

¹²⁶Ibid., p.16

¹²⁷Ibid., p.19

¹²⁸Ghods, 'Iranian Nationalism and Reza Shah', p.38

¹²⁹Mohammad Samiei, 'Najaf and Iranian Politics: Analysing the Way the Hawzah of Najaf Influenced Iranian Politics between Two Revolutions', Journal of Shi'a Islamic Studies, Volume 5, Issue 3, summer 2012, p.5

Abbas' sword to Reza Khan. So, *Reza Khan became known as defender of the Shi'i faith and the Ulama.*¹³⁰

The religious community had reasons to support Reza Khan. As a commander of the only organized military force in Iran, he proved capable of establishing order and security and he was even seen by the Ulama as a champion of resistance against foreign influence and colonialism.¹³¹ He was seen as the guardian of the Shii community.¹³² So, in general, the Ulama were willing to cooperate with Reza Khan.¹³³

When Reza Khan believed that he has consolidated his power, time was ripe to end the Qajar Dynasty. The problem was which regime had to be established after that. Reza Khan had already made his decision. *He seriously considered establishing a republic, as Ataturk had done in Turkey.*¹³⁴

1.1. The Crisis of Republicanism

Three years after the military coup, a campaign to oust the Qajars and transform Iran into a republic was instigated by Reza Khan. On 11 February, the fifth session of parliament was officially convened to discuss and to draft a bill abolishing the monarchy and constituting the republic.¹³⁵ However, just 32 deputies out of 117 supported republicanism.¹³⁶ It was not easy to conclude this debate. Discussions in the parliament took one month. On the other hand, *Reza Khan was anxious to have Iran declared a Republic before Nawruz on 21 March 1924, as at the Iranian New Year it was customary for the Shah to appear before his people in a Salaam.*¹³⁷

On 22 March 1924 the Majlis met again to discuss the proposal to change the constitution and establish a republic.¹³⁸ On the other hand, Grand National Assembly in Ankara on 3 March 1924 decided to abolish the Caliphate. The members of the Ottoman

¹³⁰Faghfoory, "The Ulama-State Relations in Iran", p.419

¹³¹Ibid., p.416

¹³²Mohammad H. Faghfoory, "The impact of Modernization on the Ulema in Iran, 1925-1941", Iranian Studies, Volume 26, No. 3/4, 1993, p.278

¹³³Stephanie Cronin, "Reform from Above, Resistance from Below: The New Order and its Opponents in Iran, 1927-29", in Touraj Atabaki (ed), The State and the Subaltern: Modernization, Society and the State in Turkey and Iran, London: I.B.Tauris Publishers, 2007, p.75

¹³⁴Ghods, M. Reza, *Iranian Nationalism and Reza Shah*", p.41

¹³⁵Atabaki, Op. Cit., p.56

¹³⁶Faghfoory, "The Ulama-State Relations in Iran", p.417

¹³⁷Vanessa Martin, "Mudarris, republicanism and the rise to power of Riza Khan, Sardar-i Sipah", in Cronin, Stephanie (ed), The Making of Modern Iran: State and Society under Riza Shah, 1921-1941, Routledge press, 2003, p.72

¹³⁸Ibid., p.73

house from the Turkish territory were also banished. The last Caliph Abdulmecit Effendi and members of the Ottoman were deported on March 17. That indicated complete separation of politics from religion. A week later, the news of Ankara's Grand National Assembly's revolutionary decision reached Tehran.¹³⁹

The news of forming a republican government in Turkey caused a reaction in Iran. *For the Shi'i clerics, the consensus between daily politics and the Islamic jurisprudence was non-negotiable.* In the eyes of many, the idea of a republic was inseparably linked to secularism.¹⁴⁰ Hence, republicans were condemned of attempting to eliminate Islam from politics.¹⁴¹

Outside the Majlis, opposition to republicanism grew rapidly.¹⁴² Traditional alliance of the Bazar and the Ulama bounced back. On 22 March, the day on which Majlis was discussing proposal to establish a republic, around 5,000 people consisted of clerics, merchants, guildsmen and ordinary people gathered around the Majlis building.¹⁴³ They were shouting *we follow the rules of the Quran-we don't want a republic'' and 'we want to follow Islam-we don't want a republic.*¹⁴⁴

Reza Shah was keenly aware of those who opposed republicanism in the Majlis and outside of it. Many members were hesitant to oppose the monarchical constitution that had placed them in Parliament.¹⁴⁵ Outside the Majlis, the social base to support republicanism was limited to few intellectuals, teachers, pharmacists, and civil servants which were not significant.

On 26 March, Reza Shah went to see the Ulama of Qum and talked with Hajj Mirza Hossein Na'ini and Sayyed Abolhasan Isfahani.¹⁴⁶ He was advised by those Ulama to give up the republican campaign.¹⁴⁷ He came back to Tehran where he issued a statement, asserting:

*In my meeting with the highly respected Ulama in Qom, once more I confirmed my commitment that preservation of Islam had been one of the most important duties of the army from the beginning. Moreover, we reviewed the events of the last few days and I would like to ask everybody to abandon the demand for a republican form of government.*¹⁴⁸

¹³⁹Atabaki, Op. Cit., p.57

¹⁴⁰Ghods, M. Reza, 'Iranian Nationalism and Reza Shah', p.41

¹⁴¹Atabaki, Op. Cit., p.58

¹⁴²Ghods, M. Reza, 'Iranian Nationalism and Reza Shah', p.41

¹⁴³Martin, Op. Cit., p.73

¹⁴⁴Faghfoory, 'The Ulama-State Relations in Iran: 1921-1941', p.417

¹⁴⁵Ibid., p.416

¹⁴⁶Martin, Op. Cit., p. 74

¹⁴⁷Katouzian, Homa, 'State and Society under Reza Shah', p.21

¹⁴⁸Atabaki, Op. Cit., p.58

Reza Khan's declaration was followed by a telegram to the Majlis signed by Ayatollahs Abul-Hasan Isfahani, Muhammad Husayn Na'ini, and Abdul-Karim Ha'iri.

*Representation for a republic which was not suitable for the country, when the Prime Minister came to Qum, we demanded that he stop his agitation and send a proclamation to all towns. He complied with our request. May God grant that the people of Iran appreciate the value of this act and give full thanks for this concern.*¹⁴⁹

Consequently, an alliance of the *Bazar* and the Ulama aborted the republican movement in its early days.

1.2. Towards the Throne

After attempts to establish a republic, the tension between Reza Khan and the Crown grew day by day. For instance, for the New Year ceremonies in March 1925 he was not invited to the Royal Palace. Reza Khan eventually resigned on 4 April 1925. *Reza Khan knew of the power vacuum his absence would create.*¹⁵⁰

Many telegrams demanding the proclamation of Reza Khan as the new shah of Iran were sent to the Majlis by army units and merchants of Tabriz.¹⁵¹

Developments in Turkey, the abolition of the caliphate and reforms undertaken by Mustafa Kemal Atatürk alarmed Iranian Ulama of the possibility of a similar destiny for themselves. After he gave up his intention of establishing a republic, the Ulama began to support his struggle for the throne.¹⁵² It was the same for the rest of the Iranians also. *Although they did not mind changing kings, they were reluctant to do away with the monarchical principle.*

On the other hand, nearly all of the deputies were supporting Reza Khan. Only 5 deputies including Mudarris Taqizadeh and Musaddiq opposed.¹⁵³

So, as expected, the Majlis passed the bill which abolished the Qajar dynasty and deposed Ahmad Shah on 21 October 1925 with eighty votes in support and only five votes

¹⁴⁹Faghfoory, 'The Ulama-State Relations in Iran: 1921-1941', p.418

¹⁵⁰Ibid., p.421

¹⁵¹Ibid., p.422

¹⁵²Mansoor Moaddel, 'the Shi'i Ulama and the State in Iran', Theory and Society, Volume 15, No. 4, July 1986, p.534

¹⁵³Homa Katouzian, 'Riza Shah's political legitimacy and social base, 1921-1941', in Cronin, Stephanie (ed), The Making of Modern Iran: State and Society under Riza Shah, 1921-1941, Routledge press, 2003, p.22

against.¹⁵⁴ According to the bill, Reza Khan became ‘temporary head of state’.¹⁵⁵ Two months later, on 12 December 1925 parliament was officially convened.¹⁵⁶ With the overwhelming majority of 257 out of 260 votes, Constituent Assembly proclaimed Reza Khan as the new shah and the founder of Pahlavi dynasty.¹⁵⁷ On 25 April 1926, he was formally crowned as the first Shah of the Pahlavi dynasty in the main hall of the Golestan Palace in Tehran.¹⁵⁸

In his coronation speech, Reza Shah again emphasized his intention to protect Islam just like he did during the crisis of republicanism.

*With God as my witness, I swear on the Quran and by everything that is holy to me that I shall dedicate all my strength to the independence of Iran, the integrity of the realm and the rights of the people.... I shall work for the propagation of our faith. To this end I implore the assistance of Allah and the cooperation of the Ulama of Islam.*¹⁵⁹

2. The Vision of modernity

The Pahlavi dynasty was the first dynasty in Iran which was based on non-tribal origin and came to power without reliance on tribal support. It can easily be said that distinctive character of that era was state-building.¹⁶⁰ In order to carve a modern state, wide-ranging reforms were implemented. The principles behind those reforms were secularism, nationalism and statism.¹⁶¹ In order to achieve first two goals, he needed the third one, i.e., statism which advocates interventionist state policies. Statism is based on two important pillars: centralization and unification.

To centralize the government administration and make it function efficiently was the Shah's greatest task.¹⁶² Between 1920s and 1930s the process of effective centralization and modernization was initiated in Iran. New institutions such as modernized army and

¹⁵⁴Miron Rezun, ‘Reza Shah's Court Minister: Teymourash’, International Journal of Middle East Studies, Volume 12, No. 2, September, 1980, p.121

¹⁵⁵Katouzian, Homa, ‘Reza Shah's political legitimacy and social base, 1921-1941’, p. 21

¹⁵⁶Martin, Op. Cit., p.67

¹⁵⁷Atabaki, Op. Cit., p.61

¹⁵⁸Cyrus Ghani, ‘Iran and the Rise of Reza Shah: From Qajar Collapse to Pahlavi Power’, London, I.B. Tauris, 2000, p.385

¹⁵⁹Faghfoory, Mohammad H., ‘The Ulama-State Relations in Iran: 1921-1941’, p.424

¹⁶⁰Ervand, Op. Cit., p.65

¹⁶¹Atabaki, Op. Cit., p.46

¹⁶²Reza Arasteh, ‘the Role of Intellectuals in Administrative Development and Social Change in Modern Iran’, International Review of Education, Volume 9, No. 3, 1963, p.327

bureaucracy were created for the first time under Reza Shah.¹⁶³ A national monetary system and a secular educational and judicial system curriculum were also founded.¹⁶⁴

To expand the power of the central government over all segments of the society, with the purpose of unification was another important task. In order to achieve that aim, *the new modern state had to subdue two of his chief rivals for power, the Ulama and the tribes.*¹⁶⁵ In order to subdue tribes, Reza Shah used the modern army. Tribal autonomy and the tribal military threat were effectively ended. By the end of the 1929, all tribal revolts had been suppressed.

On the other hand, in order to cope with the Ulama, more than a strong army, he needed an ideology. Iranian Nationalism which referred to pre-Islamic era was the answer. So, a certain version of the Iranian history was promoted, the emphasis of this new state shifted to pre-Islamic Iran.¹⁶⁶ *The inevitable corollary of nationalism, reinforced by material progress, was secularism.*¹⁶⁷

Although according to the constitution, Islam was the official state religion and The Shah was defender of the Faith, in practice religion was circumscribed and undermined.¹⁶⁸ Many reforms were consciously designed to curtail the powers of religious hierarchy in public domains.¹⁶⁹ The clerical establishment was also being seen as a chief obstacle to progress, As Issa Sadiq, Minister of Education, stated:

*The work of westernization or progress needs a centralized government. Without it the worldly priests would become too powerful and the task that has been started might be endangered and postponed.*¹⁷⁰

In order to eradicate the influence of religion and Ulama on society,¹⁷¹ secular educational and judicial system was attempted. New secular courts were established. Secular educational curriculum was introduced.

¹⁶³**Nikki R. Keddie**, ‘‘The Iranian Power Structure and Social Change 1800-1969’’, International Journal of Middle East Studies, Volume 2, No. 1, Jan., 1971, p.10

¹⁶⁴**Touraj Atabaki and Erik J. Zürcher** ‘‘Men of Order: Authoritarian Modernization under Ataturk and Reza Shah’’, New York: I.B. Tauris, 2003, p.10

¹⁶⁵**Keddie**, ‘‘The Iranian Power Structure and Social Change 1800-1969’’, p.10

¹⁶⁶**Mohammad Ali Mousavi**, ‘‘Oil and state in the political economy of Iran, 1942-1979’’, PhD thesis, 1996, p. 84, http://etheses.dur.ac.uk/5391/1/5391_2830.PDF?UkUDh:CyT

¹⁶⁷**Majid Mohammadi**, ‘‘Judicial Reform and Reorganization in 20th Century Iran: State-Building, Modernization and Islamicization’’, New York: Routledge press, 2008, p.90

¹⁶⁸**Amin Banani**, ‘‘the Modernization of Iran 1921-1941’’, California Stanford University Press, Stanford, 1961, 146

¹⁶⁹**Mohammadi**, Op. Cit., p.90

¹⁷⁰**Banani**, Op. Cit., p.149

¹⁷¹**Faghfoory**, ‘‘the impact of Modernization on the Ulema in Iran, 1925-1941’’, p.278

On the other hand, Ulama started to oppose the entire process of modernization as it posed a direct challenge to their status and power.¹⁷² According to Moaddel, *the Ulama's opposition to the state comes from the Ulama's attempts to protect their social, cultural, and economic privileges.*¹⁷³ At the end of the day, the Ulama gradually lost control over the educational and judicial systems as well as their seats in the Majlis.

On the other hand, Reza Shah's modernization policy had two important weaknesses. Firstly, contrary to Ataturk, Reza Shah's reforms were not organized, as he never advocated any principles for his wide-ranging reforms.¹⁷⁴ Reza Shah lacked an ideology, unlike Ataturk, Reza Shah wrote no Mein Kampf, he made no political statements, wrote no articles and lacked any ideological bedrock for this reforms. We cannot speak of Pahlavism as we do of Kemalism.¹⁷⁵ *There was no ideology within the context of which the Iranian transformation could find direction. Reza Shah provided no substitute for traditionalism.*¹⁷⁶

Second weakness was that Reza Shah's reforms were based on a dual structure, combining tradition and secularism. For instance, he established secular educational system but traditional religious schools were not banned. Secular courts were established while religious courts still existed. In other words, *Reza Shah's government showed a dual tendency towards secularism.*¹⁷⁷

The question is why Reza Shah could not go as far as or as fast as Ataturk. The answer was that his problems were quite different from Ataturk's. First reason was that contrary to Turkey, the state was weak vis-a-vis the society in Iran. The social groups, especially the clerics, continued to play an important role in the political life of the country.¹⁷⁸ *He attempted to modernize Iran without directly challenging the traditional framework. His prescription was to cure Iran without resorting to surgery.*¹⁷⁹

Another reason aroused from directly the position of Reza Shah. *Because he was Shah, he was an integral part of the traditional political, economic, and social structure. His legitimacy as Shah was still partly defined by Islam.*¹⁸⁰ The Pahlavi dynasty did not introduce a new constitution unlike Ataturk did in Turkey. And According to the first two articles of the Supplementary Fundamental Law of 1907, the government had to support the faith.¹⁸¹ While

¹⁷²Arasteh, Op. Cit., p.327

¹⁷³Moaddel, Op. Cit., p.520

¹⁷⁴Atabaki, Op. Cit., p.46

¹⁷⁵Banani, Op. Cit., p.44.

¹⁷⁶Pfaff, Op. Cit., p.89

¹⁷⁷Athary, Op. Cit., p.80

¹⁷⁸Atabaki, Op. Cit., p.45

¹⁷⁹Pfaff, Op. Cit., p.89

¹⁸⁰Pfaff, Op. Cit., p.87

¹⁸¹Athary, Op. Cit., p.80

Reza Shah ignored the constitutional role played by Islam in Iran, he never deleted it from the Iranian constitution. Atatürk, on the other hand, was the leader of a completely new Turkey, powered by a new constitution and ideology.¹⁸²

3. Reforms from Above, Resistance from Below: “Society versus State”

Because for this thesis it is more important to emphasize the contradiction between the traditional groups and the state over the secular reforms, all of the Reza Shah’s reforms are not explained; instead in this part just the most controversial ones will be analyzed.

Reza Khan's ascent to the throne and the establishment of Pahlavi dynasty commenced the second phase of Ulama (or society) -state relationships.¹⁸³ In the second phase, between 1926 and 1930, the relations between the state and the Ulama turned from alliance to enmity. These years witnessed that Reza shah’s consolidated its power step by step. However, he was still too weak, and his position too unsettled.¹⁸⁴ For instance, after the elections for the sixth Majlis, held in June 1926, many of the important Ulama such as Ayatollah-zadeh-ye Khorasani, Ayatollahzadeh-ye Shirazi, the Imam Jom‘eh of Shiraz and Sayyed Abolqasem Kashani became deputies of the parliament.¹⁸⁵ According to Akhavi, the Ulama constituted forty percent of the deputies in the six Majlis (1926-1928), whereas, in the Seventh Majlis (1928-1930) they were reduced thirty percent of the Parliament.¹⁸⁶

The main characteristic of the Reza Shah’s reforms which took place between 1926 and 1930 was their inherent duality. For instance, he established a secular educational system but traditional religious schools were not banned. Secular courts were established while religious courts existed. Adopting such a dualistic approach suggests that the state was weak vis-a-vis society. Those years also witnessed strong oppositions led by middle-ranking clerics, junior tribal khans and Aghas in the countryside, to the new state’s agenda.¹⁸⁷

A compulsory military law, i.e. the Conscription Law, marked the beginning of the second period. It was passed in May 1925. However it was to come into effect in 1926.¹⁸⁸ In

¹⁸²Pfaff, Op. Cit., p.87

¹⁸³Katouzian, “*State and Society under Reza Shah*”, p.27

¹⁸⁴Faghfoory, “*The Ulama-State Relations in Iran: 1921-1941*”, p.414

¹⁸⁵Katouzian, “*State and Society under Reza Shah*”, p.24

¹⁸⁶Shahrokh Akhavi, “*Religion and Politics in Contemporary Iran: Clergy State Relations in the Pahlavi Period*”, University of New York Press, 1980, p.59

¹⁸⁷Cronin, “*Reform from Above, Resistance from Below ...*”, p.72

¹⁸⁸Faghfoory, “*The Ulama-State Relations in Iran: 1921-1941*”, p.425

the original version of the law, there was no provision for exemption of the clergy.¹⁸⁹ The Ulama retorted that their mission was to preserve the integrity of Islam and to safeguard the religious spirit of the Muslims. *Hence, they performed a holy and valuable duty, and had to be exempted from military service.*¹⁹⁰

In the autumn of 1927, the time came to begin recruiting conscripts. The military authorities designated 8 October for the first call-up in Shiraz. On that day, the opposition to the conscription grew rapidly in the street. Traditional alliance of the Bazar and the Ulama had bounced back. The bazaars in Shiraz were closed down and remained closed in protest. Similar action was taken in Isfahan in Kirmanshah, Qazvin and Tehran.¹⁹¹ The opposition led by the Ulama with the support of the bazaars continued for three months. On 10 December, Taymurtash and two compliant Tehran clerics were sent to Qum by Reza Shah.¹⁹² After that meeting, the clerics were exempted from military service.¹⁹³

Same dualistic approach can be seen in the dress reform also. On 28 December 1928 the Seventh Majlis accepted the first dress code.¹⁹⁴ And it was to come into effect at Nawruz (21 March) 1929.¹⁹⁵

According the first article, all citizens of Iran who do not wear the uniform dress of government employees are required to adopt the new uniform dress. On the other hand, the second article gave a concession to the clergy. According to that article, All mujtahids licensed by the *marjae taqlid*, prominent religious scholars, prayer leaders who have a pulpit, and preachers who are licensed by two mujtahids, full time students of religious schools who pass the official examination and the non-muslim clergy are exempted from dress law.¹⁹⁶

The primary purpose of that law was to reduce the number of Ulama. Abdul Husayn Taymurtash, Reza Shah's court minister, stated:

*We want to drive the clergy out into the open, eliminate those who have been masquerading as clergy and otherwise foster national unity by eliminating a variety of special clothing.*¹⁹⁷

¹⁸⁹Akhavi, Op. Cit., p.58

¹⁹⁰Faghfoory, 'The Ulama-State Relations in Iran: 1921-1941', p.425

¹⁹¹Ibid.

¹⁹²Cronin, 'Reform from Above, Resistance from Below ...', p.79

¹⁹³Faghfoory, 'The Ulama-State Relations in Iran: 1921-1941', p.426

¹⁹⁴Houchang Chehabi, 'Dress Codes for Men in Turkey and Iran', in Atabaki, Touraj and. Zürcher Erik J (ed), Men of Order: Authoritarian Modernization under Ataturk and Reza Shah, New York: I.B. Tauris, 2003, p.218

¹⁹⁵Cronin, 'Reform from Above, Resistance from Below ...', p.81

¹⁹⁶Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.290

¹⁹⁷Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.291

It was not assertive enough when compared to the dress law of Turkey, where to wear religious dress except in places of worship and during religious ceremonies were forbidden for the clergy of all faiths.¹⁹⁸ Contrary to Turkey, in Iran, the clergy was exempted from the scope of the dress law just like they were exempted from the compulsory military service.¹⁹⁹

In 1930's Reza Shah gained more power. By 1929, all tribal revolts in Tabriz and the province of Fars were effectively ended.²⁰⁰ He also reduced the power of the Ulama in the Majlis. For instance, whereas forty percent of the deputies in the six Majlis (1926-1928) were constituted by the Ulama, the eleventh Majlis which met in 1937 did not have even a single well known and important figure from the Ulama.²⁰¹ Within a short span of time Shah's dictatorship turned into an arbitrary rule.²⁰² Prominent political figures such as Ayatollah Hassan Mudarres, Mohammad Mossadegh and Hassan Pirniya were deprived of their Majlis seats. On the other hand, Reza Shah also began to lose confidence in his supporters and began to suppress political parties and individuals who might compete with him.²⁰³ In 1929, minister of finance, Firuz was arrested and Taymurtash was murdered in jail. Many defenders of the Pahlavi regime were killed, disgraced, jailed or banished.²⁰⁴

The reforms which took place after 1930 were more sweeping. One of those assertive reforms was the *awqaf* law which broadened the jurisdiction of the department of endowments within the ministry of education.²⁰⁵ To take control of the administration of awqaf was aimed by the law passed by the Majlis on 25 November 1934. According to the new awqaf law any un-owned properties along with public endowments came under the direct supervision of the department of endowments at the ministry of education.

