From Duality to Monism: Laws and Orders in Turkey as a Story of Continuity…

and the Recent Rupture

There is no question that the old – now deceased, Republican - Turkey was "perpetually" transitioning to democracy and was going after what was an ever-elusive "rule of law" without ever attaining it, coming close at times and lagging much behind, persistently… But the "new Turkey", whose emerging characteristics since 2012 provide clues in abundance about its orientation, should not be seen merely as the continuation of the old. Particularly since 2012 till the summer of 2018, significant ruptures occurred that render "the continuity story" not justifiable. A "rupture story" to analyze the direction of Turkish politics is more and more applicable. This effort at describing the historical absence of a "rule of law" regime in Turkey, and the laws and orders of such, will highlight and define the continuities and ruptures between the old and the new political systems.

I will argue that Turkey was a "dual" state between 1923 and 2007 (in two senses). On the one hand, it institutionalized a potentially democratic (meaning, egalitarian) legal/rational framework. This framework *coexisted*, on the other hand, in perpetual tension with essentially anti-egalitarian and repressive a) illicit and/or extrajudicial state-led practices, as well as b) a tradition-bound patrimonial *nomos* or customary law.

The year 2007 when the so-called *Ergenekon* trials were launched could have been a turning point towards the elimination of this tension and the establishment of a genuinely "rule of law" based regime. But the direction that the *Ergenekon* trials have taken, led *not* to their publicized and overt aim, namely, the purge and punishment of the centers of power that were responsible for extrajudicial and illicit activities that were rampant especially in the Kurdish populated regions, and were characterized by systematic violence. Instead; through the dissemination of what transpired to be mostly manufactured evidence (Rodrik 2014), these trials were diverted from their publicized orientation and were instead instrumentalized by the Justice and Development Party (AKP from now on) to *monopolize* the security

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structure, the military in particular. By that time, the police forces and the bureaucracy were already, to a significant extent, in control of the AKP-Gulen[1] coalition.

As the sanctioning power of the states is exercised through civilian and military bureaucracies, i.e., through a) the army, b) police forces, c) bureaucracy and d) the judiciary (Neumann 1941, 1954); more than half of this institutional power came under the almost total control of the AKP by the end of 2009. What remained free from total monopolization of sanctioning power was certain chunks of the bureaucracy, particularly in public universities and at lower levels in ministries, and the judiciary.

The referendum to amend supposedly "the 26 articles of the military-drafted 1982 constitution," that took place on the 30th anniversary to the day of the 1980 military coup, but contained the core clause that essentially gave the total control of the Higher Courts to the AKP finalized the process of monopolizing the judiciary. The amendments were supported by a considerable segment of the active and influential journalists, intellectuals and academics. Their strong endorsement was crucial for branding and marketing this referendum domestically and internationally "as a final step towards democratic civilian control." The acceptance by the electorate of the amendments by 58% in favor, ensured the packing of the judiciary, and more or less completed the monopolization of the entirety of the coercive sanctioning power of the state in the hands of the AKP.

The state had changed hands.

The period from 2011 till the present, therefore; must be read as a "reconstruction" process, where the law regime managed to display yet new forms of lawlessness and staged moments of

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[1] An influential Muslim cleric who has (or had, till recently) many followers in Turkey and who is residing in the US since 1990s. For many decades, his network conducted highly publicized interfaith activities and established and ran hundreds of charter schools all around the world. In Turkey, the graduates of the Gulen schools sought employment in pivotal positions and became a significant force in higher ranks of the military and civilian bureaucracy. While the network was part of the AKP till 2012, around that time, the coalition between the AKP and Gulen community began to dissolve. Gulenites were labeled "FETO" after the 2016 coup attempt that they allegedly organized and their alleged members were ostracized and criminalized as members of a terrorist organization. The severity of the human rights violations that their alleged members were subjected after July 2016 coup attempt are widely documented.

significant rupture. The monopoly of political power is now shaping the education system, economic system and is systematically eradicating civil society and urban culture.

The worry is, more is yet to come…

In the following, I will first briefly lay out how "rule of law" is defined in the literature, how it is assessed and measured by the indices that measure it. Then I will summarize the attributes of the "rule of law" or more appropriately "law and order regimes" that were prevalent in Turkey till 2007. In the last part, I will focus on the ruptures of 2012, 2013, 2015, 2016 and 2018. More specifically, I will argue that Turkey was a "dual state," defined by the facticity and validity of rule by a) legal/rational norms, b) extrajudicial and illicit practices, and c) customary laws whose periodic, and/or issue- as well as region-specific reign was also interrupted by periods of "rule by military decree." The body of law was mixed in nature because it combined egalitarian, thus potentially democratic legal/rational form and substance *with* anti-egalitarian and identitarian, or thick, therefore antidemocratic form of law and substance. This is the primary reason why, *even on the paper of the constitution*, Republican Turkey was never a regime of rule of law.

Coupled with this formal and institutionalized duality, also the implementation of the law, depending on the issue, showed fluctuation from group of people to group of people, region to region and period to period. These fluctuations can be described as "based on the foundational identitarianism" and "extrajudicial and/or illicit" when the source of the arbitrariness was *the state itself*, and "customary or patrimonial" when the traditional status order (that correlated with terms such as "rural," "tribal," and patriarchal, etc.) resisted the implementation of the legal/rational and formally egalitarian citizenship norms, and especially gender equality.

Apart from these laws and orders, there were episodic as well as a continuous practice of "rule by military decree" defining the total and/or region-based military intervention periods (over the Kurdish region seamlessly, and over the total territory in 1960-62, 1971-74, 1980-1983, 1997).

The nature of the rupture in the law regime that came to the surface most clearly in 2012 and is in effect since then, can be characterized as "rule by civilian/caesaristic decree."

The long-term prospect of this deliberately pursued exit from the Ottoman-Republican neopatrimonial "rule by law," in order to institute a total personalization of power in Erdogan's person is not certain. But it is certain that the source of the law is now solely Erdogan, and that as the *pouvoir constituant*, he is the "law-and-order setter" who is – yet? - unbound by it. Now the open-ended and empirical question is as to whether in a land that has never experienced such an entirely lawless rule - certainly not under the Ottoman Empire[2],- a completely arbitrary, completely privatized "order" can be established.

Rule of Law, Rule by Law, Lawlessness and Dual State

The most widely accepted formulation of "rule of law" is found in Lon Fuller's (1964) eight criteria, i.e., *generality, publicity, prospectivity, intelligibility, consistency, practicability, stability and congruence*. These criteria bring together formal and minimally necessary substantive characteristics that "rule of law" should contain. These were also problematized by people who found their scope either too narrow, or on the contrary, too wide.

Furthermore, "law" is of course always in tension with "power." The stability and predictability that could be expected to emerge from a general application of Fuller's criteria is, after all, dependent upon the politically dominant actors' willingness to abide by it and their - what is in fact self-limiting - decision to recognize "democracy as the only game in town" (Przeworski 1991).

Throughout history, "rule of law" is usually reduced to a mere "rule by law," particularly when it could not bind the hands of those who wield, and exercise, political authority. Only after WWII, after the horror of the Holocaust, with the rise of constitutional democracies, in some parts of the world, the liberal democratic principles and minority guarantees that most directly pertain to, and secure the rule of

[2] The only exception or the only genuinely absolutist period during the Ottoman Empire was during certain moments in Abdulhamit II period (1876-1909).

law, such as, “minority rights,” counter-majoritarian devices and “equality before the law,” and “equality of the ruler and the ruled,” could be firmly institutionalized.[3]

In the rest of the world, military interventions, *coup d’etats*, suspension of rule *of* - and *by* – law regimes, and violation of civil and political rights, were rampant, all in the name of “social order” or for the permanence of one ideology or another.

