The Influence of Exiled German Lawyers and Legal Academics on Turkish Civil Law (Die Einflüsse der Exiljuristen auf das türkische bürgerliche Recht)

Sebnem Akipek Öcal

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DOI: https://doi.org/10.17875/gup2026-3192

I. Introduction

The evolution of legal systems is often a reflection of broader social and political changes within a country. Some countries in the world provide a good example of interesting evolutions. In Türkiye, the development of civil law has been notably influenced by various internal and external factors, including the contributions of exiled lawyers and academics.

The modernization of Turkish civil law in the early 20th century was significantly shaped by the contributions of exiled German jurists who fled Nazi persecution. Following the rise of *Adolf Hitler* in 1933, many Jewish and anti-Nazi scholars were dismissed from their positions at German universities. Türkiye, under the leadership of *Mustafa Kemal Atatürk*, welcomed these intellectuals as part of its broader Westernization and legal reform efforts[1]. Among these exiles were prominent jurists who played a pivotal role in shaping the application of the Turkish Civil Code of 1926, which was heavily influenced by way of reception[2] of the Swiss Civil Code, as well as in reforming legal education. Following this term, especially their students and the new Turkish legislation mostly inspired by them, continued to develop the Turkish law system.

II. Historical Background On And Implications For Turkish Civil Law

The influence of German legal thought on Turkish civil law can be traced back to the early 20th century[3]. During the late Ottoman period and the early years of the Turkish Republic, Turkish legal reformers sought to modernize and codify the legal system. They turned to European legal models, particularly those from Germany, which were seen as advanced and systematic. The adoption of the Swiss Civil Code (ZGB), heavily influenced by German legal principles, marked a significant shift in Turkish law.

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[1] *Andıç*, F. / *Reisman*, A. (2007). Migration and Transfer of Knowledge: Refugees from Nazism and Turkish Legal Reform. *Forum Historiae Iuris (fhi)*. https://forhistiur.net/2007-07-reisman-andic/, para. 8–22.

[2] *Lipstein*, K. (1956). The Reception of Western Law in Turkey: The Purpose and the Results of the Meeting of the International Association of Legal Science held in Istanbul in September 1955. *Annales de la Faculté de Droit d'Istanbul*, 5(6), 229–230.; *Tutaj*, M. (2024). The Turkish Civil Code and Code of Obligations of 1926 and the Charm of Swiss Civil Law. *British Association of Comparative Law*. https://british-association-comparative-law.org/2024/02/23/the-turkish-civil-code-and-code-of-obligations-of-1926-and-the-charm-of-swiss-civil-law-by-michal-tutaj/

[3] One could even say that not only the German legal thought but also the impact of Western law on Turkish law began during the Tanzimat era. For more information see: *Ünal Özkorkut*, N. (2019). Cumhuriyet Dönemi hukuksal dönüşüm sürecine katkıda bulunan yabancı akademisyenler. *Adalet Dergisi*, 62-63, 481–505.; *Andıç / Reisman* (2007), p. 5, fn. 6.

The expulsion of hundreds of academics from German universities formed an opportunity for the Turkish Republic, since Türkiye, seeking expertise to modernize its legal system, offered refuge to many of these scholars. The Turkish government, particularly through the efforts of the Minister of Justice *Mahmut Esat Bozkurt*, saw an opportunity to benefit from the expertise of these jurists in reforming the country's legal framework[4].

Among many others, especially these jurists, *Ernst E. Hirsch* (commercial law, intellectual property), *Andreas B. Schwarz* (civil law and Roman law), *Ernst Reuter* (later mayor of Berlin, contributed to administrative reforms), and *Alexander Rüstow* (sociologist who influenced legal thought), play a very important role in the legal reform established in Türkiye.

The influence of German academics, particularly *Schwarz*, has had several implications for Turkish civil law. *Schwarz*, a prominent figure in Central European legal studies, was born in Budapest to an educated and cultured family and completed his legal studies there. *Schwarz* worked in Bonn for a while and continued his academic career at the universities of Leipzig, Zürich, and Freiburg. In 1933, as one of the victims of the Nazi regime, he had to leave his chair in Freiburg. In 1934, he came to Türkiye and continued his academic life at Istanbul University. Although he was invited by Bonn University in 1948, he preferred to stay and work in Türkiye and died in Freiburg in 1953, where he had gone for a holiday[5].

