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JURISTS OF WAR AND PEACE: SIDDIK SAMİ ONAR (1898–1972) AND ALİ FUAD BAŞGİL (1893–1967) ON LAW AND PREROGATIVE IN TURKEY

Abstract
The jurists who entered Turkish academia during the 1930s built the foundations of their discipline under a regime that became increasingly authoritarian as war drew closer. Like their peers in Italy and France, therefore, they had to produce coherent doctrines but also support the frequent use of exceptional emergency powers. How did they solve this contradiction? More importantly, what consequences did their solutions have for the use of emergency powers after the war? This article adopts a Deleuzian reading of two strategies with which Turkish jurists met that challenge, approaching their work not simply as theories about law but also as models for the role law should play in the articulation of public authority. Focusing on Ali Fuad Başgil and Sıddık Sami Onar, law professors at Istanbul University, I argue that although both professors supported the regime, only a situational doctrine of the kind Onar produced was capable of ensuring that jurists would have a place in the exercise of "exceptional" state powers after the 1950 transition to democracy.

Keywords: authoritarianism; intellectuals; public law; states of exception; Turkey

In the early hours of 27 May 1960, Turkish army officers took control of government buildings in Ankara and Istanbul and arrested the leaders of the ruling Demokrat Parti (Democrat Party [DP]). The DP had been in power since Turkey's first free elections a decade earlier, when it dethroned the Cumhuriyet Halk Partisi (Republican People's Party [RPP]), Mustafa Kemal Atatürk's military-bureaucratic party that established the Republic of Turkey in 1923 and ruled it until 1950. Since the 1950 elections, the DP had been re-elected twice, while relations between the DP and RPP deteriorated to the point that by April 1960 RPP leaders feared they were about to be arrested on conspiracy charges. The 1960 military intervention came after weeks of martial law and antigovernment rioting by students, who were backed by law professors supportive of the RPP. As the junta appeared on the radio at 5:15 a.m. announcing its intention to hand power back to an elected government,[1] officers were telephoning several of the same law professors and asking them to serve as advisers. Over the following months, these jurists, led by Professor Sıddık Sami Onar of Istanbul University, did far more than advise. They also spoke on the army's behalf, made retroactive amendments to the

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penal code, wrote legal apologias for a massive show trial of the deposed government, and produced the first draft of a new constitution, which inaugurated the Second Republic. In effect, the decision to involve jurists—taken by a group of military officers who had acted outside the chain of command and suspended the Constitution—set the transition to the postcoup republic on a path over which the army progressively lost control,[2] entangling it in a web of legal technicalities so dense that some officers reported developing a "justice complex"[3] that left them unable to take any initiative without first consulting with lawyers.

The paradoxical role of these jurists continues to cause controversy today in part because they were the first in a long series of lawyers to offer expert advice when military leaders in Turkey suspend democracy. Although the cast of characters and their political aims were different, prominent law professors assisted the army again in 1971, when it forced out the government and amended the 1961 Constitution, and when the General Staff took power into its own hands and produced Turkey's current Constitution in 1980. Questions regarding the role of lawyers in the 1960 coup could therefore just as well be directed at later generations of Turkish lawyers: How could a country's most respected jurists lend their authority to a military coup? How could they argue, for example, that retroactive amendments to the penal code were legally defensible? Was their cooperation with the army a shameful abrogation of scholarly principles or a necessary undertaking at a time when the law itself was under attack by an irresponsible government?

Scholars supportive of the 1960 coup have argued that Sıddık Sami Onar accepted the unusual task because he and his colleagues were uniquely qualified to design a more stable and democratic state than that outlined in the 1924 Constitution. In this view, the military intervention was a "democratic coup"[4] followed by a "régime of exception with democratic goals,"[5] the culmination of a struggle for the rule of law that began during the late Ottoman reign of Abdülhamit II and ended with the toppling of the corrupt DP,[6] enabling Turkey's foremost jurists to ensure the "victory of modern *Rechtsstaatlichkeit*."[7] For opponents of the coup, on the other hand, the "so-called scholars"[8] who participated were simply "organic intellectuals of the militarist regime"[9] who were willing to subordinate law to the goal of safeguarding the sovereignty of the army and the corporate privileges of their own profession. Why else would the junta appoint Onar, a professor of administrative rather than constitutional law and a well-known critic of the DP, to head the Constitutional Commission, while officers threatened Ali Fuad Başgil, Turkey's preeminent expert in constitutional law and among the DP's earliest supporters, into exile?

In this article I argue that both of these explanations fall short of comprehending Onar's relation to state power because they fail to adequately grasp what legal theory does. Although the procoup view certainly exaggerates Onar's selflessness, reducing his actions to a question of political affiliation, as the anticoup view would, fails to explain why the junta engaged with him and his colleagues in the first place. Law professors are not politicians; they are lawyers, and it was in his capacity as a legal specialist that Onar was important to the officers. Yet like many Turkish jurists before and after him, Onar used his expertise to justify violations of legal principles so fundamental that they can be described as *constitutive* of law.[10] Understanding how a jurist such as Onar could rise to the apex of the state thanks to a military coup therefore requires examining the conception of law that defined the role he and his jurist colleagues were to play within

the field of public power. This article is an account of how that conception took shape during the single-party regime of the RPP, and why it was Onar's approach rather than Başgil's that became the dominant framework for determining the relationship between law and state power after the transition to democracy in 1950.

By 1950, Turkish jurists had had almost three decades to lay the foundations for their own discipline under a politically restrictive regime. In Turkey, as in several European countries, the regime of the 1930s became increasingly insistent that intellectuals obey the state as war loomed on the horizon. For many Turkish academics this authoritarian slide culminated in 1933, when the Darülfünûn-ı Şahane, Turkey's oldest and most prestigious university, was closed and replaced by Istanbul University. In the transition, fifteen of the twenty-six professors of the Darülfünûn's Law Faculty were fired.[11] Jurists were permitted to fill the vacant chairs only if they had proven themselves as active supporters of the state.[12] Among the most successful of these jurists were Başgil and Onar, both of whom enjoyed strong links to the ruling RPP and would eventually rise to become deans of the Istanbul University Law Faculty.

The professors of the single-party period were no pawns of the regime. Writing and lecturing may have been their only tools, but they used them actively and creatively to shape how the state's authority would be expressed in a legal idiom.[13] In the process, I argue, they also defined how their own profession was to take part in the articulation of public authority. Their doctrines were not simply theories about law; they were also culturally and politically resonant claims about the process through which state authority should be exercised. Turkish jurisprudence of the 1930s and 1940s was thus both theory of the state and theory of itself; it both constructed a field of legal problems and offered approaches to solving them. In the following sections, I outline two strategies with which these formative law professors tackled the challenge of developing legal doctrines under an authoritarian state. My aim is not to produce a complete overview of either jurist's oeuvre—a task that would require far more space than a journal article—but to tease out how their work positioned them *qua* legal theorists within the field of public power. To illustrate the first strategy, I briefly discuss Başgil's work, which I take to be representative of a wider trend within interwar European jurisprudence of subsuming legality under an extralegal leadership principle. Much like contemporaneous Fascist theory in Germany and Italy, Başgil's jurisprudence collapsed law, morality, and political leadership into what he described as an "authoritarian democracy"[14] where jurists ultimately had little say over the boundaries of state power. Once the war ended, Başgil realized that his wartime approach was no longer viable and reinvented himself as a liberal-conservative, but he maintained his distrust in juristic authority over state affairs. I then examine how Onar developed an approach which, while equally supportive of the authoritarian interwar Turkish regime, differed from Başgil's work in the model it provided for *doing* jurisprudence under shifting political circumstances—a model that, it turned out, was equally suited for jurists who wished to maintain their authority over the ultimate boundaries of legality within the troubled democracy that developed after 1950.