As a result of the awqaf law, huge parcels of land that belonged to the Ulama or was attached to religious establishments were confiscated by the government or came under government control.²⁰⁶ In other words, the law aimed to deprive the Ulama of their economic independence, to make them dependent on the state or forcing them to find a new source of livelihood.²⁰⁷

¹⁹⁸ Chehabi, "Dress Codes for Men in turkey and Iran", p.221

¹⁹⁹ Faghfoory, "The Ulama-State Relations in Iran: 1921-1941", p.426

²⁰⁰ Keddie, "The Iranian Power Structure and Social Change 1800-1969", p.10

²⁰¹ Akhavi, Op. Cit., p.59

²⁰² Katouzian, "State and Society under Reza Shah", p.29

²⁰³ M. Reza Ghods, "Government and Society in Iran", Middle Eastern Studies, Volume 27, No. 2, April 1991, p. 219

²⁰⁴ Katouzian, "State and Society under Reza Shah", p.31

²⁰⁵ Akhavi, Op. Cit., p.56

²⁰⁶ Faghfoory, "the impact of Modernization on the Ulema in Iran, 1925-1941", p.289

²⁰⁷ Arasteh, Op. Cit., p.327

Among Reza Shah's modernist reforms perhaps unveiling was the most controversial one, since it directly attacked one's private life.²⁰⁸ In June 1934, after his state visit to Turkey²⁰⁹, Reza Shah decided to encourage unveiling. He unfolded his plans carefully both through education and example.²¹⁰ On the other hand, unveiling caused widespread protests.²¹¹ On 10 July 1935, 24th years of the anniversary of the Russian bombardment of the Mashhad shrine in 1911, the Ulama protested unveiling in front of large crowds.²¹² Many gathered inside the shrine chanting: *The Shah is a new Yezid; and Imam Hussein protects us from the evil Shah*. It went on for four full days as city police and army refused to violate the shrine while a large number of pilgrims were camping out in the courtyard of the shrine of Imam Reza, on Friday, 13 July 1935 security forces stormed the shrine and opened fire at people. Later, most of the Ulama were banished from the city. *It was after this incident that Reza Shah decided to ban the veil.*²¹³

The turning point came on 1 February 1936, when women were officially unveiled by a decree of the Shah. The female members of the Royal Family set an example by appearing in public unveiled at all times, even to the extent of going to the Holy Shrines without a veil.²¹⁴ However, After Reza Shah left the country in 1941, the decree of unveiling was abrogated on 3 September 1943 and the veil became a matter of personal choice.²¹⁵

²⁰⁸**Omolbanin Mir and Amir Dabiri Mehr** “*the Clergy's Reaction to the Cultural Policies of Reza Shah*”, JNAS Journal, 3(6):/609-612, 2014, p.3

²⁰⁹**Houchang Chehabi**, “*the banning of the veil and its consequences*”, in Cronin, Stephanie (ed), *The Making of Modern Iran: State and Society under Riza Shah, 1921-1941*, Routledge press, 2003, p.208

²¹⁰**Shireen Mahdavi**, “*Reza Shah Pahlavi and women: a re-evaluation*”, in Cronin, Stephanie (ed), *The Making of Modern Iran: State and Society under Riza Shah, 1921-1941*, Routledge press, 2003, p.194

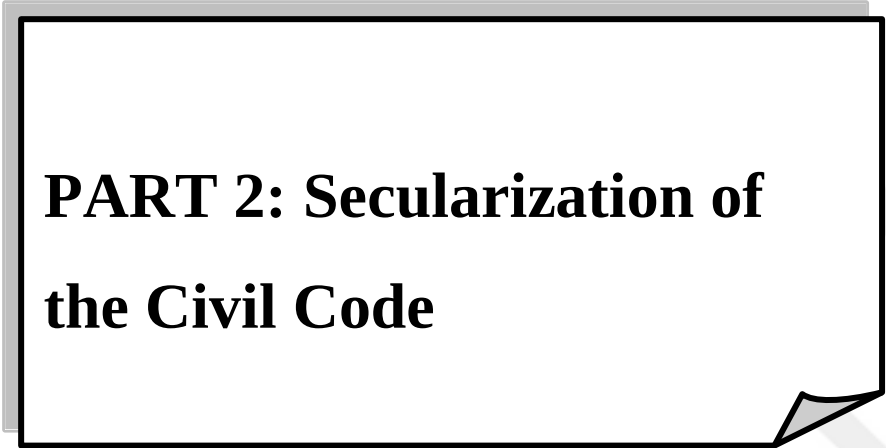
²¹¹**Mir and Mehr**, Op. Cit, p.2

²¹²**Moaddel**, Op. Cit., p.536

²¹³**Chehabi**, “*Dress Codes for Men in turkey and Iran*”, p.223

²¹⁴**Mahdavi**, Op. Cit., p.195

²¹⁵**Chehabi**, “*the banning of the veil and its consequences*”, p.212



PART 2: Secularization of the Civil Code

Chapter Four:

‘Creation of a Secular Civil Code in Turkey’

1. Judicial Reforms of the Ottoman Empire: ‘The Tanzimat Era (1839-1876)’

The Ottoman legal system comprised of three parts: Sharia, fikh (also called kanun) and minority legal codes applicable to non-Muslim society. The principles of Sharia were based on the Hanafi School, which like other schools of Islamic jurisprudence ultimately rest on two key sources, the Qur’an and the Hadith. Shari’a courts dealt with matters of personal status and family law. On the other hand, system of Kanuns, was based on prevalent Turkish traditions and was sanctioned by the Ottoman sultans, it dealt with taxation, land tenure and criminal law, fields in which the Sharia was considered mute.²¹⁶ Although Kanun was based on established traditions, it could not contradict Islamic principles.²¹⁷

The Ottoman Empire was multicultural in character consisting of different religious communities. A “*Millet*” comprised of a distinct religious community and the collection of millets formed the millet system. Each millet was responsible for establishing, maintaining and governing its own institutions such as education, religion, justice, and social security.²¹⁸ The Ottoman Empire tended not to interfere with the non-Muslim legal system. *Under the millet system each religious community maintained its own courts, judges, and legal principles to resolve conflicts among themselves autonomously.*²¹⁹ It should be noted that disputes between different religious communities were resolved by Sharia courts.

However this was all going to be changed as the Ottoman state apparatus needed to be reformed and updated in order to compete with Western Europe. By the mid-nineteenth century, Ottoman intellectuals had begun to meddle with Western intellectual ideas, most notably those on democracy and secularism. These engagements coincided with the continuing decline of Ottoman power and the subsequent rise of Western European empires. The Western ideological influence, coupled with checks on Ottoman reality, led to Western-influenced reforms during the *Tanzimat* period.²²⁰ The main characteristics of this era included implementing massive westernization efforts to create a centralized, cohesive legal system.²²¹

There were two driving forces behind these reforms. One was to save the empire from collapsing by boosting material development and progress²²² and the other reason was a

²¹⁶Van Os, Op. Cit., p.181

²¹⁷Yildirim, Op. Cit., p.351

²¹⁸Kucukcan, Op. Cit., p.482

²¹⁹Ibid., p.483

²²⁰Yildirim, Op. Cit., p.352

²²¹Oguz, Arzu, “*the Role of Comparative Law in the Development of Turkish Civil Law*”, Pace International Law Review, Volume 17, Issue 2, Article 9, Fall 2005, p.377

²²²Ibid.,

persistent pressure from the European states who wanted to improve the position of their citizens in the Ottoman Empire and of certain minority groups under their protection.²²³

In the Tanzimat Era, along with existing religious courts, new secular courts were established. Existing laws were reformed and new secular laws were issued while the fundamentals of the Sharia remained protected.²²⁴ In terms of law, this transition period can be called "Westernized Islamic Law Era." The Ottoman law system was gradually secularized between 19th and 20th centuries and *the influence of fikh and Shari'a on the Ottoman law system was diminished*.²²⁵

The Tanzimat (reorganization) reforms began with the Khatt-i Humayun of Gulhane of 1839 that were legal reforms. This was a major break from the earlier legal system of the Ottomans as *with this edict, all citizens -Moslem or non Moslem- would be treated equally before the law and criminal and civil trials would be conducted in public*.²²⁶ It can be asserted that one of the important aims of the *Gulhane* Charter was to construct a non-religious legal space.²²⁷

As a part of this Tanzimat process a new penal code was introduced in 1843 and subsequently death penalty for apostasy (which is a part of Sharia) was abolished.²²⁸ *The secular courts were formally recognized in 1847 and were independent of the Shari'a*.²²⁹ The state adopted the Commercial Code based on sections of the French commercial code in 1850.²³⁰

This gradual process of modifying the existent legal system had far reaching effects as *the millet system was continued, and foreigners still enjoyed their extraterritorial rights under treaties of capitulations; but Pandora's Box was open. A definite step had been taken in introducing a secular purpose for the state, and defining that state in political rather than religious terms*.²³¹

In 1856, declaration of the *Islahat* (Reform) edict was a confirmation that the 1839 edicts would be enforced.²³² In this edict, the equality of all religious groups was emphasized. According to this edict, religious and racial discrimination in the empire was also banned.²³³

²²³Van Os, Op. Cit., p.180

²²⁴Erik J. Zürcher, "Turkey: A Modern History" New York: I.B. Tauris&Co.Ltd., 2004, p.122

²²⁵Van Os, Op. Cit., p.180

²²⁶Arslan, Op. Cit., p.5.

²²⁷Yildirim, Op. Cit., p.352

²²⁸Celebi, Op. Cit., p.90

²²⁹Dora Glidewell Nadolski, "Ottoman and Secular Civil Law", International Journal of Middle East Studies, Volume 8, No. 4, October, 1977, p. 523

²³⁰Zürcher, "Turkey: A Modern History", p.122

²³¹Pfaff, Op. Cit., p.83

²³²Nadolski, Op. Cit., p. 523

²³³Arslan, Op. Cit., p.6

As part of these reforms, the state adopted Maritime Commerce Code in 1863. The law enacted in 1867 allowed foreigners, for the first time in Ottoman history, to own land and real estate in Ottoman territories.²³⁴

Divan-i Ahkam-i Adliye (Ministry of Justice) was established in 1868²³⁵, followed by secular Nizamiye Courts in 1869 to introduce secular legal codes.²³⁶ This was a significant development towards a secular judicial system during the Tanzimat era. These secular courts followed unprecedented procedural guidelines, such as accepting testimony from non-Muslim witnesses.²³⁷ *As a result of the jurisdiction claimed by these secular courts, the religious courts were limited to handling cases only of personal status and family law (in the broadest meaning of these terms).*²³⁸

The introduction of such secular reforms paved the way for the study of foreign legal system in the Ottoman Empire. In addition to Islamic law, other courses such as maritime commerce law, criminal law, international public law and administrative law were introduced in law schools. In 1874, new courses such as Roman law, commercial law and constitutional law were commenced at the Galatasaray educational institute and then *in 1881, the Ministry of Justice undertook the responsibility of the legal education.*²³⁹

The Tanzimat Era ended on the 23rd of December, 1876 with the making of the First Constitution modeled on Belgian Constitution of 1831. *It defined the sovereign right of the Sultan on the one hand and the basic rights of the individuals on the other hand.*²⁴⁰ However, it was suspended by Abdulhamid II in 1878, he also dissolved the parliament.

Because of a widespread uprising of the Young Turks, Abdulhamid II was compelled to sign a declaration of the Second Constitutional Period on July 23, 1908; marking a new phase of political development in Turkey.²⁴¹ In the second constitutional era, secularization attempts to the judicial system gained momentum under the Young Turks governance. New laws were introduced to circumvent religious control over political and judicial system. For instance, in 1916, the highest religious authority, *Şeyhülislam*, was removed from the cabinet and in 1917 the religious courts were brought under the control of a secular Ministry of Justice.²⁴²

²³⁴ Celebi, Op. Cit., p.90

²³⁵ Nadolski, Op. Cit., p. 523

²³⁶ Celebi, Op. Cit., p.90

²³⁷ Yildirim, Op. Cit., p.353

²³⁸ Pfaff, Op. Cit., p.83

²³⁹ Oguz, Op. Cit., p.379

²⁴⁰ Arslan, Op. Cit., p.7

²⁴¹ Yildirim, Op. Cit., p.354

²⁴² Kucukcan, Op. Cit., p.479.

1.1. The Ottoman's Reforms to the Civil Code: "The Mecelle"

As a result of the Tanzimat reforms, religious courts were limited to handle cases only of personal status and family law, bounding all citizens of the Empire subject to the public law of the state. However, each religious community remained autonomous with respect to matters of personal status and family law. In these spheres, they applied their own legal tradition.²⁴³

Still it was not enough for the Ottoman's bureaucracy who wanted to implement a cohesive and comprehensive legal system including civil code. The next step was the codification of a new civil code. There were two divergent opinions in this regard. The first group, headed by Ali Pasha supported the adoption of the French Civil Code. The second group led by Ahmet Cevdet Pasha contented that adoption of the Western Civil Code was not reconcilable with Turkish national life and supported the idea of codifying laws from Islamic jurisprudence.²⁴⁴ While the first group wanted to create equality for all citizens of the Ottoman Empire through a French based civil code and mixed courts, the second group claimed that such a secular law would not be acceptable to the Muslim population.²⁴⁵ At the end, government decided to write the civil code based on the Shari'a.

This committee worked 9 years between 1867 and 1876 and penned the Mecelle, the first civil code of the Ottoman Empire based on Hanafi principles. It was promulgated in 1879.²⁴⁶ *Although the Mecelle was a very extensive work, it was not a complete civil code. Among others, the part on family law was absent. Family law remained uncoded, and fikh and collections of fatwa continued to form its source of reference.*²⁴⁷

Until 1917, family law continued to be administered under the authority of religious courts.²⁴⁸

²⁴³Pfaff, Op. Cit., p.82

²⁴⁴Nadolski, Op. Cit., p. 523

²⁴⁵Van Os, Op. Cit., p.183

²⁴⁶Pfaff, Op. Cit., p.83

²⁴⁷Van Os, Op. Cit., p.183

²⁴⁸Nadolski, Op. Cit., p. 524

1.1.1. The Decree on Family Law of 1917

In the new era of constitutional monarchy, codifications of the civil code gained momentum. The Mecelle committee started its work in the early days of the 1908 Revolution. However, due to disagreements over whether family law could be codified or not, whether all schools of Islamic law could be included in the code or not, until 1917, the new family law did not come into existence until 1917.²⁴⁹

After 10 years of work, the decree on family law was enacted in 1917, and became a part of the Mecelle. It was the first codification of family law in the Ottoman Empire. *With the decree, the authorities went beyond the regulations of the Hanafi School.*²⁵⁰ Because new family law was based on principles derived from all four orthodox schools of Islamic jurisprudence.²⁵¹ It also included extra articles for the non-Muslim communities.²⁵²

For the first time, a minimum age to marry was introduced. In order to get married, men had to be 18 years old and women 17. Only under certain conditions could they marry earlier. Although, according to article 14, polygamy was allowed, an article based on the Maliki School *gave women the right to prevent their husbands from marrying a second wife. According to Article 38 a woman could stipulate in the marriage contract that in case her husband married another woman, she or the other woman would be regarded as divorced.*²⁵³

Regarding divorce, significant changes were introduced by the new family code. For instance, the husband's absolute right to divorce was curtailed.²⁵⁴ A woman gained the right to divorce his husband if she had not heard from her husband for four years and his absence caused her to live in poverty and if he had a serious or contagious illness such as psychiatric problems, venereal diseases or leprosy.²⁵⁵ *In addition, for the first time, the personal laws of non-Muslim Ottoman subjects were codified in this family law.*²⁵⁶

The decree remained valid until June 1919 and was abrogated later due to strong objections.²⁵⁷ After which the old tradition, without any codification of family law, was restored. This situation continued until the new Civil Code was issued in 1926.²⁵⁸

²⁴⁹Yildirim, Op. Cit., p.354

²⁵⁰Van Os, Op. Cit., p.191

²⁵¹Pfaff, Op. Cit., p.83

²⁵²Van Os, Op. Cit., p.190

²⁵³Ibid., p.191

²⁵⁴Yildirim, Op. Cit., p.355

²⁵⁵Van Os, Op. Cit., p.184

²⁵⁶Yildirim, Op. Cit., p.355

²⁵⁷Ibid.,

²⁵⁸Van Os, Op. Cit., p.191

After the Tanzimat Era and prior to the foundation of a Turkish Republic, entire Ottoman judicial system, except civil code, had already been secularized. Even the Ottoman bureaucracy attempted to write a more secular version of the family law. The secular Nizamiye courts were established and the Sharia courts were restricted to family law.²⁵⁹ Therefore when Atatürk came to power, there was a sufficient social base²⁶⁰ to carry on the Ottoman's reforms and the new ruling elite only finalized the process initiated by the Ottoman bureaucracy.

2. Atatürk's Legal Reforms: "Creation of the Secular Civil Code"

An indispensable part of the general social-engineering project promulgated by the new republic was the Kemalist agenda for legal and judicial reforms.²⁶¹ Although, during the Ottoman period secularization attempts took place, the empire still kept its religious essence. On the other hand, for Atatürk, the Turkish judicial system should be totally modernized. He said:

*We must liberate our concepts of justice, our laws and our legal institutions from the bonds which, even though they are incompatible with the needs of our century, still hold a tight grip on us.*²⁶²

Establishment of legal uniformity within territorial boundaries has been one of the major goals of nation-states within the modern era.²⁶³ Law and the judiciary which was guided by the ideology of Kemalism put an end to the dualist mentality that had characterized the Tanzimat era.²⁶⁴ It can be said that Legal and judicial reforms played a crucial role in rapid secularization of the Turkish Republic.

The new constitution was introduced in 1921 during the Turkish war of independence which was revised in 1924.²⁶⁵ Reorganization of republican courts was modeled on French courts.²⁶⁶ To put an end to the dualist mentality, in April 1924, Shari'a courts and 'mixed courts' (which had jurisdiction over the affairs of foreigners living in the Ottoman territories)

²⁵⁹ Celebi, Op. Cit., p.90

²⁶⁰ Kucukcan, Op. Cit., p.480

²⁶¹ Özman, Op. Cit., p.69

²⁶² Ali Mahmood, "Saint and Sinners", HarperCollins, 2013, p.72

²⁶³ Özman, Op. Cit., p.72

²⁶⁴ Ibid., p.70

²⁶⁵ Yildirim, Op. Cit., p.356

²⁶⁶ Özman, Op. Cit., p.73

were completely abolished.²⁶⁷ It was accompanied by adoption and adaptation of various European codes.²⁶⁸ For instance, In March 1926 a new penal code based on the 1899 Italian penal code was introduced.²⁶⁹ In May 1926 a new commercial code, based on German and Italian sources, was adopted.²⁷⁰ And the code of Execution and Bankruptcy based on the Swiss Federal Code of 1889 was adopted in 1929.²⁷¹

As a part of the judicial reforms, Ankara law school the first higher education institution of the Republic was also established. In contrast to the older law school located in Istanbul, the new school had close ties with the Government. In 1933, *Darülfünun* was abolished; Istanbul University was established in its place.²⁷²

Undoubtedly, one of the important reforms by Atatürk was the creation of a secular civil code in 1926. As discussed earlier, secularization attempts to the civil code were initiated during last decades of the Ottoman Empire. However, it could not be fully implemented in the backdrop of the Ottoman Empire, considering its religious, cultural and historical outlook. That is why the new republic attached great importance to the creation of a secular civil Code.²⁷³ Before we discuss the workings of civil code commissions, it is worthwhile to consider the impact of the Treaty of Lausanne on the creation of a secular civil code.

2.1. Impact of the Treaty of Lausanne on civil code reforms

The Treaty of Lausanne in 1923 had been considered as the most important international agreement of the Kemalist Turkey, because *it was with this treaty that the great powers of the world recognized the Kemalist state as the legitimate authority within Turkey's current boundaries.*²⁷⁴ This agreement affected not only the international relations of the Turkey but also influenced the ongoing judicial reforms of the new republic.

After the Turkish war of the independence, the new ruling elite and the allies gather around the same table. Turkish side had two important aims: to be recognized as the legitimate authority and to abrogate the capitulatory system.²⁷⁵ At the beginning, Western Powers were reluctant to accept Turkey's final push for total abrogation of the

²⁶⁷Pfaff, Op. Cit., p.87

²⁶⁸Yildirim, Op. Cit., p.356

²⁶⁹Pfaff, Op. Cit., p.87

²⁷⁰Özkan, Op. Cit., p.73

²⁷¹Yildirim, Op. Cit., p.356

²⁷²Özkan, Op. Cit., p.77

²⁷³Yildirim, Op. Cit., p.369

²⁷⁴Yılmaz, Op. Cit., p.16

²⁷⁵Nadolski, Op. Cit., p. 518

²⁷⁶Ibid., p. 527

At the end, Turkey's pleas for recognition and abrogation were accepted by France and Great Britain *only on the condition that Turkey's non-Muslim minorities were assured protection under Western-style laws with no evidently discernible links to Shari'a*.²⁷⁷

Article 39 of the Lausanne Treaty of Peace called on Turkey to furnish its non-Muslim citizens, Greeks, Armenians and Jews, with all of the civil and political entitlements of its Muslim citizens, stating flatly that *all the inhabitants of Turkey, without distinction of religion, shall be equal before the law*, paving the way for the construction of a Western legal system acceptable to non-Muslim citizens of the new Republic.²⁷⁸

Consequently, by signing the Lausanne Peace Treaty, the new Turkish Republic had to reorganize its legal and court system according to the demands of the League of Nations²⁷⁹, in order to provide for non-Turkish minorities an adequate modern legal system. In other words, Turkish Civil Code's promulgation must not, then, be viewed as a wholly spontaneous decision undertaken on the part of an uncompromisingly sovereign nation-state. Mahmut Esat Bozkurt's, the Minister of Justice, words confirmed this point of view:

When the topic of abolishing the capitulations was raised, foreign states rejected our just wishes, pointed out our legal system's backwardness and reliance on religious foundations. They were saying that laws should be secular is a requirement of the idea of a modern state. As for yours [they said], they are taken from religious foundations. We cannot give up our subjects to the principles of the Muslim religion. Let alone that although we are Christian, we have abrogated the Christian legal system even in our own countries. You can apply religious laws to your own subjects. But you cannot impose these on your subjects who belong to other religions. The twentieth century cannot accept this kind of understanding. Conscience should be free.²⁸⁰

Hence Turkey was obliged to adopt a Western law system for its minorities according to the treaty of Lausanne. Rather than keep a dual system, the new regime opted a cohesive unified legal system within its territories.²⁸¹

²⁷⁷Umut Özsu, "Receiving the Swiss Civil Code: translating authority in early republican Turkey", International Journal of Law in Context, Volume 6, Issue 01, March 2010, p.64

²⁷⁸Ibid., p.77

²⁷⁹Oguz, Op. Cit., p.380

²⁸⁰Özsu, Op. Cit., p.78

²⁸¹Başkan, Op. Cit., p.7

2.2. The Civil Code Commissions in 1923 and 1924

The first civil code commission, after the abolition of the sultanate and the promulgation of the republic, was formed under the Ministry of Justice in 1923.²⁸² Members of the commission consisted of mostly jurists as well as deputies. Head of the commission was Sadettin Efendi. The other members were Muammer Bey, Hafız Şevket Efendi, Mişon Vantura Efendi, Kemal Atıf Bey, Ahmet Samim Bey, Mehmet Efendi and Ömer Nasuhi Efendi.²⁸³

The first meeting of the commission took place on 2 May 1923. A proposed law consisted of 142 articles was submitted to the parliament 6 months later, on 30 December 1923.²⁸⁴ However it was very much like the old Decree on Family Law of 1917, *a proposed law followed, in the first place, the principles of fıkıh and used the principles of the modern state only in the second instance.*²⁸⁵

The continuing dominance of Islamic law was in a strong contrast to the aims of the secularization project.²⁸⁶ It could not be accepted by the new ruling elite. So, it was decided to form the second civil code commission on 3 April 1924. The commission began its work on 11 May 1924. Members of the commission were Hacı Adil Bey, Şevket Bey, Muammer Raşit Bey, Şükrü Kaya Bey, Ahmet Samim Bey and Ömer Nasuhi Bey.²⁸⁷ Although the second proposal law can be described more secular than the previous one, it still contained the Islamic essence.

These proposal drafts of the civil code failed to meet the aspirations of the new ruling elite towards modernization and secularization.²⁸⁸ Politicians in power strongly believed that only a secular, westernized Turkey could be successful both economically and politically. Therefore, religion and state would have to be separated and divine rules of Islamic Law should be discarded.²⁸⁹

But the problem was how to convince the traditional groups in Turkey. Before the civil code discussions, the Kemalists had already consolidated their powers. The Turkish republic had been proclaimed, the caliphate was abolished and the religious courts were

²⁸²Van Os, Op. Cit., p.185

²⁸³Elif Dursunüst, "Turkish Civil Law in the Process of Acceptance", Usûl, Volume 12, 2010, p.161

²⁸⁴Ibid., p.162

²⁸⁵Van Os, Op. Cit., p.185

²⁸⁶Özman, Op. Cit., p.73

²⁸⁷Dursunüst, Op. Cit., p.165

²⁸⁸Van Os, Op. Cit., p.185

²⁸⁹Oguz, Op. Cit., p.382

banned. Then the time came the opportunity to apply assertive secularism to the judicial system as well. The minister of justice, Mahmut Esat Bozkurt resorted to the Young Turk tactics of threat and intimidation just like Atatürk did during the discussions about whether to abolish the Sultanate or not. Mahmut Esat Bozkurt interrupted the committee meeting of the civil code and asked for permission to speak up. He said:

*The Turkish Revolution has already made its decision. There is no second civilization; civilization means European civilization. European civilization must be imported with both its roses and thorns. This decision is certain. **Ones who will attempt to impede this aim are condemned to be destroyed with fire and iron.***²⁹⁰

After this speech, the civil code commission was dissolved by Bozkurt.²⁹¹ On the other hand, members of the commission and various traditional groups were against the creation of the secular civil code. For instance Seyyid Bey, who was the minister of justice between 1923 and 1924, was one of the prominent representatives of traditional groups. He believed that civil code should be remained on the foundations of Sharia. He argued that the way to write the new civil code had to be chosen carefully and must remained reconcilable with Turkish culture.