Schwarz, who knew not only the German law but also especially the Swiss Civil Code very well[6], made a great contribution to Turkish civil law together with other German exiled jurists. This contribution, that continued after 1950 until today, can be summarized under the following main headings:

III. Enhanced Legal Precision

German legal scholars are known for their meticulous approach to legal theory and practice. *Schwarz's* influence contributed to the precision and clarity of Turkish civil law, ensuring that legal principles and doctrines were well-defined and systematically applied. This precision has helped in minimizing legal ambiguities and enhancing the predictability of legal outcomes in Türkiye.

Especially in the interpretation and implementation of the Swiss/Turkish Civil Code, *Schwarz* played a crucial role. He was a key figure in ensuring that the Code

[4] *Reisman*, A. (2007). Jewish Refugees from Nazism, Albert Einstein, and the Modernization of Higher Education in Turkey (1933–1945). *Aleph*, 7, 279.

[5] *Ünal Özkorkut* (2019), S. 495.

[6] Schwarz knew Swiss civil law very well; therefore, his invitation to Türkiye was not a coincidence but part of a plan to improve the application of the Turkish Civil Code and to contribute to the "University Reform" that had started in Türkiye: *Hamza*, G. (2016). Das wissenschaftliche Oeuvre und die Lehrtätigkeit von András Bertalan Schwarz (1886–1953). In *Prof. Dr. M. İlhan Ulusan'a Armağan* (Vol. III), S. 391.

was systematically taught and applied in Turkish universities[7]. His expertise in Roman law and comparative jurisprudence helped bridge the gap between Ottoman legal traditions and modern European civil law.

A. Modernization of Legal Principles

The integration of German legal thought facilitated the modernization of Turkish civil law. Concepts and principles derived from German legal theory, such as those concerning tort liability, contract law, and family law, were adapted to fit the Turkish context. This modernization has helped Türkiye align its legal practices with contemporary standards and international norms.

Schwarz wrote a book on family law which greatly influenced Turkish jurists and contributed to the modern conceptualization of family jurisprudence[8].

B. Strengthening the Legal Framework

The systematic approach advocated by Schwarz and other German scholars contributed to the strengthening of Türkiye's legal framework. By adopting and adapting German legal methodologies, Turkish legal reformers were able to build a more coherent and comprehensive legal system. This strengthened framework has been crucial in supporting the rule of law and ensuring effective legal governance in Türkiye.

IV. Years 1950–1985: Impact of Exiled Academics

The influence of exiled academics on Turkish civil law goes beyond mere legal reforms. Although these reforms were largely completed by the 1950s, their impact and significance persisted. This continued relevance is due not only to the principles they established but also to the students they taught while they were in Türkiye.

Their contributions have fostered a more nuanced and globally-informed legal perspective within Türkiye. The integration of international legal norms and comparative analysis has enhanced the sophistication of Turkish legal practices and supported the country's aspirations for greater integration into the global legal community.

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[7] In 1943/1944, Prof. Schwarz lectured even before the general public on the issues of the legal status of children born out of wedlock (*Hamza*, G. (2000). Andras Bertalan Schwarz, the also Internationally Highly Regarded Romanist, Papyrologist, and Civil Lawyer (1886–1953). *Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Juridica*, 41-42, p. 217).

[8] *Anduç/Reisman* (2007), para. 19.

A. Systematic Approach to Civil Law

Especially *Schwarz's* contributions to the systematic and theoretical framework of civil law were highly influential[9]. His work emphasized the importance of a coherent and organized legal structure, which resonated with Turkish legal reformers.

Schwarz's approach provided a model for structuring civil law in a way that is both comprehensive as well as adaptable to changing social needs. This systematic approach was instrumental in the development and organization of Turkish civil law, ensuring that it was both robust and flexible.

The systematic approach, which concurrently introduced a degree of flexibility, proved instrumental in the subsequent development of civil law.

Although the adoption of the Swiss Civil Code and the Code of Obligations originated from the ruling elite rather than the broader Turkish society, the flexibility and methodology introduced by German scholars facilitated the society's adaptation to the new legal framework.