DOING JURISPRUDENCE IN INTERWAR TURKEY

Can law be both authoritarian and independent? Can it be truly legal—firmly rooted in established principles and doctrine, and reasonably independent from political

influence—and at the same time authorize unlawful uses of state power? Much of the scholarship regarding law and sovereignty over the last twenty years assumes that it cannot. This assumption can partly be traced to the influence of Giorgio Agamben's critical revival of Carl Schmitt, who argued in 1922 that only a "sovereign" free of normative constraints can guarantee the integrity of a legal system. Against contemporary positivist liberals such as Hans Kelsen, who sought to confine state power within a self-contained system of legal norms, Schmitt claimed that the ability to decide on the "exception"—that is, the moment when the juridical order as a whole must be suspended—defines the sovereign without whom such an order is eventually doomed to fall.[15] Agamben takes Schmitt to task for failing to understand the nature of the nonlegal.[16] When Schmitt claims that the sovereign decision is "that which cannot be subsumed"[17] under the juridical order, Agamben argues, he is in fact identifying a legal fiction by which law can internalize and claim disruption for itself. By identifying law's sutures as part of its fabric, Schmitt is simply legitimizing the tendency in all Western legal systems since the French Revolution to domesticate political action and ultimately life itself by making the state of exception into the paradigm of government, a tendency Agamben believes only "reached its full development"[18] with the Bush administration's declaration of a Global War on Terror in 2001.

The scholarship that has followed in the wake of Agamben's critique is testimony both to the resonance of his observations and to the frustratingly abstract—some say "gnomic"[19]—level at which he places his analysis. As Austin Sarat argues, although Agamben correctly reminds us that even consolidated liberal democracies cannot exorcise the ghost of sovereignty, his focus on the metaphysical "drama" of the law/sovereignty paradox leaves us "inattentive to the myriad of ways in which law imagines, anticipates, and responds to emergencies, ways in which sovereign prerogative is either irrelevant or operates within the terrain of ordinary legal procedures."[20] As a consequence, I will argue, the Agambian perspective also fails to capture the difference that the emergence of an international body of human rights law after World War II had for the exercise of executive prerogative.[21] Although emergency powers have by no means ceased to play a political role today, the triumph of democracy in the second half of the 20th century ensured that domestic recourse to such powers must either be justified as strictly necessary to safeguard life and safety or that transgressions of the law must find other, less conspicuous forms of articulation.

Attention to such quotidian transgressions is particularly important when attempting to understand the conception of state power that compelled Turkish army officers to reach out to jurists in May 1960 as if it were a "'routine' procedure."[22] Turkey was among the founding members of the United Nations and became a signatory to the European Convention of Human Rights in 1954, placing it in the realm of countries committed to upholding democracy and the rule of law. When Turkish army officers suspended the Constitution and arrested the cabinet and president in 1960, therefore, it was with reference to those ideals. Consequently, the jurists they engaged to justify and guide the coup were not there to declare the army's power to decide on the exception; they were there to confirm that the junta's actions were already in keeping with the law. And they did so not by proclaiming loyalty to transcendent notions of prerogative but by quietly and confidently treating the situation as a series of discrete legal problems to be solved according to established doctrinal and professional principles.

Some recent work in political and legal theory has sought to avoid what Edward Mussawir calls the "philosophical bind with law and sovereignty" [23] by rethinking what it means to *do* jurisprudence. Instead of taking the Kantian universalism of liberal constitutionalism at face value and then proceeding to investigate how states fail to adhere to it, these scholars call for examining real-life legal responses to emergencies without ignoring the fact that law always operates in the folds of theoretical reflection. Deleuzian in spirit if not always in substance, much of this scholarship approaches jurisprudence as a praxis of connecting theoretical points to practical problems without ever exhausting them.[24] One particularly promising path lies in investigating *jurisdiction*, a concept fundamental to juridical orders yet until recently curiously overlooked by political and legal theory. Bradin Cormack, who has investigated jurisdiction within the British sphere of common law, argues that this apparent marginality is one of its defining features: unlike constitutional law, the techniques of jurisdiction tend to be generated incrementally as "an abstraction upward from a sphere of substantive law when the latter confronts, in practice, the question of its competence over a given case."[25] Its proximity to concrete juridical problems paradoxically makes jurisdiction both foundational to legal discourse and nearly impossible to capture in a universally valid definition. It constitutes a powerful idiom of authority, operating not just as a subject of political struggles but also as a technology through which political struggles are "transsubstantiated"[26] into law. According to Dorsett and Mcveigh, jurisdiction "encompasses the tasks of the authorisation of law, the production of legal meaning and the marking of what is capable of belonging to law."[27] Neither pure law nor pure politics, therefore, jurisdiction is a field where the relationship between the two is continuously negotiated, giving it a "distributive function that potentially returns the 'political' to the administrative reality."[28]

Attending to these unremarkable aspects of "exceptional" law is not just an academic exercise. It is also a way of doing jurisprudence under uncertain conditions. From this angle, the debate between Schmitt, Kelsen, and Agamben sits at one end of a scale of generality whose other end is occupied by attempts to theoretically capture the situational and negotiated solutions of everyday administrative practices. The former debate, which emerges most commonly in the context of constitutional jurisprudence, relies on what Deleuze calls the "dogmatic" image of thought[29] in that it sees jurisprudence as a *representation* of legal practice and therefore approaches jurisdiction as a question of accurately determining the *a priori* boundaries separating prerogative from legality. The latter approach, in contrast, sees jurisprudence as a lived activity, an immanent and creative confrontation between juridical techniques and political-administrative reality. With this strategy, more common within administrative jurisprudence, jurisdiction becomes a matter of negotiating the authority of law case by case, not by solving the issue prior to the onset of a crisis.

The divergent careers of Sıddık Sami Onar and Ali Fuad Başgil illustrate the consequences that these two strategies can have under different political circumstances. In the following pages, I begin by briefly outlining Başgil's constitutional thought as it appeared in a selection of his public speeches and journal articles during the single-party period. Başgil's interwar work is now largely forgotten even by his admirers, in part because it edged uncomfortably close to the ideas of contemporary Italian Fascist jurists such as Alfredo Rocco. More importantly, I argue, Başgil's conception of jurisprudence left jurists with little real authority over the exercise of state power. Drawing on

Deleuze's terminology, I call Başgil's constitutional jurisprudence "dogmatic" because it portrayed the nation as a moral community bound together by loyalty to the state, its law, and its leader, who stood above the law and could suspend it if need be; the task of jurists such as himself was simply to depict these principles and instill them in future generations.

Onar's administrative jurisprudence, in contrast, grounded state power in adherence to procedural criteria specified through jurisprudential scholarship. Again drawing on Deleuzian terminology, I call his approach "immanent" because while he did nothing to repudiate the authoritarianism of the RPP, he insisted that state power was always exercised within the field of law. In Onar's hands, jurisprudence became an inseparable part of the language in which the Turkish state expressed itself. Onar thus lived up to his reputation as "an erudite scholar in the best of the late Ottoman tradition"[30] both in his erudition and in his ability to adapt his jurisprudence to the ever-changing needs of state leaders. Much like the ulema of the Ottoman state, Onar combined pride in his role as an independent legal scholar with subservience to positive law and *raison d'état*.[31]

Although their theoretical frame of reference was largely the same world of French legal theory, therefore, Onar's and Başgil's approaches to doing jurisprudence differed. The consequences of this difference would only become clear after World War II. Both Onar and Başgil had legitimized the sometimes-brutal actions of the interwar regime, and thus failed in equal measure to defend the rule of law as binding the hands of rulers. Yet only Onar's situational approach was as capable of guaranteeing jurists a role in the exercise of "exceptional" state powers after the transition to democracy as it had been before. Jurists following in Başgil's steps may have adapted themselves to the new era and continued their careers as scholars and public intellectuals, but from the vantage point of the state's self-proclaimed guardians in the army, bureaucracy, and judiciary, they no longer provided relevant models for how to be a jurist. When push came to shove—as it did on the night of 27 May 1960—they were left out in the cold, while their opponents, foremost among them Onar, took up the reins of the state.

Understanding the troubling continuities between the foundational legal scholarship of the 1930s and the postwar phenomenon of legal authoritarianism, then, requires seeing the explicit theoretical claims of interwar doctrinal work as subordinate to the practical claims it made by way of theory. By creating a technical and flexible framework for solving jurisdictional conflicts, Onar enabled the authoritarian single-party state to undertake extensive interventions in Turkish society without giving up its symbolic deference to the rule of law. At the same time, he ensured that the most technocratic aspects of the single-party regime's conception of legality would survive among certain jurists, bureaucrats, and intellectuals into the postwar era in the form of a practice of jurisdiction, rendering legal academia a deeply ambiguous component of Turkish democracy.