*Laws which will be adopted from the western civilization have to be reconcilable with our customs and traditions. If it is not, that law cannot be permanent. Without any condition or reservation we cannot secularize all system, because law means custom, tradition and religion and it is part of our daily life. Some regulations related to family matters should remain sharia.*²⁹²

Discussions between the traditional and reformist groups were ended by the Atatürk's speech on October 5, 1925:

*The Turkish Revolution signifies a transformation far broader than the work revolution suggests... It means replacing an age-old political unity based on religion with one based on another tie, that of nationality. This nation has now accepted the principle that the only means of survival for nations in the international struggle for existence lies in the acceptance of the contemporary Western civilization. **This nation has also accepted the***

²⁹⁰Dursunüst, Op. Cit., p.166

²⁹¹Ibid., p.165

²⁹²Ibid., p.163

*principle that all of its laws should be based on secular grounds only, on a secular mentality that accepts the rule of continuous change in accordance with the change and development of life's conditions as its law... The time has come to lay the legal foundations and educate new men of law satisfying the mentality and needs of our Revolution.*²⁹³

After Atatürk's speech, it was declared that a new commission would be formed to investigate, translate and annotate the Swiss Civil Code.²⁹⁴ There were two reasons for choosing of the Swiss Civil Code. Firstly, Switzerland was a multi-ethnic, multi-cultural society. If a civil code governing the daily affairs of citizens worked well in such a multi-cultural society, it would certainly work well in the mainly homogenous Turkish Republic. Moreover, the Swiss Civil Code was the "newest" and "the most advanced" civil code available.²⁹⁵

The civil code commission consisted of 26 jurists.²⁹⁶ The commission was headed by Şükrü Kaya. The other prominent members of the commission were Mustafa Fevzi, Hasan Fehmi, Fuat Hulusi, Feyzi Daim, Şevket Mehmet Ali and Vasfî Raşit.²⁹⁷ A few months later, first draft of the a new civil code was written and submitted to Parliament.²⁹⁸ The General Justification for the Proposed Law was written by Mahmut Esat Bozkurt:

*There is no fundamental difference in the needs of nations belonging to the modern family of civilization. Perpetual social and economic contacts have . . . been transforming a large civilized body of mankind into a family ... **We must never forget that the Turkish nation has decided to accept modern civilization and its living principles without any condition or reservation...** If there are some points of contemporary civilization that do not seem capable of conforming to Turkish society, this is not because of the lack of capability and native capacity of the Turkish nation, **but because of the religious codes and institutions which abnormally surround it.** The Turkish nation is obliged not to make contemporary civilization conform to the Turkish nation. **The aim of law is not to maintain religious regulations, nor to maintain any other habitual customs. On the day that this document ... is promulgated, the Turkish nation will be saved from false beliefs and traditions, and the fluctuations since the Tanzimat; it will close the doors of an old civilization, and will have entered into a contemporary civilization of... progress.***²⁹⁹

²⁹³Nadolski, Op. Cit., p. 539

²⁹⁴Van Os, Op. Cit., p.185

²⁹⁵Yildirim, Op. Cit., p.363

²⁹⁶Özsu, Op. Cit., p.64

²⁹⁷Dursunüst, Op. Cit., p.166

²⁹⁸Oguz, Op. Cit., p.381

²⁹⁹Nadolski, Op. Cit., p. 539

Discussion of the proposal law in the parliament began with the justification of the minister of law, Mahmut Esat Bozkurt. He argued the secular civil law was reconcilable with Turkish national life.

*Not to change is a necessity for religions. For this reason, that religions should remain matters of conscience is one of the principles of the civilization of the present century and of the most important elements that distinguish the new civilization from the old. Laws that derive their principles from religions ... constitute one of the major factors and reasons impeding progress ... As a matter of fact, the stipulations of the religious Ottoman code are doubtlessly irreconcilable with contemporary civilization. **But it is also obvious that the Ottoman code and similar other religious regulations are not reconcilable with Turkish national life.***³⁰⁰

After Bozkurt's defense, the proposal law was discussed only for a short period of time as the assembly had been formed from the loyalists of Mustafa Kemal Pasha. The Swiss code consisted of 937 articles was accepted by a unanimous vote on 17 February 1926. The law was in effect six months later, on October 4, 1926.³⁰¹

Although the Sharia covers all aspects of life, at its heart lies the family law. With the adoption of secular civil codes, family law, the authority to legitimize the conjugal bond between a man and a woman, was transferred to the state.³⁰²

It is undeniable that the 1926 Code brought about some revolutionary changes, especially in the area of family law.³⁰³ The Turkish Civil Code's revolutionary reputation followed chiefly from five developments. Firstly, the new civil code made civil marriage obligatory. It means, legally, religious marriages were not recognized anymore.³⁰⁴ A Western-style civil ceremony was replaced with an imam-guided nikah as the officially sanctioned method.³⁰⁵ It made polygamy illegal. *No married person can re-marry unless and until the previous marriage has been dissolved by death, divorce or judgment.*³⁰⁶ Divorce under the Civil Code was no longer dependent upon the wish or temper of the husband. The right to

³⁰⁰Dursunüst, Op. Cit., p.167

³⁰¹Oguz, Op. Cit., p.381

³⁰²Van Os, Op. Cit., p.182

³⁰³Yildirim, Op. Cit., p.357

³⁰⁴Nermin Abadan Unat, "the Modernization of Turkish Women", Middle East Journal, Volume 32, No. 3, 1978, p. 295

³⁰⁵Özsu, Op. Cit., p.72

³⁰⁶Justice Frumkin, "The Legal Position of Women in Turkey under the old and New Regime, And in Egypt", Volume 10, No. 4, 1928, p. 199

divorce is vested to husband and wife alike.³⁰⁷ The law allowed marriage between Muslims and non-Muslims³⁰⁸ and removed any difference between men and women in terms of inheritance.³⁰⁹

In brief, although traditional groups were against the secular civil code, they did not have enough power to prevent the secularization of the civil code. The reasons of their failure will be explained in subsequent chapters. But it is enough to say that there were two conditions that were present in Turkey during the time of Ataturk's reforms: a strong state and an extremely weakened society and religious community.³¹⁰ All opponents of Ataturk had no societal power base; their influence came mostly from their positions in the state apparatus.³¹¹

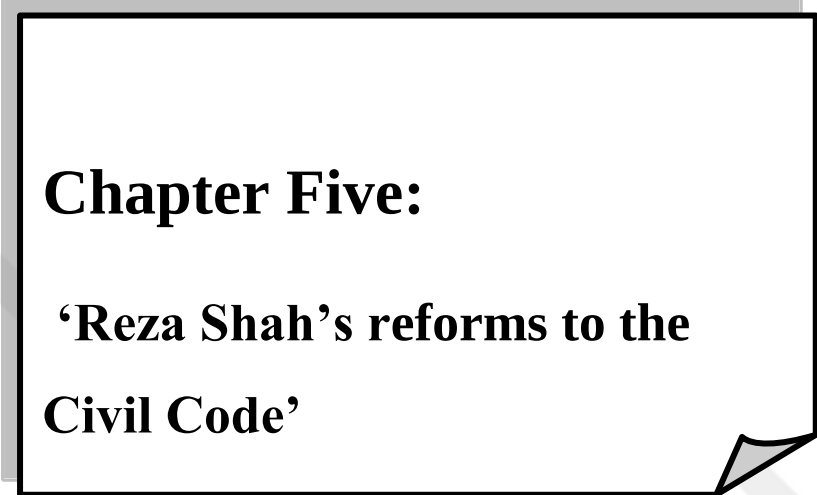
³⁰⁷**Frumkin**, Op. Cit., p. 201

³⁰⁸**Unat**, Op. Cit., p. 294

³⁰⁹**Frumkin**, Op. Cit., p. 201

³¹⁰**Başkan**, Op. Cit., p.4

³¹¹**Ibid.**, p.14



Chapter Five:

‘Reza Shah’s reforms to the Civil Code’

1. Constitutional Revolution Years

In the last decades of the 19th century, opposition of social groups against the state increased gradually. There were various reasons including corruption, inefficiency and arbitrary ruling which made society confront the state. But a key factor was an increasing foreign intervention in the country.³¹²

The constitutional movement which took place between 1905 and 1907 brought together a range of different elements: merchants and clerics, Muslim reformist intellectuals, secular liberals and nationalists. Perhaps on differing grounds, all were aiming for a single objective i.e. to curtail the absolute power of the Shah through constitution, legislature and judiciary.³¹³ It was the first time in Iranian history that the whole society turned against the state.³¹⁴

Ulama undoubtedly were the most influential among these social groups. Shiite Mujtahids supported the constitutional revolution of 1906.³¹⁵ Without their support, the revolution would not have succeeded.³¹⁶

During the Qajar era, the Ulama always had an influence on politics. But with the constitutional movement, the Ulama's influence over the political arena increased. For instance, the revolution led to the establishment of a parliament in during the Qajar Dynasty. Many religious people elected to the early parliaments further reinforced the position of the clergy in Iran.

*In short, the constitutional period, 1905-1909, witnessed a remarkable participation by the clergy in day to day events. It mattered not which side, pro-or anti-shah, the religious leaders supported: the point is that they participated.*³¹⁷

After the establishment of a parliament, the time came to create a first constitution of Iran. Earlier Shah had a dual court structure consists of customary (urf) and canon (shar) law. Urfi or state courts pertained to the matters of the state; canon law pertained to the matters of civil and personal status, whereas the source of law was based on Sharia, with senior clerics

³¹²Hassan Bashir, "the Iranian Press and Modernization under the Qajars", ProQuest LLC, 2013, p.84-85

³¹³Mir Hosseini Ziba, "Sharia and national law in Iran", in Jan Michiel Otto (ed), Sharia Incorporated: A Comparative Overview of Legal Systems in Twelve Muslim Countries in Past and Present, Leiden, Leiden University Press, 2010, p.325

³¹⁴Katouzian, "State and Society under Reza Shah", p.14

³¹⁵Pfaff, Op. Cit., p.84

³¹⁶Samiei, Op. Cit., p.2

³¹⁷Akhavi, Op. Cit., p.16

as its interpreters. However *in practice, the unstable governments of Iran had defaulted nearly all judicial authority to the Sharia courts.*³¹⁸

In 1906, the constitution was enacted. The main body of the first Constitution of Iran, in fact, is a translation of the Belgian Constitution of 1830.³¹⁹ This constitution was mainly secular based on the sovereignty of the people and granting freedom of speech as one of the constitutional rights.

*Following objections by religious scholars, a Supplement to the Constitution was drafted to include more references to Islam.*³²⁰ The first two articles of the Supplementary Fundamental Law of 1907 emphasized the Islamic tone of constitution strongly.

Art. 1. the official religion of Persia is Islam, according to the orthodox Ja'fari doctrine of the 'Ithna 'Ashariyya, which henceforth the Shah of Persia must profess and promote.

*Art. 2. At no time must any legal enactment of the Majlis . . . be at variance with the sacred rules of Islam or the laws established by the Prophet.*³²¹

On the other hand, the Supplementary Fundamental Law of 1907 stipulated *the establishment of the body of five clerics with veto power over bills deemed to be in contradiction with the Sharia.*³²²

In brief, it is important to note that the constitutional revolution was not an attack on the Islamic foundation of the Qajar regime,³²³ on the contrary, with the revolution, the influence of religion on the judicial system was strengthened.

After the creation of the constitution, the time came to reorganize the judicial system. According to the Constitution, judicial system consisted of Sharia and State courts. State courts were in big cities and towns and were run by the state officials. Sharia courts, however, were easily accessible particularly in small and remote places, as it were run by the Ulama who were available all across the country. In this period, the Sharia courts were for the most part located in the Ulama's houses. As the result of a dual structure policy, having Sharia and state courts operated side by side. The Sharia Courts often dealt with family and personal status law and sometimes with Criminal issues. But commercial issues were out of the Ulama's domain of judgment and were functioning on the basis of a secular law.³²⁴

³¹⁸Ibid., p.39

³¹⁹Banani, Op. Cit., p.17

³²⁰Ziba, Op. Cit., p.325

³²¹Banani, Op. Cit., p.18

³²²Ziba, Op. Cit., p.326

³²³Pfaff, Op. Cit., p.84

³²⁴Mohammadi, Op. Cit., p.64-65

As a part of the reforms, in 1907, a four-tier civil court system was created in Tehran: the Court of Property and Financial Claims, the Criminal Court, the Court of Appeals, and the Supreme Court of Appeals.

Before the constitutional revolution, *Sharia Courts were not bound by any higher court other than the ruler's court. There was no appeal system for the religious courts.*³²⁵ In 1908, a Dispute Court was created to deal with disagreements between civil and Sharia courts.³²⁶ However, even bounded by state courts, Sharia courts remained largely autonomous. Most cases dealt by Sharia courts were not at the state level and ruled by Ulama based on their own sources and traditions.³²⁷

In 1911, parliament set up a temporary committee to consider 'transitional laws', and the French jurist Pierny was charged with designing codes of criminal and trade. To prevent the opposition of the clerical establishment to these measures, their temporary and experimental nature was stressed.³²⁸

In 1911, the first Parliament approved the Code of Criminal Procedure tentatively. Then in January 1912 the first penal code consisting of 506 articles was introduced. This code was the first attempt to introduce Napoleonic Code within the Sharia in Iran. Although it contained no element of Islamic jurisprudential concepts³²⁹, it also did not contradict with Islamic principles. *It was signed by three ranking Mujtahids who testified that it was acceptable by the standards of the Sharia and that its new features did not violate the precepts of Islam.*³³⁰ In 1915, the Commercial Code including 387 articles was promulgated by the Parliament. This code also had no clash with Sharia.³³¹

*But the process of law reform soon ground to a halt, due to skirmishes between parliament and the clergy.*³³² With the introduction of the secular codes, the most of the Ulama, including constitutionalists, returned to their policy of fighting secularization.³³³ They were opposed a secular judicial administration, because they feared that such reforms will ease their grip on the judicial system and decrease their power and influence in Iran. *Any discussion about law and order could instigate strong reactions from Ulama that the officials want to legislate against Sharia.*³³⁴

³²⁵Ibid., p.63

³²⁶Banani, Op. Cit., p.69

³²⁷Mohammadi, Op. Cit., p.65

³²⁸Banani, Op. Cit., p.69

³²⁹Ziba, Op. Cit., p.358

³³⁰Banani, Op. Cit., p.38

³³¹Mohammadi, Op. Cit., p.71

³³²Ziba, Op. Cit., p.326

³³³Nikki R. Keddie, 'The Roots of the Ulama's Power in Modern Iran', Studia Islamica, Number: 29, 1969, p.50

³³⁴Mohammadi, Op. Cit., p.66

Reformers, on the other hand, really wanted to secularize the judiciary and to transfer power from Ulama to the state but they also knew that existing legal, political and social structures would prevent secularization of the judiciary. *They picked a gradual secularization program not to mobilize traditional forces against it.*³³⁵ Also, 2nd article of the Supplement to the Fundamental Law stated none of the laws should be in conflict with the Sharia already prioritized Sharia over state. *This was the main ideological and theoretical challenge for any secular reform in any state affair especially judiciary.*³³⁶

The period from 1910 to 1925 lacked a significant process of institution-building. In this period, new penal and commercial laws were introduced and the hierarchy of state courts in some of main cities was established.³³⁷ On the other hand, *the state did not have enough power all over the country.*³³⁸ Due to the weakness of the central government, most of these provisions were not immediately enforced except some big cities like Tehran and Tabriz. Lacking trained personnel to change the existing system, the government was not able to implement these new procedures that were completely different.³³⁹ The process of implementing a centralized judicial system did not happen in the years where *the Ulama especially in rural areas, had enough power to neutralize the government's actions.*³⁴⁰

So, when Reza Shah came to power, *the judicial power still concentrated in the hands of the clergy.*³⁴¹ And although officially the Sharia courts became a part of the Qajar judicial system, in practice, they were independent and out of the state's control.

³³⁵Ibid., p.62

³³⁶Ibid., p.67

³³⁷**Hadi Enayat**, *‘Law, State, and Society in Modern Iran: Constitutionalism, Autocracy and Legal Reform, 1906-1941’*, Verlag: Palgrave Macmillan, 2013, p.142

³³⁸**Mohammadi**, Op. Cit., p.74

³³⁹Ibid.,

³⁴⁰Ibid., p.70

³⁴¹**François Ameli**, *‘The Role of the Judiciary in implementing Western Law in Iran under the Pahlavi Dynasty’*, 2012, p.2 <http://www.reseau-asie.com/article-en/months-articlesarchive/reseau-asie-s-editorial/judiciary-implementing-western-law-iran-pahlavi-francois-ameli/>

2. Reza Shah and the creation of the modern legal system

1920's witnessed the creation of the modern state in Iran. It can easily be said that distinctive character of that era was the state-building.³⁴² In order to create a modern state, the wide-ranging reforms were implemented. These reforms were based on two principles: centralization and unification.

Reorganization of the Judiciary based on a national law system was as part of the whole package of state building. In the national law system, the main source of law was supposed to be the Constitution. The reforms in the judiciary were also based on the idea of administrative justice. The state wanted to use the law as an instrument to implement radical social change and political control, to use the power of the judicial system for a pre-determined transmutation.³⁴³

As it was explained in the previous part, during the Qajar Era, the judicial power always concentrated in the hands of the clergy.³⁴⁴ On the other hand, a modern state could no longer share part of its authority with the other centers of power in the society.

So, the state tended to be the only source of law, claiming sovereignty for itself both internally and internationally.³⁴⁵ In this system, nothing outside the state could make law effective on or within the state without the state's consent.³⁴⁶ So, the absolute external and internal sovereignty of the state led to a state monopoly on lawmaking.³⁴⁷

It was clear from the beginning of Reza Shah's reforms that state monopoly on lawmaking entailed the removing of the Ulama from the judiciary system.³⁴⁸ *Many of the Reza Shah's measures were consciously designed to break the power of the religious hierarchy in the judicial system.³⁴⁹* These reforms wanted to create a secular judicial system without the Ulama.³⁵⁰ Gradually Sharia laws were replaced by a secular European code along with the Ulama who were replaced by the product of a European education system.

³⁴²Abrahamian, Op. Cit., p.65

³⁴³Mohammadi, Op. Cit., p.84-85

³⁴⁴Ameli, Op. Cit., p.2

³⁴⁵Mohammadi, Op. Cit., p.83

³⁴⁶Ibid., p.84

³⁴⁷Ibid., p.85

³⁴⁸Banani, Op. Cit., p.73

³⁴⁹Mohammadi, Op. Cit., p.91

³⁵⁰Michael Zirinsky, 'Riza Shah's abrogation of capitulations, 1927-1928'', in Cronin, Stephanie (ed), The Making of Modern Iran: State and Society under Riza Shah, 1921-1941, Routledge press, 2003, p.90

2.1. Elimination of the Sharia Courts

On February 10, 1927, Reza Shah appointed Ali Akbar Davar, a graduate of law from the University of Geneva, as a Minister of Justice. After his appointment, within 48 hours, Davar dissolved the central state of judiciary.³⁵¹ He obtained parliamentary approval to reorganize the court system.³⁵²

Davar declared these two goals for his judicial reforms: 1) *removing the deficiencies of existing and experienced laws, and 2) correcting judiciary organizations with respect to staff and ranking officials' competency.*³⁵³ A division of work between the state courts was one of the important aspects of judicial reform in this period. He initiated massive restructuring of the system with the help of French legal counsels.

By April 1927, the clerical officials in Tehran were replaced by 600 newly appointed judges.⁶¹ *The Ulama were aware that the balance of power between themselves and the regime was about to alter decisively to their detriment. They were angry at the reorganization and secularization of Iran's judicial system which threatened their role, status and income, which altogether deprived large numbers of minor clerics of their livelihoods.*³⁵⁴

6 months later, the Ulama found a good opportunity to protest the agenda of the radical secularization and to show their displeasure. A compulsory military law was passed in May 1925. However it was to come into effect in 1927. In the original version of the law, there was no provision for exemption of the clergy.³⁵⁵ On the other hand, from the point of the Ulama, their mission was to preserve the integrity of Islam and to safeguard the religious spirit of the Muslims. *Hence, they performed a holy and valuable duty, and had to be exempted from military service.*³⁵⁶ In the autumn of 1927, the time came to begin recruiting conscripts. The military authorities designated 8 October for the first call-up in Shiraz. On that day, the opposition to the conscription grew rapidly in the street. Traditional alliance of the Bazar and the Ulama again had come back. The bazaars in Shiraz were closed down and remained closed in protest. Similar action was taken in Isfahan in Kermanshah, Qazvin and Tehran.³⁵⁷

³⁵¹Enayat, Op. Cit., p.121

³⁵²Ghani, Op. Cit., p.397

³⁵³Mohammadi, Op. Cit., p.100

³⁵⁴Cronin, 'Reform from Above, Resistance from Below ...', p.75

³⁵⁵Akhavi, Op. Cit., p.58

³⁵⁶Faghfoory, 'The Ulama-State Relations in Iran: 1921-1941', p.425

³⁵⁷Ibid.,

The shah was concerned about the threat of an open unrest.³⁵⁸ On 10 December 1927 Abdul Husayn Taymurtash, the court minister, and two compliant Tehran clerics were sent to Qum by Reza Shah.³⁵⁹ During the meeting, the Ulama also uttered their displeasure about reorganization of the judicial system. After lengthy discussions, the Ulama demanded that 1) *certain articles of the conscription law be modified, i.e. the exemption of the Ulama from military service* 2) *all functions that in the past had been within the authority of religious courts remain in their jurisdiction.*³⁶⁰ After that event, it became clear for Reza Shah, at the beginning of his reign; it was impossible to abolish the Sharia Courts. So, Reza chose the way which aimed to reduce the power of the Ulama over the judicial system gradually.

An important revolutionary step was taken by the new elite. On 5 April, The Organizational Principles Law of 1928 was introduced. Firstly, the law brought the Sharia courts under the State control. *Article 40 of the Organizational Principles Law of 1928 subdued Shar'i Courts to the State and at the same time made the former ones official and part of the formal judiciary.*³⁶¹ With the new law, the conditions and requirements for employing judges were also regulated. According to this law, all judges were expected to pass the following courses of training: logic, fiqh and usul, general fundamental law of Iran, criminal law, fiscal law, international law, commercial law, principles of trade, and law governing treaties between Iran and foreign governments. And *all judges of religious courts and the jurists were expected to obtain permission for ijtihad in order to qualify to function as judges.*³⁶² In other words, to get license from the government became compulsory for the Ulama to run their business.

3 years later, in 1931, two important revolutionary steps were taken. Firstly, in July, a marriage law consisting of 20 articles became a law.³⁶³ With the new law, marriage and divorce were brought under the jurisdiction of the ministry of justice and it made civil marriages compulsory for all. According to Articles 1 and 2 of this law registration of marriage or divorce in civil bureaus in the ministry of justice was made mandatory,³⁶⁴ they were not considered legal otherwise³⁶⁵ and violating it was punishable by 1-6 months of

³⁵⁸Enayat, Op. Cit., p.124

³⁵⁹Cronin, 'Reform from Above, Resistance from Below ...', p.79

³⁶⁰Faghfoory, 'The Ulama-State Relations in Iran: 1921-1941', p.426

³⁶¹Mohammadi, Op. Cit., p.92

³⁶²Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.282

³⁶³Ziba, Op. Cit., p.352

³⁶⁴Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.283

³⁶⁵Banani, Op. Cit., p.81

imprisonment.³⁶⁶ One of the aims of this law was to prevent child marriages. On the other hand, the practice of temporary marriage (i.e. *Mut'a*) practiced by the Shia people was also affected by the registration of marriages, because *mut'a, although not legally banned, could not be legally registered.*³⁶⁷

Secondly, on November 30, 1931, the Majlis approved a law redefining Sharia courts as special courts, affecting their status and jurisdiction.³⁶⁸ According to this law, Shari'ah Court's jurisdiction was narrowed down to: 1) disputes involving the principles of marriage and divorce. 2) The appointment of trustees and guardians.³⁶⁹ The law also placed them under the authority of state courts. *Article 2 of the new law stated that no cases may be referred to Sharia Courts without authorization from state courts and the office of the Attorney General.*³⁷⁰ The law also dissolved the Special Penal Court. According to the article 8 of the law, the Sharia courts were forbidden from pronouncing sentences. It is the state court who could pronounce the verdicts referred by the Sharia courts.³⁷¹ Verdicts of the Sharia courts be reviewed by a state court.³⁷² This led to the complete submission of Sharia Courts to the State Courts.

