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## The struggle within: "moral crisis" on the Ottoman homefront during the First World War

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## Family at the Center of Moral Decline: Legislation Targeting the Regeneration and Protection of Ottoman Muslim Families

*Bu ahlaksızlığın esbâbını böyle derince araştırırsanız ine ine aile içine girersiniz. Ve buradaki meşhudâtınıza ağlarsınız.*

–Tüccarzade İbrahim Hilmi,  
*Avrupalaşmak Felâketlerimizin Esbâbı*

**D**uring a visit to my hometown, Sivas, a man whom I met coincidentally, asked what I was studying. I told him the First World War and added: “specifically the homefront.” He immediately replied excitedly and said, “I know a lot about that!” He continued, “when the war broke out and the people heard about the mobilization, men said ‘shoot [kill] all the crippled and one-handed men’.” Not following at first, I asked the reason, and he said, “because, only crippled men would remain in the town and the fellows did not want to leave the women to them!”

“Hunger and love are what moves the world.”<sup>1</sup> As mass mobilization started in the Empire, a population of mainly women, children, and elders remained on the homefront. They suffered not only from the absence of their breadwinners, but also from the lack of a sense of patriarchal protection. The family as an institution was heavily affected by wartime conditions. The formidable problem of manpower was accompanied by heavy taxation on agricultural products in towns and villages. Amid economic deprivations, the Ottoman countryside witnessed a chaotic situation regarding the protection of soldiers’ families from sexually exploitation. The absence of the male members of the household brought about concern about the involvement of soldiers’ female relatives in extramarital sexual activities. As discussed in the following pages, this “uncontrolled” environment was referred to as “the form of moral decline in rural areas” in the writings of Ottoman intellectuals and state elites. The scope of this moral decline surpassed the capacity of civilian authorities to cope, and the Ottoman government (and military authorities) found new ways to deal with the problem.

I begin my analysis with an overview of the impact of the war on the family, contextualizing how family life was affected by wartime circumstances but also presenting the background for changing perceptions of the family. I then turn to the forms of state intervention in family affairs in terms of taking control over sexual relationships that potentially threatened the family as an institution. I demonstrate how the wartime legislation that targeted the family was driven by moral concerns. Examining gender-related aspects of war contributes to the understanding of political developments, particularly those related to “civic order.”<sup>2</sup> I contend that the turmoil of the

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- 1 Sigmund Freud quoted these lines of the famous eighteenth-century poet-philosopher Schiller as a starting point for his ego-instinct and object-instinct drive theory: “In what was at first my utter perplexity, I took as my starting-point a saying of the poet-philosopher, Schiller, that ‘hunger and love are what moves the world’. Hunger could be taken to represent the instincts which aim at preserving the individual; while love strives after objects, and its chief function, favoured in every way by nature, is the preservation of the species.” Freud, *Civilization and Its Discontents*, 34.
  - 2 I owe this formulation to the work of Elizabeth Thompson in which she casts light on the political and social reflections of the gender crisis in terms of authority and identity. In her

wartime tested and revealed the vulnerability of once solid, traditional norms and values. As the foundations of the old order were shaken, several legislative attempts were made paving the way for a new understanding of the family in which state intervention is legitimate. As a distinctive feature of this study, I consider morality discourses and moral concerns as the common point behind several legislative attempts. These legislation attempts, which so far in the historiography have been elaborated separately, are thus evaluated together in a wider framework. First, I focus on the forms of sexual assault targeting the female members of soldiers' families. Given that such cases explicitly contradicted official war propaganda based on the protection of honor and family, the state enacted a provisional law authorizing courts martial to handle sexual assaults on soldiers' families. Indeed, this legislation marked the beginning of state intervention in the family. However, instead of evaluating this intervention as the natural outcome of increasing sexual assault cases, I point out the role of individuals – both men and women – in shaping the reciprocal relationship between citizens and the state. By holding the state accountable for a lack of protection from sexual violence, victims of and witnesses to these crimes explicitly asked for further state involvement so that the perpetrators be punished in a more effective way.

The second part of this chapter examines a heretofore unexplored legislative attempt, the Adultery Bill of 1916, and the debates surrounding it. The Adultery Bill was proposed by the Ministry of War to authorize the military to police the sexual conduct of “unfaithful” wives. Although this draft was not put into force, the endeavor shows the extent of moral considerations and the approach of military authorities to the problem of moral decline. I examine how the draft law instigated debates on the understanding of morality crimes, the nature of law, and limits of public and private law. By contextualizing the punishment of such crimes in the Ottoman Empire in Islamic

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work, she used the term “civic order” to evaluate a broader context of state-society interaction: “The civic order embodies norms and institutions that govern relations among citizens and between citizens and the state. It is within the civic order that the terms of citizenship and state power are both expressed and continually renegotiated among agents of the formal state apparatus, its unofficial agents, and their clients.” Thompson, *Colonial Citizens*, 1.

Law as well as Sultanlic Codes (*kanunnames*), I show the significance – and uniqueness – of such interventions in the history of the empire.

Finally, I evaluate the Ottoman Family Rights Decree of 1917 as part of the growing intervention of the state in the family. Here, my aim is not to rewrite the narratives on the widely discussed Family Decree, but establish links between references to norms, values, and morality and the justification for the law. I argue that discourses on morality and national regeneration played an important role in shaping the body of the law. In a way, discourses on the need for social reform went hand in hand with arguments about how outdated and degenerate were the values that encompassed the family. This was a pretext for lifting taboos regarding the privacy of the family and paved the way for the introduction of family reform.

#### § 4.1 War and the Family

Specialized studies have enhanced our understanding on the impacts of the First World War on the family as an institution. The First World War triggered long-lasting change as in the perceptions of family, women, and children in many combatant countries. Among them, I believe we should also consider moral values surrounding family formation and dissolution as well as factors that are a menace to family order. In the Ottoman case, the First World War served to attach new meanings to the family in terms of defining its function within society. The impact of total war also manifested itself in patriarchal norms and traditional gender roles in a manner that redefined the relationship between individuals and the state.