The rise of financial capitalism and the intensification of globalization throughout the 1990s engendered yet another type of “duality” in globally integrated emerging market cases where, while the domestic populations were ruled by arbitrariness, foreign investors were promised “rule of law” or “security of life, liberty, property.” As Tushnet (2014) showed in the case of Singapore, where a dominant one-party exists and can change the law at will, two sets of laws came into being. This created a kind of “dual state” (Fraenkel 1941) that was also prevalent under many other authoritarian and totalitarian regimes in history, such as; the transformation of law from Weimar to the Third Reich, apartheid South Africa (Meierhenreich 2008) and military dictatorships of Latin America (O’Donnell 2004) where, O’Donnell argued, there was “rule by law” - rather than rule of law - coexisting with sheer lawlessness or extrajudicial activity.

The concept of “dual state” in political science and constitutional law literatures usually signify two kinds of duality when they refer to “duality”: a) the duality within the promulgated body of law itself, and b) the duality between the positive law and its implementation.

“Duality” is also the crux of a closely related literature on “neopatrimonialism,” which traces the coexistence and validity of two sets of laws that are implemented side by side and often in conflict with one another[4], creating arbitrariness and uncertainty that are very much desired by the rulers in such

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[3] And that is precisely what is under attack nowadays all around the world, a phenomenon that is getting discussed under a misnomer, i.e., “populism.”

[4] On patrimonialism and neopatrimonialism, see Roth, Guenther. "Personal Rulership, Patrimonialism, and Empire-Building in the New States." *World Politics* 20, no. 2 (1968): 194-206. doi:10.2307/2009795, Eisenstadt, S. N. 1963. *The Political System of Empires*. New York: Free Press, Eisenstadt, S. N. (1973) *Traditional Patrimonialism and Modern Neopatrimonialism* (London: Sage Publications), Theobald, R. (1982). “Patrimonialism.” *World Politics, 34*(4), 548-559. doi:10.2307/2010334, Heeger, *The Politics of Underdevelopment* (London: Macmillan, 1974), Erdmann, Gero and Ulf Engel (2007) “Neopatrimonialism Reconsidered: Critical Review and Elaboration of an Elusive

states. In this Weberian literature, duality refers to the plurality of contextually equally valid and therefore factual, formal/legal norms and informal traditional, patrimonial, tribal norms.

In Turkey's case till recently, *all* of these meanings of duality in fact applied, except for the domestic v. international duality, and these dualities were jealously guarded by the state and by those who wielded its powers. Extrajudicial and illicit practices against "terrorists[5]" and collective punishment of those who are accused of "crimes against the state" also had some legal basis, given that the basic law clauses in the constitutions of Turkey, and its anti-terror legislations are filled with justifications for suspension of all sorts of basic laws, and the keywords that justify such drastic intervention are generally "order and security."

This means that in reality there was no functional "hierarchy of norms" within the body of positive law in Turkey in the sense that the constitutional and legal norms could contradict one another and the contradictoriness of the legal statements was still preserved. This type of duality in Turkish law was similar to Fraenkel's[6] (1941) and O'Donnell's definition of duality as anti-egalitarian exception-generating contradictory laws that seemed to be waiting for their turn. As a result, although not entirely formally, there was in fact one law for the Turk, one law for the Kurd, one law for the Sunni Muslim and one law for the non-Muslim or the non-Sunni, and the fact that these existed and coexisted all along became most visible to participant observers when there was a security-related crisis.

Secondly, "honor killings" of women and LGBT individuals by their family members, tribal feuds, "child" marriages, letting the rapist marry the raped woman or child, and thereby letting him go unpunished, and patronage and clientelism as an exchange of gifts, rents and offices for votes were

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Concept," *Commonwealth & Comparative Politics*, 45:1, 95-119, DOI: 10.1080/14662040601135813. Lemarchand, R. & Legg, K. (1972) "Political Clientelism and Development," *Comparative Politics*, 4(2), pp. 149–178, and "Patrimonial Empire-Building and the case of Authoritarian Turkey," co-authored by Candas, Aysen and Soli Ozel (forthcoming, presented at Yale Law School's Middle Eastern Legal Studies Seminar, January 2019).

[5] It must be added that Turkey always defined "terrorism" too broadly even including freedom of speech under its umbrella, "terrorist activity" often simply meant verbal or written, nonviolent opposition to the state or the government.

[6] Fraenkel, Ernst. 2017 (1941). *The Dual State*. Oxford University Press. Also see, Jens Meierhenreich, *The Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1652-2000* (2008)

traditional/patrimonial/tribal/customary practices that were and are justified on the basis of traditional forms of domination. These existed along, but in tension with, the modern legal/rational; and on gender issues, also usually egalitarian, legal norms[7].

Thirdly, it is highly probable that since 2013 when the rule of law was gradually and then in the post-coup period totally suspended - the details of which are in the following pages - Erdogan's private cabinet members were telling foreign investors that their investments are safe in Turkey because "Erdogan personally promises to keep them so." This is probably introducing, finally, domestic v. international duality that Tushnet[8] spoke of in relation to Singapore's practices.

The dualities in law that are delineated by the literature in these ways derive from and are replicated by the fact that in order to institute the eight criteria Fuller spoke of, *other transformations and establishment of other institutions* are *also* necessary. "Rule of law" and its existence, its maintenance and implementation require not only a certain type of law, but also a certain type of state with certain kinds of institutions and requires a society that is the product of these specific norms and institutions. By "rule of law," then, I will be referring not merely to a minimalist account of the term. Following the literature at hand (Tushnet 2014, O'Donnell 2004) I will assume that for the minimalist account of Fuller's eight criteria to function at all, other institutions are also necessary[9]. Tushnet underlines the significance

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[7] On the contradictions between Turkey's gender-egalitarian legal norms and the family law, and the women's campaigns to eradicate the duality, see Ayata, Gokcecicek and Aysen Candas (2018) Mahnaz Akhami, Yakin Ertürk, and Ann Elizabeth Mayer eds., *Feminist Advocacy, Family Law and Violence against Women*, chapter on Turkey, London and New York: Routledge, 178-197.

[8] Tushnet, Mark (2014) "Rule by Law or Rule of Law?" Asia Pacific Law Review, 22:2, 79-92, DOI: 10.1080/10192557.2014.11745925.

[9] Also see Shapiro, Ian. *The Rule of Law. Nomos XXXVI* (New York: New York University Press, 1994). Raz, Joseph. "The Rule of Law and Its Virtue," *The Law Quarterly Review* 93 (1977); and last but not the least, Herbert L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961).

of party competition and human rights as check and balance mechanisms, while O'Donnell argues that rule of law necessarily entails democracy.