One year later, on 17 March 1932 the parliament enacted a new law which deprived the Ulama from one of their major sources of income.³⁷³ According to the law, the function of registration of documents such as affidavits, powers of attorney and property titles reassigned from Sharia courts to secular courts.³⁷⁴ This function was the largest source of legitimate revenue for the Mujtahids and lower clergy. *As a consequence of this law, many members of the clergy were forced to seek secular employment.*³⁷⁵

It was clear from the beginning of Reza Shah's reforms that state monopoly on lawmaking entailed the removing of the Ulama from the judiciary system. On December 27, 1936, the final step toward secularization was taken by the Majlis.³⁷⁶ The decree concerning the reorganization of the judiciary system and the employment of judges was passed. The following conditions for individuals seeking employment as judges in the ministry of justice

³⁶⁶Faghfoory, "the impact of Modernization on the Ulema in Iran, 1925-1941", p.283

³⁶⁷Mahdavi, Op. Cit., p.193

³⁶⁸Banani, Op. Cit., p.78

³⁶⁹Mohammadi, Op. Cit., p.92

³⁷⁰Ghods, M. Reza, "Government and Society in Iran", p.225

³⁷¹Banani, Op. Cit., p.79

³⁷²Ameli, Op. Cit., p.5

³⁷³Zirinsky, Op. Cit., p. 90

³⁷⁴Ghods, "Government and Society in Iran" p.225

³⁷⁵Ameli, Op. Cit., p.5

³⁷⁶Akhavi, Op. Cit., p.39

were set by the law: a) *all applicants must hold a degree from the Faculty of Law or an accredited foreign university. And b) those judges who did not hold such a degree must pass an examination administered by the ministry of justice to demonstrate their knowledge of Iranian and some European laws.*³⁷⁷ The law made impossible for Ulama to sit as judges in the courts of law and eliminated many members of the clergy from the judiciary. As a result, the Ulama's monopoly over the judicial system came to an end. At the end, *the provisions of 1939 and 1940 Civil and Penal Codes put an end to the Sharia Courts in Iranian legal system.*³⁷⁸

For Reza Shah, at the beginning, the priority was to reduce the influence of Ulama over judicial system and put an end to their power. On the other hand, it should be noted that *many laws that were put into effect during Reza Shah's reign were in harmony with the sharia*³⁷⁹, because contrary to Atatürk, Reza Shah did not create a new constitution. And according to article two of the supplementary Fundamental Laws (1907), no secular laws which are contradictory to the sharia can be enacted.³⁸⁰

Dr. Ali Shaygan, a prominent judge and professor of law at the University of Tehran, stated:

*We know that Islamic law is not limited to Shi'i fiqh only. In addition, it is obvious that the implementation of laws based on the Sahria alone is not possible in the present world situation. Therefore, we interpret the second article of the constitution in the sense that no laws may contradict the sharia in principle.*³⁸¹

Therefore, in the early years of Reza Shah's rule, the judicial reforms were labeled temporary.³⁸² And they were implemented to avoid opposition of the clergy who were defended by the second article of the Supplement to the Fundamental Law.³⁸³

In 1926 Criminal Code was introduced and it was amended in 1940; the Code of Criminal Procedure was amended in 1932.³⁸⁴ A secular definition of penal crimes in 1936 was adopted. And a secular commercial code was adopted in 1932.³⁸⁵

³⁷⁷Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.284

³⁷⁸Mohammadi, Op. Cit., p.92

³⁷⁹Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.285

³⁸⁰Banani, Op. Cit., p.69

³⁸¹Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.285

³⁸²Akhavi, Op. Cit., p.39

³⁸³Banani, Op. Cit., p.69

³⁸⁴Ziba, Op. Cit., p.358

³⁸⁵Pfaff, Op. Cit., p.87

There is no doubt the most difficult task for the Pahlavi dynasty was the codification of the civil code, because of its importance in social life.³⁸⁶ On the other hand, unlike the Ottoman society, during the Qajar era, Iranian society had not experienced any secularization attempts to the civil code before Reza Shah. For instance, whereas the first civil code of the Ottoman Empire was written in 1879, in Iran, till 1928, the civil code could not have been written. I mean the first civil code of Iran was written during the reign of Reza Shah.

3. The codification of the first Civil Code of Iran

Although the Constitutional law of Persia was adopted in 1906, the civil code could not be promulgated for almost thirty years. Before the Pahlavi period, some attempts for the creation of the civil code took place. In October 1919, a civil law commission was appointed by the government of Vosuq Al-Dowleh but it was dissolved before much progress was made. Another commission was established after the 1921 coup by the short-lived government of Sayyed Zia.³⁸⁷ Then with the establishing of the Pahlavi dynasty, the workings for the creation of a civil code gained momentum.

The creation of a new civil code was based on two reasons. Firstly, codification of the sharia under one roof had become a necessity. There were new needs that must be addressed in the Iranian society that traditional Islamic jurisprudence was unable to cope with.³⁸⁸ Also difficulties arose in the resolution of disputes in civil matters as Sharia laws could be interpreted in many ways which sometimes conflict with each other.³⁸⁹ *For the similar cases in sharia courts, there would be totally different decisions from different judges; this chaos usually directed people from one shari`ah court to the other to get what they were looking for at the end.*³⁹⁰ The Sharia was open to variety of interpretations not only conflicting with State courts but also its decrees differ among the Mujtaheds. This was a roadblock towards a centralized unified system as it created a problem of legal indeterminacy where instead of offering clarity, Mujtaheds frequently offered multiple and conflicting opinions.³⁹¹ *The purpose of the new code was to eliminate various interpretations by individual Ulama.*³⁹²

³⁸⁶Van Os, Op. Cit., p.182

³⁸⁷Enayat, Op. Cit., p.135

³⁸⁸Mohammadi, Op. Cit., p.95

³⁸⁹Enayat, Op. Cit., p.135

³⁹⁰Mohammadi, Op. Cit., p.63

³⁹¹Enayat, Op. Cit., p.135

³⁹²Faghfoory, 'the impact of Modernization on the Ulema in Iran, 1925-1941', p.282

With the civil code in place traditional multi-vocality of Sharia was put to an end.³⁹³ And a uniform basis for the application of Shari'a was provided by the new civil code.

Of course that was not the only reason. The second reason which encouraged the new elite to create a new civil code was the capitulations. Reza Shah wanted to abolish the capitulations as quickly as possible.³⁹⁴ On 27 April 1927 Reza Shah announced, he wished to abolish the capitulations existing in Iran. On 1 May 1927, the Iranian Prime Minister informed the deputies of the Shah's desire. And On 10 May 1927, the 1856 treaty with the USA was terminated by the Iranian government. The abrogation was going to be effective after one year. Simultaneously, Iran took similar action with regard to other countries.³⁹⁵

Although the western powers accepted to terminate the capitulations, a new judicial system that would replace capitulations was a matter of concern for them. This concern can be seen in State Department's solicitor's report on the new judicial system:

*The basis of Persian law has been the religion of Islam, which is not only antagonistic to other religions but which holds ideas incompatible with the proper dispensation of justice in accordance with modern ideas...it would seem extremely dangerous to surrender the judicial capitulatory rights which are the only thing now in Persia protecting American citizens from a biased, inadequate and in many instances a corrupt system of justice.*³⁹⁶

So, the western powers insisted that they would tolerate the ending of capitulations only if Iran adopted a western-style judicial system, which would provide guarantees for the security of westerners in Iranian courts.³⁹⁷

It had become clear; some secularization attempts to the civil code were going to take place to provide guarantees for the security of westerners in Iranian courts at least. Actually for the new elite, *there was no question about departing from the Sharia in civil code appropriate to the country.*³⁹⁸ But the question was to what extent those secularization attempts were going to go further. Was it possible to create the secular civil code just like Ataturk did in Turkey?

³⁹³Enayat, Op. Cit., p.139

³⁹⁴Ameli, Op. Cit., p.4

³⁹⁵Zirinsky, Op. Cit., p. 93

³⁹⁶Ibid., p. 99

³⁹⁷Ibid., p. 88

³⁹⁸Enayat, Op. Cit., p.136

3.1. Discussions in the Parliament

At the beginning of June 1927, Ali Akbar Davar presented the proposal of a new civil code to the Majlis. There is no doubt Ali Akbar Davar was eager to create a secular civil code.³⁹⁹ According to Ahmadi; *Minister of Justice wanted to engage European counselors to compile the civil code of Iran based on European Laws.*⁴⁰⁰ At the beginning of discussions, he took steps in this regard, did lobbying and received opposition. Some opposition came from Dr Muhammad Mosaddegh who was a member of Iranian assembly and was one of the eminent legal-political figures at that time. He addressed this issue in detail in the assembly on 9th, 16th and 19th June 1927 (18th, 25th and 28th khordad 1306). He severely criticized the approach of the law minister. His diatribe was long. Some parts of his long diatribe that concerns are given here. He said

*I feel honored and I hope that... someone else should rectify the ministry of justice also... if we are going to rectify it they will say Iranians did it, if Europeans will do it then they will say Europeans did it... **I agree with the purposed reforms of the minister but... understand that workings of a nation having no faith lead to bitter ends... hence a state should always keep the essence of Islam. Especially in the face of progress, we should not ruin our society at the pretext of false progress... I do not believe that in reforming the judiciary of the state, some foreign inspectors should come here and of this happens then there are two possibilities. Either one becomes a powerless 'Mr Pierny'. The other will take money, translate the Napoleonic Code, give it us and will leave. Even I can translate better than the one who knows only French but I know Persian as well. ...or someone will come here incepting his own interests and lacking good intentions. I say that Iran and Islam of mine do not permit in the assembly of Islamic jurists and representatives where descendants of Fatima and the Prophet are present that we should say out loud whatever we think; whoever wishes may not accept what I think...***⁴⁰¹

During his speech many of the religious scholars were also present. And Musaddeq speeches were supported by the conservative Ulama deputies. After the elections for the sixth Majlis, held in June 1926, many of the important Ulama such as Ayatollah-zadeh-ye Khorasani, Ayatollahzadeh-ye Shirazi, the Imam Jom'eh of Shiraz and Sayyed Abolqasem

³⁹⁹Hamid Bahrami Ahmadi, "the brief history of the writing of the civil code", 2004, p.4, http://pub.isu.ac.ir/Research-Quarterly/Research-Quarterly_24/Research-Quarterly_2402.htm

⁴⁰⁰Ibid.,

⁴⁰¹Ibid.,

Kashani had become deputies of the parliament.⁴⁰² And According to Akhavi, the Ulama constituted forty percent of the deputies in the sixth Majlis (1926-1928).⁴⁰³ On the other hand, introduction of the secular civil code in Turkey in 1926 had already made the Ulama worried enough. *The clerics acknowledged that the introduction of the Civil Code in Turkey was the ultimate conclusion of sequences of events and movements there.*⁴⁰⁴

Along with Dr Mosaddegh, Mohsen Sadr, one of the prominent Ulama, was also influential in changing the direction of civil law towards Islamic jurisprudence. He was influential in convincing the minister not to use the services of foreign counsels.⁴⁰⁵ At the end of the discussions, the minister acknowledged his view and amended his aims and accepted to adopt the principles of Islamic jurisprudence for the preparation of a new civil code.⁴⁰⁶

Discussions in the Majlis, and speeches of Musaddeq were not the only reasons made Davar change his decision about the secular civil code. There were other reasons as well which are explained in the last chapter. However it is enough to say that the creation of a civil code was an easier task. The real difficulty was to create a secular judicial system (it means abolishing of the Sharia courts) which would be compatible with this secular civil code.

The point is that the creation of secular courts was the first step towards a secular civil code. In other words, without abolishing the Sharia courts, it is impossible to introduce the secular civil code. For instance, Ataturk came to power in 1923, one year later, in 1924 he abolished the sharia courts, and till 1926 the civil code based on Sharia was implemented by the state courts. Then in 1926, the secular civil code was enacted by the Turkish parliament.

As it was observed in the previous part, the most difficult task of Reza Shah's judicial reforms was to control the Sharia Courts. Officially Sharia courts had become a part of the Qajar judicial system but in practice they were considered independent and out of state's control. At the beginning of Reza Shah's reign, the state was weak vis-a-vis society and he was not able to abolish the Sharia courts. So, he had to leave at least one scope for the Sharia courts where they can work. That scope was the civil code. On the other hand, he attempted to reduce the power of Ulama in the judicial system gradually. After 15 years of ruling, in 1940, Reza Shah had consolidated his power enough to abolish the Sharia courts. In other words, it took Reza Shah's 15 years to attain the same milestone which Ataturk had reached within 1 year.

⁴⁰²Katouzian, 'State and Society under Reza Shah', p.24

⁴⁰³Akhavi, Op. Cit., p.59

⁴⁰⁴Atabaki, Op. Cit., p.58

⁴⁰⁵Bahrami Ahmadi, Op. Cit., p.4

⁴⁰⁶Ibid.,

3.2. The Civil Code Commission of 1928: “The process of drafting”

After being discussed in the Majlis, six months later, the commission was formed by the Ministry of Justice on 1 January 1928 (10 day 1306).⁴⁰⁷ It was headed by Davar. Clerical jurists were especially prominent in the drafting committee⁴⁰⁸ which consisted of 9 members who are Mirza Seyyed Mostafâ Adl, Seyyed Mohammade Fâtemiye Qumi, Seyyed Nâsrollah Taghavi, Mohsen Sadr Alashrâfi, Sehykh Mohammad Ali Khâshâni (of the Supreme Court), Shaykh Mohammad Reza Eravani (president of the sharia courts and member of the Supreme Court), Sehykh Ali Bâbâ Firozkohi (known for his outstanding knowledge of Feqh) Mohammad Abdoh Borujerdi (Prosecutor to the Tehran appeal court since 1912 and now a member of the Supreme Court) and Seyyed Kâzeme Asâr (shaykh Ali’s son in Law, who taught philosophy and feqh at the Faculty of Law and Political Science).⁴⁰⁹ Except Seyyed Mostafâ Adl, all members of the commission were the prominent faqihs. Seyyed Mostafâ adl also had a religious background.⁴¹⁰ On the other hand, guests of the commission were Mirza Seyyed Mohammade Bahbahâni, Hâj âghâ jamâledine esfahâni and Emâme jomeye Tehrân.⁴¹¹

Seyyed Mohammade Fâtemiye Qumi was the most prominent member of the Commission. He was born in 1873 in Qum. His father was one of the Ulama. Fâtemi started his education at Qum. After he graduated he started to teach at howze almiye and later became a mojtabeh by Ayatollah Hâj Sheikh Abdolkarime Hâeri. In 1909, he was invited by the Minister of Justice to work as a judge in courthouse.⁴¹² He became a member of the Court of Cassation in 1919.

Fatimi began to write a draft for a judicial system at his own initiative in 1912 while still a young Adlieh Judge. Previously he wrote many books in Persian on Sharia and Feqh that were used in modern schools at the time of Mozaffar al Din Shah. This draft developed over the years by Sayyed Mohammad Fatemi Qomi was available to the civil code commission under Ali Akbar Davar.⁴¹³ On the other hand, *there was little or no public knowledge of Fatemi’s project until 1926 because, as Forughi had explained to law students at Tehran University in a 1934 lecture, although there was no question about departing from*

⁴⁰⁷Hassan Zandiyeh, “the position of influential clergymen in judicial modernization and codification of civil law in the first Pahlavi era”, Volume 48, Number 4 (16), 2013, p.73

⁴⁰⁸Said Amir Arjomand and Nathan J. Brown “The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran”, Albany: New York Press, 2013, p.27

⁴⁰⁹Bahrami Ahmadi, Op. Cit., p.5

⁴¹⁰Ibid., p.7

⁴¹¹Zandiyeh, Op. Cit., p.73

⁴¹²Bahrami Ahmadi, Op. Cit., p.5

⁴¹³Enayat, Op. Cit., p.136

*the Sharia in civil code appropriate to the country, there had been widespread hostility toward codification among clerics.*⁴¹⁴

The most important sources used by the commission were the classical manuals of Shii Feqh, which through the 1910s and 1920s were widely used by judges in Adlieh courts: Shahid Thanis Sharhe Lama, Mohaqqueq Hellis Sharae al Islam, and Shikh Morteza Ansari Makaseb. Shia legal texts were used as sources, and the Belgian, French and Swiss codes were used as models.⁴¹⁵

The commission had limited time. After four months of working, the first civil code in Iran's history was presented to the Majlis on 8 May 1928 (18 ordibehesht 1307).⁴¹⁶ The first volume of the civil code was consisted of 955 articles deals with property and contracts. With some modifications based on French and Swiss law, it was essentially based on Jafari feqh. The code offered unambiguous and clear cut rulings on property rights that were absent from a traditional system based on Sharia.⁴¹⁷

Little opportunity was given to members of the Parliament to discuss the civil code. There were two reasons for that. Firstly, as it was discussed in the previous part, to create a new civil code was the precondition of the agreement which abolishes the Capitulations between Iran and the Western powers. And Reza Shah did not want to wait anymore. 3 days after the submission of the drafting of the civil code to the Majlis, Reza Shah announced on 11 may 1928, that capitulations rights of all foreign powers in Iran were abrogated.⁴¹⁸

The other reason was the position of the Ulama. The Ulama were acutely aware of their loss in the balance of power between themselves and the state.⁴¹⁹ With the first civil of Iran, *the sharia, which was formally controlled by religious scholars, now became the state law in which the content and the form of the law were determined by the state.*⁴²⁰ Codification of the civil code also put an end to the clerical monopoly over the judicial system and while it transformed the Sharia into an instrument of the state.⁴²¹ Because of that *Davar was worried*

⁴¹⁴Enayat, Op. Cit., p.136

⁴¹⁵Ziba, Op. Cit., p 327

⁴¹⁶Ahmad Rezâ Nâini, ‘discussions of the civil code’, publication of the parliament of the Islamic Republic of Iran, 2007, p.19

⁴¹⁷Enayat, Op. Cit., p.137

⁴¹⁸Ghani, Op. Cit., p.397

⁴¹⁹Cronin, ‘Reform from Above, Resistance from Below ...’, p.75

⁴²⁰Enayat, Op. Cit., p.139

⁴²¹Enayat, Op. Cit., p.139

*that if the discussions in the Majlis get longer, the members of the clergy could be of adverse effect on the civil code.*⁴²²

So, after just a day of discussion in the Majlis on 8 May 1928, first volume of civil code was approved. But the Majlis did not enact the civil code i.e. draft of the civil code did not become a law. Two important decisions were taken by the Majlis. Firstly, the authority was given to the Ministry of Justice to implement the new civil code '*experimentally*', because, before the new civil code became a law, it was important to see how much it would be compatible with the Iranians daily life. So, on 10 May 1928, implementation of the civil code was initiated. Secondly, the civil code was sent to judiciary committees of the Majlis to be discussed further. Because the period of the sixth Majlis was going to finish on 13 August 1928 (22 Mordad 1307)⁴²³, the commission members came together only three times on 7/11/14 July 1928. Discussions of the civil code in the judiciary committees of the Majlis continued later in the period of seventh Majlis.

Although Ulama in the Majlis did not completely agree with the new civil code, they did not oppose the first volume of the civil code strongly. The first factor that helped the government to obtain a confirmation of this law was the abolition of Capitulations, which was a precondition to end Capitulations. And it was seen during the constitutional revolution, the clergy were very sensitive about foreign intervention. Second, except some articles which were of secondary importance, the first volume of the civil code did not have any contradiction with the Sharia. And third, the Majlis did not have to enact the civil code, as Ali Akbar Davar said to those who opposed the Code; *it was just experimental and temporary.*⁴²⁴

The civil code workings also continued after the first volume. It was followed by two concluding volumes by the ministry of Justice in 1929. However, the Majlis was becoming more reticent and the bill was rejected twice.⁴²⁵ The second and third volumes of the civil code were consisted of 380 articles (956-1335 articles) which deal with personal status and family matters. And contrary to the first volume, they had more contradictions with the Sharia law. Still, the Ulama constituted thirty percent of the deputies in the seventh Majlis (1928-1930). This is to say Reza Shah still had not consolidated enough power. However, 6 years later the second (on 26 January 1935) and third volume (on 30 October 1935) of the civil code

⁴²²Ameli, Op. Cit., p.4

⁴²³Nâini, Op. Cit., p.19

⁴²⁴Ameli, Op. Cit., p.4

⁴²⁵Banani, Op. Cit., p.72

were approved by the tenth Majlis that did not include even a single well known and important figure from the Ulama.⁴²⁶

3.3. Religious character of the civil code

*From 1920's to 1940's the laws regarding marriage, divorce, and family relations were changed four times, each one a further departure from the strict sharia rules, yet preserving the original principles.*⁴²⁷

The first volume of the civil code was written in 1928 consisted of 955 articles which deal with property and contracts.⁴²⁸ With the exception of the first ten articles which were taken from the French Civil code, the entire first volume including its methodology and consumption was entirely based on classifications of Islamic Jurisprudence.⁴²⁹ The second and third volumes of the civil code which were consisted of 380 articles (956-1335 articles) which deal with personal status and the family matters were approved in 1935. The civil codes of France, Belgium, and Switzerland were also taken as primary sources.

