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**Fuat Andic and Arnold Reisman:**

# **Migration and Transfer of Knowledge: Refugees from Nazism and Turkish legal Reform<sup>\*</sup>**

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# Introduction

*The New Turkey cannot be tied down to Mecelle,<sup>1</sup> which does not correspond to our needs today. To govern with the laws that were promulgated a hundred, five hundred or a thousand years ago is heedlessness, is ignorance.*

1

Kemal Mustafa Atatürk, speech given in Bursa, 1923.

*It takes an entirely new Turkish judicial organization, a new legal system, new laws, and new courts. But how could and should such a judicial organization be organized so that foreigners, too, could fall under its jurisdiction? The answer lies in one single word — secular.*

Mahmut Esat Bozkurt.<sup>2</sup>

In 1923 the Republic of Turkey inherited a ruined country, a disintegrated public administration and an outmoded legal system from the Ottoman Empire. All of which was totally incompatible with the tenets of a secular state that Atatürk and his collaborators wanted to establish. Turkey at the time was an exhausted and poor country. Atatürk knew full well that the country had to go through a fast metamorphosis. The Young Republicans were full of idealism and enthusiasm. The constraints to achieving their ideals were almost unlimited, yet their means to achieving them were very limited indeed.

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There were many pressing issues on the new Government's agenda. First tackled were the issues of reconstruction and development. To this end a Congress was convened in İzmir in 1923 to discuss the ways and means for economic development. The Congress took the position that the Government should pursue policies that were supportive of the private sector, since this sector was viewed as the only engine for development. However there was hardly any visible improvement and the 1929 world economic crisis was wreaking

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1 "Mecelle" represents a body of civil laws based on the Shari'a which were promulgated by the Ottomans in mid-nineteenth century.

2 Mahmud Esat Bozkurt, Minister of Justice, Republic of Turkey. Professor Ernst Hirsch cited this statement in an article published on the occasion of the 50th anniversary of the Swiss Lawyers Association. "Turkey and the Adoption of the Swiss Civil Code" Address speech by Federal Councilor Christoph Blocher given on the occasion of the opening of the symposium at Ankara University on October 4, 2006, commemorating the 80th anniversary of the entry into force of the Turkish Civil Code. <http://www.ejpd.admin.ch/ejpd/en/home/dokumentation/red/2006/2006-10-04.html>. Viewed on April 18, 2007.

havoc on the economy. The decision makers had no choice but to move towards state capitalism - étatism. To a certain extent influenced by Soviet style planning the government designed and implemented a five-year plan for the period 1933-1937. The plan had two major objectives: import substitution and the creation of state enterprises in the basic industries, such as iron-ore and textiles. A second five-year plan designed for 1938-1942 was never fully implemented because Turkey had to gear its efforts towards a war-economy.<sup>3</sup>

The realignment of the economy called for a series of reforms that the young Government put into effect. In order to make a new and modern country out of the ashes of the Ottoman state, a series of daring changes followed one another. The greatest urgency was to move Turkey from a theocratic to a secular state. Thus in 1924 the Office of the Khalif was abolished. 4

In 1926 the Turkish Parliament enacted the newly designed civil code, replacing the *mecelle*. As quoted earlier, Atatürk had been contemplating its replacement since 1923. In May 1924 a commission prepared a report which modified the old system but did not replace it, for there was resistance to changing the *mecelle* within the Parliament. Mahmut Esat Bozkurt, a fiery revolutionary, stated that Turkey had no other recourse but to abolish the old laws, and that those who were against it “would face iron and fire.”<sup>4</sup> A new commission reviewed the French, Austrian, Italian and Swiss codes. The latter was finally adopted almost intact and became effective on September 1926. The young Republic’s penal code<sup>5</sup> was taken from Italy, penal proceedings from Germany, debts and obligations 5

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3 In fact the People’s Republican Party, being the only party in Turkey, easily adopted the principle of etatism in its six tenets. However, after the World War II the country shied away from state capitalism. After the 1960 coup a new organization, the State Planning Organization (Devlet Plânlama Teşkilâtı) was set up and attached to the Prime Minister’s Office. For full details see: [www.dpt.gov/must/tarihce/asp](http://www.dpt.gov/must/tarihce/asp).

4 See: [www.belgenet.com/yasa/medenikanun](http://www.belgenet.com/yasa/medenikanun).

5 All indications suggest that none of the émigré professors were involved in formulating Turkey’s penal code. Turkish penal code (March 1926) was originally based upon the Italian code of 1889, known as Zanardelli law. During its discussion in the Parliament then the Minister of Justice, Bozkurt, said “...Our proposed code will be quite harsh, simply because revolutions are jealous by their very nature. The Law is harsh but very scientific. Only those who oppose the Turkish national interest should fear from it.”

The Law has been revised between 1926-2006 more than 50 times. The last important changes came in 2004 and 2005 (among them elimination of the death penalty) in order to harmonize it, to a certain extent, with the EU law. However certain provisions, such as insulting Turkishness, insulting the Turkish Government and its institutions and insulting the Turkish army, all of which carry penalty of 1-3 years imprisonment, are still in the books. See: [www.web.amnesty.org](http://www.web.amnesty.org) and [http://tr.wikipedia.org/wiki/T%BCrk\\_ceza\\_kanunu](http://tr.wikipedia.org/wiki/T%BCrk_ceza_kanunu).

law from Switzerland, commerce law from Germany, France and Italy, and administrative law from France. The totality became effective in September 1926.<sup>6</sup>

Another reform took place in the field of education. To this end the *medreses* (religious colleges)<sup>7</sup>, *tekkes* (dervish lodges) and *zaviyes* (dervish cells) were closed and the *tarikats* (religious orders of sufis) were banned. In 1927 the law of unification of education was enacted eliminating all religious teaching.<sup>8</sup> Then in 1928 came the change in the alphabet from the Arabic script to a Latin-based one,<sup>9</sup> the old legacy of wearing the *fez* and *charshaf* (a kind of chador) was banned. These reforms did not require a well-prepared cadre to execute them. A much more difficult task was to change the laws that were inherited from the Ottoman legislative body, for there were not enough jurists or economists in the academic community and in the civil service cadres with the appropriate knowledge and dexterity to carry out the structural changes that Atatürk and his colleagues were contemplating.

Reforms in primary and secondary education were relatively easy, but tertiary education required special attention. In the early thirties there were essentially three institutions of higher learning with some substance, *Darülfunun* (the House of Knowledge), a Higher School of Engineering, and the School of Public Administration. The latter was designed strictly to train civil servants and was instituted in the late 19<sup>th</sup> century. The *Darülfunun* was almost a medieval institution where sinecure teachers repeated the same lectures year

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6 British jurist Twining in one of his articles discusses the importation of laws from the West by various countries, one method being direct transplant, which obviously was the case in Turkey. See: Twining, William Lawrence, "Social Science and Diffusion of Law" . *Journal of Law and Society*, Vol. 32, No. 2, pp. 203-240, June 2005, available at SSRN: <http://ssrn.com/abstract=726543>. It should be added in this context that the history of the importation of European laws to Turkey goes as far back as 1839 when a series of French laws were adopted. See Christian Rumpf, "Rezeption- und Verfassungsordnung: Beispiel Türkei," in *Pax Ottomana*, Ankara 2002, pp. 735-764. [www.tuerkei-recht.de/Rezeption.pdf](http://www.tuerkei-recht.de/Rezeption.pdf).