Similarly, while existing indices on rule of law presently differ on the criteria on the basis of which they rank countries, the research on their rankings and methodologies concur that their rankings nevertheless converge (Versteeg and Ginsburg 2017). There are seven indices that rank countries (Bertellsman Transformation Index BTI, three indices by Freedom House -Freedom in the World, Countries at the Crossroads, Nations in Transit, - Global Integrity Index GI, International Country Risk Guide PRS, and Worldwide Governance Indicators WGI (Skaaning 2010). Despite their differences, especially with regards to minimalism and maximalism and *what* they measure as "rule of law" and *how* they measure them, all of these measures include "judicial independence" and "judicial efficacy" (Versteeg and Ginsburg 2017: 109) in their criteria to assess the level of rule of law in a country (Versteeg and Ginsburg 2017: 109). "Property rights, corruption, crime and violence and equality" are included in three of the indices, while "contract enforcement, separation of powers, control over police and fundamental rights" are covered by two. Democracy, human rights, constitutionalism, judicial independence, corruption and impartial government seem to be the neighboring concepts of rule of law (Versteeg and Ginsburg 2017: 112-113). Any analysis of rule of law in a certain context must necessarily involve also an analysis of the outcomes in some, or most of these areas.

Given the *substance* that seems necessary to support the *form* of rule of law, it is more or less futile to sharply distinguish the meaning of rule of law from civil - and political liberties and equal citizenship, on the one hand; and from other preconditions of democracy, such as, separation of powers and judicial independence, on the other. Application of rule of law requires a reorganization of both state-citizen relations and the state's institutions through which political power is distributed and exercised.

It turns out that to become fully functional, Fuller's supposedly minimalist criteria require something akin to a maximalist account of rule of law. This means that to give an accurate account of the attributes of and changes in Turkey's law and order regimes that pertain to the question of "rule of law," we need to address *at the very least* civil rights, equal citizenship, judicial independence and efficacy, and

highlight the systematic disruptions in the general application of the law in the historical context in which these applied.

Turkey 1923-2007: Duality as a Birth Defect and the Identitarian Citizenship Definition

Turkey was a "dual" state between 1923 and 2007, in the first two senses defined above, without the third meaning, that is explained in relation to Singapore.

Throughout the 1990s and 2000s, it was often described as a transitional regime, a tutelary regime or a delegative democracy[10] (Ozbudun 2000, 2011). The thick-identitarian Turkish-Muslim character of the republic sat right behind its *somewhat* secular state. A diligently tamed, moderated and muted interpretation of Islam[11] that was rendered compatible with the formal/legal norms of gender and non-Muslim "formal" equality; and the immense fear of the loss of this delicate balancing act could only be regulated, according to its guardians, through periodic military interventions, and the constant threat of military intervention.

To explain what we mean by the "thick identitarian" character of the state, we need to – at least briefly - focus on two birth defects that Turkey had, when the Republic came in to being. The first is the Kurdish issue, and the second, the top-down rejection of radical interpretations of Islam, or the repression of what we today call "political Islam's claim on the state." These two also constituted the two major security threats that Republican Turkey defined as such.

While 1923-1989 period showcased symmetrical suppression of both[12] of these issues with relative degrees of success; from 1989 onwards, it was no longer possible to completely suppress the rise

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[10] Guillermo O'Donnell coins the term in his 1993 Kellogg Institute paper titled "Delegative Democracy?" a copy of which can be found here: https://kellogg.nd.edu/sites/default/files/old_files/documents/172_0.pdf (last accessed in January, 2019)

[11] On debunking the widely circulated idea that Turkish state was "staunchly secular," see Kandiyoti, Deniz. 2012. "The travails of the secular: puzzle and paradox in Turkey." *Economy and Society*, 41, 4: 513-531. The fact is Turkey *was never sufficiently secular* and why this is so will be clear – though indirectly- when we explain the majoritarian-identitarian "default citizen" definition during the Republican years.

[12] There is room to argue that after 1950s the security threat was redefined as anticommunism and the security establishment both wanted to control and collaborate with Islamist movements.

of political Islamism as a political force given their electoral victories. Around the same time, the Kurdish issue culminated in "a low intensity" guerilla war in the heavily Kurdish populated region. Recognition of the *political* existence and the demands of Kurds as a political problem was a major issue for the founding ideology of the state. Therefore, their political representation at the parliamentary level, although achieved multiple times[13], was always eventually criminalized and culminated in the imprisonment of the Kurdish MPs.

The Kurdish issue as a birth defect, or a foundational problem, originates from the fact that Kurds, - naturally! - are not Turks, by definition; and/but the country is called Turk-ey, the official language of it is Turk-ish, and anyone who claims to be otherwise was sporadically and eventually criminalized as the founding ideology defines the inhabitants as strictly Turkish. Had the Turkish identity been more inclusive rather than thick and exclusivist and/or ethnicity and religion-based, it would have been perhaps possible for Kurds to define themselves as Kurdish-Turkish in time, but the fact that Turkishness is not and was not ever a new, inclusive, umbrella term but the name of a specific ethnicity and linguistic group (and for Turkists, even racial identity!) made it impossible for non-Turkish minorities to fully embrace these terms, and also rendered thick-identitarian nationalists in Turkey incapable of recognizing the equality of the country's minorities with their differences. For example, nowadays as we commemorate the assassinated journalist Hrant Dink, many call him "Armenian-Turkish" in which instance they use "Turkish" as if it were an umbrella term, but even in this good-intention to widen the meaning of "Turkish" to put it in inclusive usage, there is something thicker in it making it difficult for various identities to embrace it fully. And simply "Armenian" also would not do, as Hrant Dink was a native of Asia Minor, was a citizen of Turkey, and was not a diaspora- or Armenia-Armenian.

Kurds, much like Turks, in fact constitute a diverse group of people who speak mainly two dialects of Kurdish - Kurmanci and Zaza - and are composed of mainly - Sunni and Alevi[14] - Muslims. They have historically lived in the mountainous region in Southeast Anatolia and according to the historical records that reached us, for example, in the writings of the 17th century British consul in Smryna, Paul

[13] This means the representatives of the Kurdish movement were elected and became MPs but their role was "tolerated" till they expressed Kurdishness not merely as cultural but also as political identity.

[14] As in the case of Turks, Kurds are also roughly two thirds Sunni, one third Alevi.

Rycaut, they have always remained mostly autonomous from "the yoke of the state" during the Ottoman times. As the Ottoman Empire was a decentralized administrative structure, this was perhaps not too much of an anomaly but Rycaut underlines that the region's physical attributes rendered Kurds much less accessible to the Ottoman administrators compared with other groups.

While it is usually underlined that there was an implicit agreement between Mustafa Kemal and the Kurds between 1920-23 to continue as equal partners under the new Republic (Karlsson 2009, Bozarslan 1992, 2008, 2016), there is no doubt that the implicit agreement was over shortly after 1923 and Turkey was established as a Turkish state.

A very persistent, and in terms of its continuing influence, also regressive remnant of the Ottoman millet system in the whole region that was ruled by the Ottoman Empire is the fact that there is not a single ethnic/linguistic, and even today national, identity that is *not* at the same time seen, long-regarded and historically regimented as a religious identity. Turk meant Muslim, as much as Greek meant Christian. Kurds *qua* Muslims were part of the Muslim millet and were included under the umbrella of the Muslim millet although their regional concentration and the inaccessibility of the region rendered them more autonomous. Kurds were part of the legally "superior" Muslim millet of the Ottoman-style (a little bit more flexible) caste system. While this system recognized three Abrahamic religions as legitimate, and gave each the right to rule their members non-territorially, and through their own religious laws (Barkey and Gavrilis 2016), and was more tolerant in *that* sense compared with the inquisitions of medieval Europe, it was at the same time, from an egalitarian standpoint, in fact a caste system that regimented the population and recognized merely ascribed religion-based diversity and autonomy.

