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Competing frameworks of Islamic law and secular civil law in Turkey: A case study on women's property and inheritance practices[☆]

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SYNOPSIS

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

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Introduction

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

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

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

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

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

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

Legal pluralism: civic law vs. Islamic law in Turkey

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

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

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

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

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

also adheres to a system of inheritance governed by blood lines, with priority given to children. Concerning inheritance, the Higher Committee of Religious Affairs at the Directorate of Religious Affairs, the official body which governs religious institutions, has attempted to satisfy the dictates of the official secular law while allowing for what is required of Islam (*Diyanet İşleri Başkanlığı*, 2012). The Committee declares that according to Islam, men and women are equal and complement each other to create a whole but a woman's share of any inheritance may be different (read "less") due to the fact that a man has more economic responsibilities than a woman. However, in the event that a woman has more need and a man less responsibility, the shares of any inheritance can be reordered with the consent of both parties. Clearly, the Directorate is trying to balance its role as an organ of the state and therefore bound to uphold the official secular law which mandates gender equality while simultaneously permitting some adherence to Islamic inheritance law which provides men with a greater share than women. In doing this, the state both recognizes and attempts to control the citizenry's attempts at forum shopping or their wholesale abandonment of the secular law through the creation of a limited, state-centered Islam which is in line with the secular law.

The study: a profile for a group of Islamic women

This article stems from field research comprising in-depth interviews conducted with 20 self-identified Islamic women who at the time of the study were living in the Florya district of Istanbul. The field research was conducted over a year's time from October 2011 to October 2012. All interviews were conducted in Turkish. The in-depth interviews, on average, took 40 min, the shortest interview being 22 min and the longest 75 min in duration. All of the interviews were conducted at the women's homes where the interviewee and the interviewer were alone in the room. Therefore, interference from third parties was eliminated. Moreover, the fact that all the researchers and interviewers were women proved crucial in gaining access to the women in this group. Many observant women would have been unwilling to meet with a male interviewer that they did not know or were not related to. All of the interviews were recorded with the permission of the interviewees and then transcribed and analyzed using qualitative research methods. All of the women were assigned a pseudonym, which we use here, to protect their privacy.

The sample group was chosen from wealthy inhabitants of Florya and the respondents were contacted using a snowball technique. The research team made contact with several women residents of Florya from a variety of social circles who then referred to the team their neighbors, friends, and relatives who were living in the same area who then became subsequent interviewees. By and large, Florya is an upper-middle and upper class suburban area on the European side of Istanbul. The district is far removed from the center of Istanbul and was formerly a summer site for the Istanbulites due to its location on the shores of the Sea of Marmara. Over time, this sea side neighborhood has been engulfed by the immense growth that Istanbul has experienced and for those who can afford it is an enclave of calm away from much of the city's traffic. It is known for its green spaces as well as its villas which sit alongside more newly constructed luxury apartment houses. With

urbanization in the 1990s, Turkey witnessed the emergence of an Islamic bourgeoisie and the development of an Islamic capitalist class who obtained wealth and capital with the rise of the Justice and Development Party who came into power in 2002 and remains in power today. Since then, Florya has attracted wealthy observant Muslims who maintain a conservative way of life and set of religious values and chose to live and practice according to the dictates of Islam.

All of the respondents are adherents to the Sunnite interpretation of the Hanefite sect of Islam, which is the majority's sect in the Turkish population. Here, the term Islamic does not imply any kind of militantism or even political activism. Rather these women conduct their lives primarily along Islamic principles and endeavor to turn their beliefs into behavior. The central role and practice of Islam in the lives of these women is what separates them from many other Muslim women in Turkey. For this relatively homogenous group of Islamic women, Islam is at the center of their lives whereas many in Turkey may identify as Muslims but do not practice or place such an emphasis on Islam.