7 *Medreses* were considered higher learning institutions where law and canonical jurisprudence were taught in addition to religion. The Republic had inherited no less than 300 *medreses*. See E. İhsanoğlu, *The Medreses of the Ottoman Empire*, Publication 4055, Foundation for Science, Technology and Civilisation. Manchester, UK, 2004.

8 Until that date there were separate religious schools as well as secular ones. However, secular schools included religion in their curriculum as a separate subject The law did not only close religious schools, but also eliminated the teaching of religion in the secular schools. See O.S.Bahadır and H.A.G. Danişman, "Late Ottoman and Early Republican Science," in *Turkish Studies in the History and Philosophy of Science*, ed. G.Irzik and G.Güzeldere, Boston Studies in Philosophy of Science, Berlin & New York: Springer, 2005, p. 290.

9 M.O. Williams, "Turkey Goes to School," *The National Geographic Magazine*, January 1929, pp. 94-108 offers 17 photos and an essay depicting the process of implementing the legislation.

after year from their worn-out notebooks. They carried out little research and published very few scientific books. The School of Public Administration did not fare any better.<sup>10</sup> In order to carry out the required reforms a well-prepared cadre and an academic institution at par with those in Western Europe that would prepare such cadres were needed. A man of action and fond of radical decisions, Atatürk knew that university reform, the reform of *Darülfunun*, had to be swift and fundamental. With one order *Darülfunun* was closed, all teachers with tenure were fired on July 31, 1933.

While Atatürk and his colleagues were moving about in the maze of impossibilities, Germany was eliminating the employment of a number of university professors, doctors, and other professionals because they were Jewish, or had Jewish connectivity, were socialists or communists, or simply men and women of honor who could not and would not accept Nazism. Germany in one coup barred close to 1200 men and women of science from its learning institutions in 1933-1934. Of these some 650 managed to emigrate.<sup>11</sup> As much as the action of the Nazis was a disgrace for Germany, it was a window of opportunity for Turkey. Dr. Reşit Galip, Minister of Education, called Atatürk's attention to the fact that there was a huge shortage of teachers at the University of Istanbul while a great number of unemployed German professors whose futures were perilous in their own country were displaced persons. Could Turkey find a mechanism to invite and place some of them at the University of Istanbul and others as advisors in various ministries? Atatürk's response was very positive.<sup>12</sup> After a quick need assessment the Government began negotiations with the German professors and judicial scholars who were willing to come to Turkey.

Atatürk was able to use the situation as a catalyst to modernize Turkey. With Reichstag's consent a select group of Germans having a record of leading-edge contributions in their respective disciplines was invited to transform the new Turkish state's entire infrastructure including its legal and higher education systems. This arrangement, occurring before the activation of death camps, served the Nazis' aim of making their universities, professions,

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10 Subsequent to setting up the University of Istanbul the School of Public Administration was moved to Ankara. Its name was changed to the School of Political Science. It continued to prepare students who would serve in three branches of the Government, namely foreign affairs, internal administration, and finance. In 1940 its was incorporated into the University of Ankara.

11 Norman Bentwich, *The Rescue and Achievement of Refugee Scholars: The Story of Displaced Scholars and Scientists, 1933-1952*. The Hague, Netherlands: Martinus Nijhoff, 1953.

12 It is impossible not to remember that Beyazıt II had invited all the Jews expelled from Spain in 1492 to come and settle in the realm of the Ottomans. Reputedly he had said: "Let's bring them here; Spain's loss is our gain." [http://www.mersina.com/lib/Turkish\\_jews/history/life.htm](http://www.mersina.com/lib/Turkish_jews/history/life.htm). Viewed November 9, 2005.

and arts not only *Judenrein*, cleansed of Jewish influence, but also free from intelligentsia opposed to fascism. Because the Turks needed the help, Germany could use this fact as an exploitable chit on issues of Turkey's neutrality during wartime.<sup>13</sup> The national self-serving needs of two disparate governments served humanity's ends during the darkest years of the 20th century. Minister Reşit Galip was helped by Swiss professor Albert Malche and Frankfurt pathologist Philipp Schwartz in the process of identifying the proper people.

Hungarian born Frankfurt pathologist, Dr. Philipp Schwartz (1894-1977) fled with his family to Switzerland. Schwartz's father-in-law, Professor Sinai Tschulok (1875-1945) had taken refuge there after the 1905 Russian Revolution and was a close friend of Albert Malche (1876-1956), a Swiss professor of pedagogy who in 1932 had been invited to Turkey to prepare a report on the Turkish educational reform. Malche's *Rapport sur l'universite' d'Istanbul* was submitted on May 29, 1932. Recognizing the double opportunity of saving lives while helping Turkey, Malche contacted Schwartz and in March 1933 Schwartz established the *Notgemeinschaft Deutscher Wissenschaftler im Ausland*, (The Emergency Assistance Organization for German Scientists) to help persecuted German scholars secure employment in countries prepared to receive them.<sup>14</sup>

Some 190 eminent intellectuals were rescued<sup>15</sup> – a fact hardly known outside of Turkey.<sup>16</sup> Among them was a small contingent of legal scholars. Two were hard-core judicial scholars and at least three crossed over from other disciplines to rewrite Turkish legal codes; two of these scholars had backgrounds in economics and one was an expert in city planning and administration. Their collective impact on all aspects of Turkey's legal structure, education, and practice was monumental. On reflection, "in its essence, the affair that we call or understand as Atatürk's *Üniversite Reformu* was not merely a

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13 The Bosphorus and the Dardanelles held strategic importance. So did an uninterrupted supply of chromium and other scarce materials needed by Germany's munition factories.

14 F. Neumark, *Zuflucht am Bosphorus: Deutsche Gelehrte, Politiker und Künstler in der Emigration 1933-1953* (Escape to Bosphorus: German Scholars, Politicians, and Artists in Exile 1933-1953). Frankfurt: Knecht, 1980, p. 13, noted that three revolutions came together to make the 1933 "miracle" happen in Turkey: Russian in 1905, Turkish in 1923, and Nazi in 1933.

15 Of the 190 who found their way to Turkey a small number came from Austria after the 1938 *Anschluss*, and one each came from Czechoslovakia and France.

16 See Reisman, A. (2007) "Turkey's Invitations to Nazi Persecuted Intellectuals Circa 1933: A Bibliographic Essay on History's Blind Spot", Working paper. Available on <http://ssrn.com/abstract=993310>.

university reform, but the ultimate apex of the Atatürk cultural movement that started in the years 1925 to 1926.”<sup>17</sup>

Predisposed to German science and culture<sup>18</sup> and recognizing the opportunity that presented itself, Turkey invited Philipp Schwartz<sup>19</sup> to Ankara on July 5, 1933. Schwartz brought with him a set of CVs from the *Notgemeinschaft*<sup>20</sup> while Minister of Education Reşit Galip arrived with a complete list of professorships that were vacant at Istanbul University.<sup>21</sup> Their mission was to select individuals with the highest academic credentials in the disciplines and professions most needed in Turkey. After nine hours of negotiations agreement was reached on names for the Istanbul professorships—and all were members of the *Notgemeinschaft!* From the outset it was clearly understood that the German professors were meant to stay only until their Turkish pupils could take over; therefore, five-year contracts became the rule. Courses were to be taught as soon as possible in Turkish, using textbooks, which had been translated into Turkish as well. 12

Economist Fritz Neumark wrote about scarcity of textbooks, etc. and their attempts to fill this void: 13