At a time when society was very static, trade routes were limited and the only path to upward social mobility was through a role in the bureaucracy, for many centuries, the Millet System managed to not allow any social mobility. While this lack of social mobility was true for both Muslims and non-Muslims, Muslims were considered to be the superior group and non-Muslims therefore had to pay a special tax. In the case of non-Muslims, there was no possibility of social mobility if they were not members of the clergy or tax collecting bureaucracy in their own communities, or if they did not convert to Islam. Conversion *from* Islam to other religions was "apostasy" according to Islamic law, while conversions from other religions *to* Islam was incentivized, albeit indirectly, through the special tax that

non-Muslims had to pay. *Devshirme* system systematically "recruited" ten-year-old Christian boys from their families, and converted, educated and made them into members of the high administrative bureaucracy in Istanbul. This was the only system where a coercive and compulsory form of the most consequential type of upward social mobility was created, and it involved conversion of Christian children to Islam.

Equal citizenship as well as language-based nationalisms, the double legacy unleashed by the French Revolution, impacted the Ottoman Empire in a major way, and this fact coupled with the impact of the new trade routes, decline of the old trading routes and the steady commercialization of agriculture. These, altogether, introduced dynamism to a very static society and eventually led to the splitting of the Christian millet into nine millets by the start of the 19th century (Karpat 1972, 2002). The betterment of economic circumstances and rise in economic power rendered – initially - Christian millets' merchant and trading classes incapable of taking orders from their own millets' clergies; and sparked the same spirit in the next four decades, in the relatively minor and recently urbanizing Muslim *ayan* class. External factors, in other words, led to a questioning and eventual collapse of the clergies'-supremacy-based Ottoman millets. The old status order based on religious regimentation was challenged through the rise of modern sense of social class, and the non-Muslims began to demand equal citizenship rights, immunities from special taxes and obligations. 1839 Tanzimat Reform, which came too late to keep the Greeks and Bulgarians under the Empire, nevertheless introduced the security of "life, liberty, property" for the first time and recognized equality for Muslim and non-Muslim alike. *That* constitutional moment was the forerunner of what claimed itself to be the "secular" Republic.

The legal/rationality instituted by the Republic (1923) contained three egalitarian constitutional level moves: a) equality of the Muslim and the non-Muslim, b) equality of men and women, and c) equality of the ruler and the ruled.

The first, equality of Muslim and non-Muslim, was a constitutional/legal level achievement of in fact Ottoman modernization, but had been negated under the same Empire's final years and in the most violent form, by the extermination of "the most Ottoman of all Ottoman subjects," the Armenians, in 1915. Nor 1915 was the first attempt to do so, as the absolutist and pan-Islamist Abdulhamit II, who is Erdogan's most favored Sultan and role-model, had rehearsed "social engineering through ethnic

cleansing" from 1876 onwards[15] (Deringil 1991, 1993), when he suspended the 1876 constitution and closed the parliament for thirty years.

The Republic of Turkey that was built on this terrible legacy, completely suppressed its Ottoman roots and introduced a selective amnesia also regarding the memory of its Armenians, and did its best to think of itself as a new and young republic. It tried, during the single party (Kemalist) period, to replace one thick identity (Muslim) with another one, namely Turkish in the form of linguistic-nationalism. Yet even during the single party – Kemalist - period, Turkish-Sunni Muslim was the default "correct" identity, and the propaganda and assimilationist policies forcing everyone to speak and write in Turkish, instead of remaining purely at the linguistic/nation-building level, "gained" further race-based tones during the 1930s. A very thick Turkish - and muted, moderated and crypto but ever-present – Muslim, in other words, a new *Turkish-Muslim* identity was forged, despite the written intentions of the Republic in its constitution. Ottoman Millet system's religion-based regimenting legacy was in this way redefined and in certain ways furthered under a new garb by the Republic; this time wedded to a moderated version of Sunni Islam and egalitarian citizenship norm with linguistic nationalism. This was very bad news not only for non-Muslims whose numbers had been drastically reduced and remained "perpetual foreigners" in their own land, but also for – Muslim - Kurds. As a result, crisis moments, or what was perceived by the state as security-related crises always resulted in a deep regress into this thick identity that was the regressive shadow identity behind the formally egalitarian citizenship model.

Denaturalization policies of the Republic during WWII which were implemented solely against non-Muslim citizens residing abroad, and enabled the sending of several thousand Ottoman Jews to concentration camps during the 1940s is the major evidence of this identitarianism at work. These citizens were not recognized as such by the Turkish State despite Gestapo's (!) repeated attempts to send

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[15] Deringil, Selim. (1991) "Legitimacy Structures in the Ottoman State: The Reign of Abdulhamid II (1876-1909). *International Journal of Middle East Studies*, Vol. 23, No. 3, pp. 345- 359. Also see, by the same author, "From Ottoman to Turk: Self-Image and Social Engineering in Turkey" in Gladney, Dru C. eds., Constituting the Nation In Japan, Korea, China, Malaysia, Fiji, Turkey, and the United States. Stanford: Stanford University Press, 1998, pp. 217-226 and (1993) "The Invention of Tradition as Public Image in the Late Ottoman Empire, 1808 to 1908." *Comparative Studies in Society and History*, Vol. 35, No. 1, pp. 3-29.

them to Turkey and were finally declared stateless and a number of them perished in Nazi concentration camps[16] (Guttstadt 2006). The 1934 "resettlement" of Jews from Thrace to Istanbul and their forced displacement from Edirne, the 1942 Estate Tax that extracted from non-Muslims ten times more than the formal tax rate, sending those who could not pay these heavy taxes to labor camps in Askale, the 1955 state-instigated pogroms, primarily in Istanbul, under the Menderes government, the 1964 deportation of 12.000 Greek-speaking Turkish citizens and indirect confiscation of their property[17], a few waves of "Citizen, Speak Turkish!" campaigns during the 1960s and '70s and lately, the increasingly fervent passion for re-Islamization of the country, sent waves and waves of non-Muslims (and nowadays also seculars who are culturally Turkish) abroad. These are the major state-led policies that punctured the egalitarian norm. One could add the resilient and widely shared hate speech regarding Armenians and Jews in particular that is often perpetrated by populist leaders from Menderes to Erdogan and readily embraced by many secular and religious Turkish Muslims.

On the egalitarian gender norm, it is sometimes argued there was "state feminism" in Turkey and this was to some extent true during the single party (the most Kemalist) period[18]. 1950s onwards, however, successive right-leaning governments ruled Turkey. Their patronage-based politics that catered to the demands of local traditional groups in exchange for votes at least introduced a current of anti-egalitarianism and sublimation of patriarchy to the very center of the state and its bureaucracy. Furthermore, one of the significant ways in which the 1980 coup was different in character compared with the previous ones was the fact that it changed the major security threat for the state from "radical Islam" to "communism" (Ozkan 2018). As a result, politicization of Islam was given a green light by none other than the presumed custodian of Turkish-style-secularism, the armed forces.

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[16] About Ismet Inonu-led state policies during the Holocaust, see Guttstadt, Corinna Görgü. 2006. "Depriving non-Muslims of citizenship as part of the Turkification policy in the early years of the Turkish Republic: The case of Turkish Jews and its consequences during the Holocaust." In *Turkey Beyond Nationalism: Towards Postnationalist Identities, ed.* Hans-Lukas Kieser. New York: I. B. Tauris. pp. 50-56.

