



Women's Property Rights in Turkey

Mary Lou O'Neil & Sule Toktas

To cite this article: Mary Lou O'Neil & Sule Toktas (2014) Women's Property Rights in Turkey, Turkish Studies, 15:1, 29-44, DOI: [10.1080/14683849.2014.891350](https://doi.org/10.1080/14683849.2014.891350)

To link to this article: <https://doi.org/10.1080/14683849.2014.891350>



Published online: 11 Mar 2014.



Submit your article to this journal [↗](#)



Article views: 433



View related articles [↗](#)



View Crossmark data [↗](#)



Citing articles: 5 View citing articles [↗](#)

Women's Property Rights in Turkey

MARY LOU O'NEIL* & SULE TOKTAS**

*Gender and Women's Studies Research Centre, Kadir Has University, 34083 Cibali Fatih, Istanbul, Turkey; **Department of Political Science and Public Administration, Kadir Has University, 34083 Cibali Fatih, Istanbul, Turkey

ABSTRACT *This article takes Turkey as a case study, exploring marital and inheritance regimes with regard to their impact on women and their ability to protect women's property rights. The aim of the study is to bring to light the workings of the legal system that regulate the acquisition of property and to scrutinize the gap between the law and its practice in Turkish society. By taking this approach, the article does not only focus on laws but also on how these laws are adopted by society. Thus, two levels of analysis—de jure and de facto—are utilized for an investigation of women's property rights and hence their social and economic status.*

Introduction

Globally, men own more property overall than women.¹ In many cases, women own land but are not allowed to fully control it and may need husbands' or male relatives' permission to sell property, use it as collateral to secure credit, or to transfer ownership. Given women's traditionally weak power position within society and limited access to public sphere, the possession of economic assets in the form of property serves to strengthen women's status.² For instance, ownership and control of property provides the ability to make choices concerning livelihood, protects against poverty, and promotes autonomy.³ In addition, women's access to property contributes to a sense of economic empowerment via increasing opportunities, decision-making power, and overall well-being. Property further provides women with additional bargaining power and especially within the family.⁴ Perhaps more than anything, property rights offer the prospect of empowering women to resist domination and inequality.⁵ Recent research has shown that ownership of property has been a major factor in reducing domestic violence.⁶ The economic security provided by land ownership permitted women to refuse abuse sooner than they would have otherwise.

Two institutional factors are particularly influential in shaping women's asset accumulation—marital and inheritance property regimes. Marital status is a primary determinant of women's ownership of property due to the sets of rules that define the legal ownership of assets brought to and acquired during the marriage

Correspondence Address: Mary Lou O'Neil, Gender and Women's Studies Centre, Kadir Has University, 34083 Cibali Fatih, Istanbul, Turkey. Email: mloneil@khas.edu.tr

and any subsequent distribution of those assets in divorce.⁷ On the other hand, inheritance as a fundamental means for the accumulation of wealth opens another venue for acquiring property for women evidenced by the fact that women who own wealth are more likely than men to have inherited it from either their parents or their husbands.⁸ Given women's disadvantageous position in the labor markets coupled with the global gender gap in land ownership, understanding women's inclusion and exclusion from the processes of inheritance is important in understanding the opportunities and limitations in their accumulation of wealth and property.⁹

This article employs Turkey as a case study, exploring the marital and inheritance regimes with regard to their impact on women and their ability to protect women's property rights.¹⁰ In Turkey, a country with a secular legal and constitutional framework safeguarding the norm of equal citizenship, women are granted the same sets of rights as men. The laws regulating marriage and inheritance also attempt to protect women's rights to property. Despite the gender neutrality of laws on marriage and inheritance, which one would expect to result in a reasonable rate of female property ownership, national figures for property distribution by gender demonstrate that, in practice, this is not the case. The vast majority of property in Turkey is owned by men; in fact, Amnesty International reported that 92 percent of the immovable property in Turkey belongs to men and only eight percent was in the hands of women.¹¹ These property ownership figures illustrate a continued tendency for women to be excluded from property acquisition. The aim of the study is to bring to light the workings of the legal systems that regulate the acquisition of property and to scrutinize the gap between the law and practice in Turkish society. By taking this approach, the article focuses not only on laws but also on how they are adopted by society. Thus, two levels of analysis—*de jure* and *de facto*—are utilized for an investigation of women's property rights.

The analysis is undertaken in four parts. The first part focuses on the marital property regime in Turkey and presents the *de jure* situation that affects women's economic and social status and women's property acquisition. The second part deals with the inheritance property regime and lays out the fundamental principles guiding the distribution and allocation of inheritance. The third part carries the discussion to the *de facto* level and discusses the societal practice of the marriage and inheritance contracts but also the traditional social norms and customs that deter the application of the official legal system in the society. This section reveals that there exists a plurality of sources operating to form a hybrid system of various norms, customs, traditions, legal codes and the Islamic Law. The article ends with a conclusion discussing the research findings and main points developed in the paper, and suggests that the situation in Turkey represents a failure of the legal system to impose standards of gender equality on society as well as societal resistance to women's full equality.

Women's Property Rights in Marriage: The Legal Marital Property Regime in Turkey

With the founding of the Republic of Turkey in 1923, a number of legal reforms were instituted, all of which sought to further transform the country along the lines of

western norms. Legal and judicial reforms were major aspects of the Kemalist modernization project although changes to the legal system represented a continuation of a process of modernization and Westernization that had begun during the Ottoman period.¹² During the period, secular laws transplanted from Western sources had replaced virtually all but the Civil Law, which remained largely unchanged. As part of the Republican reforms, The Islamic Sharia Law was abolished and replaced with a "flexible adaptation" of the Swiss Civil Law in 1926.¹³ Officially, the Kemalists represented the adoption of the new Civil Law as the death knell of Islam as an official source of law and a break with Turkey's Islamic past when, in fact, the adapted Swiss Civil law retained a number of features directly from the Islamic Law.