Schwarz explains this situation with these sentences: *"[…] nowhere else where European law has been adopted under the sign of Europeanisation has it been done with such a radical determination to break completely with the past. As a result of its radicalism, this transformation of the law in Turkey could be described as a unique legal revolution in the entire history of law".*

The extreme approach stated by *Schwarz* caused various issues with the public acceptance of this legal reception, especially with regard to Swiss family law, even though approval in many areas of civil law was achieved easily.

The most difficult problem was that a considerable part of the population did not accept the compulsory civil marriage of the Swiss Civil Code, preferring religious partnerships according to Islamic law. This created the subsequent problem that millions of children born in these relationships could not be legally recognized and thus were deprived of their legal rights, which the German courts also had to deal with.

The issue of children born out of religious partnerships was one that was challenging to resolve. It is important not to undervalue the involvement of lawyers, who were aware of these issues from the start. For instance, opinions from university professors teaching related subjects as well as jurists employed by the state authorities were included in the 1942 report published by the Ministry of the Interior. Professor *Schwarz* gave a public lecture on the legal position of children born out of wedlock, during the 1943–1944 academic year.

In order to solve this issue, amnesty legislation was created[10]. But after the 1960s, things began to shift. Over time, public approval of the law played a major

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[9] *Andıç/Reisman* (2007), para. 19–22.

[10] *Akipek Öcal*, Ş. / *Arslan*, A. (2024). Overcoming the Non-Acceptance of Civil Marriages in Türkiye: The Biggest Problem of the Legal Reception of the Swiss Civil Code. *European Review of Private Law*, 32(5), 915–924.

role in resolving this issue. Nowadays, most people believe that marriages consummated outside of a civil ceremony are immoral.

In fact, some legal institutions—particularly regarding family law and the law of succession—were not well received in rural regions. Even though society accepted most of the legal changes, issues with polygamy and marriages that were religiously celebrated persisted.

The impact of Islamic law on contemporary Turkish law is rarely discernible, both in terms of legislative content and the execution of the law (with a few notable exceptions in the area of family law). Similarly, the Turkish legislator committed to altering, if not completely eliminating, both the statutory law and the so-called Living Law/social reality. In fact, according to most current data, the majority of the issues that surfaced during the initial phase of receipt have been addressed, in keeping with the demands of the Turkish lawmaker. The role of the exiled scholars is significant in this achievement.

B. Influence on Turkish Civil Code Reforms

Scholars like *Schwarz,* through their academic work and theoretical insights, helped shape the interpretation and application of these laws in Türkiye.

Although the Turkish Civil Code was initially based on the Swiss model, German academic thought, including *Schwarz's*, provided additional depth and perspective that enriched the Turkish legal system.

The influence of these German scholars extended beyond the early Republican period. Their teachings shaped judicial interpretations of the Civil Code for decades, ensuring that Turkish law remained aligned with European legal developments. Moreover, their emphasis on human rights and constitutionalism indirectly influenced later legal reforms, including Türkiye's adoption of a more rights-based legal framework in the second half of the 20th century[11].

However, their impact was not without controversy. Some critics argued that the wholesale adoption of European legal principles ignored local customs and social realities. Nevertheless, the contributions of these exiled jurists remain a cornerstone of Türkiye's modern legal identity.

Together with the contribution of the exiled academics, Turkish civil law is not only Swiss, but in total European in character[12].

C. Educational Impact

German academics, including *Schwarz,* were involved in teaching and training Turkish legal professionals. Beyond legislation, the exiled academics transformed Turkish legal education. Many were appointed to law faculties at Ankara University and

[11] See *Reisman* (2007), pp. 253–281.

[12] *Bucher*, E. (2000). The Position of the Civil Law of Turkey in the Western Civilization. *Annales de la Faculté de Droit d'Istanbul*, *32*(49), 7–23 (here: S. 7–8).

Istanbul University, where they introduced modern teaching methods and curricula based on German legal scholarship. *Schwarz* and *Hirsch*, for example, trained a generation of Turkish lawyers and judges who would later dominate the country's legal profession[13]. Their emphasis on systematic legal reasoning and comparative law enriched Turkish jurisprudence, moving it away from the rigid formalism of the Ottoman era.

Their lectures, publications, and scholarly exchanges helped introduce Turkish legal scholars and practitioners to advanced German legal theories. This educational impact extended beyond individual contributions, influencing the broader evolution of legal education and legal theory in Türkiye.

The German scholars also introduced case law analysis and doctrinal legal writing, which were previously underdeveloped in the Ottoman legal system.