[17] By forcing them to sell everything within a year, confiscation was not direct and was not nationalization.

[18] It must be mentioned that the women's movement had started to become active during Ottoman modernization and Kemalists had banned their organization, while also formally granting equal citizenship and equal civil and political rights to women.

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Women, by 1980s, took their struggle against patriarchy in their own hands and formed the most united and formidable social movement in the country to this day. In a very disunited Turkey that is fiercely polarized on ethnic and religious questions, questions of life style and the source of the law, women's movement included women from almost all groups in society. Turk and Kurd, pious and irreligious, managed to stand pretty much united, although in time due to the repression, became much more reactive rather than proactive than they used to be in the 1990s and early 2000s. The Women's movement found a similarly united patriarchal front operating against it in bureaucracy and in society, which brought secular and religious, Turkish and Kurdish patriarchal minded groups composed of men and women, together. Despite the constitutional legal level equality, civil and family law in particular and criminal law to some extent contained articles that contradicted the egalitarian norm and reproduced traditional/patrimonial anti-egalitarian custom-based laws and legal regulations.

Nevertheless, particularly in the late 1990s and early 2000s, Turkey's application to the EU opened up space and created a window of opportunity for the women's movement, and their successful campaigns resulted in an amendment to the constitution (Article 10) as well as amendments to civil law, family law and criminal law that overall pretty much cleansed the formal body of the law from the remnants of the traditionalist duality, and rendered the law egalitarian towards women.

AKP's illiberal antidemocratic and religion-tinged turn immediately impacted women and girls when the sanctioning/coercive power of the state got internally transformed to become biased *against* the egalitarian laws and *in favor of* the patrimonial customary *nomos*. Social policies immediately changed and the enforcement of the law began to work in favor of reversal of egalitarian law (Ayata and Candas 2018). This struggle continues and still constitutes the only domestic movement in Turkey whose solidarity and protest have some resonance in public opinion, and in some cases, even lead to the reversal of patriarchal-minded draft laws or to their temporary suspension. Yet this widely shared legitimacy of women's rights in Turkey only reflects the fact that egalitarian gender norms are in fact internalized by a crosscutting majority, and does not mean that the egalitarian legal norm cannot be reversed under the religion-based assault of Erdogan, who is now the only decision-maker. Duality of egalitarian law v. patrimonial customary law/tradition seems to be shedding duality in favor of the patrimonial and becoming anti-egalitarian and monist.

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Finally, on the third Republican egalitarian norm, equality of the ruler and the ruled, we can say that it has now been entirely and officially reversed in the summer of 2018. Erdogan and the AKP leaders are now "above the law" and this development has been in the works since 2012. Equality of the ruler and the ruled is the quintessential democratic norm as well as the principle that is at the very heart of what rule of law means. On the one hand, it denotes the general and consistent application of the law, and on the other, underlines that it is the binding of the hands of those who wield political authority and public authority that matters the most to ensure equality before the law and laws' rule. Therefore, we can talk about a horizontal application of the equality principle, among citizens and citizen groups, and a vertical application of it that seeks to render those who hold and exercise authority on behalf of people equal before the law. The latter underlines the requirement of accountability and the need for transparency.

In the horizontal sense, due to the fact that egalitarian legal level norms were punctuated and were often reversed in the case of non-Muslims and Kurds and women, - due to different kinds of dualities at work in each case - horizontal equality could not be realized.

In the vertical sense, all the dualities we mentioned so far were at work, and in particular the existence of extrajudicial and illicit practices that rendered state-affiliated agents free from punishment omitted the possibility of realizing equality of the ruler and the ruled. While extrajudicial activity-related punctuation of the rule of law regime was almost seamless against the Kurds residing especially in Southeast Anatolia and for this reason alone there was no vertical sense of equality of the ruler and the ruled, there is also a second way in which equality of the ruler and the ruled would be reversed in practice, and this is corruption.

Till 2000s, corruption was not rampant and bribery was not so common as they are today. If there is one thing that Kemalists were not accused of even by the Islamists, that is corruption. Patronage-based politics and political clientelism that was an essential part of populist Menderes rule and the successive right-leaning governments institutionalized certain kinds of - patronage and clientelism-based - corruption. During the late 1980s and 1990s, under ANAP and Ozal's and Ciller's terms, corruption cases and bribery began to increase and the media was at least allowed to report such cases then. Ozal famously said "my public servant knows his business" and this was interpreted to mean that Ozal did not

find bribery either legally or morally impermissible. The permissibility of corruption increasingly became the norm finally under the AKP, which managed to give a traditionalist meaning to corruption and bribery by making patronage based politics and clientelism the rule rather than the exception of governance. December 2013 investigation and police operation against the rampant corruption at the highest levels of the AKP and its aftermath will be covered in the next section.

The analysis of three formal/legal Republican norms and their reversal on the bases of different kinds of dualities shows that civil liberties of non-Muslims and women (and although we did not discuss it, LGBT individuals), and civil and political liberties of Kurds, were systematically violated even when the constitutional and legal level norms were formally and usually egalitarian. Women and Alevis were generally victims of traditional and customary laws and resurfacing of "the old status order," while non-Muslims were semi-officially discriminated against and were exposed to widely shared "populist" hate speech. Total exclusion of non-Muslims from the foreign service and a career in military were unwritten but official and systematic practices. Kurds were semi-officially discriminated against and particularly the ones that lived in Southeast Anatolia, were also subject to "exception zone" practices. Kurds' political representation was prohibited and whenever a democratization in that area took place, it culminated in jail terms for the elected representatives of the Kurds. Extrajudicial and illicit activities were completely state-led, and these had legal basis in, for example, the anti-terror legislation, and even in the constitution where the language of the text is generally in favor of justifying state's right to compulsion and "state's right to violate the basic right" rather than protecting the juridical freedom of the legal person *from* the state.

Finally, "rule by military decree" was the essential form of rule-making under the episodic periods of military rule as well as the rule that pretty much seamlessly reigned over the Kurdish region.

A Deliberate Rupture with the Ottoman and Republican Past: "Closing the 200-year old Parenthesis"

To give a brief account of the ruptures, we should start with the single positive and completely untapped constitutional/legal level rupture that is nevertheless extremely significant, namely, the amendment of Article 90 in 2004. The regime is by now changed but the Constitution is still not annulled.

As a result, Article 90, which is merely an ornament from one perspective but perhaps also an essential counterpart of the duality that produces uncertainty and groundless hope, is still legally valid.

Article 90 was amended in 2004 while Turkey, during the AKP's "liberal democratic mode" or more accurately, manipulation; was yet quite firmly anchored in the EU. According to the amended article, on questions relating to basic rights and freedoms, the measure is international human rights declarations and agreements, and not Turkish law. This means that at the constitutional level, which must be the highest norm in a country where hierarchy of norms is recognized, Turkey's obligations under the international human rights law were placed above the national law. In other words, fundamental rights and liberties are supposed to be constitutionally guaranteed not through the uncertain arbitrary dualities of the Turkish law, which have the potential to fall far below what international human rights law requires, but through the norms of the international human rights law itself.

Article 90 remained an ornament because so far not a single judge based his - as judges are hand-picked AKP apparatchiks by now and are almost always male - opinion on that clause to overturn systematic human rights violations of the past five years.