One particularly important change made to the original Swiss law was concerned with the issue of property. The husband, as also in the case of the Islamic Law, controlled all family properties. The original Swiss statute provided for shared property. The Turkish Law, however, while retaining property rights for women, maintained separate property regime by which in the event of divorce, spouses kept whatever they brought into marriage unless otherwise stipulated in a marriage contract. The secular law included a number of advancements for women such as eliminating polygamy, granting equal shares in inheritance and expanded rights of custody over children but it left the traditional family form intact: the patriarchal family headed by husband who was responsible for his wife.¹⁴

Since its adoption, the 1926 Civil Law has undergone a number of revisions; and in 2001, as a result of much campaigning on the part of feminist and women's groups, major amendments were introduced. A new Civil Law (Law No. 4721) came into force as of January 1, 2002. Despite revisions the underlying assumptions of marriage embodied in the 2002 Civil Law, it still assumes marriage to be heterosexual, exogamous (limiting endogamy), secular, patrilineal, nuclear, and monogamous. This concept of marriage rejects ideas of legal pluralism or different traditions and customs, and adheres to the monist legal coding system.¹⁵

In comparison with the original 1926 Civil Law, the 2002 Civil Law has significantly improved the position of married women. Under the current law, the husband is no longer the legal head of the household, and it is instead stated that the "spouses direct the union together" (Article 186), men and women have equal status within marriage (Article 188), and that men are not legally obligated to financially provide for the family, a circumstance which traditionally relegated women the role of domestic helper. In a further move to provide for women's equality, especially in the area of economics, the new law removed the requirement of a permission from husbands to work. It now states, "neither spouse in their choice of profession or work is required to obtain permission from the other" (Article 192). The new law also established the minimum age of marriage for both men and women as 18 and extended equal rights of inheritance to children born outside wedlock. In the midst of a statute that appears largely built on ensuring gender equality, two troubling articles seem strikingly out of place: the waiting period required for divorced women (Article 154) and the presumption that any child born 180 days after marriage belongs to the husband (Article 287). Both of these provisions appear in the 1926

Civil Law and are derived from the Islamic Law.¹⁶ Given today's technology, it is hardly necessary to maintain a waiting period after women divorce to determine whether or not they are pregnant and DNA testing is far more reliable in establishing paternity than the calendar.

Notably, the marital property regime was also changed from one based on separate ownership to a partial community property regime, mandating an equal division of any property acquired during marriage in cases of divorce or inheritance after the death of the spouse. This was a demand of the feminist movement, as well as part of the European Union accession process and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁷

Under the current civil law, the partial community property regime is the default state for all marriages, unless a couple specifies otherwise. The default partial community system identifies two types of property: communal and individual. Communal property is acquired during marriage. It includes income generated by working (wages, salaries, etc.), all social security funds obtained, compensation received as a result of accidents and loss of ability to work, and any revenues stemming from personal property (i.e. rentals, interest payments, etc.). Individual property is classified as all personal possessions, all assets and property acquired before marriage, all property and assets acquired as inheritance after marriage, and any holdings of solatium (non-pecuniary damage payments). According to the partial community property regime, all property acquired prior to marriage remains the exclusive property of the individual, while communal property composed of any assets amassed during the course of the marriage is to be divided equally in the case of divorce. Any inheritance received during marriage is considered individual property and remains the sole property of that individual regardless of the dissolution of the marriage. However, income generated by individually owned property, such as rents and interest, is pooled and considered community property and therefore to be split equally between the spouses in case of divorce. In sum, under a partial community property system, property acquired prior to marriage remains the individual property of each spouse and only those assets acquired during the marriage are considered joint. In the case of divorce, joint community property is divided into equal shares. Inheritances received during the marriage are treated as individual property and therefore are not subject to division.

For couples that do not wish to participate in the default regime (partial community property), the law allows them to choose between either a full community property system or a complete separation of property and assets. If a couple prefers to avail themselves of any regime other than the default partial community property system, they must execute a written agreement recognized by a court of law. The full community property option (Articles 256–281 of the Civil Law) stipulates that all assets acquired, regardless of whether they were acquired prior to or after marriage, are pooled. Under a full community property system, the assets of each party are pooled. All property acquired both before and after marriage is considered the joint property of the couple, the idea being that each party acquires a one-half share in all property acquired, even if the property remains in one person's name.

If the marriage dissolves, all assets are divided equally between the two spouses. Under a full community property regime all assets and property are held in common upon marriage.

On the opposite end of the spectrum is a complete separation of property (Articles 242–243) where assets acquired by each spouse prior to or during the marriage remain individual property, including earnings generated from this property and any individual earnings such as wages or salaries. Under this system, if the union is dissolved, there is no community property to divide between the spouses. A middle-road option referred to as separation of shared property (Articles 244–255 of the Civil Law) stipulates that the property acquired by one spouse after the establishment of the Division of Shared Property Regime and used jointly by, or for the benefit of, the family, or investments which have been invested for the future economic benefit of the family or corresponding assets shall, in the event of the termination of the property regime, be shared equally between the spouses. For property related to a business, economic unity is to be taken into consideration during the division process.

Women's Property Rights and Inheritance: The Legal Regulation of Inheritance in Turkey

Apart from marriage, inheritance is a particularly important means through which women can own property.¹⁸ As most women around the world do not have the financial means to purchase property, inheritance and ensuring women's equal inheritance rights becomes critical in rectifying the wealth gap that exists between men and women. Turkish Civil Law also lays out the general principles of the inheritance legal regime—the other primary determinant of women's property acquisition.

