



## REVIEWS

**THE TURKISH CRIMINAL CODE.** The American Series of Foreign Penal Codes, 9. Translated by the Judge Advocate's Office of the Joint United States Military Mission for Aid to Turkey, *et al.*, With an Introduction by Nevzat Gurelli. New Jersey: Fred B. Rothman & Co., London: Sweet & Maxwell Limited. 1965. Pp. xviii, 190. £ 3 12s. 6d.

This is the ninth volume in the American Series of Foreign Penal Codes. Read together with *The Turkish Code of Criminal Procedure* (American Series of Foreign Penal Codes, Volume 5), it is now possible to have an idea of the basic principles of criminal law and procedure of the Turkish Republic. The need for such a translation was felt particularly, as the foreword points out, by judge advocates of the U.S. armed forces and English-speaking lawyers concerned with the implementation of the criminal jurisdictional provisions of NATO SOFA.<sup>1</sup>

The present translation follows the pattern set in the previous volumes by not having any explanatory notes. This is in keeping with the objective of the project, explained by the editor-in-chief—Professor Gerhard O.W. Mueller—in the first volume, which is to make available knowledge of the basic structure of foreign penal codes and not to present commentaries.<sup>2</sup>

Professor Nevzat Gurelli's introduction provides the historical background without which it would be difficult to understand the evolution of the criminal law from the Ottoman Empire to the present day. The Islamic basis of the criminal law of the Empire, which classified crimes into (1) "definitions and punishments (which) are determined by the written sources of the Islamic law" and (2) "definitions and punishments (which) are left to the discretion of the sovereign," has now completely disappeared.<sup>3</sup>

To transform a country with a monarchist tradition to a republic "secular and revolutionary," law is, perhaps, one of the most important tools. In the field of family law, secularization was brought about by adopting the new civil code, which was based on the Swiss Code. To stabilize the new democracy, reform in criminal law was needed and this was brought about by adopting the Italian Penal Code almost in its entirety<sup>4</sup> in 1926. But while this code served a very useful purpose in

---

1. Belsler, "Foreword" to The American Series of Foreign Penal Codes, No. 9, *The Turkish Criminal Code* xvii (1965) [hereinafter cited as *Turkish Code*].

2. Mueller, "Foreword" to The American Series of Foreign Penal Codes, No. 1, *The French Penal Code* xiv (1960).

3. Gurelli, "Introduction" to the *Turkish Code* 1.

4. *Id.* at 2.



the transitional stage from a monarchy to a secular republic, today after forty years it is no longer reflecting the needs of the country nor does it mirror the values which have been accepted in many other countries both in the sphere of international crimes as well as in the approach to punishment.

The Ethiopian Penal Code, which like the Turkish Code is based on the Italian law, has by substantial additions to the original code made law to reflect certain social values.<sup>5</sup> Though a code is perhaps not the best instrument by which one makes value judgments, it does, to a great extent, reflect the ideals of the community, *e.g.*, the incorporation by Ethiopia of international crimes like genocide<sup>6</sup> in its Penal Code demonstrates their belief in internationalism.

More glaring, however, is the absence in the Turkish Penal Code of a proper perspective on punishment. Nowhere does one find the objectives of punishment laid down as, for instance, one does in the Ethiopian Penal Code—"to reform and educate the prisoner" [article 110(1)]; and the sentence of imprisonment to be given with the object of "reforming the prisoner and of enabling him to resume a normal social life on his release" (article 111). By compensating the prisoner for the work he is required to do in prison, the penal character of the work is removed and dignity is given to the labour. In contrast, the Turkish Criminal Code enumerates the nine types of punishments ranging from death to disqualification to perform a profession or trade (article 11). This is followed by another article stating that a prisoner undergoing heavy imprisonment will serve a period of solitary confinement, after which he will be "required to work" (article 13). Perhaps the only manifestation of the principle that criminal law must look to the individual and not proceed on the principle of retributive vengeance, is the permissible provision for "conditional release" when a prisoner has served the first part of his sentence with good conduct (article 16).

Like the Ethiopian Penal Code, the Turkish Criminal Code is also divided into Books. It is in three Books and Book one begins by laying down the fundamental principles of criminal law that there can be no punishment without a specific offence and that crimes are not retroactive.

The fundamental principles are followed by the jurisdictional basis of the Codes and we find that, apart from the territorial, the Code also follows the nationality and protective principles. The inclusion of the nationality principles is, perhaps, explained by the constitutional provision that "All Turks are equal before the law and are obliged to respect the law" (section 5). The privileges and the protection given by the

---

5. Franklin Russell, "The New Ethiopian Penal Code," 10 *Am. J. Comp. L.* 265, 267 (1961).

6. *Id.* at 268.



Constitution to its nationals bring in the corresponding obligation—the duty not to violate the Turkish law; the arm of the law, therefore, stretches out to nationals for offences committed even outside the territorial jurisdiction of the state.

The extra-territorial extension of the Penal Code, under the protective principle, is understandable as the new Republic needed to be vigilant and protect itself from acts of aliens which might undermine the security of the state. Regrettable, however, is the arbitrary extension to punish aliens for an offence against a Turk for which he may have already been punished in the place of the act. In the absence of a commentary one can only hazard the reason for the provision which is, perhaps, that if the punishment undergone is less than that required by the Turkish law, he should serve what according to Turkish standards is adequate punishment. Regarding the adoption of the protective principle, the Code is an improvement upon some others, e.g., the German Code, where the protective principle is applied even for trafficking in obscene literature [article 4 subsection 2(9)]. It is, however, hoped that when the “better code” is drafted,<sup>7</sup> the protective principle, if it need be followed at all, will be limited to those offences for which no punishment has been given in the place of the wrong.