The families of soldiers received attention from military and bureaucratic authorities in combatant countries. More than anything else, this attention derived from the fact that war propaganda during the First World War highlighted the protection of women and children more than any other reasons were waging war against the enemy. Paradoxically, the absence of their men in pursuit of the very same cause left women and children defenseless against several forms of violence on the homefront. The gendered aspect of war propaganda added to these concerns. As Susan Grayzel put it, “in part because the war was justified as a defense of women and children, and thus im-

plicity of traditional gender roles, there was a good deal of concern about how wartime circumstances might alter these.”<sup>3</sup>

The initial policies regarding the family were driven by the motive of compensation in the absence of breadwinners. In many combatant countries, special “family aid” measures were introduced in order to support families.<sup>4</sup> Obviously, the issue of leaving money to the discretion of the women went hand in hand with a form of moral control over consumption, putting women and adolescents under the microscope of social and political control.<sup>5</sup>

During the Balkan Wars, the Ottoman government introduced a provisional law providing family allowance (*muinsiz aile maaşı*) for the families whose sole breadwinners had been conscripted into the army. Aid became central to the new Provisional Law on Military Service issued in May 1914 and affected more families due to the large-scale mobilization.<sup>6</sup> By means of this aid program, the government financially compensated families for the absence of breadwinners, thus establishing a tacit contract with soldiers pertaining to their sacrifice. Mehmet Beşikçi explains this tacit contract between conscripted men and the state as follows:

- 1) His and his family’s basic needs were provided by the state in return for his service;
- 2) his collaboration with the state increased his social status;
- 3) he was to be assured that the war effort was worth sacrificing himself for;
- 4) the duration and conditions of his military

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3 Grayzel, *Women and the First World War*, 64.

4 On Family Aid in several countries, see Daniel, *The War from within*; Grayzel, *Women’s Identities at War*; Pedersen, *Family, Dependence, and the Origins of the Welfare State*.

5 Women and adolescents of conscripted soldiers’ families were constantly under public surveillance with regard to their sexuality, their socialization, and their communication with the soldiers in the battlefield. Their way of spending Family Aid were subject to a debate among the press, police, and several bureaucratic offices. In Germany, some municipalities announced that women who spend money for cinema-going would not be eligible to receive Family Aid anymore. In Britain, restrictions were put on alcohol consumption, which was allegedly spreading among women in reaction to the uncertainties and hardships of wartime. See Daniel, *The War from within*, 143–147; Grayzel, *Women and the First World War*, 67.

6 Van Os, “Taking Care of Soldiers’ Families: The Ottoman State and the Muinsiz Aile Maaşı,” 96–97; Akin, “The Ottoman Home Front during World War I,” 141–143.

service remained unchanged from his initial mobilization. Failure to maintain this tacit contract could produce various forms of resistance to the mobilization effort.<sup>7</sup>

In practice, the allowance was ineffective due to the irregularity of payments, as well as bad or unfair treatment of women by provisioning officers (*iaşe memurları*), including the abuses of corrupt officers who took advantage of their position to engage in sexual relationships with women in need.<sup>8</sup> Both in the countryside and in cities there was a sense of increasing prostitution as such. When such news arrived to soldiers at the battlefield, desertion became an inevitable consequence. In 1917, during the war, the Ministry of War mandated the death penalty for officers who caused such incidents for facilitating desertion.<sup>9</sup> Ahmed Emin describes the situation as follows: “As the waves of debauchery behind the front caused heads of families to grow apprehensive for the safety of their homes and to desert the front line, special courts-martial were set up to handle the task of safeguarding public morals.”<sup>10</sup>

The families of soldiers became more important as the war dragged on. The need for their collaboration with the state to continue waging the war had significant effects especially with respect to morale on the front. As many scholars agree, this era was marked by a new concept of a relationship

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7 See Beşikçi, *The Ottoman Mobilization of Manpower in the First World War*, 8.

8 In villages, the situation worsened as well due to the lack of manpower and the high taxes on products, Van Os, “Taking Care of Soldiers’ Families: The Ottoman State and the Muinsiz Aile Maaşı,” 102. Akın cites similar stories from first hand accounts of the situation. For instance, the local head of the CUP in Giresun wrote that officers were abusing their positions for such purposes: “Honor was trampled to satisfy their sensual appetite.” Quoted in: Akın, “The Ottoman Home Front during World War I,” 166–168. In his memoirs, İrfan Orga tells how they treated families in the revenue office in Istanbul. His mother, after being insulted by the officers, did not go there to collect the aid and instead sent Orga to receive it. When he went to the office, a man who helped him talk to the officer physically abused him. After the incident, none among the family members visited the office again. He says the allowance they received was anyway not enough to live on due to increasing prices. Orga, *Bir Türk Ailesinin Öyküsü*, 149–150.

9 Akın, “The Ottoman Home Front during World War I,” 160.

10 Yalman, *Turkey in the World War*, 246.



between women and the state. This relationship was more direct than before, without husbands or male relatives as intermediaries. According to Grayzel, “what made this war such a compelling moment in women history is that it provides an opportunity for many women to forge a new relationship with their nation-states.”<sup>11</sup> In the Ottoman case, Akin argues, attempts of the government to relieve the financial burden of families and to protect them from various forms of violence resulted in the “transformation of women’s identities vis-à-vis the state,” and pave the way for a new direct relationship between the state and women in the absence of men.<sup>12</sup> Toprak addresses this changing relationship vis-à-vis the formation of the nation-state. According to Toprak, the war radically changed the perception of women’s role in the society due to the need for a female workforce, and this contributed to the promotion of the nuclear family as the main component of a national state. During the war years, Ottoman society witnessed radical transformation particularly in the urban context triggered both by the intellectual environment of the Young Turk family ideology and Ottoman feminism, as well as by wartime social and demographic changes.<sup>13</sup> Yet, it is hard to say that the war emancipated Muslim women. Traditional gender roles persisted, holding women back from achieving equality.<sup>14</sup>

The interest in the family in many belligerent countries derived from the idea that the family as an institution was on the verge of losing its main functions. These functions, according to Daniel, can be defined under two headings: a) Physical, psychological, and societal reproduction of people including the raising and socialization of children and the reproduction of adults in terms of their psychological and physical components, material support, psychological stabilization, and sexuality; and b) production and

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11 Grayzel, *Women and the First World War*, 117.