In Turkey, inheritance laws and procedures are strictly regulated by the state through the Civil Law (Articles 495–682). Inheritance only occurs following death, and inheritors must be alive; if a beneficiary dies prior to receiving her inheritance, then the bequest transfers to her inheritors. The inheritance regime in Turkey is strictly tied to bloodlines and gives priority to children through a system of protected shares. The law maintains strict gender equality and stipulates that all those entitled to receive an inheritance can do so regardless of gender. In an attempt to ensure equality, the law carefully maintains gender-neutral language when referring to inheritors, children, and parents. Even when gender-specific language is employed in reference to the rights of mothers and fathers inheriting from deceased children, the rights of both parents are ensured.

The Roman Law tradition maintains a system of forced heirs and limited testamentary freedom, which allows individuals to dispose of their assets in a restricted manner. Under this system, a certain portion of the estate is reserved and cannot be disposed of through a will. This system reigned in much of continental Europe and Latin America and is still used in southern Europe, South America and Turkey. Systems, which reserve certain portions of an estate for necessary heirs, guarantee a minimum share of inheritance for women and therefore tend to provide greater

equality for women. In these systems, sons and daughters are generally treated equally; and even if the deceased parent leaves the remaining share of the estate to only one child, the extent of inequality is limited. Turkish inheritance law operates on a system of reserved shares and wills (written or oral) cannot override the rights of legal inheritors.

In general, Turkish inheritance law is underpinned by the relation between bloodline and property; and the logic of inheritance is organized via ranks of inheritance. The first rank is composed of direct descendants and the spouse of the deceased (children, grandchildren, great grandchildren, and spouse). If there are children in the first rank, then the grandchildren do not receive an inheritance, since the children are closest by blood. All children, regardless of the marital status of their parents, are legally entitled to inherit. In other words, children born outside of marriage have the right to inherit from their parents. Adopted children also possess equal inheritance rights.

Although inheritance law in Turkey is largely guided by kinship ties, the provision for the surviving spouse as well as the inclusion of adopted children and children born to unwed parents represents a privileging of the nuclear family over more extended kinship ties. This favor accorded to the conjugal family recognizes the importance of the emotional bond that binds families and the resulting sense of solidarity. The second rank is composed of the first line of descendants and parents of the deceased; and if there is no living parent, then the siblings of the deceased. The third rank is composed of the second line of descendants (grandparents and the children of grandparents).

Inheritance distribution starts from the first rank and is distributed among the inheritors of the first rank. If there is no recipient in the first rank, it passes on to the second rank and is distributed between the inheritors of the second rank. The same logic applies for the third rank and so on down the ranks. If there are no inheritors, then the inheritance goes to the state. Due to the fact that Turkish inheritance law is based on forced shares and allows for restricted testamentary freedom, only 50 percent of the estate can be disposed of through a will, in those cases where an individual dies intestate, the law stipulates the division of the estate according to the logic expounded above.

In the Turkish inheritance regime, surviving spouses are also provided for. To a certain degree, the spouse category disrupts the rank system of inheritance that relies solely upon bloodlines. Importantly, for the purposes of inheritance, the law only recognizes those spouses resulting from a civil marriage as performed by the state, officially registered and confirmed by an official marriage certificate. Of course, once divorced an individual may no longer inherit from their previous spouse. In part, the aim of the inheritance right given to the spouse is to protect the living standards of the living spouse. However, the surviving spouse receives less than that of any children and the spousal share only increases when the estate passes into the hands of more distant relatives. Surviving spouses are legally accorded one-fourth of the estate and the bulk of the estate is divided by the surviving children. If the inheritance passes on to the second rank of inheritors, the spousal share

increases to one-half and if there are no relatives and the estate has reached the third rank of possible inheritors, spouses can claim three-fourths of the estate. Finally, only if there are no first, second or third rank inheritors can the surviving spouse claim the entire estate. In the case where there is no spouse or relatives then the Turkish state inherits the deceased's estate.

Spousal inheritance rights are closely connected to the marital property regime. Historically, inheritance regimes tended to favor children, sometimes even circumventing the surviving spouse altogether. In some countries, widows were not allowed to inherit under any circumstances.¹⁹ However, over the course of the last century, international trends have tended to include spouses along with children in the first order of inheritors. Under community property regimes widows enjoy much more protection as they are entitled to half of the marital property. In a case of partial community property, which is the default legal marital property regime in Turkey, an equal share of the property acquired throughout the marriage is accorded to the spouse, unless otherwise specified by a contract between them. Therefore, when a married person dies, the property acquired within the marriage is split equally; the living spouse receives his/her half share and the other half of the estate is distributed among the legal heirs, one of which is the living spouse. The surviving spouse can also claim recognition of his or her usufruct, or right of residence, in the shared house by offering his or her inherited property right in return (Article 240).²⁰ If the monetary value of the inheritance is not equal to the value of the usufruct they can contribute extra to make up the difference. In dividing the inheritance, if there are sufficient reasons, the surviving spouse, with the consent of the other inheritors can also claim a usufruct or right of residence in place of a property right (Article 240).

The Practice of Women's Property Rights in Turkey at the Social Level: The Interplay of Customs, the Islamic Law and Official Civil Law in Marriage and Inheritance

The *de jure* framework regulating property acquisition through marriage and inheritance described above does not necessarily reflect the social practices of property acquisition and ownership. The *de facto* situation in Turkey seems to be different from what the law requires. In a just and equitable legal setting where there is a partial community property regime in marriage and gender neutrality in inheritance, one would expect to see more women holding property. Yet, the figures related to property ownership in Turkey demonstrate a decided gender gap despite a gender-neutral legal framework.