The women in the sample group maintain a way of life which is built upon a belief system where women and men have distinct roles and women's roles are concerned primarily with family and children. As such, these women place great importance on family. The family, for these women, consists not solely of the nuclear family but also includes the extended family comprising relatives of both of the spouses (aunts, uncles, nephews, nieces, cousins, and in-laws). In their leisure time, they often get together with relatives and pay frequent visits to family members. For vacations, they prefer natural sites or Islamic holy places abroad like Mecca or Medina for the purpose of religious tourism. They try to perform their roles as traditional wives and mothers – that is helping their husbands with domestic duties and raising their children to respect the elderly, the family and Islam.

The women with whom the in-depth interviews were conducted were between the ages of 35 and 56, and all were in a position to either receive an inheritance or bequeath one. The average age of the respondents was 45. Regarding education, all levels of schooling were seen among the sample group. However, university graduate was the most common. Seven out of the 20 respondents were graduates of a four-year university, one had a master's degree, six were high school graduates, one was a graduate of middle-school and five completed elementary school. In terms of occupation, a majority of the women (16 out of the 20 respondents) were housewives. Some of the respondents had worked but had stopped once they married; one was a retiree who had worked as a lawyer. At the time of the study, only three of the respondents were actively employed: two women practiced law and one was a teacher of religion at a public high school. See [Table 1](#) for a summary.

At the time of our interview 17 of the 20 women were married and it was their only marriage, one woman was divorced, and two of the respondents were widows. Of the married women, all had been married in both civil and religious ceremonies. In other words, they were married by a legal representative of the state under the civic law, thus gaining state recognition, as well as by a religious official according to Islamic rules in a separate ceremony. The husbands were predominantly involved in trades as merchants buying and

Table 1
Descriptors of the sample group.

Name	Age	Education	Employment	Marital status	Property owner
Ayla	38	University	Employed	Married	Yes
Bahar	48	High school	Never employed	Widow	Yes
Betül	53	Primary	Never employed	Married	Yes
Binnaz	50	Middle school	Unemployed	Married	Yes
Büşra	45	High school	Unemployed	Married	Yes
Esmâ	44	Primary	Never employed	Married	No
Fatma	39	Master's	Employed	Married	No
Gül	44	University	Never employed	Married	Yes
Hilal	45	High school	Unemployed	Married	Yes
İlkay	42	Primary school	Never employed	Married	Yes
Kezban	35	University	Never employed	Married	Yes
Nagehan	48	High school	Unemployed	Married	Yes
Nevin	47	High school	Never employed	Married	Yes
Nilgün	48	University	Retired	Married	Yes
Semiha	39	Primary	Unemployed	Married	No
Sevil	51	University	Never employed	Divorced	Yes
Sümeyye	42	High school	Never employed	Married	Yes
Yıldız	43	University	Never employed	Married	Yes
Zehra	47	University	Employed	Married	Yes
Zeliha	56	Primary school	Never employed	Widow	Yes

selling (export/import) goods in their own shops or businesses. All of the women interviewed for the study had at least one child with the maximum being four. The average number of children was two. All of the women had at least one sibling and some women had as many as six; the average number of siblings was three. Predominantly, the women were living in nuclear families; a few had either their widowed mothers or mothers-in-law residing with them.

Findings: women's property ownership and inheritance

Property ownership was common in the sample group. All except two of the women owned some form of property, including at least one home, in their own names, with nearly half of the respondents owning up to three houses: a summer home, shop, farm and/or vacant land (real estate). Women received these properties primarily through marriage and/or inheritance. All of the women said that their husbands wanted them to retain, in their own names, ownership of some of the property acquired during the marriage. Of those women who owned property, three-quarters obtained property within marriage with the vast majority of purchases taking place by husbands. Only two women claimed to have purchased property on their own or in conjunction with their husbands. Additionally, a number of women also received inheritance in the form of *inter vivos* transfers, transfers or gifts made between the living, as well as more traditional inheritance after the death of a parent; three had received theirs as mandated by the civil code. The women were utilizing their properties either as residences, both primary and summer, and/or as rental property which provides revenue used directly by the women. Although they benefited from the property that they owned, control is often shared with male family members (husbands, sons, sons-in-law, brothers and fathers). It seems that despite the fact that these women are property holders in their own right and benefit from their property, decisions regarding maintenance of the properties, paying the taxes, dealing with renters, buying and selling the real estate, etc. are made by either their male family members or together with them. What