The judiciary in Turkey was a typically statist and conservative force when the issue was defending the constitution with both of its birth defects (i.e., The Kurdish issue and the Turkish style moderated-Islam based (quasi or pseudo)-secularism). Therefore, while it aligned with the guardian of the state, the army, the judiciary also and generally remained independent from successive governments. Higher courts were statist rather than politicized. Turkish state, whenever it wanted to politicize the courts established special courts rather than capturing the existing ones. Ergenekon and Balyoz trials should be seen within that continuum.

The first major visible rupture in *judicial efficacy* occurred in February 7, 2012. On that date, Hakan Fidan, who was heading the Intelligence Agency and was known to be very close to Erdogan was called to give his deposition in an investigation opened by the Istanbul Special[19] Court's prosecutor's

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[19] Special Courts were established by the Ergenekon trials in 2007, although crisis, emergency, military periods have produced their precedents throughout Republican history. 2007 Ergenekon and Balyoz trials were also conducted by the same special courts.

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office. He was being investigated about the role that was played by the MIT in initiating the peace process with the PKK during what is commonly referred to as “the Oslo talks.” Erdogan became furious, commanded Fidan not to go to the court to give his testimony and immediately passed a law (a legislative majority was entirely in his hands by that time) requiring the Prime Minister’s official permission in any investigation that involves the intelligence agency.

This was an important rupture, because a) it is the official start of the war between Gulen and Erdogan, b) the police forces/prosecutor’s office were clashing with the intelligence agency, MIT, c) judicial efficacy was completely negated as Hakan Fidan followed Erdogan’s orders and not the court’s. Although this can be read as the final moment when we observed judicial independence *from* Erdogan, it was at the same time a display of the degree of *dependence of the special court on* Gulen, and therefore not a moment of judicial independence *per se*, d) immediately, upon Erdogan’s orders, a law was passed to address a single person and an individual case, which is very much against the practice of what generality of law-making requires and therefore prohibits. This was a major first as there was never a case in Republican history when either the prosecutor’s office was disregarded by the President or when someone who was called to testify simply ignored the subpoena.

2012 continued with legal regulations that rehearsed the banning of alcohol everywhere that is 100 meters away from any religious institution or school[20]. Governors in a few cities did ban alcohol consumption within the city borders. In any event, under the AKP rule taxes on alcoholic beverages were incredibly high and these continued to rise to this day. Within the general euphoria of victory, the AKP and its followers were making more than half of the population feel as if they were unwanted guests in their own country and did not have the right to eat and drink the way they like. Erdogan was constantly giving speeches explaining why men and women cannot and should not be equal. The remaining tiny

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[20] Candas, Aysen (2014) “The Immanent and Normative Criteria of Assessing the Laws that Regulate Alcohol and Tobacco Consumption, and the Emerging Questions that are Pertinent to the Political and Social Consequences of Such Regulations,” “Alkol ve Sigaraya İlişkin Yasal Düzenlemelerin ‘İçkin’ ve ‘Normatif’ Analizinin Kıstasları ve Bu Tarz Düzenlemelerin Siyasi ve Toplumsal Sonuçlarına Dair Sorular”, “İktidar Ve Özgürlük İkilemindeki Anayasa Mahkemesi,” *Journal of Constitutional Law / Revue de Droit Constitutionnel/ Anayasa Hukuku Dergisi* (3)5: 139-148.

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patches of land that belonged to the public were being sold by the state without any attempt at public justification and accountability.

All these led to lots of frustration and finally resulted in the spontaneously-generated 2013 Gezi Uprising. It started in Taksim Gezi Park, the last remaining garden-size green public property in that neighborhood at the center of the city, when Erdogan declared that he will have the old Ottoman Army Barracks and a department store constructed there. Ottoman Army Barracks had symbolic significance for Erdogan as well, as on April 13, 1909 a pro-Shariah coup was suppressed at that location.

Gezi Protest was over all a horizontal, spontaneous, pluralist, democratic and more than half female movement that represented all the colors, variety, solidarity, freedoms that are engrained in the hearts of the urban dwellers in Turkey. It spread to all the cities in the country, except for Batman. After two weeks, despite the fact that the people agreed to leave the occupied park, a very severe repression and police intervention took place. More than a dozen people died, tens lost their eyes as tear gas canisters thrown by the police seem to have targeted their eyes and heads. All of the young men who died either due to severe beating or by the injuries incurred from police repression through tear gas were interestingly Alevis[21].

After Gezi, the euphoria of victory turned into an immense fear for the ruling party and its cadres, and the rhetoric of a "second Independence War" that needed to be won against "the foreign and internal enemies" gained ground. Erdogan began to talk about "unleashing his 50 %" onto the "enemy" part of the population that opposes him. After Gezi, sporadically, many were physically assaulted by the representatives of this 50% who interpreted Erdogan's words as their marching orders. The likelihood of mass protest drastically decreased as the AKP passed an Internal Security Law, against the protests of the opposition that stood against the law in solidarity –including the right-leaning ultranationalists- that made it legal for the police forces to kill a person if they suspect he or she is carrying stones in his/her pockets.

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[21] Alevis, and Turkish-Alevis in particular, alongside women were the true beneficiaries of the Republic, especially if one does not take the 1938 Dersim Alevi-Kurdish uprising and its bloody repression and forced settlement into account. One can also argue Dersim Uprising and its repression was primarily due to the Kurdish identity and not the Alevi.

This was the first threat to make extrajudicial mass killings "within the law" and not just in the Kurdish populated zone this time, but in Istanbul and Ankara, and all over the country[22].

It was in that environment that audio recordings containing private conversations of Erdogan with his son, and bribe-bargaining conversations of Erdogan's Ministers with Reza Zarrab, a naturalized Iranian-Turkish businessman who is now famous in the US because of the Iran sanctions-busting case, came out and were widely shared over the internet and the social media. In the meantime, the police forces detained fifty-two individuals, several of whom were cabinet members and all were AKP members. On Erdogan's orders, over the following weeks, the prosecutors who investigated the crimes and the police forces who followed the prosecutors' orders were either imprisoned or purged. A massive anti-Gulen mobilization was initiated. Collective punishment of Gulen affiliates became the norm, their properties were confiscated, the purge from the police forces continued with a purge of Gulen-affiliates from all levels of civilian bureaucracy.

This wave of the purge, it became apparent soon, was not the final showdown as a "coup attempt" took place on July 15, 2016 on a Friday night at 10:00 pm. The coup was "live" on TV and a few hundred got killed. The coup attempt, although suppressed, eventually resulted in a counter-coup of Erdogan's. As - allegedly - the Gulenists were the coup-plotters, a massive purge from the military took place, military high-schools were closed down. A new cemetery in Istanbul was constructed solely for the purpose to bury the captured and killed Gulenites that took part in the coup attempt, as the AKP-affiliated mayor of Istanbul claimed they cannot be buried in the Muslim cemetery.

Direct confiscation of Gulen-affiliates' private property was a first particularly because it was against *pious Sunni-Muslims*, this was a double-first for Republican history. This was signifying that a personal – Erdoganite – and not merely Islamic order as such was getting created.

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[22] 2013 antiterror legislation was followed in 2014 by what is commonly called The MIT Law, giving the national intelligence agency (MIT) extraordinary and very broadly defined powers of intelligence gathering, practically wiping out any right to privacy and turning Turkey into a *Muhaberat* State that we are used to seeing for example in Syria.