Official statistics regarding women's property ownership in Turkey are generally insufficient, in particular, statistics that can reflect change over time. However, working with various sources of statistics, a picture begins to emerge. According to a 2006 Family Structure Survey of 24,647 individuals aged above 18 living in 12,230 households, 80.2 percent of women claimed to own no property in contrast to 39.6 percent of men who did not have any immovable real estate or motor vehicles

registered in their names.²¹ Of those remaining women who appeared to own property, the survey revealed that 5.2 percent of vacant land (fields, estates, or vineyards) was in the hands of women; and at the same time, 0.7 percent of workplaces and 11.5 percent of homes (houses or apartment flats) belonged to women. More recent research, which was conducted nationwide with 12,791 women aged 15–59 in 2008, provides more detailed figures.²² Accordingly, the research reported that nine percent of women own, either jointly or in their own name, some form of vacant land, and 17 percent of women own part or all of at least one home. The research also indicated that 4.1 percent of the women owned land in their names as the sole titleholder, 5.1 percent of women joint-owned land with others (joint titling), and 90.8 percent had no land at all. Regarding house ownership, 9.2 percent owned a house in their names as the sole titleholder, 7.9 percent joint-owned a house with others (joint titling), and 82.9 percent of women did not own a house. Overall, it appears that approximately 20 percent of women own some form of property.

Despite the attempts of Turkish modernist project to establish a uniform legal reality, there exists a situation of a hybrid rule system in which different sources of law—the Civil Law, Islamic Law and customary law—compete. The Turkish state hoped that with modernization and westernization people would replace custom and religious law with an adherence to official law. However, it is clear that in practice, legal pluralism is a reality and the challenge of unofficial Islamic norms and customs to Turkish legal modernity is one of the remarkable examples of this reality.²³ Turkish society exploits multiple sources of law to regulate civic affairs. In practice, it would appear that the plurality of different sources of law is unfolding in the sphere of property acquisition through marriage and inheritance and this may be, in part, responsible for the gender gap in property ownership.

Certain segments of the society might exploit traditional customs as well as norms of the Islamic Law. Given the unofficial nature of the Islamic Law tracking its use proves difficult, but it appears to be the case in certain areas. In Turkish society, there is widespread use of both a civil and religious ceremony despite the fact that the religious ceremony has no official standing.²⁴ According to the Islamic Law, married women retain a separate legal personality and have the right to marry and divorce, own, inherit, and bequeath property. There is also a separation of property even within marriage, meaning that neither spouse has a legal claim to nor interest in the property of the other. Married women under the Islamic Law retain possession and management of whatever property they brought to or acquired during the marriage.²⁵ The Islamic Law also prescribes that a woman is not legally bound to use her personal wealth or property to support her husband or family. Economic maintenance—providing food, clothing, and lodging—is the primary responsibility of the husband.²⁶ Yet, in practice, many women contribute some of their personal property to the running of their households.²⁷ In Turkey, social customs hinder married women from developing a sense of entitlement to their own individual property. As a result, many married women use the property they obtained before and after marriage for family and household expenses.

A similar situation is observed in the case of dower, another common social practice in Turkey. Under the Islamic Law, women have a right to a dower (*mahr*) when they enter marriage. This can take the form of money or goods; often, it is jewelry.²⁸ The traditional Islamic marriage contract stipulates that a groom provides his bride a dower and that a woman, not her family or prospective husband, directly receives the *mahr* and maintains control of it. In other words, the dower is a woman's property intended to provide her with a livelihood if she is widowed. Dower can be given by the groom or by his family to the bride either upon marriage (prompt dower) or at the time of dissolution of the marriage (deferred dower). Although both the prompt and the deferred dower provide married women with access to some assets,²⁹ and in theory, *mahr* gives women the right to their own wealth, in reality; family dynamics often lead to fathers claiming some of the *mahr*.³⁰ Moreover, in the Turkish case, the practice of *mahr* is usually deferred and only paid in the case of divorce. Since the divorce rates in Turkey are very low,³¹ deferred *mahr* remains a limited practice. In the cases of prompt dower, many women use their dower to assist in meeting household expenses, support their husbands and to look after the family.

In addition to dower, there is also the dowry, another common practice not only in Muslim countries but also in the Middle East, the Southeast Asia and Europe. Dower is composed of any wealth that a woman brings to marriage. It can be comprised of a house, land, gifts, clothes, jewelry, household utilities, etc. and is to be given by a woman's parents at the time of her marriage, either to her directly or to her husband and/or his family. Historically, the main avenue by which young women brought assets to a marriage has been via a dowry.³² The dowry may be viewed as an advance on any future inheritance that is paid to a woman at the time of her marriage rather than upon her parents' death. After the deaths of both parents, a daughter's dowry can be deducted from her total inheritance share, releasing parents from any obligation to include daughters in a will. As such, the social institutions of dowry and inheritance may work against each other.³³ In Turkey, the practice of dowry is widely used. More often observed as a custom in northern and eastern parts of the country, daughters, having received a dowry, are often excluded as inheritors in favor of sons with the eldest receiving the bulk of any estate.

Within the Islamic Law, though women are guaranteed inheritance rights, the provision of these rights is not guided by the principle of equality among the heirs. There are mechanisms that allow women to inherit more if conditions permit, i.e. in situations where there are no children or male relatives of the benefactor; however, overall, inheritance is weighted in favor of men. The Islamic doctrine prescribes as a general principle that a woman's share is only half that of a man. Daughters are entitled only to one-half the share of sons. Husbands and wives are in the first rank of inheritance, but widows occupy a less favorable position than widowers. While husbands were entitled to one-fourth of their deceased wives' estate, wives were entitled to only one-eighth of and in polygamous marriages permitted under certain conditions, this small share is divided among all wives. Generally, only

one-third of an estate can be willed freely. The remaining restricted portion is split among the children and other necessary heirs.