12 Akin, “The Ottoman Home Front during World War I,” 135–136.

13 Toprak, “The Family, Feminism, and the State During the Young Turk Period, 1908-1918,” 441–452.

14 For a discussion on the emancipation of women both in early Turkish Republican and contemporary contexts, see Kandiyoti, “Emancipated but Unliberated?”; Arat, “From Emancipation To Liberation: The Changing Role of Women in Turkey’s Public Realm.”

consumption of food.<sup>15</sup> Accordingly, during the war, the reproductive function of the family decreased, but the consumption and production of goods increased. When the balance between reproduction and production was broken by wartime circumstances, the sole function of the family remained an economic one.

It is my contention that it was exactly this decline in the reproductive functions of the family caused by the war, in other words the separation of many families, the decline in the birth and marriage rates and the increase in the number of women who no longer lived either with a husband or other family members outlined above, that moved those aspects of human coexistence previously situated in the context of the family into the arena of the public interest, where they were then defined as symptoms of a crisis affecting the entire society.<sup>16</sup>

These assumptions are indeed in line with the crisis of paternity cited at the beginning of this study. However, in the Ottoman Empire interest in the family had wider implications transcending discussions on the basic functions of the family. Owing to strict moral codes along with religious approbation, all forms of man-woman encounters in both the private and public sphere were scrutinized within a larger perspective of the family institution.

In the aftermath of the Constitutional Revolution of 1908, family became a major point of interest in the Ottoman press.<sup>17</sup> Debates on family included references to a so-called family crisis (*aile buhranı*) which encompassed morality discourses. Cem Behar and Alan Duben considers the family crisis spoken of by Ottoman intellectuals as a “cultural crisis” following the emergence of the nuclear family.<sup>18</sup> According to them, even though domestic gender roles were not radically changed, traditional elites in society and their distinctive way of living (*konak* life) were undermined by the formation of a

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15 Daniel, *The War from within*, 127.

16 Ibid., 138.

17 Toprak, *Türkiye’de Popülizm*, 264.

18 Duben and Behar, *Istanbul Households*.

new wealthy class – that is war profiteers.<sup>19</sup> Başak Tuğ argues that the point of departure for the family crisis debate among Ottoman intellectuals was not the transformation from large to nuclear families, but instead was the individualistic, loose family ties in Ottoman society.<sup>20</sup> Toprak’s studies show that the main agenda of reformist intellectuals such as Ziya Gökalp was to promote the nuclear family model among Ottoman Muslim families. They attributed a great role to morality in their vision of the national family (*millî aile*) model.<sup>21</sup>

In a way, the concerns over family in the context of the war had wider implications for the maintenance of the collective effort dedicated to mobilization. These implications extended to a broader framework of sexuality transcending the borders of the family as an institution per se. To illuminate this point further, I should note that the concept of “soldiers’ family” refers not to family as an institution, but to family members, particularly to the women of the family.<sup>22</sup> Therefore, the central issue was their sexuality and sexual encounters on the homefront.

#### 4.1.1 *Contextualizing State Intervention in Sexual Violence, Rape, and Assaults in the Ottoman Empire*

According to Islamic Law, relationships out of wedlock are considered acts of adultery (*zina*, or in Ottoman word *fi’il-i şen’î*). Adultery aside, the punishment for rape and similar acts is not defined clearly among the *hadd*.<sup>23</sup> Ac-

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19 Ibid., 200–201.

20 Tuğ, “The Claims on Modernity and Tradition,” 99.

21 Toprak, *Türkiye’de Kadın Özgürlüğü ve Feminizm (1908-1935)*, 14–16; Toprak, *Türkiye’de Popülizm*, 263–264.

22 Nicole van Os reminded me that such uses of the term family usually refer to women. I should also add that while in contemporary Turkish the word *tecavüz* means rape, in the Ottoman context it meant “crossing the lines” and violating the rights of someone else. For the dictionary meaning of the word, see Sami, *Kâmûs-î Türkî*, 481.

23 See Oxford Islamic Studies Online for the definition *hadd* in Islam: “Limit or prohibition; pl. *hudud*. A punishment fixed in the Quran and hadith for crimes considered to be against the rights of God. The six crimes for which punishments are fixed are theft (amputation of the hand), illicit sexual relations (death by stoning or one hundred lashes), making unproven accu-

cordingly, rape (*ırza geçme* or *hetk-i ırz*) was considered under the heading of adultery, yet courts had discretionary power (*ta'zir*) to determine the punishment.<sup>24</sup> There were three types of punishment for adultery: one hundred lashes, banishment, and stoning to death.<sup>25</sup> In the Ottoman Empire, the *kanunnames* (Sultanic Codes) of Sultans Mehmed II, Beyazıd II, Süleyman I, and Selim I supplemented Islamic Law with respect to rape crimes, and issued different punishments of the act.<sup>26</sup> For instance, a case study from the town of Balıkesir in the seventeenth century shows that adultery was generally punished with banishment.<sup>27</sup> Only in the 1858 Ottoman Penal Code, which was the first penal code in the modern sense, were crimes of adultery subject to standardized punishments.<sup>28</sup> This code differed from the *kanunnames* since the law applied to everyone, while the previous codes defined punishments based on whether the crime was committed by Muslims or Non-Muslims, slaves or free people.<sup>29</sup> Articles 197-200 of the 1858 Penal Code was reserved for the gender violence cases, rape, and crimes against morality.<sup>30</sup> The punishment of the crime of rape was hard labor. If the victim was a virgin, the perpetrator had to pay recompense in addition to doing hard labor

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sations of illicit sex (eighty lashes), drinking intoxicants (eighty lashes), apostasy (death or banishment), and highway robbery (death). Strict requirements for evidence (including eyewitnesses) have severely limited the application of *huddud* penalties. Punishment for all other crimes is left to the discretion of the court; these punishments are called *ta'zir*." "Hadd - Oxford Islamic Studies Online." On the discussion of *hadd* and *zina*, see Sonbol, "Rape and Law in Ottoman and Modern Egypt," 214-232.