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Systematic torture, which has disappeared during the late 1990s and 2000s as a result of determined and persistent state and civil society efforts made a comeback in Turkey's police headquarters and its prisons.

After the coup attempt and the counter-coup of Erdogan that followed, a state of emergency was declared and Turkey's law and order regime "gained" a new category: rule by civilian/ceasaristic decree." The executive orders led to massive purges in the academy targeting on the one hand, Gulenites; and the Peace Academics[23] who signed under a public statement condemning the gross human rights violations in heavily Kurdish populated town and cities by the security forces (in December 2015-January 2016), on the other. These purges continue… Purged academics could not be hired by other universities (whether public or private) and in many cases, they were condemned to starvation as private companies were also concerned about hiring them. To prevent the investigated and in some cases, their families, from leaving the country and seeking employment abroad, a few hundred thousand passports were revoked. The exercise of the right to travel is now for the first time in Turkey's Republican history dependent on the fluctuating and inconsistently implemented irrational/informal decisions of the state.

Executive orders began to reorganize the state's offices/agencies and its bureaucracy, consequently the principle of recruitment in the bureaucracy on the basis of merit is no longer valid. Going against the precedent that had been established in the course of the past two hundred years, and perhaps much longer, a completely patrimonial bureaucracy and patrimonial recruitment model (appointment based on loyalty) are created. High-ranking bureaucrats and their teams are now directly appointed from a pool of Erdogan's loyal servants. Ottoman modernization had started the merit-based legal/rational bureaucracy, and in any event when Constantinople was conquered in 1453, the Byzantine bureaucratic structure was pretty much preserved. History shows that even in the 15th century Ottomans had a reasonable amount of appreciation and regard for merit. "Purely patrimonial bureaucracy" was also not common under the Kemalist single party period, as although "loyalty to Kemalism" was considered to be an essential part of the desirable kind of merit, loyalty to Mustafa Kemal was certainly not the *sole*

[23] Yours truly is one of these Peace Academics who are on trial in Turkey, we are 1128 in total…

basis of recruitment, it was necessary but not sufficient, professional education mattered and that was also part of the legacy of Kemalist modernism.

Among the executive orders, particularly one, numbered 696, that was released in the *Official Gazette* on December 24, 2017 requires special attention. As through this decree, Turkey in fact turned totalitarian, if by totalitarian we mean the involvement of paramilitary groups, and the state's consent to sharing its monopoly of violence with a paramilitary group in addition to its becoming a police state. So, in that sense Turkey made its totalitarian turn explicit on Dec 24, 2017 with a new emergency decree.

Making reference to the lynching and even beheadings of 15-16 year old, and unarmed military academy students by the paramilitary forces on the Bosphorus Bridge, on the night of the coup attempt in July 15, 2016; the emergency decree 696 states that the events of that night cannot be prosecuted. It continues to assert that any other attempt that could be construed as the continuation of the coup attempt, if and when these are suppressed by the help of "the civilians and the voluntary citizens," will leave any action of these civilians free from prosecution. This means that paramilitary forces that are now weaponized and trained by the AKP party-state will have the ability to lynch and kill anybody, and can call their criminal actions "support for the security forces in suppressing the continuation of the coup attempt." From protests that may be based on purely economic grievances, to demonstrations, from parades to opposition parties' meetings, women's or LGBTQs events to totally nonpolitical gatherings, any person who attracts the paramilitary's ire may be subject to its violence, and the paramilitary is given a *carte blanche* by the regime to do anything it wishes, with *full legal impunity*.

That is how Turkey shed its duality regarding extrajudicial and illicit practices and as Kurdish activists expressed it so well over the social media "everyone in Turkey became a Kurd." This was a rupture as there is no longer even a legal/rational façade or a rational counterpart of the law, no hybridity, just arbitrariness as the general rule.

On June 2015 elections, the party affiliated with Kurds and young secular urban Turks passed the 10% electoral threshold that was imposed by the military regime in 1980s in order to prevent particularly Kurds' political representation. 10%, a scandalously high threshold, was the single reason why in 2002 the AKP came to power with just 34% of the votes but occupied two thirds of the seats in Parliament. This time, in 2015, despite the threshold, the party that is affiliated with the secular Kurds and urban

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progressives managed to enter the Parliament and as a result the AKP lost its Parliamentary majority for the first time since 2002.This pivotal democratic achievement that was widely celebrated in the country, led to a new rupture as against the Republican precedent, as a first in Republican electoral democracy's history, the election that the AKP lost was ignored and instead the population was, first terrorized through bombings, and then the election was simply repeated. This "repeat" election happened through machinations of the Presidency and Erdogan's refusal to invite the opposition party to form the government after the AKP PM Davutoglu's efforts failed and the new Parliament could not produce a government. The Prime Minister had warned the country before the June 2015 elections that "if they make the wrong decision, chaos would reign." As expected, the bombings and particularly the single biggest terrorist attack against a peace march in the capital city of Ankara just twenty days prior to the elections delivered the sought-after result. In the "repeat elections" AKP did win, or perhaps lost but was declared the winner.

The elections are no longer free and fair and it is now certain that Erdogan is not planning to leave the office through elections. Despite its dualities, since 1950 when it transitioned into a multiparty representative regime, Turkey was strictly an electoral regime. 2015 rupture represents the reversal of that principle. As a façade of electoral competition is helpful for saving face and promising "rule of law" to foreign investors Singapore-style, and from the population's perspective, as one cannot survive without hope, many continue to participate in elections that they no longer believe are free or fair.

The media, the economy and the civil society are now completely monopolized by the party. Osman Kavala, a secular philanthropist businessman who has kept Armenians' memory and the poor Kurdish youth's hopes alive through inter-faith, inter-ethnicity cultural activities, is in jail without an indictment for more than a year.

Finally, in the summer of 2018, in a highly symbolic ceremony Erdogan became the first "elected" President of the new regime and was greeted in the same style and through almost the same rituals that Ottoman Sultans were enthroned.

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Conclusion

Turkey is shedding precisely the wrong side of its dualities and regressing to a purely patrimonial, purely personalistic rule that has never been a fact in the land where it is being put into practice.

AKP years proved to be a period when the ideological emphasis and the security threat conception of the center were entirely and firmly transformed. To do that Erdogan forged, dissolved, carved and reshuffled "eclectic" coalitions composed of unlikely partners, pitted religious Kurds against the secular Kurds, and wielded the Kurdish issue against the secular establishment to uninstall the Republic and to create a personalized rule out of it. What emerged out of this politics and monopolized the state by now cannot be characterized as merely the continuation of the Ottoman Empire and/or merely the dissolution of the Republican period either, as Ottoman Sultans, with the exception of Abdulhamid II who pursued pan-Islamism and experimented with social engineering for the first time, were after all inheritors of a tradition and a complex institutional setup with its laws and rules, and were bound by them. Erdogan sets himself up as the tradition-setter, the *pouvoir constituant*.. In that sense, for the first time in its history, Asia Minor is entering into completely unchartered territory as *pure patrimonialism*, whose representations have been observed only in premodern and small tribes that ruled over small patches of land, and was never the reality in Asia Minor (Rycaut 1683, Ramsay 1916) is getting established. Whether a completely arbitrary and deinstitutionalized personal rule, and its necessary counterpart, a complete tribalization of Turkey's inhabitants and turning of a dynamic society into a completely static one can be accomplished or not is an open-ended empirical question now. One thing is certain, to realize it, Turkey will have to shed or mute more than half of its inhabitants and dissolve all the institutions and memory of its social, economic, political and cultural modernization of the past few centuries.