is clear is that very few if any of these women are empowered to make decisions regarding their own property without consulting the men in their lives. For these women, property ownership signaled security rather than power. In particular, home ownership gave them a place to rest their heads should divorce be necessary. More interesting is the fact that they did not perceive property as empowering them as individuals. For example, both Büşra (45, high school education, unemployed) and Nilgün (48, university education, retired) were hiding their status as property owners for fear of negative reactions from family and those in their social surroundings. They did not want to illustrate an image of "powerful enough to demand a divorce and leave the husband" if they have the funds for, and indeed they did have the property. Another contributing factor that may undermine a sense of empowerment derived from property is that only two of the women in this study reported purchasing property either by themselves or jointly with their husbands. Perhaps not coincidentally, both of these women are university educated and trained lawyers and, at the same time, they were the only two women who were working at the time that they were interviewed.

All the women reported having experienced difficulties at the municipality property registration office, tax office, notary, banks, courts, maintenance stores, real estate agencies, etc. This may be a result of male involvement in decision-making reinforcing the fact that although these women are the property owners, they do not conduct the legal and economic affairs pertaining to their property themselves. Both the decisions regarding the real estate that the women own as well as the transactions related to the property are not considered within the women's domain; male family members conduct these matters on behalf of the women which limits women's access to the public sphere. In cases where their signature is needed, the women go to the required office merely to sign the necessary documents only after these documents are prepared by their husbands or male family members.

A similar situation exists with regard to bank credits and mortgages. On occasion, a few of the women, although

reluctant, used mortgage credits when purchasing property. Although most of these mortgage credits received were in the women's names, again, the decision for obtaining a mortgage was made primarily by male family members with the women merely providing their signatures once the documents had been prepared by a male relative and/or husband.

All of the women stated that they also owned moveable assets such as cars, bank deposits, cash money, investments, stocks and shares, gold, jewelry, and furniture. On the whole, they owned gold and jewelry that they kept in safe-deposit boxes in the banks or in their houses. Any cash is held in Turkish liras or in foreign exchange bank accounts. They preferred Islamic banks such as Bank Asya, Albaraka Türk, and Kuveyt Türk which provide interest free income to the investors. The women were generally against the practice of using bank accounts largely due to the interest that is charged. The charging of interest on money lent is forbidden in Islam. Due to this, a majority of the women did not make frequent use of banks and their credit card usage was also limited. If they had extra money for investment, they preferred either to purchase gold or place the money in Islamic banks, which promise their customers non-interest revenue for their investments. Some of the women had cars, some had antiques and a few had stocks (minority shares) in the businesses run by their husbands or male relatives (fathers, sons, sons-in-law or brothers). The moveable assets were obtained in similar means to the immovable property – through marriage and/or inheritance.

Overall, our field research revealed that beyond purchasing their own property, which very few of these women did, there are three additional primary means through which Islamic women come to own property and other assets: a) marriage; b) *inter vivos* transfers from the parents; and c) inheritance from the parents and/or husband.

Marriage

Nearly half of the respondents (nine out of 20) chose their spouses themselves as opposed to an arranged marriage. Their families accepted their choice of husband, with the exception of one respondent who reported that her family resisted her choice but she married the man over their objections. The other half (11 out of 20) of the sample had marriages arranged by their families where relatives found suitable spouses. All of the women received a dowry from their parents at the time of their marriage and brought it to the family upon marriage. The dowries consisted primarily of furniture and household items, yet a few women mentioned that their parents gave them a house as a wedding present.