Restricted testamentary freedom is beneficial for women because a certain share of inheritance is guaranteed for them. Yet, it appears that male relatives may often circumvent the rights of inheritance that Islam does provide for women, as Muslim family law grants male family members extensive control over women.³⁴ The Quran describes the role of the male as head of the household and the final decision-maker. Men have authority over women and the rationale for this authority is that men are held economically responsible to support for all close female kin in their families, including divorced or unmarried sisters. They must ensure that all the women of the family without a man supporting them (i.e. son, husband, brother, father, uncle, nephew, etc.) are provided for.³⁵

In a country where the right to own and inherit property is gender neutral at the legal level, the practice of inheritance at the society level tells a decidedly different story where customs, traditions, local values and the Islamic Law norms are often at play. In a recent study regarding inheritance practices among the merchant class in Gaziantep, a city in southeastern Turkey, it was found out that land was solely considered men's entitlement; only property in the city was passed onto daughters, while agricultural land was bequeathed to sons.³⁶ Moreover, even if the women in the study owned property, its control was generally left to men (either the husband or the brother who is in charge of economic affairs). Women's access to the ownership of property was restricted and the transmission of land and other property favored sons over daughters. In order to prevent wealth dispersion and the division of land, many merchant families in Gaziantep bypassed women in the inheritance process and transferred ownership of property to their sons. The women of these families were primarily responsible domestic responsibilities and exercised power in and through their position within the family household. Men were placed in charge of economic matters and thus were deemed responsible for the family's economic resources.

Another study conducted in the Black Sea region noted that land was also often only left to sons assigned the role of family protector, thus women were left landless.³⁷ So, even though women and girls have equal inheritance rights under law, local traditions, customs, and widespread discrimination often prevent them from attaining what is rightfully theirs. Elders often bypass their daughters, either in an attempt to prevent land from being divided or to avoid control of property from passing into the hands of sons-in-law. Even when women do inherit land, they are given less valuable parcels or the father will simply sell the land to his son prior to his death, leaving nothing for his daughter. In lieu of land, women are often given gold or jewelry while sons are seen as having more need of land due to their obligations to support their families. It is assumed that even if a woman returns home after marriage, a male relative will care for her financially. Sons are also viewed as the financial guarantee for parents in old age. This set of cultural beliefs informs and structures decisions regarding inheritance.

It is apparent that many women in Turkey do not receive their rightful inheritance. Moreover, women often do not pursue the rights granted them under the Civil Law and do not apply to courts in cases where they are not granted access to the property they inherited. As part of the social system that declares women to be looked after by men, some women relinquish their share of any inheritance in favor of their brothers with the expectation that if they are in need, their brothers will provide for them. In rural areas, sons tend to inherit the most fertile fields, while daughters are traditionally prevented from using the land they inherit. Patriarchal norms also support this structure, leaving decision-making in the hands of the eldest male in the family.³⁸ Sons are considered first in the allocation of inherited agricultural property and it is offered to daughters only if sons do not wish to take it. The official aspects of the inheritance process are often handled by male relatives who may misuse the power of attorney obtained from their female family members. All too often, a woman's share is simply appropriated by brothers without legal proceedings. While the Civil Law provides a mechanism for women to contest such practices in court and attempt to reclaim their rightful inheritance, this requires a certain level of knowledge, skill, and economic power that many women simply do not possess.³⁹

Conclusion

Issues concerning women and property are shaped by a number of competing regulatory frameworks. National, international, religious, and customary law all interweave and, at times, create a system of pluralism in which more than one source guides the attitudes and behaviors of individuals coexists.⁴⁰ Such situations of pluralism can lead to conflicts between different sets of sources resulting in a hybrid situation where citizens mix and match sometimes overlapping conflicting customary norms, traditions, norms of the Islamic Law and rules of the Civil Law, depending on whichever norm best suits their needs. There is a gap between the formal legal norms and actual practices, and as a result, women's rights to property are often not realized.⁴¹ In other words, there is constant negotiation and dialogue between different sources of norms concerning the allocation of property in marriage and in inheritance within Turkish families.

The disjuncture between the official system and social practice in Turkey, a country where social and familial practices marriage and inheritance property favors men despite an egalitarian civil law and limits women's access to property. The way that property relations unfold in reality demonstrates that women continue to be discriminated against; customs and local norms and perhaps the Islamic Law, which may coincide or contradict each other, play an important role in the distribution of property. Women in Turkey comprise nearly 50 percent of the population but own only 20 percent of property. In terms of female property ownership, Turkey is estimated to be standing within the ranks of Latin American countries, sharing some of their successes, and it is above the lackluster record of most of the Middle East. Latin America, as a whole, does fairly well with women comprising 32.2 percent of all landowners.⁴² This far outpaces countries in Africa such as Kenya and

Ghana where women own five and ten percent of land, respectively.⁴³ With the exception of Jordan, women's property ownership in the Middle East remains quite dismal.

In Jordan, women own 28.6 percent of the land but in the United Arab Emirates just 4.9 percent and in Oman less than one percent.⁴⁴ The similarity between the Turkish and Latin American experience may be, to some extent, attributable to the fact that both follow the Roman Law tradition. The Roman law retains equality between male and female children, a privileged role of necessary heirs (the reserved inheritance share system) and restricts testamentary freedom. The Islamic Law, although not on equal terms, also provides women with a reserved share from inheritance. There is also the factor that although the legal level, to a certain extent, provide daughters an opportunity for equal treatment with sons in inheritance, the transfers of property before the death of the parents or the spouses (*intervivos* transfers) and gifts also acts as indirect inheritance which may bypass the legal demands of equality not only for daughters but also for sons. For example, culturally, daughters are seen as vulnerable and some families may safeguard women's economic status by *intervivos* transfers and leave out sons with the idea that men can work and earn a living.