*I myself published two volumes of general economic theory (which had several printings), a book about foreign trade and agricultural policy, the first volume of history of economic thought, a comprehensive collection of essays about finance and a monograph titled “Modern Income Taxation: Theory and Practice”. This last one formed the nucleus of a book which was later published in German in 1947. The surprising interest shown in Turkey for this book is evidenced by three printings of 3,000 each, which means it attracted more interest than the German text. Röpke, Dobretsberger and Isaac also wrote all-inclusive textbooks, which were translated into Turkish as well as various research monographs.*<sup>22</sup>

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- 17 A. Kazancıgil, A., I. Ortaylı, and U. Tanyeli, “Türkiyenin Yabancıları,” *Cogito*, Istanbul:Yapı Kredi Yayınları, Üç Aylık Düşünce Dergisi, Sayı:23, 2000, pp. 119-132.
- 18 Turkey was allied with Germany in WWI. Consequently there was much interaction between the German officer corps and their Turkish counterparts. The latter were at the forefront of founding the Turkish Republic, became the hierarchy of its civil government, and by fiat introduced many modernizing societal reforms.
- 19 P. Schwartz , *Notgemeinschaft Zur Emigration deutscher Wissenschaftler nach 1933 in die Türkei*. Marburg: Metropolis-Verlag, 1995 The organizer of the *Notgemeinschaft* lost his sister and her entire family in Nazi gas chambers.
- 20 For details see L. A. Burk, "An Open Door: German Refugee Professors in Turkey," in *The Dispossessed - An Anatomy of Exile*, ed. Peter I. Rose, Amherst: University of Massachusetts Press, 2005, pp. 235-257.
- 21 H. Müller, “German Librarians in Exile in Turkey, 1933-1945.” *Libraries & Culture*, Vol. 33, No. 3, 1998, pp. 294-305.
- 22 Neumark, *Zuflucht op. cit.*: p 166.

The University of Istanbul was established on August 1, 1933 and its doors opened to students in November 1933. The new university, which was fashioned on the prevailing German university model, was heralded in all the existing media of the country, not only in big cities but even in a small town like Yozgat, in the center of Anatolia, whose weekly newspaper carried on its front page the title “Darülfunun Assigned to History, New University Founded”<sup>23</sup>



Front page of the August 2, 1933 edition of *Yozgat* a provincial town’s newspaper.

Based on new legislation passed by the National Assembly, the Istanbul Darülfunun was closed and Istanbul University established in its place. Reşit Galip Bey, [Minister of Education] notified the Anadolu Agency on this occasion about the manner and circumstances of Istanbul Darülfunun’s having been assigned to history as of yesterday. He went on to say that the Istanbul University had nothing to do with the Istanbul Darülfunun; the University is a new institution. Its tradition will begin with itself. The institution will carry the name “üniversite” until the Turkish Language Society will find a suitable authentic Turkish name for it. Above all, Istanbul University will be a gathering place commensurate with the meaning of its name. It will be an institution that will sustain and create superior science and specialization within its mission. The new university will be composed of the Faculties [schools] of Medicine, Law, Science, and Humanities. The Faculty of Theology has been converted into a Research Institute on Islam. All conditions have been created to facilitate cooperation in science and culture among different science constituencies. Besides the Research Institute on Islam, there are seven other institutes which are institutions of Turkish revolution, national economy and sociology, Turkish geography, morphology, chemistry and electromechanics. Neşet Ömer Bey has been appointed to lead the university. The faculty of medicine will be headed by Tevfik Salim Paşa, humanities by Köprülüzade Fuat and law by Kerim Bey.<sup>24</sup>

23 Anonymous, *Yozgat*city weekly printed on Wednesdays, August 2, 1933, No. 603.

24 Ibid.

The new university rehired a number of the *Darülfünun* professors who had proven themselves to be worthy to teach in the new institution. However 157 of *Darülfünun*'s 240 professors were relieved of their duties and retired.<sup>25</sup> Many positions, especially in disciplines such as medicine, hard sciences, economics and law needed new teachers that were difficult, if not impossible, to find in the country. 16

Incredibly, courses began on November 5, 1933, as reported in various media. 17



New professors invited from Europe to teach at the University have started to arrive in Istanbul. Professor Hirsch who will teach Commercial Law at the Law Faculty arrived the day before at the university where he had talks with the dean and his colleagues. He stated that he will reside in a Turkish milieu in Istanbul so that he can learn Turkish within three years and that he considered Turkey as his own country. All the foreign professors will be at their posts by 25<sup>th</sup> of October. *Le Journal d'Orient*, October 20, 1933.

## The Role of the Émigré Professors

The émigré professors who accepted the invitation and chose to live and teach in Turkey form a broad spectrum. On the one hand there were renowned musicians and stage directors like Paul Hindemith and Carl Ebert, on the other eminent physicians like Rudolf Nissen. There were well known academicians like Alfred Isaak who brought the latest know-how of business administration and Gerhard Kessler who became an important advisor to Turkey's fledgling labor movement. This article does not pretend to give an account of all the émigré professors since that has been done elsewhere.<sup>26</sup> The weight of this article is the portrayal of four émigrés who were very influential in the legal 18

25 İlhan Elmacı, "Dr. Rudolph Nissen" *Journal of Neurological Sciences* (in Turkish), *NOROL BIL D* Vol. 18, No. 4, 2001. <http://www.med.ege.edu.tr/norolbil/2001/NBD17901.html>.

26 See Reisman, *Turkey's Modernization*, op cit.

and administrative reforms that occurred after 1933. All four were not only outstanding teachers but also advisors sought after by the Government.

## Four Portraits

**Andreas Bertholan Schwarz** was born in Budapest in 1886 and obtained his ‘habilitation’<sup>27</sup> in 1912. From 1920 to 1926 he was a professor of Roman and Civil Law at the University of Leipzig. He then transferred to the University of Zurich and in 1929 moved to the University of Freiburg from which he was dismissed in 1933. He immigrated to Turkey in 1934 and was appointed as professor in the same field at the Law Faculty of the University of Istanbul<sup>28</sup> where he remained until 1950 when he became guest professor at the University of Freiburg.<sup>29</sup> Schwarz died in Freiburg in 1953. By advising parliamentary commissions and submitting several memoranda for the required changes, he played a significant role in modernizing Turkey’s civil laws during the 1930s,<sup>30</sup> which brought a deep-rooted progress. As a result the existing religious marriage law was abolished and civil marriage became obligatory, polygamy was outlawed and equality between husband and wife was established. His book on family law<sup>31</sup> greatly influenced Turkish jurists and contributed to the modern conceptualization of family jurisprudence. He trained an entire generation of Turkish legal scholars.<sup>32</sup> Quoting Professor Fritz Neumark, economist and fellow émigré,

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27 ‘*Habilitation*,’ a term used within the university system of France and Germany, qualifies the holder to be admitted as a professor at a university. It is a post-doctoral thesis and demonstrates competence in further research.

28 “Schwarz has been a prolific writer in a little-practiced field of ancient studies that have an important sociological character. I should very much like to see him in America, both because of my personal regard for him and because of my personal interest in his work.” Charles B. Welles, classics professor, writing on Yale University stationery on October 18, 1940. Courtesy of the Grenander Department of Special Collections and Archives, University of Albany, New York.

29 In the early forties he tried to emigrate to the United States, being fearful of Germany’s military success and Turkey’s precarious position. To that effect he sought positions in Yale university and the New School for Social Research. His attempts were frustrated and he remained in Turkey until his return to post-war Germany. For the correspondence related to his attempts see: Émigré Files, University of New York at Albany Library (courtesy of Special Collections and Archives).