As part of the Islamic marriage ceremony all of the women were promised a dower (*mehir* in Islamic family law) to be given by the groom and his family. This was in the form of an oral contract. The amount of the dower contracted varied from 75 g of gold to 300 kg. Although *mehir* is traditionally paid upon marriage, the practice among the respondents was to defer so that actual payment was to take place at some later point in the marriage. A majority of the women (15 out of 20) whose *mehir* payments were deferred had not received their *mehir* at the time of the interviews, yet they underlined the fact that they would definitely ask their husbands for payment if the marriage was to dissolve. Only one woman was divorced and she stated that she did not receive her *mehir* as her former's

husband economic situation at the time of divorce was insufficient to pay the deferred dower; thus, she annulled the *mehir* (dower) agreement. Some of the married women whose husbands promised a certain amount of *mehir* at the start of their marriages renounced their *mehir* claims. Their main motivation in relinquishing their dower payment is to avoid placing economic pressure on their husbands as dower amounts are often quite sizeable and not paid easily, and the husbands are already taking care of the household needs. The belief that Islam recommends relinquishing the dower as a means to increase marital happiness and the welfare of the house was also common. It is also important to note that women forwent their dower payments with the belief that their marriages would continue. Only a few of the respondents (five out of 20) received their dower at the start of the marriage (prompt dower) and most of them received it in the form of gold. Only two of the respondents used their prompt dower for individual purposes, one purchased a house registered in her name and the other funded a pilgrimage to Mecca. The remaining women converted their *mehir* to cash for the welfare of the household.

Regarding legal marital property regime, all of the married respondents were married before the revised Civic Code came into effect in 2002. Therefore, they were subject to the legal regime of separation of property. The 2002 civil law mandates partial community property regime as the default, where all property acquired during the marriage is to be divided equally in the event of divorce. Given the fact that these respondents were married prior to 2002, all the property gained during marriage effectively belongs to the original owner or purchaser. Although most of the property obtained during marriage is entitled to the husbands, a number of the women that we interviewed held property in their own names obtained through marriage.

Those women who were given title to their houses by their husbands related that the main motivation for the transfer of property was their husbands desire to protect them and ensure that they continue to have a house to live in. Nevin (47, high school education, never employed) and Nagehan (48, high school education, unemployed) explained as follows:

I did not request it but my husband signed over to me the house that we live in. Since I do not work and he pays for the education of the children so that they can stand on their own feet, he wanted the house in my name. In the future, nobody knows what may happen. He wanted to protect me.
[Nevin]

Whatever my husband buys, he entitles it to me. It is not to be misunderstood – I do not pressure him to do so.
[Nagehan]

It would appear that many of the women that we interviewed exchange their “protection” for submissiveness and propriety, a situation that Kandiyoti terms a “patriarchal bargain” (1988: 274–275, 283). The men in their families support them financially in exchange for their domestic role. Several women also mentioned their father's and husband's desire to shield them from any potential misfortune in life. A majority also shared that their husbands wanted to continue to

ensure their wives' protection by preventing the family house from being divided or sold after their (the husbands') deaths. Keeping the family home intact was another reason for the husbands of the respondents to transfer the title of the homes to their wives. Kezban (35, university education, never employed) put it succinctly: "My husband entitled the house to me for he did not want me to have troubles or in need of others after his death". Another woman, Ilkay (42, primary school education, never employed), elated the fear that children might pressure the surviving spouse to sell. She stated that:

My husband does not want the house to be sold after his death. So, he says, I will not give my blessing to you if you sell the house. Our sons might pressure you to sell the house. Do not listen to them. Do not allow them to sell the house. You shall not be dependent. You shall not be in need of others. This is what he says to me.

Interestingly, in providing protection for their wives, a number of the men also appear to be sowing the seeds for women's greater independence in the event of their deaths. While many of the women in this study have become property owners, another made clear that in some families there is decided opposition to female property ownership. For some of the women property ownership remains all but unthinkable. For example, despite her desire to own property, one woman stated that she could not voice her wishes in the face of family antagonism. Semiha (49, primary school education, unemployed) explained:

I would like to own the house but I have a mother-in-law and she puts pressure on us. My husband's family does not approve of putting property on a woman's name. My husband and I have not even talked about this.

For families like Semiha's, property ownership is often viewed as part of the male domain. Men are the economic actors and financially responsible for the family; therefore, property should remain in the hands of men. If women begin to impede on the male domain the balance of roles that these families view as prescribed by Islam might be upset. This threatens ideas of masculinity, femininity and most importantly the family unit that arises out of the complementary roles that are prescribed to men and women.