On the other hand, the Family law was codified in 1935 as part of the civil code. Articles 1031-1206 of Volume two deal with kinship, marriage, termination of marriage, family relations, and children, whereas, there were only few instances of borrowing from western codes. For example, in article 1035 of the civil code, it permitted breaking an engagement, even after arrangements were completed for depositing the *mehr* which was not permitted initially in the Sharia.⁴³⁰ Article 1060 allowed Iranian women to marry with aliens without the condition that they get the special permission from the government: this has no foundation in Islamic jurisprudence and was added for purely political reasons.⁴³¹ Article 1041 increased the marriage age to fifteen for women and eighteen for men.⁴³² Marriage of girls under thirteen was banned.⁴³³

⁴²⁶Akhavi, Op. Cit., p.59

⁴²⁷Mohammadi, Op. Cit., p.98

⁴²⁸Nâini, Op. Cit., p.19

⁴²⁹Arjomand and Brown, Op. Cit., p.29

⁴³⁰Banani, Op. Cit., p.81

⁴³¹Mohammadi, Op. Cit., p.98

⁴³²Jasamin Rostam-Kolayi, 'expanding agendas for the 'new' Iranian woman family law, work, and unveiling'', in Cronin, Stephanie (ed), The Making of Modern Iran: State and Society under Riza Shah, 1921-1941, Routledge press, 2003, p.168

⁴³³Ziba, Op. Cit., p.351

On the other hand, the specific sharia reservations remained entirely unchanged.⁴³⁴ Some important concessions were given to the Sharia by the laws relating to marriage and family.⁴³⁵ For instance, polygamy, including contracts with up to four wives, was not in fact outlawed.⁴³⁶ It was not directly mentioned but implied to be the framework for marriages. And according to articles 1075–1077, *the man could take a number of temporary wives*.⁴³⁷ On the other hand, articles 1050 and 1051 forbid polyandry.⁴³⁸ In regard to divorce, article 1133 of the Civil Code states that a *husband may divorce his wife at any time he wishes*.⁴³⁹ On the other hand, a woman could obtain a judicial divorce just under special conditions such as the husband's refusal or inability to provide for her (Art. 1129), his refusal to perform his marital (sexual) duties, his maltreatment of her and his affliction with a disease that could endanger her life (Art. 1130).⁴⁴⁰

Articles 1150-56 specify that after a divorce or death of her husband, to make sure if she is pregnant or not, a woman must wait for a period of 130 days before she can marry again. This was based on the Koran. Articles 1042-1043 required daughters to get their father's permission for marriage. No such permission is required for male children.⁴⁴¹ Articles 1042–1043 required that a woman needs an approval from her father or grandfather for her first marriage.⁴⁴² Regarding custody of children in case of separation, civil code of Iran gave custody rights to father which was also in conformity with the Sharia. Article 1117 of the civil code says that the husband may forbid his wife to accept a job that is degrading to him or her.⁴⁴³

⁴³⁴Banani, Op. Cit., p.76

⁴³⁵Zirinsky, Op. Cit., p. 84

⁴³⁶Faghfoory, , *'the impact of Modernization on the Ulema in Iran, 1925-1941'*, p.283

⁴³⁷Rostam-Kolayi, Op. Cit., p.168

⁴³⁸Banani, Op. Cit., p.81

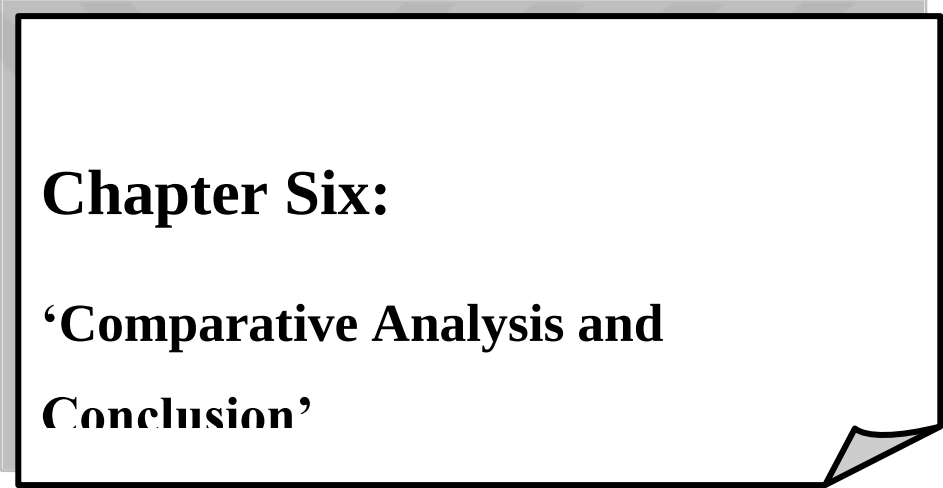
⁴³⁹Ibid., p.83

⁴⁴⁰Ziba, Op. Cit., p.351

⁴⁴¹Banani, Op. Cit., p.81

⁴⁴²Rostam-Kolayi, Op. Cit., p.168

⁴⁴³Banani, Op. Cit., p.84



Chapter Six:

‘Comparative Analysis and Conclusion’

As it has been seen in the previous chapters, contrary to Reza Shah, Atatürk's reforms were more sweeping.⁴⁴⁴ Atatürk came to power in 1923. Just one year later, in 1924, the caliphate was abolished. The religious educational system (madrasahs) was closed down. And the Sharia (religious) courts were completely abolished.⁴⁴⁵ In 1925, centers of various Sufi orders were also shut down. In 1926, the secular civil code was adopted. Finally, in 1928, the Arabic alphabet used throughout the Ottoman era was replaced with a modified Latin alphabet in 1928.⁴⁴⁶ In other words, Atatürk's reforms put an end to the dualist mentality in the political, educational and judicial systems of that time. But that was not enough for the Kemalist Elite, because they were well aware of the sway of religion over people particularly traditional groups. So, they opted to control religion by reorganizing its institutions. So, Directorate of Religious Affairs instead was established.⁴⁴⁷ Unlike the *vakıfs* of the Ottoman times, this Directorate of Religious Affairs was not an independent institution and was directly controlled by the Prime Minister, aiming to control organized religion directly by the State and making it as tool to propagate state's ideology regarding Islam.⁴⁴⁸ In other words, *the early Republican government did not separate the temporal and spiritual domains; instead, it strictly put the spiritual under the control of temporal.*⁴⁴⁹

On the Other hand in neighboring Iran, *the Reza Shah government showed a dual tendency towards secularism.*⁴⁵⁰ His reforms were based on a dual structure, combining tradition and secularism. For instance, he established secular educational system but traditional religious schools were not banned. Secular courts were established while religious courts still existed. And some of reforms gave important concessions to the Ulama. For instance, they were exempted from the scope of compulsory military law and dress law.⁴⁵¹ And although, the principle of secularism was incorporated into the Turkish constitution in 1937⁴⁵², that did not happen in Iran. The Pahlavi dynasty did not introduce a new constitution unlike Atatürk did in Turkey. And According to the first two articles of the Supplementary Fundamental Law of 1907, the government had to support the faith.⁴⁵³ While Reza Shah ignored the constitutional role played by Islam in Iran, he never deleted it from the Iranian

⁴⁴⁴Atabaki, Op. Cit., p.45

⁴⁴⁵Pfaff, Op. Cit., p.87

⁴⁴⁶Yildirim, Op. Cit., p.356

⁴⁴⁷Başkan, Op. Cit., p.22

⁴⁴⁸Gözyıldırım, "A Religious Administration to Secure Secularism...", p.6

⁴⁴⁹Seker, Op. Cit., p.52

⁴⁵⁰Athary, Op. Cit., p.80

⁴⁵¹Faghfoory, "the impact of Modernization on the Ulema in Iran, 1925-1941", p.426

⁴⁵²Unsal, Op. Cit., p.33

⁴⁵³Athary, Op. Cit., p.80

constitution.⁴⁵⁴ Hence in Reza Shah's reign, Iran did not experience a complete separation of the state from religion. However, the state did extend its jurisdiction into areas formerly regulated by religious structures.

The question is why Reza Shah could not go as far as, or as fast as Atatürk. The answer could be that the problems faced by him were different from Atatürk's. The new state in Turkey almost *exercised no power at all during the time when most of the radical reforms were adopted*⁴⁵⁵, because during the time when Atatürk's radical reforms were underway, Turkey was a strong state in contrast to an extremely weakened society and religious community.⁴⁵⁶ On the other hand, opposite conditions were present in Iran when Reza Shah initiated his agenda for reforms: Iran was a weak state competing with a strong society. Reza Shah had to strive relentlessly with the Ulama, while he consolidated his power.

1. Strong state and weak society in Turkey

1.1. Oppositions of the social groups to the new state

There were three different groups which opposed to Atatürk's governance. These are the Ulama (called Sufis in Turkish), the Pashas (the prominent military leaders of the Turkish War of Independence) and the Kurdish Islamic-nationalists.⁴⁵⁷ Each group had their own reasons. Whereas the Ulama were against secular character of the new state, Kurdish Islamic-nationalists were against the Turkish nationalist character of the new regime. On the other hand, the Pashas opposed not the new regime as such but the personal supremacy of Mustafa Kemal in it.

Firstly, Atatürk had to eliminate Ulama's sway over political, educational and judicial system. First clash between Atatürk and the Ulama took place three weeks after the victory of the Turkish war of independence on November 1, 1922. It was during the committee meetings in the Turkish parliament in 1922. The issue was whether to abolish the Sultanate or not. However, The Ulama members of the committee were reluctant to discuss this issue.⁴⁵⁸ Mustafa Kemal interrupted the committee meeting and bluntly said:

⁴⁵⁴Pfaff, Op. Cit., p.87

⁴⁵⁵Zürcher, "The Ottoman Legacy of the Kemalist Republic", p.105

⁴⁵⁶Başkan, Op. Cit., p.4

⁴⁵⁷Yılmaz, Op. Cit., p.10

⁴⁵⁸Ibid., p.8

*Gentlemen, Sovereignty and Sultanate are not given to anyone by anyone... Sovereignty and Sultanate are taken by strength, by power and by force. It was by force that the sons of Osman seized the sovereignty and Sultanate of the Turkish nation; they have maintained this usurpation for six centuries.... The question is not whether or not we should leave Sultanate and sovereignty to the nation.... This will happen in any case. If those gathered here, the Assembly, and everyone else could look at this question in a natural way, I think they would agree. Even if they do not, the truth will still find expression, **but some heads may roll in the process.***⁴⁵⁹

This speech silenced the Ulama. A proposal to separate the Caliphate from the Sultanate and to abolish the Sultanate was accepted by National Assembly on November 1, 1922. Two weeks later, on November 17, 1922, the last Ottoman Sultan, Mehmet VI, left the country.⁴⁶⁰

Second revolutionary step against the clergy was taken on March 3, 1924. The Turkish National Assembly abolished the caliphate.⁴⁶¹ The members of the Ottoman house were banished from the Turkish territory. The last Caliph Abdülmecit Effendi and members of the Ottoman were deported on March 17.⁴⁶²

All these reforms eradicated the influence of Ulama over political, educational and judicial system. Surprisingly, among Ataturk reforms, just hat law caused street protests. On 30 August 1925, Ataturk first time wore the new style hat during a public appearance in Kastamonu one of the most conservative towns in Anatolia. And he stated:

*I cannot accept the presence in Turkey's civilized community of people primitive enough to seek material and spiritual benefits in the guidance of sheiks. **The Turkish republic cannot be a country of sheiks, dervishes, and disciples.** The best, the truest order is the order of civilization.*⁴⁶³

After this speech, On 25 November 1925, Law no. 671, titled 'Law Concerning the Wearing of the Hat', required all men to wear hats. The Law also established a one-year prison sentence for the wearing of religious garb by unauthorized persons.⁴⁶⁴ Between 22 and 26 November 1925 demonstrations against the hat law took place in Kayseri, Erzurum, and

⁴⁵⁹Lewis, Op. Cit., p.258

⁴⁶⁰Yilmaz, Op. Cit., p.8

⁴⁶¹Kucukcan, Op. Cit., p.487

⁴⁶²Yilmaz, Op. Cit., p.9

⁴⁶³Yildirim, Op. Cit., p.347

⁴⁶⁴Chehabi, "Dress Codes for Men in turkey and Iran", p.215

Maras. Just in Erzurum, between 20 and 30 ‘reactionaries’, including Sheyh Osman Hoca, were executed.⁴⁶⁵

It can be said that, the Ulama who were against the secular reforms did not openly oppose the reforms and did not lead any massive street protests against Atatürk.

Some of the Ulama either chose to remain silent or left the country. For instance, Sheikh Şerafeddin Dağıstani famous Naqshi sheikh, after the banning of Sufi orders in Turkey in 1925, went to Jordan. Salih Niyazi Baba, head of the Bektashi Babagan branch, conformed to an apolitical version of Islam proclaiming that Islam, and in particular Sufism, bound to live in the hearts of the people and not on the streets. He settled himself as a manager of a hotel at Ulus in Ankara where he tried to accommodate a Sufi order.⁴⁶⁶ Abd al-Aziz Mecdi Tolun confined himself to the house and occupied himself with praying, reading and writing religious books.⁴⁶⁷

On the other hand, the majority of the Ulama pursued their Sufi activities in secret.⁴⁶⁸ instance, Süleyman Hilmi Tunahan, a famous Naqshbandi, was arrested several times. He was involved in teaching Quran in secret. His students followed his example and continue to hold illegal Quran courses in private.⁴⁶⁹ Because of his Quranic commentary titled Risale-i Nur, Said Nursi was exiled to Barla in 1925. He spent 29 years in exile in different cities.⁴⁷⁰

In brief, *Turkish Sufism did not lead to an armed reaction against the newly established regime, as was the case in Iran with Shi‘ism. The vast majority of Turkish Sufis (Ulama) simply limited their religious thoughts to their individual lives.*⁴⁷¹ According to the Küçük, contrary to the Shiism, Sufism is mainly based on a personal contact with God, and because the secularism presented in Atatürk’s period stressed the necessity of practicing Islam privately, there seemed to be no conflict. Thus Sufis, who were not interested or involved in political activities, had no problems with the abolition of the caliphate and banning the Sufi orders etc.⁴⁷²

⁴⁶⁵ Chehabi, ‘Dress Codes for Men in turkey and Iran’, p.215

⁴⁶⁶ Hülya Küçük, ‘Sufi Reactions against the Reforms after Turkey’s National Struggle’, in Touraj Atabaki (ed), The State and the Subaltern: Modernization, Society and the State in Turkey and Iran, London: I.B.Tauris Publishers, 2007, p.126

⁴⁶⁷ Ibid., p.128

⁴⁶⁸ Ibid., p.133

⁴⁶⁹ Ibid., p.135

⁴⁷⁰ Başkan, Op. Cit., p.19

⁴⁷¹ Küçük, Op. Cit., p.141

⁴⁷² Ibid, p.126

After elimination of Ulama's power and establishment of a new one-party regime, the Pashas and the Kurdish Islamic-nationalists were snubbed.

The Pashas including Rauf Orbay, Refet Bele, Ali Fuat Cebesoy, and Kazim Karabekir were some of the prominent military leaders of the Turkish War of Independence.⁴⁷³ The Pashas were also supported by the Ulama and the Kurdish Islamic-nationalists who were in disagreement with the Turkish nationalist character of the new state.⁴⁷⁴

Opposition of the Pashas to the Kemalist regime began with the Lausanne Treaty signed on July 24, 1923. With this treaty the great powers of the world recognized the Kemalist state as the legitimate authority within Turkey's current boundaries.⁴⁷⁵ The pashas blamed Atatürk to give concessions to the western powers and insisted on a tougher stance in the negotiations at Lausanne. The Kemalist solution to this problem was to purge the Grand National Assembly from opposing factions by calling for new elections on April 16, 1923. The opponents could not organize themselves and lost the elections. The second Assembly which met on August 11, 1923 consisted of those who were loyal to Mustafa Kemal Pasha. They formed the Republican People's Party (RPP) on September 9, 1923. This second assembly later declared Turkey as a republic with Mustafa Kemal as its president.

However, Mustafa Kemal faced some opposition in the second parliament when in November 1924, Rauf Orbay, Refet Bele, Ali Fuat Cebesoy, and Kazim Karabekir, who were eminent leaders of the independence war and had great reputation and respect both in the army and among the masses, formed an opposition party in the parliament called the Progressive Republican Party.⁴⁷⁶ On the other hand, outside the parliament Kurdish Islamic-nationalists started an armed rebellion against the state to attain their goals. Although Kurdish rebellion appeared to undermine the authority of the new state, Kemalists used this pretext to develop effective new ways to curb the opposition. The Law for the Maintenance of Order and the Independence Tribunals was one such development that aimed to crush both opposition blocs, those of the Kurds and the Pashas.⁴⁷⁷ This law passed by the assembly March 1925 was remained in effect till March 1929, gave the State extraordinary powers to suppress any person or group deemed to pose a risk to the security of the state. Initially two independence tribunals were established; one in Ankara and another in Diyarbakır in the east.

⁴⁷³Yılmaz, Op. Cit., p.10

⁴⁷⁴Ibid., p.10

⁴⁷⁵Ibid., p.16

⁴⁷⁶Başkan, Op. Cit., p.12

⁴⁷⁷Yılmaz, Op. Cit., p.10

*The decisions of the tribunals could not be appealed, and the death sentences were generally executed the next day.*⁴⁷⁸

In 1925, government forces crushed the Kurdish rebellion (also called Only Seyh Said rebellion), capturing most of its leaders and the Independence Tribunal in Diyarbakir condemned forty of them to death.⁴⁷⁹ Similarly, under the Law for the Maintenance of Order, government used its powers to close down the Progressive Republican Party on June 3, 1925.⁴⁸⁰

One year later, On June 17, 1926, in the aftermath of an assassination attempt on Mustafa Kemal in Izmir, an extra-ordinary court was formed that sentenced thirteen people to death.⁴⁸¹ All of them were deputies in the Grand National Assembly and leading members of the closed Progressive Republican Party. The four Pashas (Rauf Orbay, Refet Bele, Ali Fuat Cebesoy, and Kazim Karabekir), who were also taken to the court, were acquitted by special intervention of President Mustafa Kemal. *By so doing, Mustafa Kemal Pasha destroyed the entourage of the Pashas and tied the Pashas themselves to himself. Indeed, none of these Pashas created any serious problem for Mustafa Kemal Pasha from then on.*⁴⁸²

It is remarkable to note that Ataturk came to power in 1923 and within 3 years, till the end of 1926, he had eliminated all social groups like The Ulama, The Pashas and Kurdish Islamic-nationalists which opposed the new regime, because Ataturk had two important advantages against the opponents. Firstly he had strong-centralized state with a battle-trained army which he inherited from the Ottoman Empire. Secondly, the new regime had a societal base. Ataturk was supported by a much larger base of urbanized, western-oriented, secularly oriented nationalists.⁴⁸³

In short, according to Birol Başkan, society was extremely weak vis-a-vis the state during the time of Ataturk reforms:

All opponents of Ataturk had no societal power base, their influence coming mostly from their positions in the state apparatus. The elimination of none of the potential rivals in fact led to massive protests from the society. Only Kurdish rebellion, which broke out in 1925 in Eastern Anatolia, does not fit into this category. It was a massive rebellion, led by a Kurdish Nakshi Seyh. Yet, it is better to consider this rebellion not as a domestic opposition to

⁴⁷⁸Yılmaz, Op. Cit., p.11

⁴⁷⁹Küçük, Op. Cit., p.129

⁴⁸⁰Yılmaz, Op. Cit., p.11

⁴⁸¹Başkan, Op. Cit., p.13

⁴⁸²Yılmaz, Op. Cit., p.12

⁴⁸³Pfaff, Op. Cit., p.87

*Ataturk, but to the whole idea of Turkish state by the Kurdish populations in Eastern Anatolia.*⁴⁸⁴

For an answer to this question that why society was weak vis-a-vis the state we need to look into the last century of the Ottoman Empire.

1.2. Legacy of the Ottomans: “elimination of the societal powers”

By the time Ataturk came to power, all possible societal power bases had already eliminated, owing to Ottoman modernization attempts and destructive wars with the western powers.⁴⁸⁵

International military environment forced the Ottomans towards modernization. With Russia alone, the Ottomans fought four major wars in the 19th century in 1806-1811, 1828-1829, 1853-1856, and 1877-1878.⁴⁸⁶ And all of these wars ended with the Ottoman's defeat, because from early seventeenth century, military and economic prowess of the Ottoman Empire began to wane. Driving force behind reforms was to save the empire from collapsing by boosting material development and progress.⁴⁸⁷ In order to compete with Western Europe, the Ottoman state apparatus needed to be reformed and updated. Reforms into the Empire's political, economic, educational, and military structures were introduced.⁴⁸⁸ These reforms attempted to revive the existing traditional system but restoring it to an old system was not turned out to be effective. However, all this changed two centuries later when it became *possible for reformers to start transforming the traditional system and order into a new modern secular system.*⁴⁸⁹

The first set of serious reforms was introduced by Sultan Selim III (1789–1807) at beginning of the 19th century that strengthened the central state against internal and external threats with the creation of a new army of 30,000 soldiers called Nizam-i Cedid (New Order).⁴⁹⁰ After Selim III, Mahmut II (1807-1839) carried the reforms forward. In 1826, He used the new army (Nizam-i Cedid) upon European model to destroy the anti-reformist army called Janissaries (*Yeniceri*). Later the army was expanded and became equipped with newest

⁴⁸⁴Başkan, Op. Cit., p.14

⁴⁸⁵Ibid.,

⁴⁸⁶Ibid.,

⁴⁸⁷Oguz, Op. Cit., p.377

⁴⁸⁸Kucukcan, Op. Cit., p.477.

⁴⁸⁹Çelebi, Op. Cit., p.90

⁴⁹⁰Kucukcan, Op. Cit., p.477.

technology.⁴⁹¹ With the abolishing of the Janissaries army, Mahmud II *also succeeded in reducing the power of the Ulama over the Ottoman Policy.*⁴⁹² It was the cooperation of Ulama and Janissaries that had prevented any reforms attempts earlier in the 18th century.⁴⁹³

Around 1840s modernization attempts to the Ottoman systems became more comprehensive and organized. By the mid-nineteenth century, Ottoman intellectuals had begun to meddle with Western intellectual ideas, most notably those on democracy and secularism. These engagements coincided with the continuing decline of Ottoman power and the subsequent rise of Western European empires. The Western ideological influence, coupled with checks on Ottoman reality, led to Western-influenced reforms during the Tanzimat (reorganization) period.⁴⁹⁴ In this period, the Ottomans expanded reforms using all available means spanning all areas of the government ranging from military, state finance and administration to education and legal system.⁴⁹⁵

This period of Tanzimat began with the Imperial Edict of Gulhane which was proclaimed in 1839 by Mustafa Resit Pasa who was an Ottoman foreign minister. This was a major break from the earlier legal system of the Ottomans as *with this edict, all citizens - Moslem or non Moslem- would be treated equally before the law and criminal and civil trials would be conducted in public.*⁴⁹⁶

*Pandora's Box was open.*⁴⁹⁷ Another edict called the Islahat (Reform) was declared nearly 20 years later in 1856 in which the equality of all religious groups was emphasized. According to this edict, any religious and racial discrimination in the empire was also prohibited. Massive westernization efforts such as the creation of a national standing army of conscripts, a national monetary system, a nationwide communication network of railways and telegraph lines, a large and self-confident bureaucracy strengthened the central government.⁴⁹⁸

Tanzimat reforms not only strengthened the central government but made considerable progress in the judicial and educational systems. In parallel with the traditional system of education which was under local religious authorities, a secular, state-controlled educational

⁴⁹¹Başkan, Op. Cit., p.15

⁴⁹²Arslan, Op. Cit., p.6

⁴⁹³Kucukcan, Op. Cit., p.478.

⁴⁹⁴Yildirim, Op. Cit., p.352

⁴⁹⁵Başkan, Op. Cit., p.15

⁴⁹⁶Arslan, Op. Cit., p.5.

⁴⁹⁷Pfaff, Op. Cit., p.83

⁴⁹⁸Arslan, Op. Cit., p.7

system was developed.⁴⁹⁹ New secular schools such as Army Medical School (1827), School of Military Music (1831) and Military Academy (1834) were established.⁵⁰⁰

It can be asserted that one of the important aims of the Tanzimat era was to construct a non-religious legal space.⁵⁰¹ In the Tanzimat Era, along with existing religious courts, new secular courts were established. Existing laws were reformed and new secular laws were issued while the fundamentals of the sharia remained protected and codified.⁵⁰² The Ottoman law system was gradually secularized between 19th and 20th centuries and *the influence of fikh and Shari'a on the Ottoman law system was diminished*.⁵⁰³

As a part of this Tanzimat process a new penal code was introduced in 1843 and subsequently death penalty for apostasy (which is a part of Sharia) was abolished.⁵⁰⁴ *The secular courts were formally recognized in 1847 and were independent of the Shari'a*.⁵⁰⁵ The state adopted the Commercial Code based on sections of the French commercial code in 1850.⁵⁰⁶

Divan-i Ahkam-i Adliye (Ministry of Justice) was established in 1868⁵⁰⁷, followed by secular Nizamiye Courts in 1869 to introduce secular legal codes.⁵⁰⁸ *As a result of the jurisdiction claimed by these secular courts, the religious courts were limited to handling cases only of personal status and family law (in the broadest meaning of these terms*.⁵⁰⁹

As a result of the Tanzimat reforms, religious courts were limited to handle cases only of personal status and family law, bounding all citizens of the Empire subject to the public law of the state. However, each religious community remained autonomous with respect to matters of personal status and family law. In these spheres, they applied their own legal tradition. Still, it was not enough for the Ottoman's bureaucracy who wanted to implement a cohesive and comprehensive legal system including civil code. The next step was the codification of a new civil code. This committee worked 9 years between 1867 and 1876 and penned the Mecelle, the first civil code of the Ottoman Empire based on Hanafi principles. It was promulgated in 1879.⁵¹⁰ *Although the Mecelle was a very extensive work, it was not a*

⁴⁹⁹Van Os, Op. Cit., p.180

⁵⁰⁰Kucukcan, Op. Cit., p.478.

⁵⁰¹Yildirim, Op. Cit., p.352

⁵⁰²Zürcher, "Turkey: A Modern History", p.122

⁵⁰³Van Os, Op. Cit., p.180

⁵⁰⁴Celebi, Op. Cit., p.90

⁵⁰⁵Nadolski, Op. Cit., p. 523

⁵⁰⁶Zürcher, "Turkey: A Modern History", p.122

⁵⁰⁷Nadolski, Op. Cit., p. 523

⁵⁰⁸Celebi, Op. Cit., p.90

⁵⁰⁹Pfaff, Op. Cit., p.83

⁵¹⁰ Ibid.,

*complete civil code. Among others, the part on family law was absent. Family law remained uncodified, and fikh and collections of fatwa continued to form its source of reference.*⁵¹¹

The introduction of such secular reforms paved the way for the study of foreign legal system in the Ottoman Empire. In 1874, new courses such as Roman law, commercial law and constitutional law were commenced at the Galatasaray educational institute and then in 1881, the Ministry of Justice undertook the responsibility of the legal education.⁵¹²

The Tanzimat Era ended on 23 December 1876 with the making of the First Constitution modeled on Belgian Constitution of 1831. *It defined the sovereign right of the Sultan on the one hand and the basic rights of the individuals on the other hand.*⁵¹³ However, it was suspended by Abdulhamid II in 1878, he also dissolved the parliament.