BAŞGIL'S DOGMATIC JURISPRUDENCE

Ali Fuad Başgil (1893–1967) was born to a prominent family in Samsun and spent the first two decades of his life first in Istanbul and then on the Caucasian front of World War I. After completing high school and studying law and philosophy in Grenoble and Paris he obtained a position at the Ankara Law Faculty. He remained there until the 1933 purge of Istanbul University, when professor of constitutional law Ahmet

Mithat was fired and Başgil was appointed in his place. Başgil's thinking during the one-party regime has been taken as the quintessential doctrinal expression of the RPP's most authoritarian tendencies, and ensured that he would become "one of the leading party-professors of the day."[32] Like radical RPP ideologues such as Reşit Galip, Başgil believed that the traditional division between public and private law was out of touch with current realities, in which the "power and extent of the state" had become "almost limitless," rendering private law useless.[33] There was little room for private initiative in his vision; Başgil's statism called for a society in which the activities and loyalties of citizens were so thoroughly absorbed into the state that it bordered on totalitarianism. He therefore explicitly embraced a credo that Ahmet Mithat had criticized, and that was first formulated by the Fascist jurist Alfredo Rocco: "nothing against the state, nothing outside of the state."[34]

But if there was nothing outside of the state, how could its leaders claim that it was governed by law? When it came to incorporating such exceptional executive powers as the 1930 Law on the Protection of the Turkish Currency, Başgil agreed that it uncovered a "gap" in Turkey's constitutional architecture, but contended that circumstances necessitated setting the Constitution aside.[35] Ultimately, he argued, issues such as individual rights and the legality of state action could not be discussed separately from issues of national unity and, ultimately, survival.[36] "Étatisme," he argued, may have bad connotations in France, but in Turkey it must be seen as a reaction to the ruinous passivity of the Ottoman regime and a natural implication of the deep social changes that the new regime was effectuating.[37] In contrast to Ahmet Mithat,[38] Başgil felt that the state could be trusted to keep itself within the principles of public law.[39] He was not particularly worried about how this self-limitation would be ensured. Although he did concede that in some exceptional cases courts must be allowed to set aside blatantly unconstitutional laws,[40] he saw the rule of law as an essentially moral issue that could only be perfected through national unity and social solidarity. In an argument reminiscent of the Fascist philosopher Giovanni Gentile,[41] he argued that the only way to ensure the legality of state action was to instill in every Turk a commitment to law so genuine that law (*hukuk*), justice (*adalet*), and morality (*ahlak*) became indistinguishable.[42] Thus the rule of law was not a question of separating powers, but of training and discipline (*terbiye*). Ultimately what was required was not the legal accountability on which "materialist" jurists insisted, but moral responsibility, a noble feeling (*duygu*) that ensured that public servants would be loyal to the common good of the nation.[43] Başgil's notion of social cohesion as the basis of the rule of law was thus in keeping with the contemporary Italian emphasis on what Durkheim had called "mechanical solidarity."[44]

After becoming dean of the Istanbul Law Faculty and director of the Mülkiye Mektebi (School of Public Service) in 1937, Başgil applied the same axiom to his philosophy of education. The foremost function of education, he argued, was to develop nation-minded public servants who would be loyal to the state and its Milli Şef (National Chief).[45] As World War II began, he enthusiastically embraced what he believed would be a new era of national unity and solidarity (*tesanüt*). It was not military shortcomings but "spiritual decrepitness" and lack of national unity that caused France to fall so easily at the hands of German invaders.[46] To avoid the same fate and emerge from the war as a stronger nation, he argued, Turkey must measure individual rights and freedoms against the yardstick of societal discipline and state security.[47] In this endeavor, jurists must

either adapt or risk irrelevancy: "Let the lawyers keep on discussing the limits of state action; in reality these limits have merged with the limits of the nation and encompass all social relations."[48]

If Başgil was an apologist for the most radical strands of authoritarian-corporatist thinking within the RPP during the one-party period, he was also among the first to completely revise his worldview after the war. As the RPP renounced its authoritarianism in favor of a policy of careful liberalization and democratization, Başgil formulated the liberal-conservative approach for which he is mostly remembered today, one that maintained a focus on the "moral" (*ahlakî*) and "spiritual" (*manevî*) basis of politics but veered sharply from his interwar writings in its conception of the state and its relation to law.[49] Against the "legalist and authoritarian"[50] ideology of the single-party regime, he now saw the state as a necessary but subordinate component in ensuring social cohesion; the more important factor was the totality of moral, spiritual, and customary norms embedded in society, only a small subsection of which could be codified and enforced by the state.[51]

Considering Başgil's ability to adapt to Turkey's changing political climate after the RPP had lost its monopoly on state power, one might expect him to have had a significant impact on postwar jurisprudence. Although he continued to publish and teach at Istanbul University until the 1960s, however, Başgil never founded a "school" of legal theory. While his interwar thinking is mostly forgotten, his postwar thinking has had more of an impact outside of academia, where it made him one of the "symbolic names" of Turkish conservatism.[52] This may in part be explained by the political affiliations for which Başgil became known during the decade of DP rule. In 1947 Başgil co-founded the Hür Fikirler Cemiyeti (Association for Free Thought) and wrote editorials for its journal *Hür Fikirler Mecmuası* (Journal of Free Thought) and newspapers alongside his longer theoretical writings for academic journals. Although Başgil claimed never to have had direct dealings with the DP before 1950,[53] the association did eventually become part of the infrastructure on which the party organized its successful challenge to the RPP in the elections that year; he also advised government leaders during the tense few weeks before the 1960 coup.[54] His support for a more relaxed Anglo-Saxon secularism[55] further distanced him from the "Republican alliance" of RPP supporters in the universities, bureaucracy and judiciary,[56] whom he considered to be following the "Moscow fashion" (*Moskova modası*) in their statist laicism.[57]

But Başgil's association with the DP is an insufficient explanation for his fall from grace. During the debates on a new law governing Turkish universities' autonomy from state interference in the mid-1940s, he stood up for academic freedom in newspaper editorials. Likewise, the DP supported the university's struggle for independence from what was then an RPP-dominated state and was consequently popular among academics until 1954. Moreover, in the latter half of the 1950s, when the DP government began restricting university autonomy, Başgil distanced himself from the party. Realizing that the DP's authoritarian drift was enabled by the 1924 Constitution's lack of checks and balances, he made recommendations for a new constitution that were strikingly similar to those his opponents would make after the 1960 coup, including an assembly with two chambers and a constitutional court.[58]

A more satisfying explanation, I suggest, lies in the continuity between Başgil's interwar authoritarianism and his postwar critique of the discourse of expertise on which

the RPP's primary constituency of bureaucrats, military officers, and jurists relied.[59] Although he never openly cited Fascist theorists, the interwar Başgil was similar to Carl Schmitt in his celebration of the prerogative of the state and its "National Chief" over experts in law and administration, what Schmitt disdainfully called "the spiritually helpless bureaucracy."[60] After World War II, Başgil embraced the rights that the individual citizen had acquired with the transition to democracy, but he continued to reject the technocratic authority of legal-administrative experts—no longer because it stood in the way of sovereign prerogative, but because it was a side effect of state-led redistributive policies, which Başgil argued was incompatible with liberal democracy.[61] It was in his conception of the role of jurisprudence in the exercise of state power, then, that Başgil's postwar thinking carried on strands of his prewar thinking, and which led him, by his own account, to stay out of the open conflict that erupted in April 1960 between the universities and the DP government.[62] Although many academics and jurists were thankful for the DP's early support for university autonomy and judicial independence, Başgil's opposition to juristocracy made him an unreliable outsider in their quest for a doctrine that was both sufficiently rooted in the single-party era of Atatürk to support their historical role as the guardians of the Turkish state and sufficiently adaptable to maintain their authority in the new democratic era. The jurist who provided them with such an approach was Sıddık Sami Onar.

ONAR'S IMMANENT DOCTRINE

Sıddık Sami Onar (1898–1972), the son of an army doctor, was born in Istanbul, where he graduated from the Darülfünûn's law faculty in 1922. He continued his studies in Paris under Henri Capitant between 1923 and 1924 before returning to Turkey, where he occupied positions in the judiciary, the universities, the Istanbul Bar Association, and the Mülkiye Mektebi.[63] During the 1920s he wrote mainly on civil and international law,[64] but soon signaled that his ambitions went beyond the ordinary purview of legal academics. In a period when the RPP was drifting towards a stricter subordination of Turkey's intellectual life to party discipline, jurists such as Başgil responded by discarding the humanist and individualist principles of their French teachers in favor of a complete embrace of revolutionary statism. Onar's solution was no less supportive of statism, but in contrast to Başgil's rejection of lawyers who "keep on discussing the limits of state action," Onar endeavored to construct a doctrine that would enable him to do precisely that without challenging the state's ever-widening powers.