Inter vivos transfers

Inter vivos transfers, although technically not inheritance, often circumvent the need for inheritance as the family's wealth is distributed prior to death. As this process is a transfer rather than an inheritance, there is no restriction on how property or wealth is allocated. Shares can be allotted equally to all children or in accordance with Islamic law. Furthermore, the costs of *inter vivos* transfers (purchasing tax or other costs related to the transfer of real estate at the state registration office) are lower than inheritance tax.

Half of the women in the study had received some form of transfer and three-quarters of the women claimed that they planned to continue the tradition. The distribution of family wealth, whether property or money, took a number of different forms ranging from strict equality among children to transfers

which mirrored Islamic inheritance law granting sons twice the share that would be allocated to any daughters. In the instances of those families who adhered to the strictures of Islamic law, it was generally fathers who sought to apply Islamic law. Sümeyye (42, high school education, never employed) related her family's situation:

In our religion, the daughter receives one-third... In our family, since everybody is alive, according to our religion, if everybody gives consent, for example, if the siblings give consent, the parents can allocate as they wish. There is no problem because the parents may give more to the child who is in need. It happened like that in our family. My father managed these things with a lawyer. He also called us and said, "I think like this. What do you say?" Everybody agreed... Probably my brothers' estate is worth more. Maybe they are not, I do not know. I mean, everybody was satisfied in the end.

Despite the fact that all of the women in the study identified as Islamic, not all of the *inter vivos* transfers that took place were according to Islamic law. Some parents transferred their property on the basis of equality so that their daughters were not discriminated against. Moreover, some even provided more to their daughters. Hilal (45, high school education, unemployed) explained that:

I use the property that I own. We live in one of the houses and we have rental income from another. Both of the properties are registered in my name. The house that we live in is not one that my husband and I purchased during our marriage. It is a gift from my father. It is not inheritance. My father gave one house to me and one house to my brother as presents.

One of the primary reasons offered for transferring more to the daughters than sons seems to be a concern to protect them in case of future divorce or after the parents' deaths. The respondents described their parents' desire to protect them through the provision of property.

My father said, "I am placing the house in your name. You shall not be in need." Because he knows men. With this thought he transferred the house to me. What other reason would there be for him to give away his own property?

[Kezban]

One of the respondents stated that her father transferred all of his properties to her instead of her brother in order to maintain equality between her and her brother, but also to protect her. The respondent was divorced and in need of an income. Sevil (51, university education, never employed) explained the transfers that her father made as follows:

My father transferred all the money that he owned to me. Because of that, my brother and I do not see each other anymore. My father said to me, "You should have all the property that I have because it would be just." Since I am a divorcee and there is no income from my former husband, my father wanted to protect me. He transferred all the property to me by selling on the paper. There is less tax when selling the property instead of inheriting it.

Another aspect of the transfer of property and wealth in these families is the issue of one sibling renouncing their right in favor of another. The main motivation for such a sacrifice appears to be need. Several respondents related that this was a more just distribution than strict equality because their siblings might have greater needs. As Kezban and Bahar (48, high school education, never employed) explained:

My father titled one house in my sister's and my name. My father is still alive. He did this because life may bring the unexpected and we may go through a bad patch at some point of our lives. My sister and I gave this house to our brother. We decided like that. We showed our initiative like that. We gave it to our brother who sold the house and opened a business for himself.

[Kezban]

My father sold the house and we are four sisters. My father wanted to distribute it equally among the four children. I said to my father, "The money that you receive after the sale of the house, I do not want it. I will give it to my sister. I will give up my share." My other sisters said, "But you may need this money in future." I said, "No, I want to give my share of money to my sister because she needs it more." I did not take the money.

[Bahar]

Several of the respondents also made it clear that their parents intended to use *inter vivos* transfers as a means to avoid the equality provided in the Civil Code. In order to ensure the distribution that they wished, they would avail themselves of the freedom provided for in *inter vivos* transfers. Büşra's (45, high school education, unemployed) family provides a pertinent example:

In our family, the measurement is who needs more, could be given more. It does not need to be within the framework of the law. Civic law is not our measurement. In our family, we resolve issues amongst ourselves. It is an intra-family matter.