One of the important consequences of Tanzimat reforms resulted in the creation of a new social class known as the *Young Turks* who *adopted European tastes in dress and in its social life, literature and thought.*⁵¹⁴

It should be noted that one important aspect of the Ottoman's reforms was their secularization of the political system and society. The early reformers of the Ottoman Empire considered it as the only way to catch up with the high standards of a 'civilized' West.⁵¹⁵ On the Other hand, the Young Turks were different from the classic Ottoman ruling elites.⁵¹⁶ The main difference which excludes the Young Turk from the classic Ottoman ruling elites is that unlike the Ottoman Sultans, the Young Turks did not feign that Islamic principles are compatible with Western civilization. Although the Ottoman Sultans initiated the secularization attempts, they still tried to save the Ottoman's Muslim identity. On the other hand, according to most of the Young Turks, Islam was the reason of this underdevelopment and hence should be purged from the system of the state in order to achieve a modern state and society.⁵¹⁷ I.e. The Young Turks were against the policy of "half-way" borrowings. The words of Abdullah Cevdet, a well-known Turkish writer of the beginning of the 20th century reflects the opinion of the Young Turks about westernization. He says:

⁵¹¹Van Os, Op. Cit., p.183

⁵¹²Oguz, Op. Cit., p.379

⁵¹³Arslan, Op. Cit., p.7

⁵¹⁴Ibid.,

⁵¹⁵Celebi, Op. Cit., p.91

⁵¹⁶Arslan, Op. Cit., p.7

⁵¹⁷Celebi, Op. Cit., p.91

*There is no second civilization; civilization means European civilization, and it must be imported with both its roses and thorns.*⁵¹⁸

Because of a widespread uprising of the Young Turks, Abdulhamid II was compelled to sign a declaration of the Second Constitutional Period on July 23, 1908; marking a new phase of political development in Turkey.⁵¹⁹ In the second constitutional era, secularization attempts to the judicial system gained momentum under the Young Turks governance.⁵²⁰ After gaining power, The Young Turks' party, Committee of Progress and Union, followed assertive secular policies and made laws to prevent the Ulama's control over politics and education. For example *in 1916, the highest religious authority, Seyhülislam, was removed from the cabinet, in 1917 the Sharia courts (religious courts) were brought under the control of secular Ministry of Justice and medreses (religious schools) came into the control of Ministry of Education.*⁵²¹ Education of women was also encouraged. Primary education for girls became compulsory in 1913 and some university courses were opened for women in 1914.⁵²²

Also, the decree on family law was enacted in 1917, and became a part of the civil code (called Mecelle).⁵²³ It was the first codification of family law in the Ottoman Empire. *With the decree, the authorities went beyond the regulations of the Hanafi school.*⁵²⁴ Because new family law was based on principles derived from all four orthodox schools of Islamic jurisprudence.⁵²⁵

In brief, firstly, owing to the Ottoman modernization, the modern army and centralized bureaucracy were inherited to the new republic. *The army of the republic was the army of the late empire. It was the army, and certainly also the gendarmerie, which allowed the republican regime to extend its control into every corner of the land and into every village, to a degree the empire had never achieved. The bureaucracy by and large was the imperial bureaucracy.*⁵²⁶

Secondly, the Ottoman modernization had already eliminated powerful groups in the Ottoman society.⁵²⁷ As the Ottoman modernization expanded to all aspects of the government

⁵¹⁸Unsal, Op. Cit., p.27

⁵¹⁹Yildirim, Op. Cit., p.354

⁵²⁰Kucukcan, Op. Cit., p.479.

⁵²¹Çelebi, Op. Cit., p.91

⁵²²Kucukcan, Op. Cit., p.480.

⁵²³Yildirim, Op. Cit., p.355

⁵²⁴Van Os, Op. Cit., p.191

⁵²⁵Pfaff, Op. Cit., p.83

⁵²⁶Zürcher, "The Ottoman Legacy of the Kemalist Republic", p.103

⁵²⁷Başkan, Op. Cit., p.16

including legal and educational system, the two strongholds of religious institutions were also modernized and hence weakened in front of the Turkish state. For instance, prior to the foundation of a Turkish Republic, entire Ottoman judicial system, except civil code, had already been secularized. The secular Nizamiye courts were established and the Sharia courts were restricted to family law.⁵²⁸ All these modernizing reforms transmuted the Islamic character of the state, including legal, educational and political culture in Ottoman Turkey.⁵²⁹ The point is the Ottoman statesmen never followed rapid secularization process. Instead, *the effects of state building in the legal system and education were so gradual that the Ulama did not feel threatened by the process. It took almost 80 years for the state to create its own courts and schools to compete with the Ulama.*⁵³⁰ Many Ulama also got employed in newly established state institutions. For example, a religious judge became the head of secular courts.⁵³¹ So, prior to the foundation of a Turkish Republic *Ottoman religious establishment had already been bureaucratized and brought under state control in the late Ottoman Empire.*⁵³² And the community became too dependent on the state as they became involved in modernization.⁵³³

The founders of the Republic of Turkey not only adopted the prevalent Ottoman's reforms but also accelerated the modernization process in Turkish society.⁵³⁴ *When the Kemalist Revolution declared the new Turkish Republic as a break from the Islamic Ottoman Empire, there already existed a framework within which the Kemalist reforms could take place.*⁵³⁵ The foundation of this new Turkish Republic was a continuation of the reforms of the late Ottoman Empire.⁵³⁶ And there was also a sufficient social base for establishing a secular republic.⁵³⁷

Another reason which helped the Kemalist regime to establish a secular state was the consequences of destructive wars with western powers.⁵³⁸ Firstly, losing Arab territories helped Turkey to conceive a modern nation-state. With the inclusion of Arabs, the Turks

⁵²⁸ Celebi, Op. Cit., p.90

⁵²⁹ Kucukcan, Op. Cit., p.478

⁵³⁰ Başkan, Op. Cit., p.16

⁵³¹ Başkan, Op. Cit., p.16

⁵³² Zürcher, "The Ottoman Legacy of the Kemalist Republic", p.105

⁵³³ Başkan, Op. Cit., p.19

⁵³⁴ Kucukcan, Op. Cit., p.505

⁵³⁵ Yildirim, Op. Cit., p.368

⁵³⁶ Celebi, Op. Cit., p.91

⁵³⁷ Kucukcan, Op. Cit., p.480

⁵³⁸ Başkan, Op. Cit., p.14

could not reinforce the idea of modern secular nationalism. Only with their exclusion Turkey could embrace nationalism and could define it in secular terms.⁵³⁹

Secondly, the wars brought their own destructions and further weakened the potential of societal opposition. Turkish society bore the brunt of five inter-state wars in this period: Trablusgarb war with Italy, two Balkan wars, the World War and the Turkish war of independence. World War I in particular was deadly to the Turkish society with more than 2 million suffered directly during the four years. For instance, in 1913, population of Anatolia was 15.3 million which was reduced to 13.6 million based on an official census in 1927. *According to an estimate by Kemal Karpat, an Ottoman historian, 18 percent of the Muslim population in Anatolia was wasted in wars from 1914 to 1922.*⁵⁴⁰ These wars also adversely affected the religious social base of the region. Many Sufi Sheikhs also fought along with their students, Army also recruited students from seminaries and hence disrupting their religious networks. It should not be surprising when Abdulhakim Arvasi, a Sufi Sheikh and a supporter of the Republican Turkey, said when the Sufi Orders were closed down; *the Government did not close down the Sufi lodges. The Sufi lodges closed themselves down. The Government closed something already emptied.*⁵⁴¹

In brief, According to Barış Birol, Atatürk came to power at very opportune time.

*The Atatürk reforms took place at a very opportune time in Turkish history during which two mutually reinforcing conditions met. First, the state emerged as the most powerful institution, with no other institution militarily, economically, and organizationally matching that level of effectiveness in Turkey. Second, the society and religious institutions emerged as fragmented and weakened as they had never been before. One century of Ottoman modernization, successive destructive wars, massive population displacements, and the role of the reformers in saving the country from foreign occupation brought about these two conditions, which were conducive to the successful introduction and implementation of reforms.*⁵⁴²

On the other hand, by the time Reza Shah came to power, opposite conditions were present in Iran: a weak state attempting to rule a strong society.

⁵³⁹Pfaff, Op. Cit., p.85

⁵⁴⁰Başkan, Op. Cit., p.17

⁵⁴¹Ibid., p.19

⁵⁴²Ibid.,

2. Weak state and strong society in Iran

2.1. Oppositions of the social groups to the new state

There were mainly two different groups which opposed Reza Shah's governance. These are the Ulama and the Tribes. Each groups had their own reasons. Whereas the Ulama were against secular character of the new state, the tribes were against the nationalist character of the new regime. Both of the opponents were also against the expansive power of the central government over all segments of the society. Especially, first decade of the Reza shah reign witnessed strong oppositions led by middle-ranking clerics, junior tribal khans and Aghas in the countryside, to the new state's agenda.⁵⁴³

The first clash between the state and society took place before the establishing of the Pahlavi Dynasty. Three years after the military coup, a campaign to oust the Qajars and transform Iran into a republic was instigated by Reza Khan.⁵⁴⁴ On 22 March 1924 the Majlis met to discuss the proposal to change the constitution and establish a republic.⁵⁴⁵ On the other hand, Grand National Assembly in Ankara on 3 March 1924 decided to abolish the Caliphate. The news of forming a republican government in Turkey caused a reaction in Iran.⁵⁴⁶ In the eyes of many, the idea of a republic was inseparably linked to secularism.⁵⁴⁷ Hence, republicans were condemned of attempting to eliminate Islam from politics.⁵⁴⁸ Outside the Majlis, opposition to republicanism grew rapidly.⁵⁴⁹ Traditional alliance of the Bazar and the Ulama bounced back. The day on which Majlis was discussing proposal to establish a republic, around 5,000 people consisted of clerics, merchants, guildsmen and ordinary people gathered around the Majlis building.⁵⁵⁰ They were shouting *we follow the rules of the Quran-we don't want a republic, and we want to follow Islam-we don't want a republic.*⁵⁵¹

Reza Shah was keenly aware of those who opposed republicanism in the Majlis and outside of it. Many members were hesitant to oppose the monarchical constitution that had placed them in Parliament. Outside the Majlis, the social base to support republicanism was limited to few intellectuals, teachers, pharmacists, and civil servants which were not significant. On 26 March, Reza Shah went to see the Ulama of Qum and talked with Hajj

⁵⁴³Cronin, 'Reform from Above, Resistance from Below...', p.72

⁵⁴⁴Martin, Op. Cit., p.67

⁵⁴⁵Ibid., p.73

⁵⁴⁶Atabaki, Op. Cit., p.53

⁵⁴⁷Ghods, 'Iranian Nationalism and Reza Shah', p.41

⁵⁴⁸Atabaki, Op. Cit., p.58

⁵⁴⁹Ghods, 'Iranian Nationalism and Reza Shah', p.41

⁵⁵⁰Martin, Op. Cit., p.73

⁵⁵¹Faghfoory, 'The Ulama-State Relations in Iran: 1921-1941', p.417

Mirza Hossein Na'ini and Sayyed Abolhasan Isfahani. He was advised by those Ulama to give up the republican campaign.⁵⁵² He came back to Tehran where he issued a statement, asserting:

*In my meeting with the highly respected Ulama in Qom, once more I confirmed my commitment that preservation of Islam had been one of the most important duties of the army from the beginning. Moreover, we reviewed the events of the last few days and I would like to ask everybody to abandon the demand for a republican form of government.*⁵⁵³

Consequently, an alliance of the Bazar and the Ulama aborted the republican movement in its early days. At the end of the day, the society had won the first round against state.

To expand the power of the central government over all segments of the society was an important task.⁵⁵⁴ In order to achieve that aim, *the new modern state had to subdue two of his chief rivals for power, the Ulama and the tribes.*⁵⁵⁵ Reza Shah was aware of that without a modern army it is impossible to achieve this aim.

So, a compulsory military law, i.e. the Conscription Law was passed in May 1925. However it was to come into effect in 1927.⁵⁵⁶ In the original version of the law, there was no provision for exemption of the clergy.⁵⁵⁷ The Ulama retorted that their mission was to preserve the integrity of Islam and to safeguard the religious spirit of the Muslims. *Hence, they performed a holy and valuable duty, and had to be exempted from military service.*⁵⁵⁸

In the autumn of 1927, the time came to begin recruiting conscripts. The military authorities designated 8 October for the first call-up in Shiraz. On that day, the opposition to the conscription grew rapidly in the street. The bazaars in Shiraz were closed down and remained closed in protest. Similar action was taken in Isfahan in Kirmanshah, Qazvin and Tehran. The opposition led by the Ulama with the support of the bazaars continued for three months. On 10 December, Taymurtash and two compliant Tehran clerics were sent to Qum by Reza Shah.⁵⁵⁹ After that meeting, the clerics were exempted from military service.⁵⁶⁰ At the end of the day, the society also won the second round against state.

⁵⁵²Katouzian, "State and Society under Reza Shah", p.21

⁵⁵³Atabaki, Op. Cit., p.58

⁵⁵⁴Faghfoory, "The Ulama-State Relations in Iran: 1921-1941", p.414

⁵⁵⁵Keddie, "The Iranian Power Structure and Social Change 1800-1969", p.10

⁵⁵⁶Faghfoory, "The Ulama-State Relations in Iran: 1921-1941", p.425

⁵⁵⁷Akhavi, Op. Cit., p.58

⁵⁵⁸Faghfoory, "The Ulama-State Relations in Iran: 1921-1941", p.425

⁵⁵⁹Cronin, "Reform from Above, Resistance from Below...", p.79

⁵⁶⁰Faghfoory, "The Ulama-State Relations in Iran: 1921-1941", p.426

Reza Shah was not able to defeat the Ulama and Tribes at the same time. He could not take a risk to compete with the Ulama. So, *Reza Shah had to temper both the pace and character of his reforms.*⁵⁶¹ The main characteristic of the Reza Shah's reforms which took place between 1926 and 1930 was their inherent duality. For instance, he established a secular educational system but traditional religious schools were not banned. Secular courts were established while religious courts existed. Another important point between 1926 and 1930, the Ulama's power over political system was also strong. Forty percent of the deputies in the six Majlis (1926-1928) and thirty percent of the Parliament in the Seventh Majlis (1928-1930) were constituted by the Ulama.⁵⁶²

Reza Shah used the modern army. Tribal autonomy and the tribal military threat were effectively ended.⁵⁶³ By the end of the 1929, all tribal revolts in Tabriz and the province of Fars had been suppressed by the state. Now the time came to defeat the clerical establishment.

So, the reforms which took place after 1930 were more sweeping. Among Reza Shah's modernist reforms perhaps unveiling was the most controversial one, since it directly attacked one's private life.⁵⁶⁴ In June 1934, after his state visit to Turkey⁵⁶⁵, Reza Shah decided to encourage unveiling. He unfolded his plans carefully both through education and example.⁵⁶⁶ On the other hand, unveiling caused widespread protests.⁵⁶⁷ On 10 July 1935, 24th years of the anniversary of the Russian bombardment of the Mashhad shrine in 1911, the Ulama protested unveiling in front of large crowds.⁵⁶⁸ Many gathered inside the shrine chanting: *The Shah is a new Yezid and Imam Hussein protects us from the evil Shah.* It went on for four full days as city police and army refused to violate the shrine.⁵⁶⁹ While a large number of pilgrims were camping out in the courtyard of the shrine of Imam Reza, on Friday, 13 July 1935 security forces stormed the shrine and opened fire at people.⁵⁷⁰ Later, most of the Ulama were banished from the city.

The elimination of the social groups which opposed the reforms just took 3 years of Ataturk. On the Other hand, after 15 years ruling, Reza Shah still was not able to expand the power of the central government over all segments of the society completely. So, *Reza Shah*

⁵⁶¹Pfaff, Op. Cit., p.87

⁵⁶²Akhavi, Op. Cit., p.59

⁵⁶³Keddie, "The Iranian Power Structure and Social Change 1800-1969", p.10

⁵⁶⁴Mir and Mehr, Op. Cit, p.3

⁵⁶⁵Chehabi, "the banning of the veil and its consequences", p. 208

⁵⁶⁶Mahdavi, Op. Cit., p.194

⁵⁶⁷Mir and Mehr, Op. Cit, p.2

⁵⁶⁸Moaddel, Op. Cit., p.536

⁵⁶⁹Abrahamian, Op. Cit., p.94

⁵⁷⁰Chehabi, "the banning of the veil and its consequences", p.209

*could not go as far or as fast as Ataturk, because Reza Shah had to assert his authority over Iran before he could begin to modernize it.*⁵⁷¹

Reza Shah had three important disadvantages which were inherited from the Qajar era. Firstly state was extremely weak. The Modern army and centralized bureaucracy had been established long before Ataturk. However, this was not the case with Iran. First Modern army as well as centralized bureaucracy was established by Reza Shah. In other words, *Reza Shah had to build a state, while Ataturk, during his rule could transform an existing one.*⁵⁷² Secondly, although, Ataturk was supported by a much larger base of urbanized, western-oriented, secularly oriented nationalists⁵⁷³, *the state in Iran was apart from the society, It was not based on any of the social classes.*⁵⁷⁴ And, thirdly, in spite of 15 years of governance and secular reforms which aim to eradicate Ulama's power, the clerical establishment still had a societal power base. They were able to mobilize society and lead massive street protests against the state.

For an answer to this question that why state was weak vis-a-vis the society we need to look into the last century of the Qajar dynasty.

2.2. Legacy of the Qajars: “Emerging of the strong societal powers”

The Qajars belong to the family of *Oghuz* Turks and came to power in 1779 with the backing of Turkic tribal forces and ruled the country up till 1925.⁵⁷⁵

Contrary to the Ottomans, who made a great effort to establish a modern state, the nineteenth century of the Qajar dynasty did not witness any serious modernization attempt. This was partly due to the personalities of the two Qajar rulers who were on the throne in the period that reform might have taken place: Naser ad-Din Shah (1848-96) and Mozaffar ad-Din (1896-1907). Naser ad-Din, having flirted with the idea of reform for some time, primarily under prime-minister Mirza Taqi Khan Amir Kabir, became increasingly fearful of the anti-autocratic implications of reform. While acknowledging the importance of establishing a modern bureaucracy to develop effective means of control, he also feared that introducing elements of modernity would jeopardize his power and reduce his ability to have

⁵⁷¹Pfaff, Op. Cit., p.87

⁵⁷²Atabaki and Zürcher, Op. Cit.,p.10

⁵⁷³Pfaff, Op. Cit., p.87

⁵⁷⁴Katouzian, “*State and Society under Reza Shah*”, 2003, p.14

⁵⁷⁵Ziba, Op. Cit., p.324

control over his subjects. Later, Amir Kabir was murdered and modernization attempts were discontinued.

Marred with financial problems along with the suspension of modernizing reforms, the Qajars were unable to found the modern army. *A westernized military force would cost money, and none of the Qajar Shahs attempted large-scale confiscations or taxation directed at the wealthy tax-exempt classes.*⁵⁷⁶ Similarly, an effective national bureaucracy and tax system could not be established. *Governorships put up to auction, and royal or state domains sold in the Qajar period; outside the Tehran area the central government did little beyond collecting revenue.*⁵⁷⁷ Contrary to the Ottoman Empire, in terms of modernization attempts, 19th century of the Qajar Dynasty was unsuccessful. According to Nikki Keddie, *reform and modernization in general in Iran have been almost exclusively post- 1905 phenomena.*⁵⁷⁸

On the other hand, in the 19th century Ottoman Empire witnessed also serious secularization attempts to the entire system of the Empire; however, in Iran no secularization attempts to the Qajar system took place. Religion kept its importance in political and judicial system of the Qajars. The cause of this situation perhaps lies in the power structure of the Qajar Dynasty.

The Qajar never established an effective central government. The state was weak vis-a-vis powerful social groups consisted of leaders, landlords, and leaders of the Ulama in early nineteenth century. Rise in power of these social groups is proportional to a governmental "power vacuum."⁵⁷⁹ According to Keddie, among those three most powerful social groups, *The Ulama were the most independent and self-conscious non-governmental center of power in Iran before World War I; this distinguished Iran from most Middle Eastern countries.*⁵⁸⁰

The Ulama's independence from the government increased as Safavid power decline in the last period of the Safavid era. Some denied the legitimacy of the Shah and claimed the rights of Mujtahids to rule.⁵⁸¹ Ulama's were divided into three groups regarding their role in the society until the 19th century. Akhbari and Sufi schools rejected any direct participation of Ulama in running the State and refused any independent ruling except what was left from the traditions of the Prophet and the Imams. Ulama of the Usuli School, on the other hand, asserted the legitimacy of the function of the Mujtahids in the interpretation of law and doctrine and in making independent judgment. *Sufism, like Akhbarism, rejected the validity*

⁵⁷⁶Keddie, "The Iranian Power Structure and Social Change 1800-1969", p.7

⁵⁷⁷Keddie, "the Roots of the Ulama's Power in Modern Iran", p.34

⁵⁷⁸Keddie, "The Iranian Power Structure and Social Change 1800-1969", p.7

⁵⁷⁹Keddie, "the Roots of the Ulama's Power in Modern Iran", p.34

⁵⁸⁰Ibid.,

⁵⁸¹Ibid., p.43

of any interference of the Ulama in worldly affairs, while claiming that the Sufi doctrine was identical with the esoteric knowledge of the Imams.⁵⁸²

The rise of the Qajar's political ascendance coupled with the rise of power and influence of the Usuli School. Because the Qajar's central government was weak, in order to consolidate and legitimize their power, the Qajar rulers needed to cooperate with the Usuli Ulama. Both consolidated their influence in different parts of the country. Usuli Ulama, established their own influence at the expense of Akhbaris and Sufis, which was later reinforced by their educational, judicial and legitimating functions of the Qajar state.⁵⁸³ Subsequently, the institution of marja'iyat emerged separately from the state during the 19th century which later turned into the notion of a supreme religious authority.⁵⁸⁴

On the other hand, in the late decades of the 19th century, the opposition of the social groups against the state began to increase gradually mainly because of the expansion of foreign intervention in the country.⁵⁸⁵ The constitutional movement which took place between 1905 and 1907 brought together a wide range of different elements: merchants and clerics, Muslim reformist intellectuals, secular liberals and nationalists. *The common aim was to limit the absolutism of the Shah through a constitution, an elected legislature, and an independent judiciary.*⁵⁸⁶ It was the first time in Iranian history, the whole of the society was against the state.⁵⁸⁷ There is no doubt among the social groups the Ulama were the most influential one. Shiite Mujtahids supported the constitutional movement of 1906.⁵⁸⁸ Without that support, the revolution would not have succeeded.⁵⁸⁹

During the Qajar era, the Ulama always had an influence on politics. But with the constitutional movement, the Ulama's influence over the political arena increased. The revolution led to the establishment of a parliament in during the Qajar Dynasty. Many members of this parliament belonged to the class of Ulama which further reinforced their position as representatives of the people. In short, *the constitutional period, 1905-1909, witnessed a remarkable participation by the clergy in day to day events. It mattered not*

⁵⁸²Moaddel, Op. Cit., p.522

⁵⁸³Ibid., p.523

⁵⁸⁴Ziba, Op. Cit., p.324

⁵⁸⁵Bashir, Op. Cit., p.84-85

⁵⁸⁶Ziba, Op. Cit., p.325

⁵⁸⁷Katouzian, "State and Society under Reza Shah", p.14

⁵⁸⁸Pfaff, Op. Cit., p.84

⁵⁸⁹Samiei, Op. Cit., p.2

which side, pro-or anti-shah, the religious leaders supported: the point is that they participated.⁵⁹⁰

After the establishment of a parliament, the time came to create a first constitution of Iran. The constitution in 1906 and its Supplementary in 1907 were enacted. According to the second articles of the Supplementary Fundamental Law of 1907 emphasized *at no time must any legal enactment of the Majlis . . . be at variance with the sacred rules of Islam or the laws established by the Prophet.*⁵⁹¹ On the other hand, the Supplementary Fundamental Law of 1907 stipulated *the establishment of the body of five clerics with veto power over bills deemed to be in contradiction with the Sharia.*⁵⁹² It is important to note that the constitutional revolution was not an attack on the Islamic foundation of the Qajar regime,⁵⁹³ on the contrary, with the revolution, the influence of religion over the judicial system and the Ulama's power over the political system was strengthened.