There is a gender gap in the ownership of assets within households in Turkey but due to joint ownership of the family home, more women own homes than arable land. This is, in part, due to a cultural belief that women's place is in the private, domestic space with men's place in the public sphere. Women also fare better in full and partial community property regimes.⁴⁵ As of 2002, the default marital regime in Turkey is one of partial community property. Yet, it should be noted that until 2002, women were disadvantaged by a marital property regime, which favored men, so it is still early for the results of the new marital property regime. For future reference, one might expect to see an increase in the share of female homeowners. The system of reserved shares and restricted testamentary freedom both in the formal legal system of the Civil Law as well as the Islamic Law also provide women a certain guaranteed share from the total inheritance. Whether they will actually receive those shares remains questionable.

The presence of unequal ownership and control of land is a critical factor that creates and maintains differences between women and men in relation to economic well-being, social status, and empowerment.⁴⁶ Examinations of the gendered distribution of wealth can help illustrate the economic deprivations women have been subjected to over time and therefore show more clearly the intensity of long-term gendered economic disadvantages the system sets into place.⁴⁷ The gender division of labor between productive and reproductive labor and within the labor market hindering women's employment, limited political representation and low levels of schooling also give rise to low values in property ratios among Turkish women. Undoubtedly, inheritance practices that discriminate against women as well as the marital property regimes are a large source of the gendered division of wealth. While gender-neutral legislation and explicit legal equality are necessary, unfortunately they are not enough to ensure that women enjoy equal access to property rights,⁴⁸ as this examination of inheritance and marital regimes in Turkey has demonstrated.

Acknowledgements

The authors would like to thank the Scientific and Technological Research Council of Turkey (TUBITAK), especially the Research Group of Social Sciences (SOBAG) for the support provided to the research. Additionally, the authors would like to show gratitude for the contributions of Çiğdem Oğuz in the conduct of research.

Notes

1. Doss et al., "Gender and Asset Ownership"; Antonopoulos and Floro, "Asset Ownership along Gender Lines."
2. Agarwal, "Bargaining and Gender Relations."
3. Mukhopadhyay, "Introduction: Women and Property."
4. Agarwal, "Disinherited Peasants, Disadvantaged Workers," 2–14; Agnes Quisumbing and Maluccio, "Intrahousehold Allocation and Gender Relations."
5. Datta, "Joint Titling – A Win-Win Policy?"
6. Bhatla et al., "Property Ownership and Inheritance Rights."
7. Deere and Doss, "The Gender Asset Gap," 7, 12, 26.
8. Deere and Leon, "The Gender Asset Gap: Land in Latin America."
9. Deere and Doss, "The Gender Asset Gap," 30.
10. This article is part of a broader research project funded by the Scientific and Technological Research Council of Turkey (Tübitak). The authors would like to thank the Social Sciences and Humanities Research Group (SOBAG) at Tübitak for generous support granted to the research.
11. Amnesty International, "Women Confronting Domestic Violence," 9.
12. Yıldırım, "Aftermath of a Revolution," 349, 359, 360.
13. Miller, "The Ottoman and Islamic Substratum of Turkey's Swiss Civil Code," 336, 337.
14. Özsu, "Receiving the Swiss Civil Code," 72.
15. Yarar, "Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi."
16. Yıldırım, "Aftermath of a Revolution," 366.
17. CEDAW affects women's property rights because it recommends the protection of equal rights of women and expects signature countries to adopt norms of CEDAW in their civil law and family law. Although the new Civil Law represents a decided improvement for women, women's groups as well as the monitoring Committee for the Elimination of Discrimination against Women have long called for the current law, which provides for a partial community property state, to be retroactive thus further elimination discrimination against women who were married before the law went into effect. The current Civil Law only applies to those who married after 2002 when the law went into force. See Arat, "Women's Rights and Islam in Turkish Politics."
18. Benschop, *Rights and Reality*.
19. Benschop, "Women's Rights to Land and Property," 2.
20. T. C. Başbakanlık Kadının Statüsü Genel Müdürlüğü, *Türkiye'de Kadının Durumu*.
21. T. C. Başbakanlık Türkiye İstatistik Kurumu, *Aile Yapısı Araştırması*.
22. T. C. Başbakanlık Kadının Statüsü Genel Müdürlüğü, *Türkiye'de Kadına Yönelik Aile İçi Şiddet*.
23. Yılmaz, "Non-Recognition of Post-Modern Turkish," 27.
24. Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü, *Türkiye Nüfus ve Sağlık Araştırması 2008*, 8.
25. Esposito and DeLong-Bas, *Women in Muslim Family Law*.
26. Fay, "From Concubines to Capitalists."
27. Olmstead, "Gender, Aging and the Evolving Arab Patriarchal Contract," 56.
28. Western, "Islamic Purse Strings."
29. Moors, *Women, Property, and Islam*, 127.
30. Olmstead, "Gender, Aging and the Evolving Arab Patriarchal Contract," 56.

31. According to the national survey conducted by Hacettepe University in 2008, 95 percent of women are married and only 2 percent of women are widows and 3 percent are divorced/separated women. Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü, 68.
32. Deere and Doss, "Gender and the Distribution of Wealth in Developing Countries."
33. McCreery, "Women's Property Rights and Dowry in China and South Asia," 163.
34. Abou-Habib, "Family Law and Gender Discrimination," 143.
35. Smith, "Women in Islam."
36. Karadağ, "Formations of Gender in a Turkish Context," 77, 78, 79.
37. Uzun and Çolak, *The Issues of Women's Property Acquisition in Turkey*.
38. Starr, "The Role of Turkish Secular Law in Changing the Lives of Rural Muslim Women, 1950–1970".
39. International Helsinki Federation for Human Rights-IHF, *Women 2000*.
40. Yılmaz, *Muslim Laws, Politics and Society Nation States*.
41. Chiweza, "Women's Inheritance Rights in Malawi," 84; Deere and Leon, "A Disjuncture in Law and Practice."
42. Deere et al., *Poverty, Headship and Gender Inequality in Asset Ownership in Latin America*.
43. Deere and Doss, "The Gender Asset Gap," 4.
44. Cotula, "Gender and Law."
45. Deere and Leon, "The Gender Asset Gap," 933.
46. Ikdahl et al., "Human Rights, Formalization and Women's Land Rights," 1.
47. Warren, "Moving Beyond the Gender Wealth Gap," 197.
48. Varley, "Gender and Property Formalization," 1748.