Kezban made it clear that the *inter vivos* transfer process allowed for her father to ensure that the majority of his wealth goes to his sons:

My father predominantly wants his property to be transferred to the sons. For the daughters, he would want a small share that would be suffice for us but for the sons, he would want the remaining to give all the real estate and the businesses to the sons.

Inter vivos transfers thus represent an important part of the practice of inheritance in this community; this strategy enables them to dispose of their property and wealth with little or no interference from authorities. This allowed families to distribute the wealth contained in their estates according to their own values and needs whether they be Islamic or based on equality.

Inheritance

Despite the rather widespread use of *inter vivos* transfers, the women in this study also received property through the

more traditional route of inheritance. According to the civil law, after the death of a Turkish citizen, the population registration system automatically identifies the legal inheritors by use of a computerized system. Courts, notaries and land registration offices are privy to the list of all inheritors and the shares of all legal inheritors are calculated automatically. Inheritors receive an official certificate declaring their share of the estate. Although the civil law provides for strict gender equality between inheritors, a number of the respondents reported that they had renounced their part of the inheritance in favor of their brothers. For example, Esma noted:

There was property that I was going to inherit but it does not exist now. On the whole, we [my sister and I] transferred it to my older brother. We gave our signatures... It is like that in our family. Usually in the Black Sea region people do not give importance to girls. I mean property is not bequeathed to them. Therefore, we...ourselves did not demand our inheritance. This is a tradition in our family...I did not object. No. Even our Holy God set out the rule that way. The shares of brothers more than the share of the sisters. I would never object to the rule of God. After my father died, the inheritance was distributed. We waived our rights for our brother.

While Esma is correct that Islam provides a larger share of inheritance for sons, nowhere does it require women to give up what is their legal share. In fact, it was one of the great advancements of the day that Islam actually provided women with inheritance rights long before women in most places could avail themselves of such a right. Similarly, Nilgün (48, university education, retired) relinquished her share with the express intention of honoring the Islamic law on inheritance:

The inheritance was distributed equally according to the legal civic law but later on, I re-arranged it according to Islamic law. I received my share according to the civic law, but I calculated according to the Islamic law and then gave some portions of my inheritance back to my brother because I believed it was more than I deserved according to Islam. My parents had no will. I just wanted it to be that way. Nobody objected. Everybody was satisfied. I re-calculated what was given to me as an inheritance by law and then gave the amount that I received as surplus to my brother.

For the three women who relinquished their legal inheritance, all did it in favor of Islamic inheritance law and its prescriptions. They appear to have acted in this way out of belief, however Esma invokes the concept of tradition both in her family and the Black Sea region from where they originate. Here, it is difficult to separate custom from religion. However, Esma, Nilgün and Büşra all reported that they also planned to invoke Islamic inheritance for their own estates when the time comes.

While some of the women who bowed to tradition in order to observe Islamic law, claimed to have willingly renounced their legal inheritance shares from their parents' inheritance in favor of their brothers, there were those who did so as a result of family pressure. Despite these pressures, several of them made clear the extent to which they were resisting and attempting to assert their claims of equality. As Gül (44, university education, never employed) argued:

My father, before he died, had an oral will stating that all his property should be given to his sons. I do not respect this will. My brother says that our father stated this to him personally. Therefore, he claims the entire estate and wants our signature to renounce our legal share. I did not give my signature. I did not go along. My other sisters renounced but I did not... I do not find it logical, I mean, that the inheritance be given to one child and this is why I objected. I do not need the money and I do not need the inheritance that I received from my father... But I have a legal right and I used my legal right. I did not find it rational so I did not say yes. I did not give my signature. Naturally, we are now cross with each other. We do not have a dialogue. All the family relations are cut off now.