- 24 Dönmezer, *Ceza Hukuku*, 31-32. For prophetic and sectarian traditions of punishment in *zina* cases, see Sonbol, "Rape and Law in Ottoman and Modern Egypt," 215-219.
- 25 Konan, "Osmanlı Hukukunda Tecavüz Suçu," 152-155.
- 26 Ibid., 157-162. Semerdjian, "Gender Violence in Kanunnames and Fetvas of the Sixteenth Century," 180-197.
- 27 Yağcı, "Osmanlı Taşrasında Kadına Yönelik Cinsel Suçlarda Adalet Arama Geleneği," 51-81.
- 28 Konan, "Osmanlı Hukukunda Tecavüz Suçu," 162-163; Dönmezer, *Umumî Adab ve Aile Nizamı Aleyhinde Cürümler*, 27-28.
- 29 Konan, "Osmanlı Hukukunda Tecavüz Suçu," 168. This aspect of law was also discussed in the case of Egypt, see Sonbol, "Rape and Law in Ottoman and Modern Egypt," 225.
- 30 For a transliterated version of the articles, see Akgündüz, *Mukayeseli İslam ve Osmanlı Hukuku Külliyatı*, 864-866.

sentence. The severity of the punishment increased if the victim was a minor or if the perpetrator was among family members who were supposedly guardians of the victim. If the perpetrator was a state officer, he was fired from his position immediately. If the crime of rape was committed together with other crimes such as homicide, banditry, or theft, the punishment became more severe: a life-long sentence of hard labor or the death penalty.<sup>31</sup> In the course of the nineteenth century, several supplementary articles were appended to this part of the Penal Code.

The Ottoman Penal Code of 1858 was inspired by the French Code of 1810. An historian of comparative law, Sulhi Dönmezer, points out that as a general principle of lawmaking throughout the nineteenth century, state intervention in private affairs and family relationships was considered “unnecessary” because it was perceived that such interventions would further deteriorate family order and peace.<sup>32</sup> For him this principle explains the reason for the limited number of articles devoted to sexual violence, violating morality, and family-related crimes in the penal code. Accordingly, from the second half of the eighteenth century to the First World War, philosophy prevailed and a strong reaction against the intervention of law in the sphere of individual morality developed. As a consequence, the list of morality crimes remained limited in the penal codes of the time since most were considered crimes without victims or harmless to the state. Even though strict legislation stipulated punishments for immorality in Britain and its colonies, the individualist mentality was particularly evident in the French Penal Code of 1810. Only acts violating the freedom of another individual or those openly inciting public morality were punished. However, the First World War was a watershed event that marked the beginning of a new understanding for the punishment of morality crimes and crimes against family.<sup>33</sup> Especially crimes against the family constituted an essential part of several penal codes after the war. While some, such as the Italian Penal Code of 1931, greatly

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31 Konan, “Osmanlı Hukukunda Tecavüz Suçu,” 162–166; Dönmezer, *Umumi Adab ve Aile Nizamı Aleyhinde Cürümler*, 27–28.

32 Dönmezer, *Ceza Hukuku*, 19–21.

33 Dönmezer, *Umumi Adab ve Aile Nizamı Aleyhinde Cürümler*, 20–28.

stressed such acts, more liberal codes such as that of the Swiss kept the list of morality crimes limited. The redefinition of crimes against morality and family derived from the wartime developments because of which the previous approaches toward the limits of private sphere were transformed. Also, new offenses were added to the penal code such as abandonment of the family. According to Dönmezer, this was due to intense migration in the aftermath of the First World War that resulted in the separation of many spouses. He added that the war opened a path to the return of patriarchy leading to further state intervention to the family.<sup>34</sup> “Saving the family” by establishing severe penalties became a matter for the state (especially for Fascist governments) as a result of the war.

What transpired during the First World War was that both the code and its application vis-à-vis gender violence were insufficient in a time of turmoil. The war shook the foundation of what had been considered private up to then. Not only in the Ottoman Empire and republican Turkey, but also in many other countries, the First World War opened a new page on the punishment of acts against public morality and crimes against family. Specifically, crimes against family constituted an essential part of several penal codes after the war due to the concern about population decline.<sup>35</sup> I suggest reconsidering the Ottoman state’s and military’s intervention in this private sphere during the First World War from this perspective. For the first time in the history of the Ottoman Empire, crimes against morality and family during the First World War were tried in military courts. This intervention created a discussion of the limits of the public and private spheres. There was a specific moment that this situation triggered an important discussion among bureaucrats: the Ministry of War’s proposal of the Adultery Bill in 1916, which is discussed at length in the following pages.

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34 Ibid., 24.

35 Emphasis on population growth was particularly evident in the penal codes of fascist countries, see Quine, *Population Politics in Twentieth-Century Europe*.

#### 4.1.2 *Sexual Assaults Targeting Soldiers' Families Before the First World War*

Archival documents suggest that sexual assault cases against members of soldiers' families were common even prior to the First World War. An overview of similar cases during the Balkan Wars reveals that female members of soldiers' families were faced with several forms of sexual assault. However, during those years the judicial process worked differently; charges brought up and trials for such cases were under the authority of the civilian bureaucracy, unlike during the First World War. In many cases, soldiers themselves petitioned the Ministry of War regarding their families' situation. The Ministry of War brought cases to the attention of civilian authorities such as the Ministry of Justice and the Ministry of the Interior Affairs. Sometimes in a bitter tone in the correspondence, the Ministry of War urged civilian authorities that the government's initial duty was to protect soldiers' female relatives. For instance, Mehmed Ali bin Mehmed Ali, a soldier stationed at Anadolu Kavağı (a district along the Bosphorus), wrote a petition on May 3, 1913, to the Ministry of War claiming that his wife had been abducted and raped by some of his fellow townsmen from Kastamonu. The Ministry of War passed the complaint on to the Ministry of the Interior Affairs and added, "needless to say, the first responsibility of the government is to protect the women in soldiers' families from attack or assault."<sup>36</sup> As this case illustrates, the process was initiated by the Ministry of War, and the Ministry of the Interior Affairs then started an investigation through the provincial governor. In addition to petitions written by soldiers, wives who were attacked or assaulted also sent complaints to the Ministry of War. For example, Fatma from Adana petitioned the ministry complaining that she had been assaulted and robbed by fifteen men on her way to the city. During her journey to Adana for the purposes of work, the perpetrators stopped her, stole her money and earrings, and assaulted her sexually. She sent a telegram to the Ministry of War and