Notes on contributors

Mary Lou O'Neil is an Associate Professor of Sociology and the director of the Gender and Women's Studies Research Center at Kadir Has University in Istanbul, Turkey. She has an MA in Women's Studies from the University of Exeter and completed her Ph.D. in American Studies at the University of Kansas. Her research interests focus on gender, women's studies and law in Turkey. She has published various articles in the *European Journal of Women's Studies*, *Fashion Theory*, *Journal of International Women's Studies* and *Comparative America Studies*.

Sule Toktas is a political scientist at the Department of Political Science and Public Administration, Kadir Has University, Istanbul, Turkey. She has PhD degree in Political Science from Bilkent University and an M.Sc. in Gender and Women's Studies from the Middle East Technical University. Dr Toktas's research interests include women's studies, Turkish politics, ethnicity and international migration. Her publications appeared in various journals, i.e. *International Migration*, *Middle East Policy*, *Political Science Quarterly*, *Violence Against Women (VAW)*, *Women's History Review*, *Minerva* and *the Muslim World*. She co-authored three books on documentation of immigration in Turkey and foreign policy-making in Turkey and the Middle East.

Bibliography

- Abou-Habib, Lila. "Family Law and Gender Discrimination: Advocacy for Legal Reforms in the Arab Region." In *Gender Perspectives on Property and Inheritance: A Global Sourcebook*, edited by S. J. R. Cummings, H. van Dam, A. Khadar, and M. Valk, 51–55. Amsterdam: KIT Publishers, 2001.
- Agarwal, Bina. "Bargaining and Gender Relations: Within and Beyond the Household." *Feminist Economics* 3, no. 1 (1997): 1–51.
- Agarwal, Bina. "Disinherited Peasants, Disadvantaged Workers: A Gender Perspective on Land and Livelihood." *Economic & Political Weekly* 33, no. 13 (1998): 2–14.

- Amnesty International. Turkey: *Women Confronting Family Violence*, 2004. Accessed December 28, 2011, <http://www.amnesty.org/en/library/asset/EUR44/013/2004/en/1a0d2faf-d5ed-11dd-bb24-1fb85fe8fa05/eur440132004en.html>
- Antonopoulos, Raina F., and Maria S. Floro. "Asset Ownership along Gender Lines: Evidence from Thailand." Levy Economics Institute Working Paper, No. 418, 2005.
- Arat, Yeşim. "Women's Rights and Islam in Turkish Politics: The Civil Code Amendment." *Middle East Journal* 64, no. 2 (2010): 235–251.
- Benschop, Marjolein. *Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?* Nairobi: United Nations Human Settlements Programme – UN-HABITAT, 2002.
- Benschop, Marjolein. "Women's Rights to Land and Property." Paper presented to the Commission on Sustainable Development, UN-HABITAT, in Human Settlements Development – Challenges and Opportunities, April 22, 2004. Accessed October 31, 2011, <http://www.unhabitat.org/tenure>
- Bhatla, Nandita, Swati Chakraborty, and Nata Duvvury. "Property Ownership and Inheritance Rights of Women as Social Protection from Domestic Violence: Cross-Site Analysis." In *Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience – Synthesis of Three Studies*, edited by Pradeep Panda, Jayoti Gupta, Indika Bulankulame, Nandita Bhatla, Swati Chakraborty, and Nata Duvvury, 71–103. Washington: International Center for Research on Women, 2006.
- Chiweza, Asiyati Lorraine. "Women's Inheritance Rights in Malawi: The Role of District Assemblies." *Development in Practice* 15, no. 1 (2005): 83–89.
- Cotula, Lorenzo. "Gender and Law: Women's Rights in Agriculture." Food and Agriculture Organization of the United Nations FAO Legal Office in Rome FAO Legislative Study, No. 76, Rev. 1, 2006.
- Datta, Namita. "Joint Titling – A Win-Win Policy? Gender and Property Rights in Urban Informal Settlements in Chandigarh, India." *Feminist Economics* 12, nos. 1–2 (2006): 271–298.
- Deere, Carmen Diana, Gina E. Alvarado, and Jennifer Twyman. "Poverty, Headship and Gender Inequality in Asset Ownership in Latin America." Paper presented at the 11th Regional Conference Gender, Development, and Globalization Program, Center for Gender in Global Context, Michigan State University, July 13–16, 2010.
- Deere, Carmen Diana, and Cheryl R. Doss. "The Gender Asset Gap: What Do We Know and Why Does It Matter?" *Feminist Economics* 12, nos. 1–2 (2006): 1–50.
- Deere, Carmen Diana and Cheryl R. Doss. "Gender and the Distribution of Wealth in Developing Countries." United Nations University World Institute for Development Economics Research Paper Series, No. 2006/115, 2006.
- Deere, Carmen Diana, and Magdalena Leon. "A Disjuncture in Law and Practice: Women's Inheritance of Land in Latin America." In *Gender Perspectives on Property and Inheritance: A Global Sourcebook*, edited by S. J. R. Cummings, H. van Dam, A. Khadar, and M. Valk, 19–32. Amsterdam: KIT Publishers, 2001.
- Deere, Carmen Diana, and Magdalena Leon. "The Gender Asset Gap: Land in Latin America." *World Development* 31, no. 6 (2003): 925–947.
- Doss, Cheryl R., Caren Grown and Carmen Diana Deere. "Gender and Asset Ownership: A Guide to Collecting Individual-Level Data." The World Bank Poverty Reduction and Economic Management Network Gender and Development Group Policy Research Working Paper, No. 4704, 2008.
- Espósito, John L., and Natana J. DeLong-Bas. *Women in Muslim Family Law*. Syracuse: University of Syracuse Press, 2001.
- Fay, Mary Ann. "From Concubines to Capitalists: Women, Property and Power in Eighteenth-Century Cairo." *Journal of Women's History* 10, no. 3 (1998): 118–140.
- Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü. *Türkiye Nüfus ve Sağlık Araştırması 2008*. Ankara: Hacettepe Üniversitesi Nüfus Etütleri Enstitüsü, Sağlık Bakanlığı Ana Çocuk Sağlığı ve Aile Planlaması Genel Müdürlüğü, Başbakanlık Devlet Planlama Teşkilatı Müsteşarlığı and Tübitak, 2009.
- Ingunn, Ikdahl, Anne Hellum, Randi Kaarhus, Tor A Benjaminsen, and Patricia Kameri-Mbote. "Human Rights, Formalization and Women's Land Rights in Southern and Eastern Africa." Institute of Women's Law, University of Oslo, Norway *Studies in Women's Law*, no. 57 (2005): 1–131.