The Mülkiye was an ideal laboratory for such thinking. It provided a milieu that was both intellectually eclectic and closely integrated into state circles, where the ideologues of the RPP were observing the ravages of the depression and its political fallout in Europe with trepidation. The school's journal began appearing in 1931 and published essays of Turkish jurists and political scientists alongside translations of the latest texts by thinkers as disparate as Gaston Jéze, Maria Montesorri, Hermann Goering, and Benito Mussolini. This diversity must have appeared both promising and frustrating for Onar. His first articles for the journal were simultaneously an indictment of the preceding five decades of Westernizing reforms and a historical-philosophical argument for the authority that he believed scholarship and science must have in political life. The Tanzimat had failed to salvage the Ottoman state, Onar argued, not because of the European theories

of the reformers, but because they could not adapt those theories to the lived experience of the empire's citizens.[65] The result was a capricious experimentation with institutional forms and reformist projects with no staying power. Onar therefore hoped that, in the future, "there may not even be a distinction between scholarship and practice."[66]

Onar agreed that the danger of reactionary subversion required a state that was strong and capable of responding quickly to threats. What for Başgil implied freeing the state from legal limitations, however, entailed the opposite for Onar. For him, the revolution's most noble achievement was that it had replaced the superstition and despotism of the Ottomans with rationality. Previously governing was seen as an issue of cunning and strategy (*zeka ve hud'a*) in a world governed by coincidences and supernatural causes. This left rulers free to pursue their own personal gain, and made it impossible to develop lasting institutions—all of them collapsed "like a house of playing-cards."[67] In contrast, Onar argued, contemporary Turks knew that society was governed by social and economic laws, and that only those leaders who obeyed the theories and findings of scholars (*âlimler*) would succeed. Thus "the true ruler [*hakikî hâkim*] of the state is neither emperors, kings, assemblies or dictators. Above all of these we see the sovereignty of scholarship [*ilmin hakimiyeti*]. Those who deny this invisible ruler [*gayrı mer'î hâkim*] are soon confronted by reality."[68]

Onar's portrayal of modern statecraft as intrinsically opposed to arbitrary political leadership came close to identifying the despotism of the sultans with the authoritarianism of the Kemalist regime. As I have argued, however, the doctrinal work of jurists such as Onar should be seen not just as theoretical statements, but also as practical claims regarding the role jurists should have in authorizing state power. Onar's primary concern was not establishing the "rule of law"—a concept that implies establishing limits on the powers of the state—but the "rule of lawyers." He attempted this in his early writings through a skillful elision of concepts that resonated with the ideological imaginary of the Kemalist elite. Thus *ilim* could mean both "science" and "scholarship," enabling Onar to identify his own academic jurisprudence with the objectivity of statistics and the natural sciences, while *hâkim* could mean either "ruler" or "judge," allowing the "sovereignty" (*hakimiyet*) of science to merge with the "rule" of law. Similarly, Onar avoided confronting the authoritarianism of the regime by downplaying the violence of the War of Independence in favor of the timeless and objective principles it had vindicated. Instead of challenging the regime, therefore, Onar celebrated it as the emancipator of "scientific" legal rationality, at the same time freeing legal scholarship from the assumption that it must act as a subordinate servant of the state.

ONAR'S STATISM

When the RPP established Istanbul University in 1933, Muslihiddin Adil Taylan lost his position and Onar was appointed professor of administrative law in his place. His appointment coincided with the RPP's first five-year industrialization plan which, while not as radical as some statist theoreticians would have wanted, made dramatic inroads into the country's socioeconomic structure. Onar's understanding of statism was by no means moderate. In his view, statism implied that "society comes before the individual; the individual only exists within society. The individual does not have rights, only duties towards society."[69] What for Başgil entailed setting legality aside, however, had the

opposite implications for Onar. Whereas the administrative judiciary's operations were previously built on individualist foundations, he argued, they were now built on the basis of "public interest" —certainly a drastically wider notion than recognized by French legal theorists such as Maurice Hauriou and Léon Duguit, but still one that served as the delimitation criterion for state activity, and thus as the jurisdictional basis of administrative law.[70] Given such a wider understanding of public interest, in fact, expansive statism required an equally expansive conception of the jurisdiction of administrative law.[71] The proof, Onar argued, was that even in countries that had explicitly rejected the principle of legality, such as Fascist Italy and Nazi Germany, the administrative courts continued to operate as an "inseparable element of the system of statism."[72] Therefore, "the transformation of the individual's natural rights into the concept of social function does not place the state's activities outside of the scope of legal rules."[73]

Onar thus located the conceptual resources for reaffirming the authority of jurisprudence squarely within the received doctrine of French administrative law, without recourse to ideological principles such as leadership and nationalism. It is clear, however, that Onar's concern for theoretical integrity remained subordinate to his goal of establishing the legal professions' share in state authority. This becomes increasingly obvious in his writings from the end of the 1930s, when the already fragile distinction between ordinary and emergency modes of governance began blurring. Onar's discourse during this period oscillated from sophisticated theorizing to theoretical sophistry—from discussion of the distinctions and mechanisms for solving jurisdictional conflicts between the judicial and executive organs of the state to purely rhetorical moves meant to affirm the authority of "law" where there were no legal limitations on government action.

On the theoretical end of the spectrum, Onar built on the distinction in French administrative doctrine between "acts of administration" and "acts of government." Although the administration must be granted discretion (*takdir selahiyeti*) in determining how to carry out its duties, it was still subject to the administrative judiciary in all acts "that do not directly concern sovereignty [*hakimiyet*], but are taken with a view to public service [*amme hizmeti*]."[74] These, then, were "acts of administration" (*idarî tasarruflar*). "Acts of government" (*hükümet tasarrufları*), on the other hand, were issues of such exigency that judicial intervention might interfere with the administration's ability to safeguard the existence of the nation. These were therefore outside of judicial supervision, and could not be supervised except through a widely defined form of political accountability (*siyasi mesuliyet*).[75]

Had Onar left his discussion there, he would not only have granted the political leadership wide discretionary powers, but also would have rhetorically excluded himself and his jurist colleagues from the process through which the boundary between legality and sovereignty was determined. This would certainly have been acceptable from the viewpoint of jurists such as Başgil, whose goal was to legitimate whatever policies the RPP leadership pursued, but it would also have run the risk of making jurisprudence marginal to the exercise of public authority. On the other hand, specifying exactly what circumstances could justify sovereign "acts of government" would have presented its own challenges. Establishing fixed criteria, however wide, might mean placing unacceptable limits on the state's power to safeguard the state against foreign aggression and domestic subversion. In the worst-case scenario, this could lead the RPP to give up its rule-of-law pretensions and sideline the legal profession.

Solving this dilemma required descending from the realm of pure distinctions to the situated and temporary compromises of day-to-day power struggles. Onar conceded that the precise scope of "acts of government" must be left open to changing political circumstances.[76] Rather than leave the determination of such acts entirely to chance, however, he recommended that judicial mechanisms be established to determine the distinction between executive discretion and legal limitations using "empirical" (*empirique*) criteria, that is, through "discussion" (*münakaşa*) on a case-by-case basis.[77] He therefore suggested establishing a venue such as the French Tribunal des conflits, a court attached to the Conseil d'État tasked exclusively with solving jurisdictional conflicts.[78] Far from widening the government's scope of discretion, he argued, such a venue would narrow it by making discretion dependent on a specialized mechanism within the purview of administrative jurisprudence.[79]

Preparations for a Turkish Tribunal des conflits began during World War II, but it was not completed until the end of the war. In the meantime, the Turkish state provided ample "acts of government" to challenge Onar's pragmatic approach. The most egregious example occurred four years before the war, during an internal conflict in the district of Dersim in Central-Eastern Anatolia. Dersim was one of the last mainly Kurdish areas to be brought under the control of the republican state. Most of the villages in the district were governed according to customary law and led by tribal chiefs who walked a fine line between accommodating and resisting representatives of the central government. On 25 December 1935, the assembly passed law no. 2884, changing the etymologically Persian name of Dersim to Tunceli and placing the province under military administration.[80] Following a small skirmish in March 1936, the government launched a military campaign to bring Tunceli under control. Turkish forces bombed the province, shot and hanged the inhabitants of villages that surrendered, and in many instances bayoneted and burned women and children alive.[81] Estimates range between 8,000[82] and 40,000[83] civilians killed and up to 12,000 forcibly relocated.