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36 BOA. DH.H. 43/66 4 Nisan 1329 (17 April 1913). "Beyandan âzâde olduğu üzere efrâd-ı askeriye muhareminin her dürlü taarruzat ve tecavüzetdan masûn bulundurulmaları hükümetin de akdem-i vezâifinden olmağla..."

signed it “a soldier’s wife, Fatma.” The Ministry of War passed her petition along to both the Ministry of the Interior Affairs and the Ministry of Justice on October 4, 1913.<sup>37</sup> The Ministry of the Interior Affairs forwarded the complaint to the provincial governor of Adana requesting an investigation. Another case shows that complaints by soldiers regarding the protection of their families were more effective than those by civilian members of the family. For instance, Arif bin Emin, a soldier, petitioned the Ministry of War complaining that local authorities in his hometown of Ürgüb had not heeded his sister Fatma’s case.<sup>38</sup> Fatma had been attacked and raped by a certain Çir [sic] Ali and his companions. They cut Fatma’s husband’s fingers while he defended Fatma against the attackers. Fatma’s four-month-old child died during the incident. The family had applied to local authorities, but no investigation had been initiated. Arif bin Emin, as a member of the military, submitted the case to the Ministry of War demanding justice for his sister. The Ministry of War passed the case on to the Ministries of Justice and Interior Affairs on October 30, 1913, asserting that such incidents have a negative impact on the morale of both the soldier whose family was involved and the battalion of which that soldier was a member.<sup>39</sup> Before the First World War, the Ministry of War passed these cases along to civilian authorities urging them to conduct investigations. Due to the bureaucratic exchanges involved in the process, investigations could last a long time. As the number of conscripted men increased during the First World War, leaving many women on the homefront without protection, the Ministry of War initiated more straightforward solutions to bypass such bureaucracy.

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37 BOA. DH.H. 46/01 (04) 21 Eylül 1329 (21 September 1913).

38 BOA. DH.H. 48/06 (026) 17 Te 1328 (30 October 1912).

39 Ibid. “efrâd ailelerinin bu misüllü tecavüzat ve ta’adiyata düçâr olmaları hem kendü üzerlerinde ve hem de mensub oldukları kıta’at-ı askeriyece ne derecelerde sûi tesir hâsıl eyleyeceği...”



## § 4.2 In Search of State Protection: Who Will Protect the Honor of the Soldiers?

As discussed in chapter 3, the war brought about the expansion of military power throughout the country owing to the declaration of the martial law. At the beginning of the war, on January 3, 1915, the Ministry of the Interior Affairs issued a general order to all provinces which read: “We are informed that in some places, the families of those soldiers – our soldiers who are ready to die to protect the faith, honor, and homeland – are being attacked and assaulted in their hometowns. As it is not desirable to hear of such cases, the protection of soldiers’ families is of great importance. Thus, such attacks should be prevented and those who dare to act to the contrary shall be arrested and summoned before the courts martial and condemned to severe penalties.”<sup>40</sup> This general circular was issued even before the proclamation of the provisional law authorizing courts martial to handle sexual assault cases involving soldiers’ families. This means the courts martial operated under an administrative measure (*idâri karar*) until the proclamation of the provisional law. On September 8, 1915, the Council of Ministers approved the official provisional law mandating that sexual assaults of members of soldiers’ families be taken to courts martial. The text in the Ottoman Code Book (*Düstur*) provides a brief description of the provisional law. The law stipulated that in times of mobilization – during the proclamation and continuation of martial law – rapes and assaults against wives, children, or any female relatives of soldiers be tried by martial courts and punished according to Article 206 of the Penal Code.<sup>41</sup> The bill was not in accordance with usual procedure for such cases. Under usual circumstances, the punishment of civilians

40 BOA.DH.EUM.MTK 79/34 1333 S 16 (3 January 1915).

41 “Seferberlikte idâre-i örfiyyenin ilân ve devamı müddetince berrü ve bahri erkân ve ümerâ ve zâbitan ve zabıt vekilleri ve zabıt namzetleri ve küçük zâbitan ve onbaşı ve neferât ve mensûbin-i askeriyenin zevce ve evlâdlarına ve ailelerinde bulunan mahremine karşı kânûn-i umûmî-i cezânın ikinci bâbının üçüncü faslıyla kânûn-u mezkurun iki yüz altıncı maddesinde münderic efalden birini irtikab edenlerin tâkib ve muhâkemesi divân-ı harblere aiddir.” *Düstur*, Vol.2, No.7, 716.

who assaulted soldiers' families was not under the jurisdiction of military authorities. Correspondence written by the Ministry of the Interior Affairs reads: "As a matter of fact, rape cases involving soldiers' wives or family members are not among military offenses. Nevertheless, it became necessary in the course of the war to investigate and punish those crimes in the military courts."<sup>42</sup> Military as well as civilian authorities might have thought that trials in courts martial would be more effective given that there was no supreme court above the military courts to reinvestigate the case. Their decisions were immediately applied. Thus, Ottoman authorities (especially the Ministry of War) attempted to prevent rape and violence targeting soldiers' families by authorizing the courts martial and executing sentences more effectively. At this point, it is important to underline the role of individuals calling on the state to take measures against such cases and to point out the bilateral relationship behind the state's measures. The social background of wartime legislation and policies, in which moral considerations played an important role, transformed perspectives on the limits of the private and public spheres with regard to family.

Let me now examine the exchanges between soldiers' families and state authorities with respect to sexual assault. First, I present the voices of women through the petitions they submitted to legal authorities. Second, I discuss the petitions of soldiers' addressed to the Ministry of War or to the Ottoman Parliament regarding sexual assaults that their families had suffered. Third, I consider complaints filed by locals, *muhtars*, and village elders. Finally, I mention reports written by local military officers such as those of Recruiting Office Chiefs (*Ahz-ı Asker Riyaseti*) and Gendarmerie Commanders (*Jan-darma Alay Kumandanlığı*).

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42 BOA. DH. EUM. ADL 23/31, 26 Temmuz 1332 (8 August 1916). "asker aileleri ve muharemine tecavüz esasen askeri bir cürm olmayub ancak hal-i harbin tevellid ettiği bir zaruret üzerine tecavüzet-ı vakianın takib ve muhakemesi divân-ı harblere tevdi' olunmuş..."