In short, the period from 1910 to 1925 did not witness a significant process of institution-building. Although officially the Sharia courts became a part of the Qajar judicial system. In practice, they were independent and out of the state's control. And *the judicial and educational power still concentrated in the hands of the clergy.*⁵⁹⁴ On the other hand, *the state did not have enough power all over the country.*⁵⁹⁵ And *the Ulama especially in rural areas had enough power to neutralize the government's actions.*⁵⁹⁶

So, when Reza shah came to power, Iran's power structure was totally different than that of Turkey. Whereas the Ottoman Empire was able to create a modernized army and central bureaucracy and to weaken the clerical establishment, in Iran, however, there was a significant rise in Ulama's power. And that was directly related to a governmental power vacuum⁵⁹⁷, because, contrary to the Ottoman Empire, the Qajars never established an central army or national bureaucracy. It was only in the 1920s and 1930s that Iran took tangible steps to have effective centralization and modernization. Modernized army and bureaucracy were formed by Reza Shah and not by the Qajars.⁵⁹⁸ This is to say that much before Atatürk; the Ottoman religious establishment had already been bureaucratized. On the

⁵⁹⁰Akhavi, Op. Cit., p.16

⁵⁹¹Banani, Op. Cit., p.18

⁵⁹²Ziba, Op. Cit., p.326

⁵⁹³Pfaff, Op. Cit., p.84

⁵⁹⁴Ameli, Op. Cit., p.2

⁵⁹⁵Mohammadi, Op. Cit., p.74

⁵⁹⁶Ibid., p.70

⁵⁹⁷Keddie, "the Roots of the Ulama's Power in Modern Iran", p.34

⁵⁹⁸Ibid.,

other hand, Reza shah had to compete relentlessly with the clergy, while he consolidated his power.

In this thesis I claim that structural factors played an important role but it does not mean other factors such as the influence of agency and influence of the western powers did not have any significant role.

3. The influence of Agency:

Absence of an ideology behind reforms was a major weakness of Reza Shah. It can be said that Reza Shah was unable to promote an ideology as well to substitute tradition.

The ideology of the Kemalism was articulated in 1931 and the Six principles of Kemalism namely republicanism, nationalism, secularism, populism, statism and reformism were adopted by the state. These principles were later incorporated into the Turkish constitution in 1937.⁵⁹⁹ And in order to disseminate Kemalist ideology to all fragments of society, the People's Houses were established by the Republican People's Party. The number of such organizations reached 4,500 in 1950.⁶⁰⁰

On the other hand, contrary to Ataturk, Reza Shah's reforms were not organized, as he never advocated any principles for his wide-ranging reforms.⁶⁰¹ Reza Shah lacked an ideology, unlike Ataturk, Reza Shah wrote no *Mein Kampf*, he made no political statements, wrote no articles and lacked any ideological bedrock for this reforms. We cannot speak of Pahlavism as we do of Kemalism.⁶⁰² *There was no ideology within the context of which the Iranian transformation could find direction. Reza Shah provided no substitute for traditionalism.*⁶⁰³

Reza Shah could not create a new ideology because of two reasons. First reason aroused from directly the position of Reza Shah. *Reza Shah, because he was Shah, was an integral part of the traditional political, economic, and social structure. His legitimacy as Shah was still partly defined by Islam.*⁶⁰⁴ The government could not go against the constitution which it, itself espoused. The state was obliged to support the faith under the cleric's supervision.⁶⁰⁵ In other words, Reza Shah ignored the constitutional role of Islam but

⁵⁹⁹Unsal, Op. Cit., p.33

⁶⁰⁰Seker, Op. Cit., p.53

⁶⁰¹Atabaki, Op. Cit., p.46

⁶⁰²Banani, Op. Cit., p.44.

⁶⁰³Pfaff, Op. Cit., p.89

⁶⁰⁴Ibid., p.87

⁶⁰⁵Athary, Op. Cit., p.80

never deleted it from the Iranian constitution. Atatürk, on the other hand, was leader of a new Turkey, with a new constitution based on a new ideological base.⁶⁰⁶

Second reason aroused from political and social conditions of both country. Atatürk came to power after the Turkish war of independence. And, one of the important consequences of the Turkish war of the independence was an emergent new state legally and formally different from that of the Ottoman Empire.⁶⁰⁷

The aftermath of World War I, losing major territories, was the bedrock of unprecedented political and social developments for modern Turkey.⁶⁰⁸ The Arab provinces, along with southern Balkan ('Rumelian') provinces had been lost and losing such important areas clearly was a traumatic affair.⁶⁰⁹ Warfare and large-scale migration significantly altered the population composition. The changes in population meant that culturally Anatolia in 1923 was a completely different place from what it had been in 1913. With the migration of large Christian communities, Muslim became 98 percent as against 80 percent before the war.⁶¹⁰ I mean, *Atatürk's Turkey was really a new Turkey. Its geographical boundaries were different from those of the Ottoman Empire. The political system of the new Turkey was different. Even the capital of Turkey was different, and the deliberate selection of Ankara as the new capital served to differentiate this new Turkey clearly from the old.*⁶¹¹

In a sharp contrast to Turkey, Iran continued with its centuries old political framework where Tehran remained the capital city tended only to strengthen the influence of history and tradition in Iran. The geographical boundaries, the political system, the capital and the composition of population of the Qajar and Pahlavi dynasties were the same. Except the ruler, nothing changed in Iran. So, it was easier to create a new ideology for Atatürk. He just gave his country a new identity in accordance with the new situation of Turkey.

4. The influence of International factors

As it was explained in the previous chapters, influence of the western powers on judicial reforms was also played important role. For instance there was a strong correlation between the abolishing of the capitulations and the civil code in Iran and Turkey. In other

⁶⁰⁶Pfaff, Op. Cit., p.87

⁶⁰⁷Zürcher, "The Ottoman Legacy of the Kemalist Republic", p.100

⁶⁰⁸Pfaff, Op. Cit., p.85

⁶⁰⁹Zürcher, "The Ottoman Legacy of the Kemalist Republic", P.96

⁶¹⁰Ibid., p.98

⁶¹¹Pfaff, Op. Cit., p.86

words, the abrogation of capitulations was one of the important reasons which encouraged both leaders to create a new civil code.

For instance, in Iran, on 27 April 1927 Reza Shah announced, he wished to abolish the capitulations existing in Iran. And On 10 May 1927, the 1856 treaty with the USA was terminated by the Iranian government. The abrogation was going to be effective after one year. Simultaneously, Iran took similar action with regard to other countries.⁶¹² Although the western powers accepted to terminate the capitulations, a new judicial system that would replace the capitulations was a matter of concern for them. So, the western powers insisted that they would tolerate the ending of capitulations only if Iran adopted a western-style judicial system which would provide guarantees for the security of westerners in Iranian courts.⁶¹³

On the other hand, the Treaty of Lausanne between Turkey and The allies had an important influence on civil code reforms. With The Treaty of Lausanne in 1923, the great powers of the world recognized the Kemalist state as the legitimate authority within Turkey's current boundaries.⁶¹⁴ This agreement affected not only the international relations of the Turkey but also influenced the ongoing judicial reforms of the new republic, because one of the important issues of this agreement was the capitulations. Atatürk just like Reza Shah wanted to abrogate the capitulatory system as soon as possible.⁶¹⁵ Turkey's pleas for abrogation were accepted by France and Great Britain *only on the condition that Turkey's non-Muslim minorities were assured protection under Western-style laws with no evidently discernible links to Shari'a*.⁶¹⁶ So, by signing the Lausanne Peace Treaty, the new Turkish Republic had to reorganize its legal and court system according to the demands of the League of Nations⁶¹⁷, in order to provide for non-Turkish minorities an adequate modern legal system.

⁶¹²Zirinsky, Op. Cit., p. 93

⁶¹³Ibid., p. 88

⁶¹⁴Yılmaz, Op. Cit., p.16

⁶¹⁵Nadolski, Op. Cit., p. 518

⁶¹⁶Umut Özsu, p.64

⁶¹⁷Oguz, Op. Cit., p.380

5. Conclusion

In the present study, I contend that social structure of society often has implicit but profound effects on policy implementation. To understand a state, its leaders and their ability to make rules for their population and various social groups which in turn also influence the state and its leaders – one must start with social structure. This social structure cannot be conceived as a variable independent from historical experiences.

Historical experiences of both Turkey and Iran in terms of secularization were distinct. At least from 19th century onwards both countries followed their own paths, in many ways divergent from each other.

As already discussed in detail in previous chapters, modernization and secularization attempts were initiated by the Ottoman bureaucracy at the beginning of the 19th century. Before Ataturk rose to power, modernization and even secularization of the Ottoman's educational, judicial and political system had been nearly completed. For instance, prior to the foundation of a Turkish Republic, entire Ottoman judicial system, except civil code, had already been secularized. The secular courts were established and the Sharia courts were restricted to family law. Bounded by its religious context, the Ottoman Empire did its best in secularizing the country. No matter how secular they wanted it to be, the Empire still need to keep its religious legitimacy and hence cannot be completely secularized. Under such circumstances, without huge and destructive changes, it was impossible to establish a completely secular state for the Ottoman bureaucracy. The consequences of the First World War gave this opportunity to Ataturk i.e. to be able to break from the past and to have a fresh start. The timing of Ataturk's ascension to power could not have been better.

The founders of the Republic of Turkey not only adopted the previous Ottoman's reforms but also accelerated the modernization process in Turkish society. The foundation of this new Turkish Republic can be seen as a continuation of the reforms of the late Ottoman Empire.

Contrary to the Ottomans, the 19th century of the Qajar dynasty did not witness any serious modernization attempts. Some attempts took place during Prime-minister Mirza Taqi Khan Amir Kabir, but after his death, modernization attempts were discontinued. Marred with financial problems along with the suspension of modernizing reforms, the Qajars were unable to form a modern army. Similarly, an effective national bureaucracy and tax system could not be established. On the other hand, in Iran no secularization attempts to the Qajar

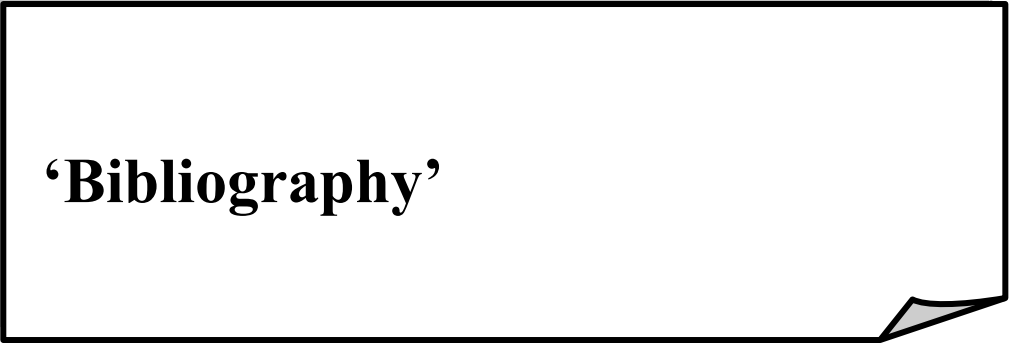
system took place in the 19th century and religion kept its importance in political and judicial arenas of the Qajars. And Sharia courts continued to play an important role.

It was Reza Shah who initiated the Modernization and secularization reforms to Iranian political, educational and judicial system in tangible terms. In terms of secularization and modernization we can talk about the legacy of the Ottomans, On the other hand, there was no significant legacy of modernization and secularization which could be inherited from the Qajars. That means before Reza Shah, contrary to Turkish society, Iranian society had not experienced secularization as such. They largely remained unfamiliar to a secular educational or judicial system.

Reza Shah and Ataturk both found themselves facing different social structures. Owing to the Ottoman modernization, the modern army and centralized bureaucracy were inherited to the new republic. And prior to the foundation of a Turkish Republic, the Ottoman modernization had already eliminated powerful groups in the Ottoman society. On the other hand, the Qajar never established an effective central government. The "power vacuum" created by weak Qajar governments filled by social groups consisted of leaders, landlords, and leaders of the Ulama resulting in a strong society governed by a weak state.

In brief, under these circumstances (insufficient historical experiences and strong society vis-a-vis the state) Reza Shah attempted to implement his reforms. These reforms were assertive to such an extent that what the Ottomans transformed in hundred years, it took Reza Shah only 15 years to reach the same transformation.

So, when we take into account social structures and historical experiences of both countries in terms of secularization, it can be easily said that Reza Shah's reforms were more assertive and less well-received than Ataturk's.



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"دولت در رویکرد جامعه": چهارچوب نظری

از طرف دیگر دولت در جامعه میگوید یک همفکری و همکاری بین دولت و جامعه وجود دارد. در حقیقت هر دو نهاد تحت تاثیر یکدیگر هستن. دولت ها الگوی برای جوامع هستند ولی دولت ها نیز بطور مداوم در حال الگو برداری از جوامع درون خود میباشند. یا به عبارت دیگر دولت ها و جوامع هیچ کدام سازمانهایی بی حرکت نیست.

براساس مگدال دولت با توجه به ماهیت خود بیشتر دنبال غلبه بر دیگر سازمانها و دادن اختیارات به آنهاست. که این هدف دولت را در مقابل سایر سازمانها قرار میدهد. آنها همچنین به دنبال کنترل اجتماعی میباشند.

بنابراین بر اساس مگدال مدل یک جنگ حیاتی در جامعه بر سر کنترل وجود دارد. یک جامعه تشکیل شده از گروه های مختلف اجتماعی در حال پیشرفت که جنگ قدرت بین آنها هرگز تمام نمیشود. آنها مدام در حال رقابت برای کنترل جامعه میباشند. و در سیستم مدرن جهان دولت وسط این مبارزه قرار دارد. نکته مهم این است که طبیعت و نتایج این جنگ قدرت مشخص کننده ساختار یک جامعه و همچنین مشخص کننده نهاد دولت است.

همانطوری که مگدال اشاره میکند نه تنها کسانی که قوانین را میسازند بلکه موفقیت در وفادار بودن به قوانین نیز مهم است. زیرا قدرت و اختیار همیشه با دولت نیست به طور مثال گروه های اجتماعی که دارای این قدرت هستند که قوانین را مربوط به گروه های دیگر اجتماعی کنند و آنها را مجبور به رعایت این قوانین نمایند.

به طور خلاصه، در تمام جوامع و مبارزه مداوم میان گروه های مختلف اجتماعی هستند. این مبارزات است که باعث متفاوت بودن جوامع میشود. در این زمین دولت ها از گروه های دیگر جامعه متفاوت نیستند و مثل تمام گروه های اجتماعی خارج یا بالای جامعه قرار ندارند. دولت جامعه را تحت تاثیر قرار میدهد و بطور مشابه گروه های اجتماعی نیز بر دولت تاثیر میگذارند. ساختار جامعه دارای یک اثر غیر مستقیم مهم در اجرای سیاست است. از این رو برای درک یک دولت، و رهبران آن و توانایی آنها برای ساختن قوانین برای مردمشان و گروه های مختلف اجتماعی که بر دولت و رهبران دولت تاثیر میگذارند باید با ساختار اجتماعی شروع کند.

قسمت اول: مقدمه

کمال آتاترک از ترکیه و رضا شاه از ایران به عنوان دو معمار سازنده دولت و ملت مدرنیزه در قرن بیستم شناخته شده اند. هر دو در ارتش خدمت کردند و قدرت خود را از طریق حمایت از ارتش محکم کردند. بعد از شکست دادن نیروهای متفق در سال ۱۹۲۲ آتاترک تمام قدرتها را در ترکیه امروزی یکی کرد. و آن را به عنوان یک جمهوری که او در راسش بود در سال ۱۹۲۳ اعلام

کرد. در حالی که رضا شاه در سال ۱۹۲۱ از طریق ارتش به قدرت رسید و سپس سلسله پهلوی رادر سال ۱۹۲۵ به وجود آورد. هر دو مجذوب ایده یک دولت و ملت مدرن شده بودند و به خاطر بوجود آوردن یک دولت مدرن هردو مجموعه ای از اصلاحات را در کشورشان انجام دادند. این اصلاحات بر اساس سه چیز بود. (۱) سکولاریزم (۲) ناسیونالیزم یا ملت گرایی (۳) دولتگرایی. برای به دست آوردن دو تای اول آنها به سومی احتیاج داشتند. برای مثال دولتگرایی که حمایت کند از سیاستهای دولت. دولتگرایی خود بر اساس پایه های وحدت و تمرکز بود. با توجه به ملی گرایی هر دو آتاترک و رضا شاه تلاش برای ایجاد یک هویت ملی جدید با انتشار یک معنی خاص از هویت ملی در کشور خود بودند. این هویت ملی جدید بر اساس تصویری از دولت و ملت در غرب مدرن بود در حالی که هنوز به عقاید قومی اسلامی خود وصل بودند از نظر فرهنگی و تاریخی چه ترک چه ایرانی. سکولاریسم برای آتاترک و رضا شاه مهم بود. چون بر اساس تفکر آنها سکولاریسم تنها راه ایجاد یک جامعه و دولت مدرن و متمدن بود. به همین دلیل آنها سکولاریسم را در مرکز دید خود به نوسازی قرار دادند.

بنظر میرسد در مقایسه بین آتاترک و رضا شاه اصلاحات آتاترک گسترده تر بود. او یک طرح بسیار محکمتر برای سکولاریسم دنبال میکرد برای مثال اودر سال ۱۹۲۳ به قدرت رسید و یک سال بعد در سال ۱۹۲۴ خلافت را کنسل کرد. سیستم آموزشی مذهبی در مدارس بسته شد. و دادگاه های مذهبی تعطیل شد و در سال ۱۹۲۵ مراکز مختلف دستورات سوری نیز بسته شد. ودر سال ۱۹۲۶ قانون سکولار مدنی تصویب شد. و بلاخره در سال ۱۹۲۸ الفبای عربی که در سراسر دوران عثمانی استفاده میشد با الفبای لاتین جایگزین شد. به عبارت دیگر، اصلاحات آتاتورک پایان دادن به ذهنیت دوگانه در سیستم های سیاسی، آموزشی و قضایی در آن زمان بود. فقط در عرض ۳ سال، یعنی تا پایان سال ۱۹۲۶، آتاتورک همه گروه های اجتماعی مانند علما و پاشا ها و علمای اسلامی کرد را که مخالف رژیم جدید بودند را حذف کرد. به خصوص، او قدرت علما بر نظام سیاسی، قضایی و آموزشی را حذف کرده بودند.

اما این اقدامات برای نخبگان کافی نبود زیرا آنها به خوبی از سلطه دین بر مردم به ویژه گروه های سنتی آگاه بودند بنابراین آنها تصمیم گرفتند برای کنترل دین تشکیلاتشان را سازماندهی کنند. وزارت شرع و موقوفه لغو شد و امور دینی بجای آن تاسیس شد. بر خلاف اوقاف در زمان عثمانی سازمان امور دینی یک سازمان مستقل نبود و زیر نظر مستقیم نخست وزیر بود. با هدف کنترل سازمانهای مذهبی توسط دولت و استفاده از آنها به عنوان ابزاری برای تحمیل ایدئولوژی در مورد اسلام استفاده میکردند. به عنوان دیگر جدایی دین از سیاست هدف اصلی دولت بود. به هر حال شرکتی برای کنترل دولت بر دین از طریق اداره امور مذهبی تاسیس شد. دولت جمهوری مادیات را از معنویات جدا نکرد بلکه معنویات را تحت کنترل مادیات در آورد.

از طرف دیگر در کشور همسایه یعنی ایران دولت رضا شاه تمایلی دو گانه به سکولاریسم نشان میداد. اصلاحات او بر اساس یک ساختار دو گانه بود که شامل ترکیب سنت و سکولاریسم میشد برای مثال او نظام آموزشی سکولار ایجاد کرد ولی مدارس مذهبی

را تعطیل نکرد. دادگاه سکولار تاسیس شد در حالی که دادگاه های مذهبی هنوز هم وجود داشته است. و در برخی از اصلاحات امتیازات مهمی به علما داده به طور مثال آنها از خدمت اجباری و قانون لباس معاف بودند. همچنین اصول سکولاریسم در قانون اساسی ترکیه در سال ۱۹۳۷ گنجانیده شده بود، که در ایران این اتفاق نیوفتاد. و سلسه پهلوی یک قانون اساسی جدید را معرفی نکرد. با توجه به دو مقاله مکمل قانون اساسی سال ۱۹۰۷ دولت باید از ایمان حمایت میکرد در حالی که رضا شاه نقش قانون اساسی که توسط اسلام در ایران برای قرنهای شکل گرفته بود را نادیده گرفت. او هرگز آن را از قانون اساسی ایران حذف شده است. آتاتورک، از سوی دیگر رهبر یک ترکیه کاملاً جدید با قانون اساسی و ایدئولوژی جدید شد. از این رو در زمان رضا شاه ایران یک دولت جدا از مذهب را به طور کامل تجربه نکرد. با این حال دولت قلمرو قضایی خود را به مناطقی که قبلاً توسط ساختارهای مذهبی تنظیم میشدند گسترش داد.

قسمت دوم : ایجاد یک قانون مدنی سکولار در کشور ترکیه

یک بخش ضروری از پروژه به طور کلی مهندسی اجتماعی اعلام شده توسط جمهوری جدید در دستور کار کمالیست برای اصلاحات حقوقی و قضایی بود. هر چند در طول دوره عثمانی تلاش سکولاریزاسیون صورت گرفت، ولی امپراطوری همچنان ذات مذهبی خود را نگه داشته بود از سوی دیگر، برای آتاتورک، سیستم قضایی ترکیه باید کاملاً مدرن میشد.

قانون اساسی جدید در سال ۱۹۲۱ معرفی شد در طول جنگ استقلال ترکیه که در سال ۱۹۲۴ مجدد مورد تجدید نظر قرار گرفت. سازماندهی مجدد دادگاه حزب جمهوری خواه بر اساس دادگاه فرانسه بود. برای پایان دادن به ذهنیت دو گانه در آوریل ۱۹۲۴ دادگاه شرع و دادگاه مخلوط (که بر روابط خارجی هایی که در قلمرو عثمانی بودند نظارت داشت) به طور کامل منسوخ شد. و در ماه مارس سال ۱۹۲۶ قانون مجازات جدید بر اساس ۱۸۹۹ قانون مجازات ایتالیایی معرفی شد. در ماه مه ۱۹۲۶ یک کد تجاری جدید، بر اساس منابع آلمانی و ایتالیایی، به تصویب رسید. و کد اعدام و ورشکستگی بر اساس سوئیس کد فدرال در سال ۱۸۸۹ در سال ۱۹۲۹ به تصویب رسید.

بدون شک، یکی از مهم اصلاحات آتاتورک ایجاد یک قانون مدنی سکولار در سال ۱۹۲۶. اولین کمیسیون قانون مدنی بود. پس از از بین بردن سلطنت و اعلام جمهوری، تحت وزارت دادگستری در سال ۱۹۲۳ تشکیل شد. یک قانون پیشنهادی شامل ۱۴۲ مقاله به مجلس ارائه شد. با این حال این قانون پیشنهادی در مرحله اول، اصول فق را دنبال میکرد و در مرحله دوم اصول دولت مدرن استفاده میشد. ولی تسلط ادامه از قوانین اسلامی بر خلاف اهداف سکولاریسم عمل میکرد. که این نمیتوانست توسط نخبگان حاکمیت جدید پذیرفته شود. به همین دلیل تصمیم به تشکیل کمیسیون دوم قانون مدنی در سال ۱۹۲۴ گرفته شد.

اگرچه قانون پیشنهادی دوم سکولار تر از اولی بود ولی باز هم میشد حضور مذهب را در آن دید. این پیش نویسی های طرح قانون مدنی موفق برآورده کردن خواسته های نخبگان حاکم به سوی نوسازی و سکولاریزاسیون نبود سیاستمداران در قدرت به شدت اعتقاد داشتند که تنها یک ترکیه سکولار و غربی می تواند موفق شود در هر دو زمینه اقتصادی و سیاسی. بنابراین، دین و دولت باید از هم جدا شوند و قوانین الهی حقوق اسلامی باید دور انداخته شود. بنابراین، کمیسیون قانون مدنی دوم نیز توسط نخبگان منحل شد. اعلام شد که یک کمیسیون جدید به منظور بررسی، ترجمه و حاشیه نویسی قانون مدنی سوئیس تشکیل می شود.

قانون مدنی سوئیس شامل ۹۳۷ بخش بود در سال ۱۹۲۶ پذیرفته شد. این قانون شش ماه بعد اجرا شد. این غیر قابل انکار است که قانون مدنی سکولار جدید تغییرات انقلابی مخصوصا در قوانین خانواده بوجود آورد. اعتبار انقلابی قانون مدنی ترکیه را عمدتا پنج تحول تشکیل میدهد. دز مرحله اول قانون مدنی جدید ازدواج مدنی را اجباری کرد. و مراسم ازدواج غربی را با مراسم ازدواج در ترکیه جایگزین کرد و چند همسری را غیر قانونی اعلام کرد. هیچ فردی که ازدواج کرده اجازه ازدواج مجدد را ندارد مگر آنکه ازدواج قبلیش بر اساس مرگ یا جدایی یا قضاوت ملغا شده باشد. و جدایی دیگر تنها بر اساس خواست شوهر صورت نمیگرفت. و حق جدایی بین زن و مرد برابر شد. و اجازه ازدواج به مسلمان با غیر مسلمان داده شد و از نظر ارثی دیگر زن و مرد با هم تفاوتی نداشتند.