30 A relevant publication of his is: A.B. Schwarz, *Das Schweizerische Zivilgesetzbuch in der auslaendischen Rechtsentwicklung*. Zurich 1950. One of his publications that relates to family law in Turkey is “Ein Rechtsvergleich zwischen dem alten und neuen türkischen Zivilgesetzbuch,” in *Annales de la Faculté de Droit d’Istanbul*, Vol. 35, No.52, 2003, pp. 323-338.

31 Andreas B. Schwartz, *Aile Hukuku* (Family Law), translated by Bülent Davran into Turkish. Istanbul University Publications, 1942. Second printing 1946.

32 Stanford J. Shaw, *Turkey and the Holocaust*. London: Macmillan, 1993, p. 355.

*Schwarz was one of the most impressive and scientifically invaluable persons among us. He possessed high degree self-respect and had a lasting influence on his Turkish colleagues. He was of the opinion that a university professor should have a social preference stand based on quasi-natural law.*<sup>33</sup>

**Ernst Eduard Hirsch** (1902-1985) came to Turkey in 1933 after being dismissed from the University of Frankfurt am Main and declining an offer from the University of Amsterdam, which probably saved him from Nazi persecution when Germany invaded Holland. He was the youngest émigré professor at the University of Istanbul. Hirsch quickly learned Turkish and soon wrote books in the language. He was a great teacher of commercial law from 1933 to 1943. In 1943 he moved to the Law Faculty in Ankara where he



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became interested in the philosophy of law. He taught legal philosophy and legal sociology in addition to commercial and maritime law. At the same time he worked as an advisor to the Ministry of Justice. His appreciable influence was made on public policy and legal structure of the country, especially on the modernization and westernization of the commercial code. As a well-known authority on all aspects of commercial law he wrote numerous books and articles<sup>34</sup> and submitted a series of reports and memoranda to the Government. Sadly, none of these have survived. He was well respected in government circles, since his opinion was sought repeatedly. He took his responsibilities quite seriously and in a short time considered Turkey as his fatherland.

Hirsch was granted Turkish citizenship in 1943 and stayed in the country until 1952 when he went to the Free University of Berlin. His memoirs were first published in Germany in 1982 but later his students and assistants decided that the book should be available in Turkish.<sup>35</sup> It is a very detailed story of his life both in Germany and Turkey. The first two chapters are devoted to his life in Germany until 1933 when at the age of 31 he left for Turkey. In these chapters he writes about his family, education at home and at school, the “golden 1920s,” Jewish life and customs of the period. Chapter III is about his first impressions of Turkey, the “birth pains of the University of Istanbul,” his private life and the social life of émigré scientists in Istanbul, including his work and courses at the Law Faculty, and his relations with students and colleagues. In the second part of this chapter

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33 Fritz Neumark, *Zuflucht, op.cit.*, p. 89.

he reflects on his years in Ankara, his application for and acceptance of citizenship, his invitation to occupy the post at the Law Faculty in Ankara once he became a citizen.<sup>36</sup> When Hirsch went to the Free University in Berlin, his intention was to teach there temporarily. However, he remained in Germany and was twice appointed Chancellor of that university.

Hirsch's profound influence on Turkey is depicted clearly in his memoirs. Well-known Turkish personalities – Türkân Rado, Bülent Davran and Hıfzı Veldet – were his collaborators. Professor Ünal Tekinalp, a retired law professor who refers to him as his mentor recalled:

*Hirsch is known in Turkey as a scholar of commercial law. However, he also has another side as a law sociologist. Hirsch gained fame outside of Germany with this second personality after 1950. His works have made echoes in other European countries, Japan and the United States. It can even be said that as of the 1950s this second side of his surpassed his fame as a leader in the field of commercial law.*<sup>37</sup>

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- 34 Some of his publications are: Hirsch, Ernst E.: *Rezeption als sozialer Prozess: Erläutert am Beispiel der Türkei*; Berlin: Duncker & Humblot, 1981. *Vom schweizerischen Gesetz zum türkischen Recht*, in: ZSR 1976, Vol. I. pp. 223- 248. „Vier Phasen im Ablauf eines zeitgenössischen Rezeptionsprozess“, in *ZvglRWiss*, 69, 1968, pp. 182 ff. „Die Rezeption fremden Rechts als sozialer Prozess“, in *Festgabe für Friedrich Bülow*, Berlin, 1960. pp. 121 ff. and in *Recht im sozialen Ordnungsgefüge*, Berlin, 1966, pp. 89 ff. “Die Einflüsse und Wirkungen ausländisches Rechts auf das heutige türkische Recht,” in *ZHR* 116, 1954, pp. 201 ff. *Rezeption als sozialer Prozess. Erläutert am Beispiel der Türkei*. Berlin: Duncker & Humblot, 1981; “Vom schweizerischen Gesetz zum türkischen Recht,” in *ZSR* 1976, Vol. I, pp. 223-248; “Die Rezeption des schweizerischen Rechts in der Türkei.” Reports of the Conference of International Committee of Comparative Law in Istanbul, September 1955; “Das schweizerische Zivilgesetzbuch in der Türkei,” in *SJZ*, 50, 1954, pp. 337 ff; “Bericht über die türkische Gesetzgebung, 1935,” in *Legislazione Internazionale*, IV, p.55; “Bericht über die türkische Gesetzgebung 1936-37,” in *Legislazione Internazionale*, VI, p. 155; “Bericht über die türkische Gesetzgebung, Jahr 1938,” in *Legislazione Internazionale*, VII, p. 20; *Die Verfassung der türkischen Republik*. Frankfurt a.M., 1966.
- 35 E.E.Hirsch, *Anılarım: Kayzer Dönemi, Weimar Cumhuriyeti, Atatürk Ülkesi*. Translated by Fatma Suphi, Ankara: Tübitak Popüler Bilim Kitapları, 8<sup>th</sup> printing, 2000. The original title in German is *Aus des Kaisers Zeiten durch Weimarer Republik ins Land Atatürks, Eine Umzeitgemasse Autobiographie*. 1982.
- 36 At the time the Law Faculty in Ankara was not allotted funds for foreign professors, hence there was the danger that Hirsch would be unemployed thereby losing the residence permit. Moreover he had also refused to have his German passport renewed, for he refused the letter (J) stamped on his passport indicating that he was Jewish. Although with the help of Phillip Schwartz he (and a few other émigrés) had a Czech passport it was a debatable question whether the Turkish Government would recognize a passport of a government that was in exile in London. Turkish citizenship solved two problems in one coup, employment and citizenship. See: Ernst E. Hirsch, *Anılarım*, *op.cit*, p.305.
- 37 Recollection of Prof. Ünal Tekinalp of Prof. Ernst Hirsch <http://www.salom.com.tr/010904/prspektif001.htm>.

**Ernst Reuter**, one of the most illustrious among the social and legal reformers who took refuge in Turkey, was born in 1889 in Apenrade (Aabenraa today), Denmark. He joined Germany's Social Democratic Party in 1912. Reuter was conscripted into the army during the First World War, was wounded in 1916 and interned in a Russian prisoner of war camp that year. This was to be his first, but not his last internment. The Bolshevik revolution began while he was still in the camp. Reuter sympathized with the ideals of the revolution and joined the Communist party in 1918. He rose in the party ranks and became a Commissar in the Volga German Autonomous Workers' Commune in Saratov, Russia. He returned to Germany in December 1918, joined the German Communist Party and was appointed its Secretary in Berlin. In 1922 he quit the Communist Party and rejoined the Social Democrats. In 1926 he was elected to the City Council of Berlin, served as the mayor of Magdeburg in 1931, and in 1932/33 represented the Social Democrats in the leftist wing of the Reichstag.