Schwarz, the most distinguished scholar in the evolution of Turkish civil law, delivered lectures at the Istanbul University Faculty of Law from 1934 to 1953. During this period, he mentored numerous young law students, imparting the core principles and values of civil law. His influence was profound, shaping the education of an entire generation of Turkish legal scholars.

Subsequently, many of his former students assumed prominent roles, including professorships, city mayorships, governorships, high-ranking government positions, and directorships. Among them were even ministers and leading modern lawyers. Their impact was particularly significant between 1950 and 1975, playing a crucial role in shaping and advancing Türkiye's legal system.

With regard to Turkish civil law, *Schwarz* managed to simplify the concepts of European law, having its roots in Roman law, for the new Turkish law. He helped Türkiye's future generations of jurists in the process of understanding and adopting legal concepts and legal language.

By following a method based on both history and current law in Roman law courses, he not only increased the students' interest in the course, but also facilitated the study of civil law.

Schwarz was the mentor to several key figures who made significant contributions to Turkish legal education and literature in subsequent periods. These include *Kudret Ayiter*, a professor of Roman law who contributed important works to legal literature and trained many jurists; *Bülent Davran*, a professor of civil law; *Türkan Rado*, Türkiye's first female law professor and the world's first female professor of Roman law; *Ziya Umur*, a professor of Roman law; and *Hıfzı Veldet Velidedeoğlu*[14]. *Schwarz* made a great contribution to Turkish legal education not only with his lectures, books, and articles, but also with the academics he trained and the contemporary academics trained by those academics.

One of the notable legal scholars invited to Türkiye by *Andreas Schwarz* was *Paul Koschaker*. *Koschaker* made significant contributions to the study of Roman law and,

[13] *Andıç/Reisman* (2007), para. 60.
[14] *Ünal Özkorkut* (2019), S. 497.

through his assistant *Kudret Ayiter*, played a crucial role in the development of both Roman law and civil law. In 1948, *Koschaker* arrived and taught at the Faculty of Law in Ankara for a period of two years.

German legal scholars of Jewish origin also made significant contributions to the preparation of the Turkish Legal Dictionary. While *Schwarz* was responsible for providing the English and Latin equivalents of the terms, *Hirsch* and *Crozat* contributed by correcting errors and addressing omissions.

V. Conclusion

Codifications are the result of centuries of intricate development within their respective countries, reflecting the unique culture of the society from which they originate. Consequently, transplanting a civil code from one country to another is akin to moving a palm tree to a different climate.

Schwarz expresses this point in these lines quoted from *Goethe*:[15]

> *"Whoever wants to understand poetry [codifications-law],*
>
> *must go to the land of poetry;*
>
> *whoever wants to understand the poet [jurist]*
>
> *must go to the land of the poet".*

This is where the significance of the exiled academics, including *Schwarz*, who came to Türkiye, becomes clear. Although they had the opportunity to return to their home countries, they chose to stay and contribute to the development of Turkish law.

Their influence extended beyond their own contributions as they also shaped the legal system through the students they taught over the years.

Professor *Fritz Neumark*, economist and fellow émigré, explains[16] the importance of *Schwarz* with these words: "Schwarz was one of the most impressive and scientifically invaluable people among us. He possessed a high degree of self-respect and had a lasting influence on his Turkish colleagues. He was of the opinion that a university professor should have a social preference stand based on quasi-natural law."

Acceptance of a code has its difficulties. The exiled scholars' participation in the field of civil law increased accomplishments and lessened setbacks. We are grateful for their contribution, which continues to have beneficial impacts today.

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[15] *Schwarz*, A. B. (1950). Das Schweizerische Zivilgesetzbuch in der ausländischen Rechtsentwicklung. Schulthess, S. 5.

[16] *Neumark*, F. (1980). Zuflucht am Bosporus: Deutsche Gelehrte, Politiker und Künstler in der Emigration 1933–1953. Knecht Verlag, S. 89.

The exiled German jurists who found refuge in Türkiye during the 1930s left an indelible mark on the country's civil law system. Through their work in legislation, legal education, and jurisprudence, they helped transform Turkish law from an Ottoman-Islamic system into a modern, secular, and European-inspired legal framework. Their legacy endures in Türkiye's legal institutions and continues to influence contemporary debates on law reform.

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