The duality of the concept of marriage in modern Muslim societies has an historical background. In Turkey specifically it arose out of the transition between the Ottoman Empire and the Republic of Turkey. The legal system of the Ottoman Empire was based on Islamic Law. Over the years elements of Western legal systems were adopted in the Ottoman administrative and judicial fields in line with

6 Zayn at-Di”n b. Ibrahim Ibn Nujaym, *al-Ashbah wa at-Nazair,ed.* Zakariya ’Omayrat, lth ed.,

(Beirut: Dar aI-Kutub al-llmiyyah 1999.) p. 20.

### 7 Ahmad Ibn Hanbal, *aI-Musnad,* ed. Shuaib aI-Arnaut, Adel Murshid, Ith ed., (Beirut:

Muassasat aI-RisaIah, 2001.), vol. 8,p. 224.

Abu Zakariyya Mohyi at-Din Yahya b. Sharaf at-DTn aI-Nawawi”, *Minhaj at-Talibi“n wa 'Omdat aI-Mufi’i”n fi al- ”*

*Fiqh,* ed. ’Iwad Qasem Ahmad, Ith ed., (Beirut: Dar al-Fikr, 2005.), v. 1, p.213; Ibn Nujaym,

*al-Bahr aI-Raiq*

*Sharh al-Kanz al-Daqaeq,* vol. 3, p. 138.

Halil Cin, *islam ve Osmanh Hukuku’nda Evlenme,* 2th ed., (Konya: 1988) p. 348.



*the Reforms* being carried out in the later years of the empire.10 Islamic Law, however, remained in force in other areas of the Ottoman Empire. This is most evident in the case of Family Law.

Under the Ottoman Empire the marriage process looked something like this: the two parties who wished to be married applied to a judge and brought with them documents demonstrating that there were not any obstacles to their marriage. They would then obtain official permission to marry, which they would then present to an imam who was authorized by the government to conduct a marriage ceremony. The imam would ask them to proclaim, in the presence of at least two witnesses, their desire to be married, and would then perform the ceremony. The imam would register this marriage in a record book given to him by the government, and would then officially inform the Public Registration Office of the marriage. The duty of informing the government of the marriage was later given to the husband instead of the imam, and serious penalties were imposed on those who did not expeditiously register their marriage with the authorities.\*\*

From an Islamic perspective a marriage ceremony does not have to be presided over by a third person, like an imam. Neither still is the recitation of prayers during a marriage ceremony religiously necessary. Because it has long been customary to do so, however, imams, being well qualified to recite such prayers, have traditionally performed the wedding ceremony.

In the Ottoman Empire marriages were thus generally presided over by imams, but there were also many marriage ceremonies conducted without an authorized imam and which were not reported to the Public Registration Office. These too were accepted as valid in the legal system as long as there were witnesses to attest to the legitimacy of the marriage. In these unofficial marriages, the ceremony was performed by a person who had enough religious knowledge to conduct the ceremony in accordance with custom. In the later years of the Ottoman Empire, abuse of the system led to the introduction of sanctions designed to prevent those without official authority from performing marriage ceremonies. In 1917 the authority to preside over marriage ceremonies was taken away from imams and given instead to *mukhtars,* the elected heads of villages or neighborhoods within a town or city. This authority was returned to imams in 1919.

From 1918-1923, in the aftermath of World War I, the majority of the territory of the modern Republic of Turkey was occupied by foreign powers. In 1920 a new National Assembly was created in Ankara to replace the government in occupied Istanbul. This meant that there were in effect two different governments in the same country at the same time, with the Ottoman government in occupied Istanbul on the one hand and the Ankara government on the other. It was the latter of these, the National Assembly organized in Ankara, that was to form the core of the modern Republic

1o David Bonderman, *"Modernization and Changing Perception of Islamic Law" Harvard Law*

*Review,* (1968 ),

No. 6, Vol. 81. p. 1177.

11 Ekrem Bugra Ekinci, *"Osmanh Hukukunda Izinname iI”e Nikah",* Turk Hukuk Tarihi

Ara§tirmalan, No: 2,

Year: 2006, ss: 41-60.

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of Turkey. Though the main purpose of this new government was resisting the occupation, it also enacted some laws relating to the family. One of these, passed in 1921, was a law ordering imams to register within a period of six months any marriage ceremonies they presided over. This shows that the Ankara government considered marriages performed by imams to be valid.

The Ankara government became the only administrative and legislative authority in the land after the Istanbul government was overthrown in 1922. After the declaration of the republic in 1923, the National Assembly passed many important pieces of legislation relating to the country’s administrative and legal systems as well as others relating to society as a whole. One of the most important pieces of legislation affecting the judicial system was the adoption of the Turkish Civil Code, based on the Swiss Civil Code, on 17 February 1926. One of the most notable characteristics of this new code was that it was completely secular.12 The new code abolished the authority of imams to perform marriage ceremonies1\* and instead empowered local mayors or their appointees to conduct the ceremonies. Thus, marriage ceremonies performed by an imam not only lost their legal status, but actually became crimes.