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Arrested by the Nazis during the first years of Hitler's dictatorship, Reuter spent two years in Lichtenburg, one of Germany's early concentration camps,<sup>38</sup> his second internment. He escaped from the camp with the help of English Quaker friends via Holland and went to England. He arrived in Istanbul in 1935 where with the help of his friends Martin Wagner and Fritz Baade, he found employment as a tax specialist in the Ministry of Economy and subsequently in the Ministry of Transportation in Ankara. Soon thereafter he complemented his activities with lectures at the School of Public Administration whose director Mehmet Emin Erişgil, also the Minister of Interior, appointed him as professor of community sciences, particularly urban planning, urban architecture, municipal finance administration and environmental management. Reuter emphasized the economic and social dimensions of city and community planning. He drew upon his experiences in Berlin, relying on theoretical foundations at the same time.

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Reuter was also constantly active as a technical advisor to the Turkish government. He prepared the statute which founded the Institute of Urban Settlement and City Building at the Faculty of Political Sciences in Ankara which was established in 1953. The Institute's mission was to research, publish, and organize forums, seminars, and symposia for the

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38 One summer when, dressed only in his bathing suit with no shirt on at the swimming pool at Ormançiftlik outside Ankara, he was asked whether the deep wounds on his back were caused while fighting during the First World War, he answered: "Concentration camp." See L. Kudret Erkönen, "Familie Reuter in Ankara," in *Erinnerungen an Ernst Reuter*. Berlin 1978, pp. 25, 26.

purpose of the exchange of ideas and opinions between practitioners and theoreticians. He published a series of fundamental research papers and books. His 350-page book *Social Science: Introduction to City Planning* was published in 1940 while still in Turkey. Among other issues covered, the book included subjects such as the planning of public spaces and legislation for public administration. He recommended that the state acquire land for a successful housing policy, which the United Nations recommended for developing countries in the 1970s. He recommended financial equalization (*Finanzausgleich*) and distribution of public expenditures among local governments and the state. This was included in Article 116 of the Turkish Constitution in 1961 and in Article 127 in 1982, which state that the central government distribute public funds proportionally among the local governments.<sup>39</sup>

Reuter had an extremely pleasant personality combining the characteristics of a good politician, teacher and experienced administrator. Learning Turkish in a very short time enabled Reuter to have good relations with the Turks and he maintained his relationship with Turkey even after his return to Germany. Anti-Nazi to the core, he was the unofficial leader of Turkey's German and Austrian expatriate community who were similarly disposed. 26

When Turkey finally severed diplomatic relations with Germany and searched for additional chits from the Allies, it designated Çorum, Kirşehir, and Yozgat, each a small town, as sites to intern German nationals living in the country. These were not Soviet-style gulags nor Nazi-type concentration camps or ghettos. They were closer to the internment camps to which the Japanese-Americans were sent. Anyone bearing a German passport without a "J" stamp identifying the carrier to be a Jew was sent to one of these towns. The majority of those confined in Kirşehir were from Ankara, although some came from Istanbul as well, including a group of Roman Catholic nuns. Ironically, among the detainees were the Nazi sympathizers and those who loathed them. Ernst Reuter, the informal but acclaimed and acknowledged leader of the anti-Nazi German community who a few years prior had escaped from a Nazi concentration camp, was among the interned. This time it was along with his entire family. 27

Later, his former students held important positions, such as professors, city mayors, governors, government officials, and general directors. There were even ministers and modern city planners. They had significant impact, especially during 1950-1975, on the administrative structure and political development of Turkey. 28

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39 See Ruşen Keleş, "Über Ernst Reuter," in *Der Scurla Bericht*, Frankfurt 1987.

Reuter served as professor at the Faculty of Political Sciences until 1946<sup>40</sup> when he returned to Germany. He became the first mayor of post-World War II Berlin and was in office during the city's 1948-1949 blockade by Russian army tanks and the Americans' 324-day airlift of food, coal, blankets, soap and other supplies to the city's population. He made inspirational radio addresses during that blockade which was broken thanks to his leadership and the Western Allies' determination. He died in 1953. 29

**Fritz Neumark** was born in 1900 in Hanover, Germany. Among the four émigrés he was perhaps the most important contributor to the modernization of Turkey's public sector. He was dismissed from the University of Frankfurt on September 1, 1933 and left Frankfurt on September 22 of the same year. He went to Switzerland and in the presence of the Turkish Ambassador Cemal Hüsnü in Geneva signed a renewable five-year contract (October 15, 1933 to October 15, 1938) to teach social hygiene and statistics. He went to Istanbul via Italy and Greece. He was among the first wave of émigré professors. Neumark learned Turkish to perfection, began to lecture in Turkish within two years, published prolifically in Turkish, German, English and French. His contract was renewed and he became a Turkish citizen. His stay lasted until 1951. In 1952 he was offered the chair of public finance at the University of Frankfurt. Germany was ready to return his German citizenship in March 1952, which he rejected at first and accepted when he became the University Chancellor in July 1954, a post to which he was elected twice. He retired in 1970 and moved to Baden-Baden in 1984 where he died in 1991.



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Neumark's field of expertise was neither social hygiene nor statistics. He was an economist specializing in public finance. Soon Professor Ömer Celâl Sarç took over the course of statistics and he was relieved from teaching social hygiene. He was named professor of economics and public finance at the Faculty of Law. Subsequently the discipline of economics separated from the Law Faculty and became an independent faculty where Neumark occupied the Chair of Public Finance. He became the director of the Institute of Public Finance which was created in 1946 within the Faculty of Economics. 31

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40 As "enemy aliens" the Reuter family was briefly interned in *Kırşehir* (a small town in Anatolia) by the Turkish government. They were the "good" Germans so interned along with the "bad" Germans for the last few months of the war in Europe after Turkey decided to sever all relations with Nazi Germany and in fact declared war on both Germany and Japan.

Among his most important publications written while he lived in Turkey are *Neue Ideologien der Wirtschaftspolitik* (New Ideologies of Economic Policy),<sup>41</sup> a two-volume *General Economic Theory* (which had several printings), the first volume of *History of Economic Thought*, and *Gelir Vergisi* (Income Taxation) which had three printings of 3,000 copies each,<sup>42</sup> *Theorie und Praxis der modernen Einkommensbesteuerung* (Modern Income Taxation: Theory and Policy), and *Beiträge zur Geld- und Finanztheorie* (Contributions to Monetary and Fiscal Theory)<sup>43</sup>. In 1939 he founded and edited the *İstanbul Üniversitesi İktisat Fakültesi Mecmuası* (Revue de la Faculté des Sciences Économiques de l'Université d'Istanbul) which published articles by his colleagues in Turkey as well as abroad in Turkish, French, German and English with whom he maintained contact. He was co-founder of the International Institute of Public Finance of which he was the president from 1956 to 1959. 32

In addition to his courses at the university, Neumark gave a series of lectures in the provinces. His objective was to educate and increase the knowledge of the government staff as well as of the population in general. These lecture trips provided him with the opportunity to familiarize himself with the economic structure of the country in which he had taken refuge.<sup>44</sup> The information thus gained was used in his analyses contained in the frequently requested reports he submitted to various ministries. Of these agricultural and industrial problems, planning and etatism, public administration, monetary policy, taxation were among the most important and his opinions on several issues were very much sought as an advisor.<sup>45</sup> 33

He noted the large role that the inefficient agriculture played in Turkey's national economy and suggested that land holdings be redistributed and productive technology be improved. He was in favor of encouraging industrialization, especially in the areas of textiles and food production. He felt that the mining industry should be expanded and claimed these areas could be improved by subsidizing industrial enterprises and/or establishing state industrial enterprises in the respective fields. He did not oppose etatism which he considered justified to a certain extent, since the republic was very young and 34

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41 In *Wiener staats- und rechtswissenschaftliche Studien*, Vol 25, 1936.