Similarly, Sevil's story, points to the potential difficulties when women stake their claims to equality in the face of family opposition:

When you apply the Islamic law, more is given to the son. My mother wanted to observe the Islamic law... She decided to give more to my brother and less to me. At that time it was not important to me because I was married, I had a house, I had a car which was enough for me... I did transfer the title of the smaller property to my name but my brother did not and left it like that [under my mother's name]. Now the property is the problem. My mother died. After my mother died, my situation got worse. My marriage was in trouble. My husband went bankrupt. I then got divorced. I needed to set an order for myself. I needed the rent from the larger property that my mother left. I told this to my brother and we quarreled. After my mother's death, legally, I have an equal share with my brother in the bigger property, but he does not accept this. He was mad at me. We had serious arguments. It is still unresolved. Since all the promises that my brother made have not been kept, now I demand equality. My brother does not accept this. He wants the entire building and does not even give me part of the rent [from the stores in the building]. I ask my brother, "Why are you doing this to me?" He says, "You are a girl. You got married and established your own family..." My brother also does not take care after me. According to Islamic law, divorced sisters are to be taken care of by their brothers. But he does not fulfil this responsibility. Since he does not respect me and he does not take the responsibility of taking care of me, I demand my share... All these material problems influenced our lives negatively.

Largely as a result of their experiences of trying to oppose such inequality, half the women (such as Gül) do not plan to leave an inheritance claiming that it would only lead to more family fighting. However, in this community, the use of *inter vivos* transfers is widespread and there are women who plan to employ them to ensure an adherence to Islamic inheritance law. However, for women like Sevil who plan to do so, they also want to ensure that any inheritance will be provided equally for their children.

Conclusion

This article has attempted to unravel the intertwined aspects that influence the practice of inheritance among self-

identified Islamic women in Turkey. The women in this study operate at the crossroads of Islam, secular law, and customs with regard to the construction of their lives in general and their practice of inheritance in specific. Despite the adoption of a civil law which mandates gender neutrality in inheritance, our research demonstrates that the women in this community engage in a number of different practices when it comes to the distribution of family property and wealth. For many of these women, Islam is an important source for determining conduct in family affairs and civic relations. The importance attributed to Islam and hence the Islamic worldview prevalent among the women influence the decisions of many regarding property distribution and allocation within the family. At times, the unequal distribution of property between genders among the family members is justified through an Islamic lens and at other times, the inequalities prescribed by Islamic inheritance regulation are resisted through *inter vivos* transfers to achieve equality among the children or other members of the family. Islam continues to be a source of law for these women and many others in Turkey and its continued use competes and circumvents with secular law resulting in a hybrid system where citizens pick and choose the mechanisms which best suit their needs, motivations and values.

In line with the existing research by Deere and Doss (2006b) and Deere, Alvarado, and Twyman (2010), marriage proved particularly important in providing a means through which the women in this study came to be property owners. Many of the women in this study received property upon marriage when houses and property were titled in their name. At the same time, Agarwal (1994) points to a gender gap between law and practice where there is a mismatch between modern inheritance laws and traditional marriage practices which seems to be the case in Turkey as well. Despite the fact that some of the women in this study inherited on equal terms with their siblings, many did not. In fact, *inter vivos* transfers were consistently employed by many families to allow for an inequitable distribution of property. Specifically, *inter vivos* transfers were employed to allow families to allocate whatever wealth and property existed in accordance with their beliefs and values. While inheritance remains a crucial mechanism among women securing property (Benschop, 2004), this research illustrates that in this community, transfers among the living prove equally important in assisting women in becoming property owners.

The process of inheritance is further complicated by those women who renounce their inheritance rights. Several women that we interviewed related that they willingly relinquished their inheritance rights generally in favor of a male sibling who was deemed to be in greater need. Many of the women employed a rhetoric of need to justify such inequity asserting that the sibling in need should inherit or receive more even if it was at their own expense. However, there is a sense that women in this community are understood to be always in need, particularly of protection by a male relative. At the same time that these women were giving up their inheritance, several more made clear that they were resisting the pressure of their families and were attempting to secure their equal share of the family property. Moreover, their resistance also extended to their intention to distribute their own estates on an equal basis between their children.