The Tunceli intervention was far from constitutional. Existing martial law legislation was grounded in the Constitution's Article 86, which gave the Grand National Assembly the power to approve or reject a declaration of martial law in cases of internal rebellion and limited its duration to one month at a time, subject to extension by the assembly. The Tunceli law was no such declaration, but it nevertheless established a semipermanent military administration in the district and gave the military governor extensive executive and judicial powers over not just Tunceli, but also adjacent districts. Thus the law sidestepped constitutional limitations on martial law and allowed the army to usurp judicial authority.[84]

Several law professors went out of their way to praise the resolute way in which state leaders had dealt with the "uprising." As İsmail Beşikçi argues, the political atmosphere during the years after the military operation was not conducive to moderation; when Mustafa Kemal Ataürk died and İsmet İnönü was appointed "National Chief" in 1938, the leader worship in public addresses approximated that of Nazi Germany.[85] Cemil Bilsel, rector of Istanbul University (1933–43) and founding professor of the Ankara University Law Faculty, described the events as a victory of the "Eternal Chief" Atatürk, the "National Chief" İsmet İnönü, and the military governor of Dersim in replacing "brigandry" (*eşkiyalık*) with safety and infrastructure. Başgil similarly used the

opportunity of a public conference in Diyarbakır to praise the "pure-hearted and dutiful" state servants of the Turkish nation.[86]

In contrast to the theatrical gestures of Başgil and Bilsel, Onar's concern was as always to specify his conception of administrative law in such a way that it could function as the doctrinal basis for what we might call a "prosaic politics of emergency."[87] His contribution to the doctrine of exceptional powers came after the outbreak of war, when the government turned from the outright violence of the Dersim intervention to coercion of a more economic and quasi-judicial kind. As in France, where according to Agamben the "state of exception" that had come into effect with World War I was maintained and extended into the economic realm during the interwar years,[88] the confluence of domestic and international unrest permitted Turkish leaders to merge military and economic force under a single statist paradigm. In January 1940, for example, they passed the National Defense Law, empowering the government to force peasants to work in coal mines.[89] They then passed a new Martial Law Act[90] and declared martial law in several districts.[91] Although martial law was justified as a preemptive means of maintaining the rule of law, its usefulness as a means of censoring opponents of the regime led the government to renew it until December 1947, long after the war had ended.[92] Other instances of wartime intervention included the 1942 Wealth Tax that, although presented as a fiscal matter to meet the ballooning costs of maintaining a combat-ready army, was implemented in such a discriminatory way that many members of the non-Muslim bourgeoisie were forced to sell their homes and businesses at very low rates.[93]

Onar's take on this transgressive state activity was characteristically phlegmatic. He admitted that recent state initiatives were stretching the notion of "public interest" to cover circumstances which "older administrative jurisprudence had never imagined."[94] Nevertheless, he persisted in his efforts to normalize such actions by rendering them in a technical idiom that made no concessions to less academic audiences. At a public presentation in Elazığ in September 1942, for example, Onar addressed the "very delicate and important" issue of what he called "extraordinary situations" (*fevkalâde haller*).[95] The term "extraordinary situation" had played a marginal role in Turkish legal terminology until then. The term was mentioned in the Constitution's Article 74, which stated that no citizen shall be forced to make any material sacrifice except in extraordinary situations (*fevkalâde ahvalde*), but appeared neither in the Constitution's Article 86 on martial law nor in the 1940 Martial Law Act. Onar's discussion can therefore be considered a foundational contribution to the Turkish doctrine on exceptional state powers.

Onar began by pointing out that situations occasionally arise that are so unexpected that no form of normativity can foresee them.[96] Although such situations require that the state be given wide discretion, he rejected the notion that it could be left to govern itself, the remedy which Başgil had suggested in place of judicial oversight. Onar argued that this would leave the determination of legality entirely to the "subjective actions" of state administrators, which could have "very dangerous consequences."[97] Instead, martial law and similar situations should be seen as a particularly exceptional category of "acts of government" which, like "acts of administration," were among "the state's ordinarily available powers." Although such acts were not subject to judicial oversight, they were entirely legal, and did not imply breaking the principle of legality.[98]

Given the wide range of powers that the government had claimed for itself, it is difficult to interpret Onar's assertion as anything but a rhetorical move to cover a

contradictory state of affairs. On the one hand, Onar insisted that the Turkish state did not supervise itself but had remained bound by law "even in the most dangerous moments of national defense."[99] If on the other hand it was within the ordinary powers of the assembly to abrogate any number of constitutional guarantees without judicial supervision, then there were in fact no limitations on what it could do as long as its actions took the form of "law." Thus Onar contended that the National Defense Law was legal not because it was passed according to Article 86 of the Constitution but simply because it was passed by the assembly. By this standard, even the Dersim intervention was legal. In a flourish of casuistry, Onar argued that the unique and local situation in Tunceli "could be considered an extraordinary situation" which made it possible for the "legal regime" of such situations to "partially" (*kısmen*) come into effect. This situation could thus be "compared to" the situations which according to Article 86 could justify martial law, making the Tunceli law "a kind of martial law [*bir nevi örfi idare*] passed by the Grand National Assembly but separate from the Martial Law Act."[100]

As Beşikçi argues, Onar and his fellow law professors clearly saw the extrajudicial and savagely violent Dersim operation as "very normal."[101] But the complacency which in Beşikçi's eyes makes both professors the Turkish equivalent of Nazi intellectuals masks crucial differences in their approach to state violence. Unlike Başgil, Onar consistently strove to incorporate the violence of the Turkish state into a legal idiom, using terminology firmly rooted in French administrative jurisprudence. If this occasionally strained his ability to maintain logical coherence, he met such challenges not with appeals to superior ideological principles but with technical innovation and analysis of the "empirical" conditions with which law had to come to terms.

This was little consolation for the thousands of Kurds killed in Dersim or the Greeks and Armenians whose homes and livelihoods were expropriated under the wartime Wealth Tax. But this only underlines my argument that Onar was more concerned with securing the authority of jurisprudence than with limiting state action. As such, his doctrine made an important difference in the development of Turkish legal culture after World War II. Like Başgil, Onar placed his expertise in the service of the state. Unlike Başgil, the long-term effect of Onar's work was to reinforce the authority of jurisprudence as the "invisible ruler" of the state. The result, I contend, was that while Başgil only acquired a following among certain liberal-conservative intellectuals and attorneys after World War II, Onar's thinking was seized upon as the cornerstone of the self-conception of new generations of jurists and public servants.

CONCLUSION: CONSOLIDATING A LEGACY

In 1942 Başgil stepped down as dean of the Istanbul Law Faculty and Onar was appointed in his place. As Onar increasingly focused on administrative duties his doctrinal mantle was assumed by his protégé Ragıp Sarıca, who carried on Onar's investigations into the issue of "exceptional" state powers.[102] Sarıca, who had spent the first few months of the war in Paris, built his interpretation of the Martial Law Act mainly on Onar's writings, which he elaborated with the help of contemporary French jurists, from the "Neo-Fascist"[103] Roger Bonnard to the formerly liberal Joseph Barthélemy, who became Minister of Justice for the Vichy regime a few months after the German invasion. Meanwhile, law students continued to study Onar's foundational work through the

following decade, and used his 1,406-page tome *İdare Hukukunun Umumi Esasları* (The General Principles of Administrative Law)[104]—popularly referred to as *gayrimenkûl,* "immovable"[105]—as their guide through the complex principles of administrative jurisprudence.