42 This book was subsequently translated into German as *Theorie und Praxis der modernen Einkommensbesteuerung*, Frankfurt: Francke 1947.

43 Tübingen: Mohr-Siebeck, 1951.

44 See Volker Wolf, "Fritz Neumark – Emigrationsziel Türkei: Deutsche Wissenschaftler auf der Flucht vor dem Nationalsozialismus," Master's thesis, Johann Wolfgang Goethe University, 2006. p. 73.

45 For an extensive discussion see A Reisman, *Turkey's Modernization*, *op.cit.*, pp. 106-116.

foreign monopolies were still restricting sovereignty in economic policy. But he was against excessive etatism, since private enterprise was emerging. Moreover, the intrusions in the trade policy were slowing down and raising the cost of both the exports of agricultural products and the imports of equipment. Neumark undertook great responsibility when Minister Nihad Erim assigned him the task of preparing a report on the rationalization and modernization of Turkey's public administration. To comply with this task he took a sample of the administrative institutions where reform was particularly required and conducted research in Ankara for several months into administrative changes that would have been politically acceptable. The result was his 1949 report "*Devlet dairesi ve müesseselerinde rasyonel çalışma esasları hakkında rapor*" (Report on the Principles for Rational Processes in Public Offices and Institutions) which investigated of the causes that called for substantial reform. These were the imbalance in the employment in public offices and enterprises and lack of networking among them, inefficient management, lack of inspection and transparency in economic and fiscal operations. This was a very analytical and important report. However, in 1950 the helm of the Government changed hands and the new party in power had a different agenda.

Another opportunity for Neumark to express his opinion about Turkey's economic policy occurred shortly after WWII ended. The Director of the Istanbul branch of the Central Bank was interested in Neumark's opinion of devaluating the Turkish lira. He wanted to know whether, and if so to what extent, it should be devalued. Neumark presented a brief report on the issue. The Parliament convened shortly after the submission of his report and the Prime Minister declared that yes, the Government had decided to devalue the currency. Naturally criticisms were voiced. To counter them the Prime Minister opened his briefcase, took out Neumark's report, declared that an eminent university professor had expressed the view that it should be done and with that the Parliament accepted the view and devalued the lira.<sup>46</sup>

Neumark's greatest impact on the Turkish economy and functioning of the public sector was in the fields of budget, fiscal policy and especially taxation. His efforts were aimed at modernizing, rationalizing the taxation system and undertaking a fundamental and comprehensive fiscal reform. Having resided in Istanbul for several years, having visited several regions of the country, and having obtained first hand knowledge of the workings of the country's public administration and parliament, he realized the great difficulties that

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46 This is the 1946 devaluation of the Turkish lira from \$ 1.00 = TL 1.31 to \$ 1.00 = TL 2.80 <http://www.turkishdailynews.com.tr/archives.php?id=9528> Viewed on June 13 2007. The news media was not informed of the devaluation beforehand.

would be encountered in adopting western financial institutions and procedures. For, despite the efforts made, fiscal administration was inefficient and the tax system was antiquated. Hence public services could not be financed in a fair and non-inflationary way.

But before any drastic steps could be taken in this direction the public expenditures caused by WWII had to be financed. Though Turkey was not actively involved in the war, its neutrality required maintaining large military forces. Tax revenues were insufficient to meet the rising defense expenditures which were being financed by short-term credit and the printing of money, hence, the high rate of inflation during those years. Under these circumstances the Government enacted the *varlık vergisi* (real wealth tax) in December 1942. Neumark was of the opinion that it should be a one-year tax, which it turned out to be. The need for such a tax was recognized by some business people in principle. However, Neumark was very critical of the nature of the tax and the way it was levied.<sup>47</sup> The tax had no rates. The fiscal administration did not have the ability to collect it in an equitable way, for there was no property tax and not even a modern income tax that would have provided the information on which to base a one-time real wealth tax.<sup>48</sup> The amount to be paid was not determined according to the principle of the taxpayer's ability to pay. The payments were lump sum and their amount was differentiated among the taxpayers in an unfair, unjust and arbitrary way<sup>49</sup> taking into account in which minority group (Greek, Armenian, Jewish, or was a foreigner) the taxpayer belonged or if he was a Moslem Turk. Even in this latter case discriminations abounded. Many minorities had to pay a tax amount, which exceeded their wealth. Therefore they either borrowed money, went bankrupt or were sent to Aşkale a forced labor internment camp with very primitive conditions in the interior of the country. They were paid a very low wage, part of which was withheld to meet their tax bill. It would have taken scores of years for these withholdings to pay off the tax assessments of ten thousands or hundred thousands of liras had not the tax debts been erased in 1943 when the tax was repealed. Evasion was rampant, so those taxpayers who evaded payment ended up gaining while honest people were made into fools with the repeal of the tax whose yield was a little over TL 300 million, one-third of the government's total revenue in 1941.

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47 In his memoirs he states that the tax was "a sad chapter in the tax history of the Turkish Republic. It has shaken significantly the trust Atatürk created within and without the country for a long period." See *Zuflucht...*, *op.cit.*, p.219.

48 *Zuflucht*, *op.cit.*, p.217.

49 *Ibid.* Although vehemently against the discrimination, there was not much Neumark could do, given the political atmosphere that reigned in the country. See Wolf, *op.cit.*, p.94.

It can be said that the objective of the tax was realized: to tax minorities and the citizens of other countries who conducted business in Turkey. Unfortunately, Neumark's harsh criticism of the way the tax was implemented, criticism that he made to the highest authorities, fell onto deaf ears and those in the government who somehow were influenced by the Nazi ideology pretended not to hear it. In later years the same criticism was made by a number of professionals, including economists such as Fail Ökte who actually implemented the tax; but the damage had been done. 38

Neumark's greatest impact in the field of taxation in Turkey began in the late forties and ended with the tax reform legislation of 1950, which, after several amendments and changes over half a century, constitutes the basis of the current tax system. The tax reform act of 1950 can be conceived as the pinnacle of his life and work in Turkey. 39

As mentioned earlier, Turkey's tax system was antiquated. It was dominated by indirect taxes and especially by the turnover tax. A land tax was levied which did not provide much revenue. There was no property tax to speak of and the inheritance tax was insignificant. There was an income tax, which was not global but levied on individual sources of revenue in different ways. Wages and salaries were levied at progressive rates with some exemptions, while businesses were hardly paying taxes. A republic since 1923, Turkey underwent a stream of modifications to overcome the antiquated and inequitable tax system she inherited from the Ottomans. The piecemeal remedial changes and ad hoc amendments between 1926 and 1946 did not solve the budgetary problems and met the development requirements. A great deal more reform had to come starting with the income tax. 40

In this context Neumark raised and answered the following set of significant questions: (1) Could a modern income tax be implemented in a country where agriculture and artisans and handcrafts constituted a great portion of the sources of income? (2) Could the principles of a modern income tax be made consistent with the circumstances and conditions of the Turkish society? (3) What would be the trade-off between efficiency and equity; in other words, given the circumstances, could a modern income tax yield sufficient revenue to meet the development requirements and be equitable at the same time? (4) How to change the tax administration to conform to the new tasks arising from a tax reform? 41

Neumark was not alone in promulgating the need for a tax reform. There were also Turkish finance specialists who saw this need. Ali Alaybek, who was familiar with European financial institutions, was one of them. After numerous discussions with high 42

government echelons, he and Neumark succeeded in persuading the finance minister Nurullah Esat Sümer, and through him the entire cabinet, of the necessity of creating a small commission to investigate and discuss tax reform. The intensive work of the commission, in which the Chief of the Tax Office of Istanbul, Mehmet İzmen, also participated, continued for years. The goal issue was to create a new tax system that would broaden the base by bringing businesses that were rarely paying taxes into the income tax net, while reducing the tax burden of the workers and employees.