- International Helsinki Federation for Human Rights-IHF. *Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the Newly Independent States*. Vienna: International Helsinki Federation for Human Rights, 2000.
- Karadağ, Meltem. "Formations of Gender in a Turkish Context." *International Journal of the Humanities* 3, no. 7 (2006): 77–82.
- McCreery, John L. "Women's Property Rights and Dowry in China and South Asia." *Ethnology* 15, no. 2 (1976): 163–174.
- Miller, Ruth A. "The Ottoman and Islamic Substratum of Turkey's Swiss Civil Code." *Journal of Islamic Studies* 11, no. 3 (2000): 335–361.
- Moors, Annelies. *Women, Property, and Islam: Palestinian Experiences, 1920–1990*. Cambridge: Cambridge University Press, 1995.
- Mukhopadhyay, Maitrayee. "Introduction: Women and Property, Women as Property." In *Gender Perspectives on Property and Inheritance: A Global Sourcebook*, edited by S. J. R. Cummings, H. van Dam, A. Khadar, and M. Valk, 13–19. Amsterdam: KIT Publishers, 2001.
- Olmstead, Jennifer. "Gender, Aging and the Evolving Arab Patriarchal Contract." *Feminist Economics* 11, no. 2 (2005): 53–78.
- Özsu, Umut. "Receiving the Swiss Civil Code: Translating Authority in Early Republican Turkey." *International Journal of Law in Context* 6, no. 1 (2010): 63–89.
- Quisumbing, Agnes, and John Maluccio. "Intrahousehold Allocation and Gender Relations." International Food Policy Research Institute (IFPRI) FCND Discussion Papers, No. 84, 2000.
- Smith, Jane I. "Women in Islam: Equity, Equality, and the Search for the Natural Order." *Journal of the American Academy of Religion* 47, no. 4 (1979): 517–537.
- Starr, June. "The Role of Turkish Secular Law in Changing the Lives of Rural Muslim Women, 1950–1970." *Law & Society Review* 23, no. 3 (1989): 497–523.
- T. C. Başbakanlık Kadının Statüsü Genel Müdürlüğü. *Türkiye'de Kadına Yönelik Aile İçi Şiddet*. Ankara: T. C. Başbakanlık Kadının Statüsü Genel Müdürlüğü, 2009.
- T. C. Başbakanlık Kadının Statüsü Genel Müdürlüğü. *Türkiye'de Kadının Durumu*. Ankara: T. C. Başbakanlık Kadının Statüsü Genel Müdürlüğü, 2011.
- T. C. Başbakanlık Türkiye İstatistik Kurumu. *Aile Yapısı Araştırması*. Publication No. 3046 Ankara: T. C. Başbakanlık Türkiye İstatistik Kurumu, 2006.
- Uzun, Bayram, and Ebru Çolak. "The Issues of Women's Property Acquisition in Turkey." Paper presented at the FIG Congress 2010 Facing the Challenges Building the Capacity, Sydney, Australia, April 11–16, 2010.
- Varley, Ann. "Gender and Property Formalization: Conventional and Alternative Approaches." *World Development* 35, no. 10 (2007): 1739–1753.
- Warren, Tracey. "Moving Beyond the Gender Wealth Gap: On Gender, Class, Ethnicity and Wealth Inequalities in the United Kingdom." *Feminist Economics* 12, nos. 1–2 (2006): 195–219.
- Western, David J. "Islamic Purse Strings: The Key to the Amelioration of Women's Legal Rights in the Middle East." *Air Force Law Review* 61 (2008): 79–147.
- Yarar, Betül. "Bir Moral Düzenleme Biçimi Olarak Medeni Kanunun Aile Hukukunun Arkeolojisi." *Öneri* 7, no. 28 (2007): 209–224.
- Yıldırım, Seval. "Aftermath of a Revolution: A Case Study of Turkish Family Law." *Pace International Law Review* 17, no. 2 (2005): 347–371.
- Yılmaz, İhsan. "Non-Recognition of Post-Modern Turkish Socio-Legal Reality and the Predicament of Women." *British Journal of Middle Eastern Studies* 30, no. 1 (2003): 25–41.
- Yılmaz, İhsan. *Muslim Laws, Politics and Society Nation States: Dynamic Legal Pluralisms England Turkey and Pakistan*. London: Ashgate, 2005.