But Onar's doctrine was *gayrimenkûl* in more sense than one. Başgil's views underwent a fundamental change after World War II, winning him admirers among intellectuals who were tired of decades of authoritarian statism. If in 1950 Başgil appeared commendably repentant, however, his change of mind was not thanks to the reflexivity of this interwar worldview. The interwar Başgil was what Deleuze would call a "representative"[106] intellectual in that he was less concerned with reaching a pragmatic accommodation with the RPP leadership than with dogmatically depicting the legal implications of the party's ideology. Consequently, Başgil's theory of state failed to account for himself. In his view, legal authority resided in the hearts and minds of people; the only task left for professors such as himself was to teach new generations of administrators to obey the state. Once Başgil followed the state in officially abandoning authoritarianism, therefore, he also gave up the privilege of being a loyal state theorist. It was thus in a sense the rigidity of Başgil's interwar thinking that forced him to make a clean break with his intellectual past once the horrors of totalitarianism had become clear.

Onar's doctrine, in contrast, enabled him to moderate his views on authoritarianism without thereby forgoing the claims he had set forth on behalf of jurisprudence in the interwar period. The reason, I suggest, was that Onar was less engaged in representing the RPP's ideology than in reflexively arbitrating between its internal contradictions. The framework of distinctions and institutional technologies Onar introduced for dealing with jurisdictional conflicts within the state also construed political conflicts as legal issues and offered legal solutions for solving them. Although Onar also criticized the destructive effects that the RPP's interwar authoritarianism had left in people's respect for the judicial system,[107] therefore, there was no need for him to change his own approach once the war ended. The interwar Başgil had vested interests in the substantial political issues of the RPP; the interwar Onar, in contrast, was invested only in the procedures and technologies with which political issues were solved. While Başgil was forced to reinvent his professional role after the war, therefore, Onar and his followers entered postauthoritarian Turkey pursuing the same activities as they had before.

There are parallels here between the legacy of authoritarian law in Turkey and that of countries that were more directly involved in the totalitarianism of the 1930s and 1940s. Many "representative" theorists such as the Fascist philosopher of state Giovanni Gentile or Carl Schmitt, crown jurist of the Third Reich, were either shunned by universities, jailed, or assassinated by the time the war ended. In both Italy and Germany, however, most legal professionals who had been active during the war continued their careers almost as if nothing had happened. This was not just because it would have been impossible to replace them all, but also because the conceptual framework of their profession was a "praxis-oriented jurisprudence, embedded within the system of co-ordinates of politics and contemporary values."[108] As "immanent" theorists their wartime task had not been to depict authoritarianism in the form of coherent legal theory like Gentile and Schmitt, but to perform it through theoretically informed action. Like Onar, their role was not to "represent" but to relay "from one theoretical point to another."[109]

The difference between these two conceptions of jurisprudence should therefore not be mistaken for a difference between democracy and authoritarianism. Although Başgil's postwar alignment with the DP made him a champion of the rule of law in the eyes of liberal-conservatives, we cannot know how he would have reacted to the military coups in 1971 and 1980, both of which rolled back judicial independence and restricted university and media autonomy in the name of military prerogative. Given Başgil's continued emphasis on the precedence of the moral intuition of the ordinary man over the technical knowledge of legal experts, it is possible that he would have supported the coups as paving the way to a more authentic democracy even as they reanimated Schmittian legal thinking and provided executive authorities with widened emergency powers such as "statutory decrees" (*kanun hükmünde kararnameler*)—a power that recent cabinets have used extensively.[110] Onar, meanwhile, lived long enough to comment on the constitutional amendments that were made after the 1971 coup, describing some of them as necessary corrections but criticizing, among others, the introduction of "exceptional" criminal courts and the removal of statutory decrees from the purview of the judiciary.[111]

What remained "immovable" in Onar's jurisprudence, then, was an ethically agnostic conception of professional jurisdiction. Like his conception of legality, Onar's professional identity was situational. He approached the question of legal limitations on state action through a pragmatic notion of jurisdiction that permitted state leaders to take liberties with the law as long as they continued to negotiate their authority with legal professionals such as himself. After the war, therefore, jurists such as Onar were not only practically indispensable because they alone had the legal know-how required to administer a modern state but also politically acceptable because they had always been "apolitical." More importantly, they embodied a professional ethos that made jurisprudence into a bridge between wartime authoritarianism and postwar democracy. For jurists who regretted their loss of access to the halls of power after 1950, Onar was more than a theorist of administrative law; he was a living symbol of the power of law to shape and limit powers based on such populist notions as the "will of the people."

Consequently, Onar not only founded a school of jurisprudence, but also rose in the ranks of the university. He played an important role in the drafting of the 1946 Universities Law, which gave Turkish universities greater independence from government control. Onar then defeated Başgil in Istanbul University's first elections to the Istanbul University rectorship, receiving seventy of the faculty votes against Başgil's five.[112] He remained rector until 1949, when he stepped down to establish and serve as the first director of the Istanbul University Institute for Administrative Law and Sciences, and was elected for a second term as rector in 1959, when the relationship between the DP government and the universities had deteriorated.

Attention to the Turkish interwar jurisprudence of jurisdiction thus sheds light on poorly understood continuities between pre- and postwar legal and political culture in Turkey. More specifically, it helps explain why it was Onar who became the symbolic leader of the alliance that supported the overthrow of the government of the DP in 1960, while Başgil was arrested on suspicion of subversive activities. The army's engagement with Onar resulted from a locally and historically situated understanding of what state authority should be and who was competent to define it. Accordingly, any exercise of state power in the name of the law required deference to the authority of legal experts—unless, like Başgil, they had already renounced that authority.

NOTES

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[1]Reproduced in the *Resmi Gazete* (Official Gazette, hereafter RG) no. 10539, 30 June 1960, 1,632. A translation can be found in William Hale, *Turkish Politics and the Military* (London: Routledge, 1994), 119–20.

[2]Nicolas Camelio, "'The Military Seize the Law': The Drafting of the 1961 Constitution," in *Order and Compromise: Government Practices in Turkey from the Late Ottoman Empire to the Early 21st Century*, ed. Marc Aymes, Benjamin Gourisse, and Élise Massicard (Leiden: Brill, 2015), 122.

[3]Orhan Erkanlı, *Anılar, Sorunlar, Sorumlular* (Istanbul: Baha Matbaası, 1972), 67.

[4]Ozan O. Varol, "The Democratic Coup d'État," *Harvard International Law Journal* 53 (2012): 292–356.

[5]Bülent Tanör, "States of Exception in Turkey 1960–1980," in *States of Exception: Their Impact on Human Rights* (Geneva: International Commission of Jurists, 1983), 315.

[6]See, for example, Reşat Kaynar, *Türkiyede hukuk devleti kurma yolundaki hareketler* (Istanbul: Tan Matbaası, 1960); Bahri Savcı, "Yeni Bir Anayasa Rejimine Doğru Gelişmeler (I)," *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi* 16, no. 1 (1961): 62–101; and Mümtaz Soysal, *100 Soruda Anayasanın Anlamı* (Istanbul: Gerçek Yayınevi, 1969).

[7]Christian Rumpf, *Das Türkische Verfassungssystem. Einführung Mit Vollständigem Verfassungstext* (Wiesbaden: Harrassowitz, 1996), 68.

[8]Engin Yıldırım, "İktidar, Üniversite ve Aydınlar," *Bilgi* 2 (2000): 4.

[9]Nimet Baş, "Hurdles before Independence, Impartiality of Military Judiciary," *Today's Zaman*, 13 January 2013.

[10]David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (Cambridge: Cambridge University Press, 2006), 7.

[11]Emre Dölen, *Darülfünun'dan Üniversiteye Geçiş: Tasfiye ve Yeni Kadrolar* (Istanbul: İstanbul Bilgi Üniversitesi Yayınları, 2010), 378–88.

[12]Mete Tunçay and Özen Haldun, "1933 Darülfünun Tasfiyesinde Atılanlar," *Tarih ve Toplum*, no. 10 (1984): 21–25.

[13]A point made by Boğaç Erozan in "Producing Obedience: Law Professors and the Turkish State" (PhD diss., University of Minnesota, 2005).

[14]Ali Fuad Başgil, "La Constitution et le Régime politique," in *La vie juridique des peuples: Bibliotheèque de droit contemporain,* ed. Henri Levy-Ullmann and Boris Mirkine-Guetzevitch, vol. 7, *Turquie,* by Ali Fuad Başgil, Cevdet Ferit Basman, Kemaleddin Birsen, et al. (Paris: Librairie Delagrave, 1939), 20.