The commission, which included several other experts, recommended establishment of a German-based tax system that introduced a global income tax on personal incomes and corporations, yet levied small businesses and artisans with a different tax, for they could not be expected to be integrated effectively into a modern tax system which required book-keeping. The report also proposed that the inheritance tax be progressive, not only to increase revenue, but for social purposes as well. 43

Fueled primarily by those whose tax burden would be increased, a fierce public debate emerged when the report, and especially the tax legislation projects were made public by the Ministry of Finance. The discussions by the general press in professional publications, radio programs and chambers of commerce and industry became the order of the day and continued for a whole year. During those days Neumark's public fame and popularity oscillated between pro and con. Among his students, however, the respect he commanded was unquestionable and unwavering.<sup>50</sup> Neumark was also very active in organizing and participating in Turkey's Second Economic Congress in 1948 where all sectors were present –private, public and academic – and where all tax issues were debated.<sup>51</sup> 44

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50 A conference on the subject took place in the Chamber of Commerce attended by representatives of various taxpayer groups and by a group of fourth-year students from the Faculty of Economics of the University of Istanbul, including one of the co-authors of this paper. They were working as ushers, rapporteurs and assistants to the participants. Just before the closing hours a rumor began to circulate: A group of anti-income tax diehards were planning to disrupt the conference by shutting off the electricity and in the dark assault Professor Neumark. The students who had unfailing regard and respect for him were alarmed. Professor Neumark was not at the podium; he was sitting among the participants and following the deliberations. Immediately they congregated around him; some stood behind him, some took the seats in front of him, and some were at his side. They were ready to defend him with their bodies, for he was sacred to them and were not going to allow anybody to touch him. However, to their relief the rumor turned out to be false. See Fuat Andic and Suphan Andic, "Fritz Neumark: Reformer and Teacher," *Finanzarchiv*, 1980.

51 Andic & Andic, *op.cit.*, p. 12.

The proposals of the report became law in 1950. The tax legislation enacted (with all its amendments and alterations) is the basis of the tax system that exists today.<sup>52</sup> 45

Turkey's tax reform is the first to be initiated in a developing country after WWII. Fritz Neumark was involved with reform efforts from its very inception. He had submitted several reports to high government officials on the need for reform, had participated in endless committee meetings at the ministerial level and had written several articles in scientific journals and newspapers to educate and inform the public. 46

Neumark contributed greatly to the education of young Turkish economists who themselves contributed to teaching modern economics and became holders of public offices. For example, Refii Şükrü Suvla (his docent<sup>53</sup>) over many years advised the Central Bank and other state banks; Muhlis Ete (docent) became Minister of Commerce; Osman Okyar (assistant) taught at Middle Eastern Technical University and subsequently became the Chancellor of the University of Erzurum; Memduh Yaşa (docent) succeeded Neumark as the director of the Public Finance Institute at the University of Istanbul and advised Prime Minister Adnan Menderes; many other of his docents and assistants became well-known professors of economics and of public finance. 47

The year that the old income tax was abolished also turned out to be the year when Neumark, the architect of the new one, began deliberating about his future. His ultimate decision to return to his native land generated a loss for his foster home. 48

Following the war Neumark renewed contacts in the international economics community and served as a consultant to the Allies on planning the reconstruction and de-Nazification of Germany's system of higher education. He served for years as an advisor to the German government. He was the Chairman of the Scientific Commission of the Ministry of Finance for ten years. He also served on the Scientific Commission of the Ministry of Economic Affairs and worked for the Organization of Economic Cooperation and Development. In 1960 he led a Tax Commission of the European Economic Community that developed the tax policy of the Common Market. The "Neumark Report," to which it was constantly referred was submitted in 1962. It gave birth to the value-added tax which 49

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52 In his memoirs Neumark points out the significant progress made and states that the reform of the tax on individual and corporate incomes has become the underpinnings of the Turkish tax system. He merely regrets that such changes have not taken into consideration the effects of inflation. See *Zuflucht, op.cit.* p. 168.

53 The teaching structure at the Turkish universities was as follows: Each discipline was headed by an ordinarius professor who had the chair. Second in ranking was a professor (or professors) of the same discipline. The chair also included a number of docents (from German *dozent*) and assistants.

is currently levied in European Economic Union member states. He was awarded honorary doctorates in several German universities and was named honorary president of the International Institute of Public Finance and International Economic Association. He was often consulted regarding the German-Turkish relationship.<sup>54</sup>

He never stopped expressing his loyalty and gratitude to Turkey<sup>55</sup> and in 1986 he traveled to Turkey with President Richard von Weizsäcker who placed a plaque at the University of Istanbul. Germany acknowledged its gratitude to Turkey for having granted refuge to the German professors in her academic institutions. 50

## Perceptions of the Émigrés in Today's Turkey

Memories of the émigré professors and the appreciation of their contributions to Turkey's modernization are well and alive. This topic is of particular relevance, especially considering Turkey's continued efforts to become a member of the European Union and remain a secular state with a mostly Moslem population while living with at least one theocracy in its immediate border and others close by. 51

The *History* and *Mission* statements as posted on the web by the original three Turkish universities have documented the prevailing national pride in the legacy that was left by the émigré professors.<sup>56</sup> Specifically, the 2004 the Law Faculty of the University of Istanbul declares proudly in its website that: 52

*Until other universities established their faculties of law, ours was the first to train young jurists. After the university reforms of 1933 and with the contribution of academics fleeing from the Nazi regime the principles of contemporary legal education originated and were developed at this institution. Many prominent and well-known figures, famous academics such as Prof. Andreas Schwarz, Prof. Ernst E. Hirsch, Prof. Siddik Sami Onar, many judges, politicians, lawyers, writers and journalists feature in the annals of the Faculty. The academic staff of our Faculty is proud of this heritage and aims to retain and promote the tradition of high quality education.*<sup>57</sup>

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54 For details of his activity upon his return to Germany see Wolf, *op.cit.*, pp. 107 ff.

55 Neumark never stopped expressing his gratitude to Turkey. On one occasion Fuat Andic posed the following question to him: "If the German army had entered to Turkey what would you have done?" His answer was very categorical: "My whole family had decided to commit suicide. You see, Turkey was our second homeland, we did not have a third." Quoted in Fuat Andic, *Elveda Yurdum* (Goodbye Homeland) Istanbul: Eren Yayıncılık, 2006, p.184.