Even after the adoption of equal inheritance rights in Turkey in 1926, the rights of widows and daughters were commonly

overlooked and patrimonial land continued to be divided among sons. Even when a female inherited land, she would not take the land but would leave it to her brothers (Karadağ, 2006: 79). This appears to still be the case. Further, several of the women made clear that despite wanting to own property they could not voice such desires. As one woman explained, the tradition in the Black Sea region was opposed to women owning property therefore women should not seek their rightful inheritance. Research conducted in the Black Sea region confirms that practice that land is often only left to sons, thus rendering women landless and depriving them of their legal rights (Uzun & Çolak, 2010: 3). So, even though women have equal inheritance rights under the official law, local traditions and discrimination may prevent them from getting their inheritance shares (Chiweza, 2005: 84).

Despite the difficulties that women have in becoming property owners through any means, these women do own property unlike most women in Turkey. However, their status as property owners did not yield any sense of empowerment for them as individuals. Rather, home ownership symbolized security and protection from any adversaries that they might face in the present and future. The lack of empowerment seems to derive from two factors: the lack of decision-making that women exert over their property and the fact that for all but two of the women in the sample their property was secured through means other than their own. The two women who were involved in the purchase of their own properties are the only two who present a different profile. Unlike their counterparts, these two women were professionals employed at the time of their interview. Interestingly, both of these women, practicing attorneys, planned to distribute their own estates on the basis of equality. This contrasted with several other women who were also university educated, including those also trained as lawyers who had not purchased their own property and intended to use Islamic inheritance law in the distribution of their wealth. The distinguishing factor here seems to be employment and the pursuit of a career.

A number of the women reported that their families relied on or intended to rely upon Islamic legal principles in distributing their property. Many of the women in this study planned to continue this tradition in the distribution of their personal property. The primary means through which they used to achieve this is *inter vivos* transfers. Transfers among the living are largely unregulated and can be arranged as the giver sees fit thus allowing any distribution of family property and wealth with little or no interference from authorities. This is in direct contrast to the civil law which requires not only strict gender equality but is highly regulated by the state. In practice most of the women in this study reported that they would use both *inter vivos* transfers as well as regular inheritance laws to achieve their desired ends. The study not only demonstrates the highly gendered practice of inheritance and property distribution in Turkey, but also points to the on-going struggle on the part of the state to establish a unified legal reality in the face of continued contestation and challenge from unofficially, but still very powerful, Islamic laws.

Perhaps more than anything this research demonstrates the existence of legal pluralism in Turkey. Despite attempts to reject legal pluralism and establish a unitary legal system of secular laws (Yarar, 2007), the existence of multiple sources of law guiding citizen's civic affairs continues. Some segments of

Turkish society view the civil law as the ultimate arbiter of their affairs concerning inheritance. Yet, there are those, as the group in our sample, who insist that Islamic law is the paramount. The continued existence of legal pluralism points to the unfinished project of Turkish modernity where fault lines still exist between the sacred and secular. Despite attempts to establish a fully secular Republic where the public equality of women signaled its modernity and westernization, much remains to be done. The process of women's emancipation remains incomplete and individual's experiences of citizenship are deeply informed by gender (Aslan-Akman, 2013).

Religion, primarily Islam, continues to be important in the daily lives of many, as do customs. Despite attempts by the state to relegate religion to the private sphere, Turkey is still experiencing social, cultural and political processes in which the presence of Islam is felt (Gülalp, 2003). Any difficulties in achieving gender equality do not lie with Islam per se but the secondary roles of orthodox interpretations of religion assigned to women and the control that they exert over the bodies and moral choices of women are influential (Arat, 2010: 881). Certainly the worldview that the women in this study articulated fits into this category and many have entered into "patriarchal bargains" (Kandiyoti, 1988) which confine them to the domestic sphere. The lack of equality that often emanates from adherence to the pious worldview that these women espouse relegates them to a position of inequality vis-a-vis men (Aslan-Akman, 2013). What is evidently clear is that these women, and many others, must continue to negotiate a number of contentious forces, including both secular and Islamic laws in the construction of their lives and choices. Last but not least, it has to be mentioned that further research in the field of women and property is essential as this study is only about a sample group composed of 20 women. Additional research on other groups of women from lower classes or with different life styles and traditions would provide important data to the field.

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