[15]Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, Mass.: MIT Press, 1985).

[16]Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, Calif.: Stanford University Press, 1998); Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005).

[17]Schmitt, *Political Theology*, 13.

[18]Agamben, *State of Exception*, 32.

[19]S. Humphreys, "Legalizing Lawnessness: On Giorgio Agamben's State of Exception," *European Journal of International Law* 17 (2006): 683.

[20]Austin Sarat, "Introduction: Towards New Conceptions of the Relationship of Law and Sovereignty under Conditions of Emergency," in *Sovereignty, Emergency, Legality*, ed. Austin Sarat (Cambridge: Cambridge University Press, 2010), 3.

[21]I thank an anonymous reviewer for reminding me to make this point.

[22]Camelio, "'The Military Seize the Law,'" 128.

[23]Edward Mussawir, *Jurisdiction in Deleuze: The Expression and Representation of Law* (New York: Routledge, 2011), 5.

[24]For an overview of recent Deleuzian engagement with the law, see, in addition to Mussawir's study, Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, and Spinoza* (Stanford, Calif.: Stanford University Press, 2008); and Laurent de Sutter and Kyle McGee, eds., *Deleuze and Law* (Edinburgh: Edinburgh University Press, 2012).

[25]Bradin Cormack, *A Power to Do Justice: Jurisdiction, English Literature, and the Rise of the Common Law, 1509–1625* (Chicago: Chicago University Press, 2007), 4.

[26]Mariana Valverde, "The Sociology of Law as a 'Means against Struggle Itself,'" *Social & Legal Studies* 15 (2006): 591–97.

[27]Shannaugh Dorsett and Shaun Mcveigh, "Questions of Jurisdiction," in *Jurisprudence of Jurisdiction*, ed. Shaun McVeigh (London: Cavendish/Routledge, 2007), 5.

[28]Cormack, *A Power to Do Justice*, 5.

[29]Gilles Deleuze, *Difference and Repetition* (London: Continuum, 2004), chap. 3.

[30]Dankwart A. Rustow, "Connections," in *Paths to the Middle East: Ten Scholars Look Back*, ed. Thomas Naff (Albany, N.Y.: State University of New York Press, 1993), 267.

[31]On the once proudly independent Ottoman ulema's surrender to centralization and careerism after the 16th century, see Madeline C. Zilfi, "The Ottoman Ulema," in *The Cambridge History of Turkey*, vol. 3, *The Later Ottoman Empire, 1603–1839*, ed. Suraiya Faroqhi (Cambridge: Cambridge University Press, 2006), 209–25. After the 1960 coup, Başgil himself argued that Onar's defense of the mass trial of the DP leaders amounted to a fetva. Ali Fuad Başgil, *27 Mayıs İhtilalı ve Sebepleri* (Istanbul: Kubbealti, 1966), 184.

[32]Taha Parla, *The Social and Political Thought of Ziya Gökalp, 1876–1924* (Leiden: Brill, 1985), 124.

[33]Ali Fuad Başgil, "Muasır Devlette Memur Meselesi ve Memurların Mesleki Vazife ve Terbiyesi," *İstanbul Hukuk Fakültesi Mecmuası* 7, no. 4 (1941): 794.

[34]Ali Fuad Başgil, "Dördüncü Kurultay Münasebetiyle," *Aylık Siyasal Bilgiler Mecmuası*, no. 50 (1935): 1–5; cited in Parla, *The Social and Political Thought of Ziya Gökalp*, 124. For Ahmet Mithat's critique, see his article "Faşistlik," *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* 8, no. 48 (1930): 929–34.

[35]Ali Fuad Başgil, *Türkiye Teşkilat Hukukunda Nizamname Mefhumu ve Nizamnamelerin Mahiyeti ve Tabi olduğu Hukuki Rejim* (Istanbul: Kenan Basımevi ve Klişe Fabrikası, 1939), 76.

[36]Ali Fuad Başgil, *Klasik Ferdî Hak ve Hürriyetler Nazariyesi ve Muasır Devletçilik Sistemi* (Ankara: Hukuk İlmini Yayma Kurumu, 1938).

[37]Başgil, "La Constitution et le Régime politique," 22.

[38]Mithat, "Hukuku Amme Dersleri 2: Devlet Anasırının Hukuki Şeraitti," *İstanbul Hukuk Fakültesi Mecmuası* 8, no. 46 (1930): 665–696.

[39]Başgil, "La Constitution et le Régime politique," 20, 22–23, 36–38.

[40]Ali Fuad Başgil, "Esas Teşkilatımızın Umumi Hatları," in *Üniversite Haftası, Erzurum, 13-7-1940–19-7-1940* (Istanbul, 1941), 240.

[41]A. James Gregor, *Mussolini's Intellectuals: Fascist Social and Political Thought* (Princeton, N.J.: Princeton University Press, 2004), 87.

[42]Ali Fuad Başgil, "Kanunun hâkimiyeti prensibi," *İzmir Barosu Dergisi* 2, nos. 1–5 (1936): 63–75.

[43]Başgil, "Muasır Devlette Memur Meselesi," 802.

[44]Robert O. Paxton, *The Anatomy of Fascism* (New York: Knopf, 2004), 143.

[45]Ali Fuad Başgil, *Siyasal Bilgiler Okulunun 86ıncı Yıl Dönümü Münasebetiyle 4/12/1943 Tarihinde Yapılan Merasimde Söylenen Nutuk* (Ankara, 1943).

[46]Başgil, "Muasır Devlette Memur Meselesi," 790.

[47]Ali Fuad Başgil, "Vatandaşların Amme Hakları ve Milli Camianın Emniyet ve Disiplin Meselesi," *İstanbul Hukuk Fakültesi Mecmuası* 6 (1940): 289–300.

[48]Başgil, "Muasır Devlette Memur Meselesi," 794.

[49]Ali Fuad Başgil, "Hürriyete Dair I," *Siyasi İlimler Mecmuası,* no. 181 (1946): 1–6; "Hürriyete Dair II," *Siyasi İlimler Mecmuası*, no. 182 (1946): 49–52; "Demokrasi ve Hürriyet," *Siyasi İlimler Mecmuası*, no. 184 (1946): 149–52.

[50]Ali Fuad Başgil, "Devlet Nizamı ve Hukuk, Hukuk ve Hak ile Kanun Arasındaki Münasebete Dair Bir İzah Denemesi," *İstanbul Hukuk Fakültesi Mecmuası* 19 (1954): 576–91.

[51]Ali Fuad Başgil, "Devlet Nizamı ve Hukuk, Devletle Hukuk Arasındaki Münasebet Üzerine bir İzah Denemesi," *İstanbul Hukuk Fakültesi Mecmuası* 16 (1950): 27–50.

[52]Tuncay Önder, "Ali Fuad Başgil," in *Muhafazakârlık*, ed. Ahmet Çiğdem, vol. 5, *Modern Türkiye'de Siyasi Düşunce* (Istanbul: İletişim, 2003), 291–301.

[53]Ali Fuad Başgil, "Nemmamlık, Ahlâksızlıktır," in *İlmin Işiğinda Günün Meseleleri*, ed. Ali Hatiboğlu and İsmail Dayı (Istanbul: Yağmur Yayınları, 1960), 194–97.

[54]Başgil recounted his discussions with cabinet leaders and president Celal Bayar in his *27 Mayıs İhtilalı ve Sebepleri*, 132–46.

[55]Umut Azak, "Secularists as the Saviors of Islam: Rearticulation of Secularism and the Freedom of Conscience in Turkey (1950)," in *Secular State and Religious Society: Two Forces in Play in Turkey*, ed. Berna Turam (New York: Palgrave Macmillan, 2012), 68.

[56]I borrow the term "Republican alliance" from Ceren Belge, "Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey," *Law and Society Review* 40 (2006): 656.

[57]Ali Fuad Başgil, *Ord. Prof. Dr. Ali Fuad Başgil'in Hatiraları* (Istanbul: Boğaziçi Yayınları, 1990), 83.

[58]His recommendations were presented at a conference in 1956 but only published after the 1960 coup as "Vatandaş Hak ve Hürriyetlerinin Korunma Meselesi ve Anayasamız," in *İlmin Işiğinda Günün Meseleleri*, ed. Ali Hatiboğlu and İsmail Dayı (Istanbul: Yağmur Yayınları, 1960), 43–85.