56 See Reisman, *Turkey's Modernization*, *op.cit.*, pp. 471-473.

57 See <http://www.istanbul.edu.tr/fen/astronomy/tanitim/tarihce/history.htm>. Viewed August 22, 2005.

Turkish media also contributed to keeping alive the memories. During the celebration of the 83<sup>rd</sup> anniversary of the republic, an article by Murat Bardakçı in the daily *Hürriyet* described Einstein's appeal to Prime Minister İsmet İnönü to accept 40 German intellectuals who were ready to come and work in Turkey without pay and saw a decline in the current body politic and its preoccupations as compared to those of the young Republic with great promise for the future.<sup>58</sup> The article kindled renewed interest in the émigrés and their reception in Turkey.<sup>59</sup> Within a week the newspaper *Milliyet* printed an article by Melih Aşık juxtaposing the attention given by Turkish media to the Einstein letter with the lack of awareness of this episode outside of Turkey. On October 30, 2006, the newspaper *Sabah* returned to the subject of university reform, stating that the reform was prepared by Professor Malche and that refugees, such as Neumark, Hirsch and others established faculties, assisted in enacting laws, and trained great numbers of good students. It added: This was "a wonderful country where the western plague of fascism had not penetrated."<sup>60</sup> İlhan Selçuk, writing in the newspaper *Cumhuriyet* discussed the contributions made to Turkish Civil Code by Andreas B. Schwarz, referred to his book on family law and cited the changes that came with the young Turkish republic.<sup>61</sup>

In addition to newspaper columns, several symposia have been devoted to keeping the memories alive. Speakers in Turkey and abroad expressed their opinion on what has occurred during the thirties and forties, paying respect to those scholars who took refuge in Turkey and to their significant contribution to the legal and educational development. In a July 19, 2003, the seminar entitled "Culture as a Weapon: Academicians in Exile" that took place in Berlin a member of the Turkish Parliament, Mr. Onur Öymen, referred to Prof. Ernst Hirsch, as one of the émigré professors who participated in major reform projects besides their teaching activities and referred to Professor Andreas Schwarz's important contribution to the adoption of western laws in the thirties.<sup>62</sup>

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58 See A. Reisman, "What a Freshly Discovered Einstein Letter Says about Turkey," *HNN*, <http://hnn.us/articles/31946.html>, posted November 27, 2006. Also see A. Reisman, "Saving German Intellectuals: Albert Einstein's 1933 Attempt to Influence Turkey's Prime Minister." Forthcoming on *History News Network*.

59 Murat Bardakçı, "A Request from the Great Genius to the Young Republic," *Hürriyet*, October 29, 2006.

60 Umur Talu, "ON University Reform," *Sabah*, October 30, 2006.

61 İlhan Selçuk, "Is the Harem Going up to Çankaya?" *Cumhuriyet*, 25 April 2007.

62 See <http://www.onuroymen.com/docs/konusma37.doc>, September 10, 2005.

On November 29, 2005, the Consul General of Germany in Istanbul at that time organized a symposium at the consulate that dealt with the contributions of émigré scholars' legal contingent to Turkey's legal system.<sup>63</sup> 55

On April 7, 2006, the University of Istanbul conducted a symposium on the 1933 university reform. In his opening welcoming speech, Dr. Mustafa Kaçar reiterated the great debt Turkey owes to the émigrés and the great work they had accomplished. He referred to Kamran İnan, a former minister of foreign affairs who was a student of Professor Hirsch at the University of Ankara. Professor Hirsch had asked him one time whether he was interested in politics and he had answered that he was interested in academic subjects only. He cited Hirsch's answer: "Once we did the same thing. We were interested in academic careers only. Luckily for us a country like Turkey which the plague could not contaminate existed."<sup>64</sup> 56

Professor Ünal Tekinalp recalled<sup>65</sup> that Professor Hirsch had raised some concerns about the broader issues of the Atatürk reforms, especially whether the legal and university reforms were threatened. His concern was with the constitutional court's ruling that put education ahead of science as the function of universities. When Prof. Tekinalp questioned him on this matter Hirsch's response was: "An episode is a temporary scene, a term used in the theater... it is a momentary incident. It comes and goes and is followed by another one. Epoch, however, is a terminology of sociology and history; it is a basic concept of these sciences. The sociologist and historian identify, judge and evaluate epochs. Epoch has a particular significance for those concerned with sociology of law. This is because 'epoch' describes a period that leaves imprints; it gives direction to the future and has lasting effects." Professor Tekinalp was of the opinion that Turkey's legal and university reforms constituted an epoch, but was skeptic whether his opinion still held today. 57

Then the 80<sup>th</sup> anniversary of the enactment of the Turkish Civil Code was commemorated with a symposium at the University of Ankara on October 4, 2006, where the German Federal Councilor Christoph Blocher gave a speech emphasizing Atatürk's courage of transforming the vestiges of the Ottoman Empire into a modern republic.<sup>66</sup> 58

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63 See Reiner Möckelmann, "Exil und Bildungsreform: Deutsche Rechtsprofessoren in der Türkei ab 1933: Discussionsabend im Generalkonsulat am 29/11/2005 (Exile and education reform: German law professors in Turkey as of 1933: An evening of discussion at the General Consulate of the German Republic).

64 A.N.Erdem, *Siyasetin Yollarında* (On the Roads of Politics). Istanbul, Ötüken Yayınları, 2004.

65 Recollections of Prof. Ünal Tekinalp about Prof. Ernst Hirsch in [www.eskiszozluk.com](http://www.eskiszozluk.com), entry by "arrakis" on September 9, 2006.

66 "Turkey and the adoption of the Swiss Civil Code," address by Christoph Blocher. See

Finally, on November 18, 2006, the Turkish Academy of Science (TÜBA) held a conference devoted to the “Evolution of the Concept of University in Turkey (1861-1961)” where its hundred-year history was discussed. Much of the discussion focused on Atatürk’s university reforms the realization of which was attributed to the émigré professors from Germany. 59

As can be surmised the memories of émigré professors are still very much alive among today’s Turkish intellectuals, although many of them are now students of their students. Because the émigrés had succeeded in transferring their knowledge to young Turks willingly and generously,<sup>67</sup> their generosity of intellect and spirit is retained today 60

## Concluding Remarks

As compared to their impact on Turkey’s science, medicine, and humanities, the émigrés’ legacy has fallen short of expectations, and developments in the legal sphere and receive mixed reviews. Leaving implementation issues aside, Turkey’s Commercial Code as originally modified by the émigrés, is still in place and in harmony with its counterparts in western countries. However, over the decades, her criminal laws were seriously eroded by many real and some imagined threats. There is no doubt that Turkey is in a geopolitically rough neighborhood and in a geopolitically sensitive region. Externally, Turkey has always felt threatened by its Greek neighbors. The flare-up over Cyprus and its long legacy is yet another part of that story. 61

Although good trading partners, the political powder kegs of bordering Iraq and Syria have always given Turkey cause for concern, as have, in recent years, the Islamic theocracies of neighboring Iran, Afghanistan, and Saudi Arabia. The Soviet block which until the 1980s included the neighboring Balkan countries, and its machinations in the Middle East while Turkey was a partner in NATO, kept Turkey at bay for many decades. 62

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<http://www.ejpd.admin.ch/ejpd/en/home/dokumentation/red/2006/2006-1-04.html>.

67 For a thorough study of such testimonials see Çimen Günay-Erkol and Arnold Reisman, “The Founders of Turkey’s System of Modern Higher Education: An Anthology of Testimonials from First, Second, and Third Generation of Students,” Working paper, 2007.( Available from the authors.)

Since the Soviet Union's implosion, most of the Central Asian Turkic countries have had good relations with Turkey. This is especially the case with Azerbaijan. However, the Azeris (who are Muslim with a language that is understandable to an average Turk) have not as yet fully resolved their border issues with Armenia, a Christian people. **63**

In the past it has not heretofore been easy for Turkey to keep the Republic as secular as its founding fathers intended, nor is it now. Turkey's military establishment, which has always been dedicated to the spirit of Atatürk's principles, has assumed the responsibility of maintaining the country secular and democratic. Odd as this may seem to us who live in western democracies, coups to restore the government back to that path have in fact taken place. **64**