Book two begins with the more serious offences which in the Code are called felonies and the last Book with the minor offences which are called misdemeanours. Though the Code does not define either felonies or misdemeanours, it is from the punishment prescribed for the latter—light fine, light imprisonment and disqualification to perform a profession or trade [period being from three days to two years (article 28)], in contrast to heavy imprisonment, heavy fines, disqualification to hold public office, prescribed for the former—that one deduces that these are petty offences.

To break with the past and modernize the country, six basic principles were enunciated by the government—republicanism, nationalism, etatisme, sovereignty of the people, secularism and revolution—that would guide the future actions of the government.<sup>8</sup> Part 1 of Book two reflects the need for surveillance against any attack on these principles. It attempts to safeguard the republican form of government as well as the classless character of the society. Any attempt to erode the economic structure of the society—etatisme—is severely punished [article 142(1) and (2)].

Ataturk's policy was said to be in the initial stages a “combination of national independence and international interdependence and his domestic policy was a special brand of dictatorship.”<sup>9</sup> It is, perhaps the latter, which induced the inclusion of “aggressive publication

---

7. Gurelli, “Introduction” to the *Turkish Code* 8.

8. “Turkey,” in *The Encyclopedia America* 181 (1959).

9. *Id.* at 198 n.



against the President” even by “allusion or hint” to be a serious felony (article 158). Mere “disrespectful publications” are not considered a potential danger and are therefore dealt with more leniently subjecting the person to imprisonment for a period of at least six months but not exceeding three years.

The spirit of nationalism—one of the six basic tenets—is manifested in many ways. One innovation is the punishment meted out for overtly cursing the laws of the Turkish Republic, the offence being more heinous if done by a Turk outside the country (article 159). The national flag also symbolizes the same sentiment and, along with other sovereign emblems, is protected from insult and damage—a lacuna in our own law necessitating the Madras Prevention of Insult to National Honour Act in 1957.

Without appreciating the political affiliations of Turkey with other countries, it is difficult to understand the restriction placed on the freedom of association “without the permission of the Government (in) societies of international character.” On the face of it, the provision is incomprehensible particularly as it is extended to cover even non-Turkish people (article 143). Secularism is safeguarded by imprisonment of two to seven years for any attempt to replace or modify laicism by the formation of any society (article 163).

Unhampered by fear of erosion in its political set-up (characterized by the felonies against the state), the felonies against individuals and property illustrate the skilled lucidity of the draftsmen. Without getting involved in definition of murder and manslaughter, or culpable homicide amounting and not amounting to murder, the Turkish Code states concisely that malicious killing is punishable (article 448). This is followed by the enumeration of factors which aggravate the offence and enhance the punishment culminating in the death sentence. No notes or commentaries explain why poisoning is regarded as more heinous than any other mode of killing. Of interest, however, is the fact that consanguinity with or affinity of the deceased to the killer makes the offence more heinous in the eye of the law. Some other codes also take this into account in regarding the offence as aggravated [article 250(2) Korea Penal Code; article 80 Argentina Penal Code], but neither of the codes go into details or are as exhaustive as the Turkish Code, *e.g.*, killing of a brother, sister or a mother-in-law is regarded as being less serious than the killing of any ascendant or descendant—the latter type deserving the death sentence (article 449, 450).

A study of the last part of the Code, Book three leads the reviewer to the conclusion that the social consciousness of the Turks in the twenties bore a striking resemblance to ours. How else can one explain the inclusion of offences like throwing things which might “injure...or soil...clothes” (article 558), begging by able-bodied persons (article 544) and the leading and driving in streets of animals and carts (article 565).



Professor Gurelli, in the concluding paragraphs of his introduction, maintains that the Turkish Code, based on the Italian Penal Code of 1889, is no longer capable of serving the needs of present-day Turkish society.<sup>10</sup> The fact that the Code has had to be amended piecemeal twenty times brings home this inadequacy. The stability of the Republic and the progress of the country have made many of the old offences redundant. Criminal law must reflect not only the fundamental values of the country but also meet the requirements of a developing society and therefore the adoption of a foreign code, however well drafted, can never really take roots in a different soil with different traditions.<sup>11</sup>

Today the availability in translation of many of the foreign penal codes brought out by the Comparative Criminal Law Project of the New York Law School makes the task of the drafters somewhat easier. It enables them to study not only the forms of the various codes but also the penal laws of societies with more or less similar traditions and political development.

Professor Gurelli, who is well-acquainted with the conditions of Turkey, is of the opinion that without adequate research in criminology resulting in an awareness of the crime problems of the country, revision of the Penal Code, even though it is greatly out of date, would not be of lasting value. It is, however, hoped that when Turkey does decide to revise the Penal Code it will rectify, among other things, the present approach to punishment and incorporate in the Code some of the principles accepted by the Congress of the Prevention of Crime and Treatment of Offenders, 1955. This would be a much-needed step forward towards universal principles of criminal law.

*Lotika Sarkar\**

THE CIVIL LAW IN THE MODERN WORLD. Edited by A. Yiannopolos. Louisiana State University Press. 1965. Pp. xvi, 197. \$ 7:50.

A collection of erudite essays on the "Civil Law in the Modern World" will surely evoke different responses. In this review, our approach has been to assess the significance of these essays in terms of the theory of comparative law or more aptly, comparative jurisprudence and to stress the tasks which await the Indian legal scholarship in this area.

The essays reproduced in this book were first presented to a colloquium on "Civil Law in the Modern World" at the first Annual

---

10. Gurelli, "Introduction" to *Turkish Code* 8.

11. *Ibid.*

\* Research Professor, The Indian Law Institute, New Delhi.