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Given this picture, one might ask, if these dualities and birth defects threatened to negate the three egalitarian norms persistently, if the possibility for the rise of rule of law was so systematically arrested through the character of the foundation, where is the rupture? Is there even the possibility of a rupture?

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This is a legitimate question and this is the primary reason as to why debates that involve intellectuals who study Turkey revolve around the question of continuity and rupture nowadays.

To understand the full qualitative impact of the list of the ruptures I outlined in the paper, we perhaps need to lay out what Turkey was but is clearly not so, now.

- Since 1950 Turkey was a strictly electoral regime, bracketing the practices in the Kurdish region in 1990s, votes in the rest of the country were always accurately counted and the results of elections were accurately broadcasted.
- The Higher Board of Election was not a political body or a political party's branch.
- State and government, even during the time when Ataturk was president during the single party period were *separate* entities and were not fused.
- The bureaucracy was based on professional education and merit. While under the model of moderated-Islam based tutelary secularism, political Islamists or those who were suspected to be political islamists and non-Muslims were not given roles at ranks of the military or the civilian bureaucracy, looking like a secular or being a member of the ruling party, or personal loyalty to the President were never the sole grounds of recruitment either. Legal/rational and merit-based bureaucracy was the outcome of the complexity of the Ottoman imperial administrative structure. As a result, under the Republic which *did not completely purge* the Ottoman bureaucracy but sits atop its legacy, while members of the military and civilian bureaucracy were selected among the pool of Turkish-Muslim majority, the selection criterion that applied to Turkish Muslim pool was merit and professional criteria.
- The only period in Republican history when there was *unification of powers* was just before the establishment of the Republic. Between 1920 and 1923, the first Parliament adorned itself with the constituent power and authorized itself to carry unified powers in the Parliament. The ability to represent that unified power did not exist. In Rousseauean manner, power of the People's Assembly could not be delegated even to Mustafa Kemal himself, and his demands along these

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lines were explicitly rejected by the first Parliament precisely by these arguments from the overwhelming majority of the MPs.

- Women of all backgrounds have been declared equal citizens from the beginning and through their almost a century old struggle have managed to completely erase the remnants of traditional patrimonial or secular patriarchal law from all systems of legislation by early 2000s.
- Except for two *indirect* confiscation of non-muslims' property through 1941 Estate Tax, and, 1964 denaturalization of 12.000 Greek-speaking citizens and one Istanbul pogrom led by Menderes government in 1955 that *destroyed* particularly non-Muslims' property, there was not a single instance of confiscation of *Turkish-Muslims'* property, underlining the thick identitarian shadow identity of the Republican regime.
- and there certainly was no instance of *direct confiscation* of property.
- While traditional as well as modern forms of patronage and clientelism were always present, these were also region or issue-specific and not the norm.
- Courts' orders were followed by anyone regardless of rank or status.
- Higher courts were *statist rather than politicized* by the ruling party.
- Mafia leaders could secretly cooperate with this or that party's members but were not given medals by a party-state, extrajudicial activities that were state- and not party-led were nevertheless deemed scandalous and were covered up,
- Regressive shadow identity behind the egalitarian constitutional level norms was Turkishness and a moderated and muted Islam definition.
- An education that is on par with the scientific and technological developments in the world was a policy priority.
- There was free and alternative media.
- There were free civil society associations.

The rupture is in all these areas.

- Turkey is now ruled by ceasarian decrees,
- Whether it is an electoral democracy or not is open to question,
- starting from preschoolers, in public schools, students are now taught the Sunni dogmas and rituals instead of science, Darwin's evolution theory is erased from all levels of education including the biology departments,
- social policies under Erdogan's decrees are constantly aiming to reverse gender equality,
- mafia leaders are given medals as the ruling party's members and as its donors,
- bureaucracy is now solely based on "loyalty to the Leader,"
- "less education is better" is repeated as a mantra,
- courts are turned into party-branches.
- Constitution is completely suspended,
- basic rights are completely suspended for everyone,
- rule by law is turned into complete arbitrariness for everyone, but less so for high-ranking AKP members,
- state is now sharing its monopoly of violence with paramilitary groups that it trains and equips and passed its "enabling act" in that regard,
- the primary security threat is foreign and internal enemies defined as the West, the seculars, and whoever criticizes the party-state,
- Consequently, the regressive shadow identity is no longer Turkish-top-down moderated muted Islam but imperialist irredentist Sunni Islam, aiming to unite all Muslims everywhere under Erdogan's leadership,

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- Sunni Arabs who were born elsewhere and are affiliated with certain transnational Islamic movements are welcome but not secular or pious natives of Turkey,
- whoever criticizes Erdogan is declared a terrorist, shadow identity-affirming principle or Article 301 of the criminal law, is functionally replaced by the law against insulting Erdogan.
- There is complete personalization of power and monopolization of all sources of social power in Erdogan's hands,
- there is systematic direct confiscation of opposition's property that is impacting the Muslim bourgeoisie the most, in particular those who are allegedly Gulen-affiliates are targeted by this policy, but it is also a constant threat looming above the secular business,
- the economy is no longer competitive but completely under the yoke of Erdogan,
- the educated and education as such are despised,
- militarism is now not based on Turkish style secularism and nationalism but based on a transnational Sunni religious nationalism,
- women and Alevis and non-Muslims and seculars are regarded as lower castes that are to be tolerated insofar as they accept their own inferior status….
- Secular Kurds are no longer considered as merely the enemies of Turks but also as enemies of religion.

All this, I tried to argue, is the character of the rupture and it seems to be wedding the character of a mafia state with a particular interpretation of mobilized Sunni Islam that is rendered prophetic under Erdogan's absolutist autarchy. A new antiegalitarian status order, a caste system is day by day getting established.

Dualism is getting replaced by monism but the process of shedding duality is happening *precisely against* the democratic side of the duality equation.

These sum up the nature of the rupture that is taking place in Turkey's law and order regimes.

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A final note: this outcome - from duality to monism, from Article 90 of 2004 to patrimonial unhinged despotism - was the result of a persistent and deliberate effort on the part of Erdogan and his elites; and what occurred since 2012 cannot be explained by reference to purely contingent factors or the nationalists' plot or "the deep state" to corner "a weakened Erdogan" to become something that he did not intend to be. Here is why: On April 1, 2013, just two months before the Gezi Uprising, ruling AKP's Istanbul chair, Aziz Babuscu, addressing the members of a government affiliated association at a dinner party in Istanbul stated that:

''Those who have become our partners in one way or another during our 10 year-long rule, will not be our partners in the coming decade. Because during the past decade, there was a process of liquidation, and a partnership based on a definition, of what we did in terms of freedom, rule of law, a narrative of justice. They also, even when they could not "stomach us" for example the liberals, in one way or another partnered with us during this process; yet the future is the period of reconstruction. Reconstruction period will not be as they wish. Thus; those partners will not be with us. Those who walked alongside us in one way or another yesterday, will this time partner up with those who are against us. Because the (New) Turkey that will be established, and the future that will be created will not be a future or a period that they would accept. Therefore, our job will be much more difficult."

And the rest, as they say, is history...

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