Throughout the war, many women communicated with the government by submitting individual or collective petitions.<sup>43</sup> These petitions have been evaluated by several researchers from different perspectives.<sup>44</sup> In this study, I consider these petitions as sources through which the extent of sexual violence as part of the homefront dynamic can be ascertained. Women as well as soldiers used petitioning as an instrument to remind the state of its duty to protect honor (*namus*) and dignity (*şeref*). They explicitly held the state accountable for rapes, abductions, assaults, and threats, thus inviting the government to take severe measures against the perpetrators of such offenses. As a result, the state gradually began intervening in the realm of the family. In part, this intervention was invited. However, it would be misleading to ignore the agency of military authorities to take strict measures as such affairs curbed the war effort.

The most common phrase in women's complaints regarding sexual assault is, in Ottoman Turkish, "ırzımızı paymal ettiler," meaning "they trampled our honor." Two women, Emine and her sister Havva from Akkilise, a village near the city of Konya, sent a telegram on November 24, 1915, directly to Talat Pasha, the Minister of the Interior Affairs.<sup>45</sup> They accused Captain Osman Ağa and his companions as rapists and aggressors who had trampled their honor. Emine and Havva said, "our husbands are fighting for the faith and the state, but here, Captain Osman Ağa's gangsters are raping us.

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- 43 In the scope of this study I include only the petitions of Muslim women in Anatolia. For a study on the petitions of Armenian women, see Kutluata, "Birinci Dünya Savaşı'nda Ermeni Kadınların Yazdıkları Arzuhaller." For a study evaluating sexual assaults and rape crimes of Armenian women, see Bjornlund, "A Fate Worse Than Dying': Sexual Violence during the Armenian Genocide."
- 44 Petitions are useful sources through which one can get an idea on people's demands from the government during the wartime. Many women submitted petitions to complain about privations, hunger, and other problems on the homefront. See Van Os, "Taking Care of Soldiers' Families: The Ottoman State and the Muinsiz Aile Maaşı," 103–104; Akın, "War, Women, and the State," 25–28; Akın, "The Ottoman Home Front during World War I," 122–178; Mahir Metinsoy, "Osmanlı Kadınlarının Gıda ve Erzak Savaşı," 56–61.
- 45 BOA. DH. EUM. 2. Şb. 35/1, (003) 11 Teşrinisani 1331 (24 November 1915). The letter begins with "we, the three of us, are soldiers' wives;" however, it was signed by only two women.

We are sisters. They beat us and abducted us from our village.”<sup>46</sup> The statement “fighting for the faith and the state” is a phrase commonly found in these petitions. Emine and Havva added something interesting at the end of their telegram: “For God’s sake, please save us from these Muscovites.”<sup>47</sup> By this, they equated an Ottoman military captain to those of the enemy nation.<sup>48</sup>

Another case exemplifies solidarity between families of soldiers with respect to a sexual assault that involved a war widow. Three women from İnegöl, Bursa, wrote a petition on December 25, 1914 to the president of Ottoman parliament addressing him as “father of our nation.”<sup>49</sup> They informed him that a municipal council member from Bursa, Hacı Ahmed, had abducted a war widow, Ayşe, and taken her to his farm. These three women emphasized crucial points in their attempt to attract the attention of parliament. They employed key concepts of war propaganda such as protection of the faith, the nation, justice, and honor in their letter. Moreover, they wisely articulated the wartime circumstances with which soldiers’ families were faced on the homefront. The letter begins: “We are at war with the enemies of Islam and faith. Our sons are being martyred. Their women are the honor of faith and fatherland.”<sup>50</sup> These expressions equated their own situation with the honor of religion and the state and were among common phrases that can be found in such letters. They continued as follows:

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46 Ibid. “Üçümüz de asker karısıyız. Kocalarımız orada elyevm din devlet için muharebe ediyor fakat burada Yüzbaşı Osman ağanın çeteleri zorla bizim ırzımıza geçiyorlar. Biz iki kız kardeşiz. Köyümüzden döğerek tekmeliyerek başka köye götürdüler.”

47 Ibid. “Allah aşkına bizi bu Moskoflardan kurtarınız.”

48 Ibid. The second item of correspondence in this file was from the governor of Konya. The governor said that an investigation had been conducted about this case. He claimed that Captain Osman had been appointed to track bandits and that these petitions were meant to prevent him from doing so. Eventually, the martial court found him not guilty.

49 BOA.DH.EUM. 2. Şb. 35/1, (102) 12 Kanunuevvel 1330 (25 December 1914). “Millet[in] babası efendimiz.”

50 Ibid. “Cümle İslam din düşmanları ile muharebe ediyoruz. Evladlarımız muhârebede şehid oluyor. Haremleri din ve devlet namusudur.”

They took the widow of a martyr from İnegöl to Bursa promising to pay her a salary [family allowance]. They kept her at municipal council member Hacı Ahmed's farm. They raped her. They made her a whore. Hacı Ahmed has syphilis. Now this soldier's desperate widow has syphilis, too. She is still at Hacı Ahmed's place as a concubine.<sup>51</sup>

It is interesting that they used notions of honor, faith, and nation to defend Ayşe against a municipal official. The mention of venereal disease could also be a conscious means of stigmatizing Hacı Ahmed. In the next part of their letter, the women reminded the government of its promises at the beginning of the mobilization, and they finished their letter with a demand for justice.

The honor of a soldier, honor of the faith and state have been destroyed. How can this happen? How does your dignity accept this? Will the homeland embrace the syphilitic man who took a Muslim woman as his concubine? For the love of God, please, avenge the honor of a Muslim martyr. We beg your mercy. In the newspapers we see the promises that our national assembly has made. God forgive you. Investigate the cruelty of infidels who destroy honor. We want justice, dear sir.<sup>52</sup>

They signed the letter with reference to their own belonging to soldiers' families: wife of soldier, Ayşe; a soldier's mother-in-law, Fatma, and the widow of a martyr Medri [*sic*]. It is possible to interpret this solidarity as a signifier of the demand for justice for all soldiers' families which stemmed from fear that in the absence of their men, others in the town - officials, wealthy townsmen, or local military commanders - would be encouraged to attack soldiers' families if their vulnerability was exposed as such. By establishing relations between different connotations and notions, such as the reasons for the war as propagandized by the government itself - "protecting the state and faith" - and the state's promises to soldiers and their families, they

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51 Ibid. See Appendix C, Quotation 1.