[59]Erozan also alludes to a "strange continuity between some of [Başgil's] pre- and post-1945 thoughts." Erozan, "Producing Obedience," 171–72.

[60]Carl Schmitt, "Der Führer Schützt Das Recht." *Deutsche Juristen-Zeitung* 39 (1934): 950.

[61]Ali Fuad Başgil, "Demokrasiye Dair," *Siyasi İlimler Mecmuası*, no. 179 (1946): 579–85; "Demokrasi ve Müsavat Kaideleri," *Siyasi İlimler Mecmuası*, no. 183 (1946): 93–97; "Demokrasi ve Müsavat," *Yeni İstanbul*, 10 and 13 September 1963.

[62]Başgil, *Ord. Prof. Dr. Ali Fuad Başgil'in Hatiraları*, 65–79.

[63]"Ord. Prof. Dr. Sıddık Sami Onar'ın Hayat Hıkayesi," *İstanbul Hukuk Fakültesi Mecmuası* 39, nos. 1–4 (1974): x–xi; Özer Ozankaya, "Siyasal Bilgiler Fakültesi Tarihinden Bir Belge," *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi* XLIV, nos. 1–2 (1989): 15–16.

[64]For Onar's publications from 1924 onwards until his move to the Mülkiye Mektebi, see Ahmet Cihan, "Cumhuriyet Dönemi Türk İdare Hukukçuları," *İdare Hukuku ve İlimleri Dergisi* 13 (2000): 110–12.

[65]Sıddık Sami Onar, "Tetkik Mevzulari," *Mülkiye Mektebi Mecmuası*, no. 2 (1931): 1–3.

[66]Sıddık Sami Onar, "İlim ve Tatbikat," *Mülkiye Mektebi Mecmuası*, no. 5 (1931): 5.

[67]Sıddık Sami Onar, "Bizde Cemiyet Fikri ve Hayati Niçin İnkişaf Edemiyor?," *Mülkiye Mecmuası*, no. 22 (1933): 5.

[68]Onar, "İlim ve Tatbikat," 5.

[69]Sıddık Sami Onar, *Devletçilik ve İdare Hukuku*, Hukuk İlmini Yayma Kurumu konferanslar serisi 54 (Ankara: Hukuk İlmini Yayma Kurumu, 1937), 8.

[70]Ibid., 21.

[71]Sıddık Sami Onar, "İdari Kazaya Lüzum Var Mı?," *İzmir Barosu Dergisi* 3, nos. 1–9 (1937): 1–18.

[72]Recent scholarship has to some extent corroborated Onar's assertion that administrative law continued to operate in Nazi Germany. Stolleis, for example, shows that the administrative courts enjoyed a large degree of institutional continuity until the end of the war because they were willing to discard their liberal provenance in order to retain formal jurisdiction. Michael Stolleis, *The Law under the Swastika: Studies on Legal History in Nazi Germany*, trans. Thomas Dunlap (Chicago: University of Chicago Press, 1998), 112–44.

[73]Onar, *Devletçilik ve İdare Hukuku*, 22.

[74]Sıddık Sami Onar, "İdare Hukukunun Tatbik Sahası ve Salahiyet İhtilafları," *Aylık Siyasal Bilgiler Mecmuası*, no. 46 (1935): 26.

[75]Sıddık Sami Onar, "İdarenın Takdir Hakkı," *Mülkiye İçtimai İlimler Mecmuası*, no. 37 (1934): 36.

[76]Ibid., 36–37.

[77]Ibid., 36.

[78]Ibid.

[79]Ibid., 37.

[80]Tunceli Vilâyetinin İdaresi hakkında kanun, Law no. 2884, in RG 3195, 2 January 1936.

[81]Martin van Bruinessen, "Genocide in Kurdistan? The Suppression of the Dersim Rebellion in Turkey (1937–38) and the Chemical War against the Iraqi Kurds (1988)," in *Conceptual and Historical Dimensions*

of Genocide, ed. George J. Andreopoulos (Philadelphia, Pa.: University of Pennsylvania Press, 1994), 141–70.

[82]Ibid.

[83]David McDowall, *A Modern History of the Kurds*, 3rd ed. (London: I.B.Tauris, 2004), 209.

[84]Mehmet Semih Gemalmaz, "Historical Roots of Martial Law within the Turkish Legal System: Perspectives and Texts," *Turkish Yearbook of Human Rights* 13 (1991): 102–6.

[85]İsmail Beşikçi, *Tunceli Kanunu (1935) ve Dersim Jenosidi* (Istanbul: Belge Yayınları, 1990), 112.

[86]Ibid., 107.

[87]Leonard C. Feldman, "The Banality of Emergency: On the Time and Space of 'Political Necessity,'" in *Sovereignty, Emergency, Legality*, ed. Austin Sarat (Cambridge: Cambridge University Press, 2010), 138.

[88]Agamben, *State of Exception*, 13.

[89]Milli Korunma Kanunu, Law no. 3780, in RG 4417, 26 January 1940.

[90]Örfi idare kanunu, Law no. 3832, in RG 4518, 25 May 1940, replacing both the 1877 İdarei Örfiye Kararnamesi and the 1919 İdarei Örfiye Kararnamesi.

[91]Kararname no. 14705, in RG 4668, 23 November 1940.

[92]Zafer Üskül, *Siyaset ve Asker. Cumhuriyet Döneminde Sıkıyönetim Uygulamaları* (Istanbul: AFA Yayınları, 1989), 111–22.

[93]Varlık Vergisi hakkında kanun, Law no. 4305, in RG 5255, 12 November 1942.

[94]Sıddık Sami Onar, "İdare Hukuku bakımından İktisadi Devlet Teşekkülleri," *İstanbul Hukuk Fakültesi Mecmuası* 7 (1941): 736.

[95]Sıddık Sami Onar, *Fevkâlade Hallerin Hukukî Nizam Üzerindeki Tesirleri* (Istanbul: Kenan Basımevı, 1943), 380.

[96]Ibid., 378.

[97]Ibid., 383.

[98]Ibid., 381.

[99]Ibid., 384.

[100]Ibid., 385.

[101]Beşikçi, *Tunceli Kanunu (1935) ve Dersim Jenosidi*, 119.

[102]See, for example, Ragıp Sarıca, "Fransa'da ve Türkiye'de Örfi İdare Rejimi," *İstanbul Barosu Mecmuası* 15, no. 2 and 3 (1941).

[103]Kenneth H. F. Dyson, *The State Tradition in Western Europe: A Study of an Idea and Institution* (Oxford: Martin Robertson, 1980), 148.

[104]Sıddık Sami Onar, *İdare Hukukunun Umumi Esasları* (Istanbul: Marifet Basımevi, 1952).

[105]Onar's textbook is referred to as *gayrimenkûl* by his students in "Üniversite: Sokrat Yaşıyor," *Akis*, 26 April 1958, 12.

[106]Gilles Deleuze and Michel Foucault, "Intellectuals and Power," in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. D. F. Bouchard (Ithaca, N.Y.: Cornell University Press, 1977), 206.

[107]Sıddık Sami Onar, "Hukuk Telakkimizin Geçirdiği Buhranlar," *Siyasi İlimler Mecmuası* 20, no. 233 (August 1950): 173–78.

[108]Michael Stolleis, "Reluctance to Glance in the Mirror: The Changing Face of German Jurisprudence after 1933 and Post-1945," in *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and Its Legal Traditions*, ed. Christian Joerges and Navraj Singh Ghaleigh (Oxford: Hart Publishing, 2003), 15. For the legal legacy of Fascism in Italy, see Claudio Pavone, "La continuità dello Stato. Instituzioni e uomini," in *Italia 1945–48: Le origini della Repubblica*, ed. Claudio Pavone (Turin: Einaudi, 1974), 137–289.

[109]Deleuze and Foucault, "Intellectuals and Power," 206.

[110]Statutory decrees were added to the 1961 Constitution's Article 64 and are currently present in the 1982 Constitution's Articles 91, 121, and 122.

[111]Onar's comments were only published years later in "Benim Anayasalarım," *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* 69, nos. 1–2 (2011): 1–36.

[112]Emre Dölen, *Özerk Üniversite Dönemi (1946–1981)* (Istanbul: İstanbul Bilgi Üniversitesi Yayınları, 2010), 71–74.