قسمت ۳: اصلاحات رضا شاه در قانون مدنی

در سال ۱۹۲۰ شاهد ایجاد یک دولت مدرن در ایران بودیم. بازسازی سازمان قضایی بر اساس قانون ملی بخشی از دستور عمل دولت بود. و دولت تمایل داشت تنها قدرت و منبع قانون داخلی و بین المللی باشد. در چنین سیستمی هیچ گروهی در بیرون دولت و حتی در درون دولت بدون نظارت دولت قدرتی نداشت. از آغاز اصلاحات رضا شاه روشن بود که انحصار دولت در قانونگذاری مستلزم از بین بردن علما از دستگاه قضایی بود بسیاری از اقدامات رضا شاه آگاهانه طراحی شده بودند برای شکستن قدرت مذهبی در نظام قضایی طراحی شده بودند. این اصلاحات به دنبال ایجاد یک دستگاه قضایی سکولار بدون علما و مذهب بود. به تدریج قوانین شریعت توسط قوانین سکولار اروپایی و علما توسط افراد تحصیل کرده در غرب جایگزین شدند.

در سال ۱۹۲۷ رضا شاه علی اکبر داور را انتخاب کرد. و بعد از آن دولت مرکزی قوه قضاییه را از بین برد. و تا آوریل ۱۹۲۷ ششصد نفر از مقامات مذهبی در قوه قضاییه توسط افراد تحصیل کرده جدید جایگزین شدند. رضا شاه در آغاز سلطنت خود برایش غیر ممکن بود تا بتواند دادگاه های شریعت را تعطیل کند. بنابر این رضا شاه تصمیم گرفت تا قدرت را از علما در قوه

قضایه بتدریج بگیرد . و در آخر مفاد قوانین مدنی و جزایی که بین سالهای ۱۹۳۹ و ۱۹۴۰ بوجود آمد پایانی بود برای دادگاه های شریعت در سیستم قضایی ایران .

از سوی دیگر، در سال ۱۹۲۶ قانون جنایی معرفی شد و در سال ۱۹۴۰ اصلاح شد. آیین دادرسی کیفری در سال ۱۹۳۲ بوجود آمد. قانون سکولار از جرائم کیفری در سال ۱۹۳۶ به تصویب رسید و اصلاح شد. و یک قانون تجاری سکولار در سال ۱۹۳۲ نیز به تصویب رسید .

بدون شک سخت ترین کار برای سلسله پهلوی تهیه و تدوین قانون مدنی بود. در ژوئن سال ۱۹۲۷، علی اکبر داور پیشنهاد یک قانون مدنی جدید را به مجلس ارائه شده . هیچ شکی وجود ندارد که علی اکبر داور تمایل زیادی برای بوجود آوردن یک قانون مدنی سکولار داشت . در آغاز کار او با مخالفت هایی روبرو شد . برخی از این مخالفت ها از سمت دکتر مصدق بود که در آن زمان عضو مجلس و چهره برجسته سیاسی و قانونی بود . در طول سخنرانی دکتر مصدق در مجلس بسیاری از علمای دینی حضور داشتند و از او حمایت میکردند در پایان این سخنرانی وزیر قوه قضایی نیز با یک قانون مدنی جدید بر اساس اصول فقه اسلامی موافقت کرد . پس از اینکه این موضوع در مجلس مورد بحث قرار گرفته، شش ماه بعد، این کمیسیون توسط وزارت دادگستری در ۱۰ روز در سال ۱۳۰۶ توسط علی اکبر داور و به رهبری او تشکیل شد . حقوقدانان روحانی به ویژه در کمیته تهیه پیش نویس شامل ۹ عضو برجسته بودند .

کمیسیون زمان محدودی داشت و بعد از ۴ ماه کار اولین پیش نویس قانون مدنی در تاریخ ایران به مجلس در ۱۸ اردیبهشت ۱۳۰۷ داده شد . جلد اول قانون مدنی از ۹۵۵ مقاله تشکیل شده بود که به قوانین مالکیت و قراردادهای می پرداخت . با برخی از تغییرات بر اساس قانون مدنی فرانسه و سوئیس ولی اساسا بر پایه فقه جعفری بود . قانون مدنی بدون هیچ ابهامی بود و در آن از حقوق مالکیت که در یک سیستم سنتی مبتنی بر شریعت وجود ندارد شکل گرفته بود. جلد دوم و سوم قانون مدنی توسط مجلس دهم در سال ۱۹۳۵ تصویب شد . جلد دوم و سوم قانون مدنی از ۳۸۰ مقاله (۹۵۶-۱۳۳۵) که به وضعیت شخصی و مسائل خانواده میپرداخت . و بر خلاف جلد اول بیشتر بر اساس شریعت بود .

قوانین شریعت به صورت دست نخورده در آن باقی ماند به طور مثال با توجه به مقالات ۱۰۷۵-۱۰۷۷ مرد میتواند تا ۴ همسر قانونی و تعدادی همسر وقت داشته باشد و این چند همسری غیر قانونی نبود . با توجه به قانون طلاق، ماده ۱۱۳۳ از قانون مدنی آمده است که شوهر همسر خود را در هر زمان که بخواهد طلاق میدهد . از سوی دیگر، یک زن می تواند طلاق قضایی فقط تحت شرایط خاص مانند امتناع شوهر و یا عدم توانایی او در انجام وظایف زناشویی (جنسی) و یا سوء رفتار (هنری ۱۱۲۹)، و یا ابتلا به یک بیماری می تواند زندگی زن را به خطر اندازد (ماده ۱۱۳۰) داشته باشد.

بخش چهارم : تحلیل مقایسه ایی

۴.۱ دولت قوی و جامعه ضعیف در ترکیه

در واقع سؤال این است که چرا رضا شاه نتوانست به اندازه آتاترک موفق شود. و جواب میتواند این باشد که مشکلاتی که رضا شاه با آن مواجه شد با مشکلات آتاترک بسیار متفاوت بود. دولت جدید در ترکیه هیچ قدرتی را اعمال نمیکرد و بیشتر اصلاحات در آن زمان توسط گروه های رادیکال شکل گرفت. چرا که در طول زمانی که اصلاحات رادیکال آتاتورک در حال انجام بود، ترکیه یک دولت قوی در مقابل یک جامعه بسیار ضعیف و جامعه مذهبی بود. از سوی دیگر شرایط در ایران متفاوت بود وقتی رضا شاه اقدام به اصلاحات کرد. ایران یک دولت ضعیف در حال رقابت با یک جامعه قوی بود. رضا شاه در حال یک مبارزه خستگی ناپذیر با علما بود و همزمان در تلاش برای تثبیت قدرت خود بود.

سه گروه مخالف با دولت آتاترک وجود داشت. دسته اول علما بودند که در ترکیه سوفی نامیده میشدند و دسته دوم پاشاها (رهبران برجسته نظامی از جنگ استقلال ترکیه) و دسته سوم کردهای اسلامی-ناسیونالیست بودند. و هر گروه دلیل خودش را برای مخالفت داشت. علما با شخصیت سکولاریسم دولت مخالف بودند. کردها با شخصیت ناسیونالیست دولت و پاشاها مخالف شخص آتاترک بودند و نه دولت جدید

در مرحله اول آتاترک اقدام به حذف قدرت علما بر سیاست و تشکیل یک سیستم آموزشی قضایی جدید کرد. و یک پیشنهاد برای جدا کردن خلافت از سلطان و لغو سلطنت داد که توسط مجلس ملی در سال ۱۹۲۲ بعد از دوهفته پذیرفته شد. و آخرین سلطان عثمانی محمد ۶ از کشور خارج شد. و دومین گام بزرگ بر علیه روحانیت در سال ۱۹۲۴ در ترکیه برداشته شد. مجلس ملی ترکیه خلافت را لغو کرد. می توان گفت که علما علیه اصلاحات سکولار بودند و هرگز از حکومت آتاتورک حمایت نکردند، ولی بر خلاف علما در ایران آنها آشکارا مخالف اصلاحات نبودند و هیچ تظاهرات گسترده خیابانی علیه آتاتورک انجام ندادند. برخی از علما هم تصمیم به سکوت گرفتند و یا کشور را ترک کردند.

پس از حذف از علما از قدرت و استقرار یک رژیم جدید یک حزب و یک پارچه، مخالفت پاشاها و کردهای اسلامی-ناسیونالیست به جایی نرسید. برخی از رهبران برجسته نظامی که در جنگ استقلال ترکیه در سال ۱۹۲۴ شرکت داشتند. این پاشاها یک حزب مخالف در مجلس به نام حزب جمهوری خواه پیشرو تشکیل دادن. از سوی دیگر، در خارج از مجلس کردهای اسلامی، ناسیونالیست دست به شورش مسلحانه علیه دولت برای رسیدن به اهداف خود زدند. در سال ۱۹۲۵ دولت کردها را سرکوب کرد و بسیاری از آنها را دستگیر و رهبرانشان را به مرگ محکوم کرد. و همچنین دولت حزب جمهوری خواه پیشرو را نیز در سال

قابل توجه است که آتا ترک در سال ۱۹۲۳ به قدرت رسید و در عرض سه سال تمامی گروه های مخالف رژیم جدید مانند علما پاشاها و کردها را حذف کرد . و این بدلیل داشتن یک دولت مرکزی قوی و یک ارتش آموزش دیده که از زمان عثمانی باقی مانده بود این توانایی را داشت که مخالفان را حذف کند .

برای جواب به این سؤال که چرا جامعه ترکیه ضعیف بود باید نگاهی به دوران پایانی امپراطوری عثمانی کرد .

مجموعه ای از اصلاحات جدید در اوایل قرن ۱۹ معرفی شد که دولت مرکزی را با تشکیل یک ارتش شامل ۳۰۰۰۰ هزار سربازی از خطرات داخلی و خارجی حمایت میکرد . و بعدها ارتش گسترش یافت و با پیشرفته ترین سلاح ها مجهز شد در دوران ۱۸۴۰ نوسازی در دولت عثمانی سازماندهی بیشتری پیدا کرد . و تلاشهای بزرگی در تشکیل یک ارتش ملی از سربازان انجام شد . یک سیستم پولی ملی و یک شبکه ارتباطی در سراسر کشور از راه آهن و خطوط تلگراف ایجاد شد ، که باعث بوروکراسی بزرگ و تقویت اعتماد به نفس دولت مرکزی شد . این اصلاحات نه تنها دولت مرکزی تقویت کردند که باعث پیشرفت های قابل توجهی در سیستم قضایی و آموزشی شدند . به صورت موازی با سیستم های سنتی آموزش و پرورش که تحت مقامات مذهبی محلی بود ، نظام آموزشی سکولار تحت کنترل دولت توسعه داده میشد . میتوان گفت که یکی از مهم ترین اهداف در دوره تنظیمات ساختن یک نظام قانونی غیر مذهبی بود . وزارت دادگستری که در سال ۱۸۶۸ تاسیس شده بود به دنبال دادگاه نظامی که سکولار بود در سال ۱۸۶۹ به قوانین حقوقی سکولار معرفی شد کل سیستم قضایی عثمانی به غیر از قانون مدنی سکولار بود

با توجه به نوسازی در دوران عثمانی، ارتش مدرن و بوروکراسی متمرکز به جمهوریت جدید به ارث رسیده بود . و در نوسازی عثمانی گروه های قدرتمند در جامعه عثمانی حذف شده بودند . نوسازی عثمانی در تمام جنبه های دولت از جمله نظام حقوقی و آموزشی گسترش یافته بود و نهادهای مذهبی نیز مدرن شدند و از این رو در مقابل دولت ترکیه تضعیف شده بودند . بنیانگذاران جمهوری ترکیه، نه تنها اصلاحات رایج عثمانی بلکه شتاب روند نوسازی در جامعه ترکیه را به تصویب رساندند . پایه و اساس این جمهوری جدید در ترکیه در واقع ادامه اصلاحات از امپراتوری عثمانی بود .

۴.۲ جامعه قوی در مقابل یک دولت ضعیف در ایران

دو گروه اصلی وجود داشت که با دولت رضاشاه مخالف بودند . گروه اول علما و گروه دوم قبایل بودند . هر یک از گروه دلایل خود را داشتند . در حالی که علما در برابر شخصیت سکولار دولت جدید مخالفت میکردند ، قبایل مخالف شخصیت ناسیونالیستی رژیم

جدید بودند. هر دو گروه از مخالفان نیز در برابر قدرت گسترده دولت مرکزی بر همه اقشار جامعه مخالفت میکردند. به خصوص در دهه اول سلطنت رضا شاه که شاهد مخالفت های قوی به رهبری روحانیون میانه حومه شهر و خانهای قبایل با دستور کار دولت جدید بود.

گسترش قدرت دولت مرکزی بر همه اقشار جامعه یک وظیفه مهم بود. به منظور دستیابی به این هدف، دولت جدید و مدرن باید با کنار زدن دو تاز رقبای اصلی خود که علما و قبایل بود فکر میکرد. اما رضا شاه کاملاً آگاه بود که بدون داشتن یک ارتش قوی این کار ممکن نیست.

بنابراین، قانون سربازی، یعنی قانون خدمت نظام وظیفه در سال ۱۹۲۵ ارائه شد. ولی تا دو سال بعد این قانون اجرا نشد و در سال ۱۹۲۷ این قانون تصویب شد. در نسخه اصلی از قانون هیچ معافیتی در مورد روحانیت وجود نداشت. علما با گفتن این که ماموریت آنها حفظ تمامیت اسلام و به منظور حفاظت از روح مذهبی مسلمانان است. از این رو، آنها یک وظیفه مقدس و با ارزش دارند که باید از خدمت سربازی معاف باشند و مخالفت ها در مقابل خدمت اجباری در خیابان ها بیشتر شد. بازار در شیراز بسته شد و در ادامه اعتراض بسته ماند. اقدام مشابهی در شهر اصفهان و کرمانشاه، قزوین و تهران صورت گرفت. مخالفت علما با حمایت بازار تا ۳ ماه ادامه پیدا کرد. پس از آن رضاشاه با فرستادن تیمورتاش و دو نفر دیگر از روحانیون تهران به قم روحانیون را از خدمت اجباری معاف کرد.

رضاشاه قادر به شکست علما و قبایل در یک زمان نبود و نمیتوانست ریسک رقابت با علما را بپذیرد. بنابراین تصمیم گرفت به آرامی به اصلاحات خود نزدیک شود.

رضاشاه از یک ارتش مدرن استفاده کرد و این طوری به تهدید قبایل خودمختار پایان داد. در پایان سال ۱۹۲۹ همه شورش قبیله ای در تبریز و استان فارس توسط دولت سرکوب شد. از سوی دیگر، از بین بردن گروه های اجتماعی که مخالف اصلاحات در ترکیه بودند فقط ۳ سال طول کشید ولی رضا شاه با گذشت ۱۵ سال نتوانست به طور کامل مخالفان را حذف کند.

برای پاسخ به این سؤال که چرا دولت در مقابل جامعه ضعیف بود باید به یک قرن گذشته یعنی دوران سلسله قاجار نگاه کرد.

به دلیل وجود مشکلات مالی و توقف اصلاحات نوسازی در ایران قاجار موفق به تشکیل یک ارتش مدرن نشد. به طور مشابه، یک بوروکراسی ملی و نظام مالیاتی موثر نتوانست تشکیل شود. در مقایسه با نوسازی در دوران عثمانی در اوایل قرن ۱۹ سلسله قاجار ناموفق بود. سلسله قاجار هرگز موفق به تشکیل یک دولت مرکزی موثر نشد و دولت در مقابل با مخالفان و رهبران مذهبی و قبایل بسیار ضعیف بود. افزایش قدرت در این گروه های اجتماعی متناسب بود با ضعیف شدن قدرت در دولت بود و چون دولت مرکزی قاجار یک دولت ضعیف بود بخاطر محکم کردن قدرت خود رهبران سلسله قاجار مجبور به همکاری با علما شدند و هر دو

گروه قدرت یکدیگر را در بخشهای مختلف کشور تشدید میکردند

در دوره قاجار علما همیشه در سیاست نقش داشتند اما با جنبش مشروطه، نفوذ علما بر عرصه سیاسی افزایش یافته بود و بسیاری از این اعضای پارلمان از علما بودند که بیشتر موقعیت خود را به عنوان نمایندگان مردم ثابت کردند. در مدتی کوتاه انقلاب مشروطه هیچ پیشرفتی را ندید. اگر چه رسماً دادگاه های شریعت بخشی از سیستم قضایی قاجار شد. در عمل، آنها مستقل و خارج از کنترل دولت بودند. و قدرت قضایی و آموزشی هنوز در دست روحانیت بود.

بخش ۵: نتیجه گیری

در مطالعه حاضر، من ادعا می کنند که ساختار اجتماعی جامعه اغلب ضمنی است. برای درک یک دولت و رهبران آن و توانایی آنها در ساختن قوانین برای جامعه و گروه های مختلف اجتماعی که این گروه های اجتماعی و جامعه نیز بر دولت و رهبران آن تاثیر دارند باید ابتدا از ساختار اجتماعی شروع کنیم. این ساختار اجتماعی را نمیتوان به عنوان امر مستقل از تجربه های تاریخی دانست. تجربیات تاریخی هر دو کشور ایران و ترکیه در سکولاریزاسیون متفاوت بودند. حداقل از قرن ۱۹ به بعد هر دو کشور مسیرهای بسیار متفاوتی را رفتند.

همانطور که قبلاً در جزئیات در بخش های قبلی گفته شد، تلاش های نوسازی و سکولاریزاسیون و بروکراسی در ترکیه قبل از به قدرت رسیدن آتاترک و در قرن ۱۹ شروع شده بود. نوسازی و حتی سکولاریزاسیون نظام آموزشی و قضایی و سیاسی که در زمان عثمانی شروع شده بود نزدیک به اتمام بود. همچنین، یک پایگاه اجتماعی در زمان عثمانی برای حفظ و ادامه این اصلاحات وجود داشت. بنیانگذاران جمهوری ترکیه، نه تنها اصلاحات قبلی عثمانی را تصویب کردند بلکه به شتاب در روند نوسازی در ترکیه جدید پرداختند. پایه و اساس این جمهوری جدید ترکیه را می توان به عنوان یک ادامه اصلاحات از امپراتوری عثمانی دید.

بر خلاف امپراطوری عثمانی در ایران سلسله قاجار در قرن ۱۹ هیچ تغییر مهمی به سمت مدرنیزه شدن نداشتند. اگرچه در زمان میرزا تقی خان امیر کبیر تغییرات کمی به سمت مدرنیزاسیون انجام گرفت که پس از مرگ او این اصلاحات نیز متوقف شد. با توجه به مشکلات مالی سلسله قاجار و نداشتن یک ارتش مدرن اصلاحات امکان پذیر نبود. در زمان قاجار در قرن ۱۹ هیچگونه اصلاحات سکولاریسم در ایران اتفاق نیوفتاد و قدرت علما بر سیاست همچنان زیاد بود و دادگاه های شریعت نقش مهمی در جامعه داشتند

این رضا شاه بود که اصلاحات مدرنیزاسیون و سکولاریزاسیون را در نظام سیاسی، آموزشی و قضایی ایران به طور جدی آغاز کرد. از نظر سکولاریزاسیون و مدرنیزاسیون ما می توانیم در مورد میراث عثمانی برای ترکیه جدید صحبت کنیم از سوی دیگر، هیچ

میراث قابل توجهی از نوسازی و سکولاریزاسیون از زمان قاجار برای ایران دوران رضا شاه باقی نمانده بود.

این به این معناست که قبل از رضا شاه، بر خلاف جامعه ترکیه، جامعه ایران سکولاریزاسیون را تجربه نکرده بود. و آنها تا حد زیادی با یک سیستم آموزشی یا قضایی سکولار ناآشنا باقی مانده بودند. رضا شاه و آتا ترک هر کدام با ساختارهای مختلف جامعه روبرو شدند. در مورد ترکیه به جا ماندن یک بروکراسی و ارتش مدرن از دوران عثمانی پایه های یک جمهوریت جدید را محکو کرده بودند. در مقابل سلسله قاجار هرگز یک دولت مرکزی قوی را نساخت و قدرت طلبی قاجار باعث ایجاد یک دولت ضعیف در مقابل گروه های اجتماعی مانند علما و سران قبایل شد.

به طور خلاصه در چنین شرایطی رضا شاه تلاش برای انجام دادن اصلاحات کرد و توانست اقداماتی را که دولت عثمانی در طول یک قرن انجام داد در طول ۱۵ سال انجام دهد.

بنابراین بر اساس ساختار اجتماعی و تاریخیچه هر دو کشور در مورد سکولاریسم بسادگی میتوان گفت قاطعانه تر بود ولی به خوبی اصلاحات آتاترک مورد پذیرش قرار نگرفت.

چکیده

این پایانامه در مورد بررسی مراحل نوسازی و سکولاریزاسیون توسط رضا شاه و آتاترک است. و تلاشهای آنها برای سکولاریزاسیون سیستم قضایی مخصوصاً قانون مدنی، هدف اصلی این پایانامه برای جواب به یک سؤال ساده است که چرا رضا شاه بر خلاف آتاترک نتوانست سیستم قضایی بخصوص قانون مدنی را بر اساس سیاست سکولار که میخواست اصلاح کند.

این مطالعه بر اساس چهارچوب نظریه دولت در جامعه است. بر اساس این تئوری در بعضی از کشور های پیشرفته مبارزه دائمی بین دولت و رهبر گروه های اجتماعی و رهبران مذهبی و بر سر کنترل جامعه وجود دارد. و قدرت گروه های اجتماعی ممکن است اولویت های رهبران دولت تاثیر گزار باشد و باعث ضعف توانایی دولت در اجرای قوانین و اجرا سازی سیاست شود.

در این پایان نامه من به این نتیجه رسیدم که تفاوت بزرگ بین آتاترک و رضا شاه در سکولار کردن ایران و ترکیه این بود که ترکیه در آن زمان مدریزه بود . ولی تلاشهای رضا شاه برای مدیرنیزه کردن و سکولار کردن جامعه ایران به دلیل ناتوانی رضا شاه در تشکیل قانون مدنی جدید به نتیجه نرسید. و این امر به دلیل رهبری ضعیف رضا شاه و نفوذ قدرت علما و بخش های محافظه کار در یک جامعه قوی بود



دانشگاه تهران

دانشکده مطالعات جهان

گواهی دفاع از پایان نامه کارشناسی ارشد ناپیوسته

هیات داوران پایان نامه کارشناسی ارشد ناپیوسته آقای ارسین چلیک

شماره دانشجویی: ۶۵۰۸۹۲۰۰۸ دانشکده: مطالعات جهان رشته تحصیلی: مطالعات ایران

با عنوان: آتاتورک و رضا شاه: بررسی اصلاحات سکولار آنها در قانون مدنی

Ataturk and Reza Shah: Evaluating their Secular Reform to the Civil Code

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با نمره نهایی: به عدد به حروف

۱۹ نوزده

با درجه عالی ارزیابی نمود.

ردیف	مشخصات هیات داوران	نام و نام خانوادگی	مرتبه دانشگاهی	دانشگاه یا موسسه	امضاء
۱	استاد راهنما	دکتر مهدی آهویی	استادیار	دانشگاه تهران	
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دانشگاه تهران

دانشکده مطالعات جهان

آتاترک و رضاشاه :

بررسی اصلاحات سکولار آنها در قانون مدنی

نگارش :

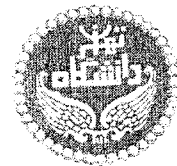
ارسین چلیک

استاد راهنما :

دکتر مهدی آهوئی

پایان نامه برای دریافت درجه کارشناسی ارشد در رشته مطالعات ایران

شهریور ۱۳۹۴



دانشکده مطالعات جهان

تعهد نامه اصالت اثر

اینجانب **چلیک** متعهد می شوم که مطالب مندرج در این پایان نامه ارشد / رساله دکتری حاصل کار پژوهشی اینجانب است و به دستاوردهای پژوهشی دیگران که در این پژوهش از آنها استفاده شده است، مطابق مقررات ارجاع و در فهرست منابع و مآخذ ذکر گردیده است. این پایان نامه / رساله قبلاً برای احراز هیچ مدرک هم سطح یا بالاتر ارائه نشده است. در صورت اثبات تخلف (در هر زمان) مدرک تحصیلی صادر شده توسط دانشگاه از اعتبار ساقط خواهد شد. کلیه حقوق مادی و معنوی این اثر متعلق به دانشکده مطالعات جهان دانشگاه تهران می باشد.

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