52 Ibid. See Appendix C, Quotation 2.

sought justice for a widow, emphasizing her Muslim identity. Upon receiving this letter, the Ministry of the Interior Affairs sent it to the province of Hüdavendigâr (Bursa) and asked for an investigation. The governor wrote a detailed answer which is worth quoting here.

It was notified to our office that Ayşe bint-i Meryem was abducted and taken to the farm of a member of the municipal council, Hacı Ahmed, as a concubine. The aforementioned woman's husband did not return from the Balkan Wars and she was not welcomed into her mother-in-law's place. Therefore, she was drifted around, and at one point she went to Ankara and then to İnegöl, where she was accused of immorality together with another woman called Meryem. Thus, she was taken to Bursa again and was suspected of having a criminal [prostitution] background according to police and gendarmerie reports. Eventually, she began working for Hacı Ahmed Efendi as a servant where she is taken care of just like an adopted child. Since Hacı Ahmed Efendi discouraged her from prostitution, in our opinion it is better for her to stay there instead of wandering around vagrantly. Thus, our police department decided there is no need to take Hacı Ahmed's case to court.<sup>53</sup>

Obviously, we cannot know which story is true, but it is unlikely that these three women who wrote to parliament had anything to gain by giving false or misleading information. Most probably they knew Ayşe from their town. The women considered each other's situations to be alike in the sense that they were all soldiers' families. They might have thought that once rumors emerged that widows, mothers, or any other relatives of soldiers were not under the protection of the government – and even worse, that the government turned a blind eye to abductions, rapes, and assaults – nothing would stop other men from taking advantage of this. In Ayşe's case, the government apparently turned a blind eye by leaving Ayşe at Hacı Ahmed's place instead of paying her an allowance.

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53 BOA.DH.EUM.2. Şb. 35/ 1, (104) 9 Şubat 1330 (22 February 1915). See Appendix C, Quotation 3.

Among the archival documents there are similar complaints filed by soldiers themselves. Apparently, their families informed them about such instances in letters asking for help. The soldiers deliberately reported these cases to the Ministry of War or to the Ottoman parliament. One interesting case involved a soldier's sister. Mustafa from the village of Kemer near the town of Salihli in Aydin province was a member of Second Army stationed in Edirne. Mustafa wrote a petition on January 9, 1915 to the Ministry of Justice to be conveyed to the president of the Ottoman parliament. In his letter he said that fifteen days earlier, townsmen raided his sister's house and attacked her. The perpetrators threatened her continuously after the event. He wrote that he had informed local authorities in Edirne and asked the office to inform the Ministry of Justice of the case. After a few days, he received another telegram from his sister saying that she was again attacked in the middle of the night and that other women in the neighborhood had rescued her. Mustafa wrote to the Edirne prosecutor once again and was told that because of the lack of gendarmerie forces in that village, the attackers had not been arrested. After detailing the negligence of local authorities, he continued his letter, reminding the Ottoman government and parliament of its promises at the beginning of the war regarding the protection of soldiers' families.

Your honor, the declarations of the Deputies and the Notables Chamber addressing the military were read to our units on December 24, 1914. Here, I would like to write down those words as far as I remember. "The day of revenge that the whole nation, from elders to the young and from martyrs to the living, has been awaiting has come at last. You, together with our allies, are fighting against the Muscovites again, the biggest enemy of the Ottomans and the Muslims. Take revenge for those houses they burned, the wounds they opened, and the martyrs they stepped on. Do not ever think about the families you left behind. They are entrusted to us by God." Your honor! I expect only the protection of my sister's rights and the punishment for

the perpetrators by our constitutional government of the Ottoman State.<sup>54</sup>

Mustafa almost quoted the declaration by the government that had been read in military units with special emphasis on the protection of families.<sup>55</sup> This implied the contract between the government and the soldier in which they were united on the idea of “protecting honor.” Finally, Mustafa asked not only for the perpetrators to be punished but also the police officers in his town for their negligence. He continued, “[I ask you to punish them] because I am soldier. I cannot leave here and go there to follow up on this case. I can only entrust my family to the great conscience and justice of our government of the Constitutional Ottoman State with my best thoughts for the victory of our nation, army, and navy.”<sup>56</sup> These lines indicate the basic contract between soldiers and the state regarding the protection of their families. Also, the way that he signed his letter in which he emphasized his Turkish identity is related to the same concern: “From the Second Army unit, yours, ready to renounce his life for the nation, son of Turk, soldier of the Turks.”<sup>57</sup> In contrast to his bitter tone throughout, he added a desperate postscript to his letter: “As telegrams arrive [from my sister], I crave to commit suicide. I can’t talk about this to any of my companions and will never do so.... My sister filed a complaint, as well, yet it seems that the police prosecutors did not pay attention to it. I present this case to your conscience and kiss your hands your honor, sir.”<sup>58</sup> Finally, the Ministry of the Interior Affairs sent a

54 BOA.DH.EUM. 2. Şb. 35/1, (92). 27 Kanunuevvel 1330 (4 January 1915). See Appendix C, Quotation 4.

55 For the original statement see *MMZC*, Term 3, Vol. 1, Year. 1, 21 December 1914, 26.

56 BOA.DH.EUM. 2. Şb. 35/1 (92), 27 Kanunuevvel 1330 (4 January 1915). “Çünkü bendeniz askerim. Tâkib-i dâ’va için oralara kadar gidip intikam alamayacağımdan hükümet-i meşrûti-yi Osmaniyemizin adaletine havale ederek milletimizin ordumuzun donanmamızın muzaffer olmasını niyâz ederek pek âlî olan vicdânınıza ailemi terk ederim.”

57 Ibid. “ikinci ordu efradından milleti için hayatım vakf eylemiş olan Türk oğlu Türk askeri”

58 Ibid. “Telgraf geldikçe intihar edeceğim geliyor. Hiçbir asker arkadaşşıma meseleyi açamıyorum ve açmayacağım.... Hemşirem da’va ettiği halde kaza-yı mezkur müddeî umûmi komiser bey nazar-ı ehemmiyete almadığı anlaşılıyor. Vicdan-ı selimiye yine havale ederek birader-i ‘alilerin ellerinden öperim efendim hazretleri.



notice to the province of Aydın asking them to investigate the events. The province replied that the perpetrators were arrested but not taken to the court martial since the event occurred before the general order authorizing martial courts to protect soldiers' families.<sup>59</sup>

In some cases, Recruitment Offices (*ahz-ı asker şubeleri*) attempted to initiate investigations regarding assaults of soldiers' families with no official complaint from women or soldiers. For instance, on January 18, 1917, the Third Army Command (*Üçüncü Ordu Kumandanlığı*) reported that the office had carried out an investigation following gossip in the city that a certain Salih Beyzade Mehmed, a notable of Tokat, had been seducing desperate women with the help of his own wife.<sup>60</sup> The commander stated that Salih "a man of dubious morals" sat behind curtains and doors and secretly watched the women who visited his wife at home. With the help of his wife and, the commander wrote, owing to the "women's weakness and factors of necessity" (*zaifiyet-i nisvan ve saike-yi zaruret*), he seduced those whom he fancied. Recently, the letter read, gossip had arrived to the commander that Salih had seduced the daughters of Osman Bey (who was a deceased colonel of the gendarmerie) in the same way. The commander sent his report to the Ministry of War urging it to take action against those insulting the morality and honor of soldiers' families. He added that soldiers should be spared any worries regarding the honor of their families in order to stay focused on their military duties in battle. The commander requested the banishment of Salih as an administrative measure because current law did not apply to his case. However, gossip was not reason enough to enforce the law in Salih's case. The office of the governor of Sivas (the province of which Tokat was an administrative district) indicated this fact in correspondence addressed to Enver Pasha. The office concluded that despite the gossip regarding Salih's relationship with the daughters of Osman Bey, authorities were unable to prove it and no official complaints had been filed by the women.<sup>61</sup> Eventually, trial or administrative measure was taken against him. However, cases like this

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59 BOA. DH. EUM. 2. Şb. 35/1 (106) 12 Şubat 1330 (25 February 1915).

60 BOA. DH. EUM. ADL. 32/28 (011) 1335 B 16 (8 May 1917).

61 Ibid.

prompted discussions among civil and military officials about how to react to illicit relationships if no complaints of sexual assault were filed or if the relationship was established on a voluntary basis. Could or should military or civilian authorities intervene in such cases? This topic will be discussed under the heading of Adultery Bill in the following section.

Another source through which sexual assaults are revealed the weekly reports by local military authorities, especially gendarmerie forces, to the governors of their districts. For instance, the commander of gendarmerie regiment (*jandarman alay kumandanı*) in Hüdavendigâr province reported four criminal cases in the districts (*livas*) of Söğüt and Ertuğrul on December 30, 1915.<sup>62</sup> Two of the four were sexual assaults and the other two were cases of theft. One concerned an attack of five women, among whom was a soldier's wife, while they were on their way to Eskişehir together with the local headman (*muhtar*) of their village, Hasan Ağa, to go shopping. Some other armed villagers stopped them along the way, stabbed the *muhtar*, and raped the women. The attackers were arrested and summoned before the courts martial. Another case concerned Captain Süleyman, the Head of the Subsistence Office (*İaşe Memurluğu*), who was caught raping Ali Osman. (It was not indicated whether Ali Osman was a minor.) The document says Ali Osman was rescued; moreover, the captain had been previously caught having an affair with a woman. The subsistence offices were the main points from which food was distributed during the First World War. Apparently, Captain Süleyman used his position to abuse men (or boys) and women who were in need. There is plenty of evidence in the archives similar to the case of Captain Süleyman in which military officers themselves were accused of sexual assault.<sup>63</sup>

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62 BOA. DH. EUM. 2. Şb. 35/1 (028) 17 Kanunuevvel 1331 (30 December 1915).

63 For instance, in a telegram eleven men from Malatya complained to the Ministry of the Interior Affairs that their "honor was trampled by a few gendarmeries in the region" see BOA.DH.EUM. 2. Şb. 35/1 (071) 18 Ağustos 1331 (31 Ağustos 1915). The ministry received not only cases of sexual assault, but also cases of property violation and homicide cases for which the members of the military were accused. For a homicide case in which two soldiers attacked and murdered two women, see BOA. BEO. 4495/337074 11 Kanunuevvel 1333 (11 December 1917); for a case of the violation of private property by gendarme and its investiga-

It is arguable that the Ottoman Anatolian countryside was in complete disorder due to the high number of rapes, abductions, and assaults against women in soldiers' families. The old codes of moral principles – the “collective guardianship” of morality – were shaken by the wartime circumstances, and apart from severe punishment no mechanism remained to protect soldiers' families from sexual exploitation.<sup>64</sup> This situation contributed to the perception of moral degeneration and social crisis (*ictimai buhran*) during and after the war. On the other hand, victims of such crimes called for action and held the state accountable for their vulnerability. Eventually, this contributed to the widening of the scope of state intervention in the sphere of family issues.

#### 4.2.1 *Punishing Sexual Assaults: The Legal Process in Martial Courts*

It is easier to find the final decisions of sexual assault trials than the initial complaints or petitions that would more fully complete the story. As discussed earlier, starting in early 1915, the courts martial began trying sexual assault cases involving members of soldiers' families. Some exemplars in the archives demonstrate a pattern in the punishments of such offenses as well as the procedures of the military tribunals. The military courts tried rape and sex crimes according to the Ottoman Penal Code and forwarded their decisions to the Ministry of War. In most cases, Articles 206 and 198 were applied. While the former stipulated the punishment for rapes involving victims of fifteen years old or younger, the latter applied to rape cases that included abduction. The Minister of War, Enver Pasha approved the decisions to be issued as an imperial order (*irade-i seniyye*), generally on his own initiative. Once the decision was approved by imperial order, the Ministry of

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tion which was instigated upon the receipt of a telegram from five women (soldiers' wives) from Bursa, see BOA. DH. EUM. 2. Şb. 35/1 (034). Eventually, the Directorate of Police issued a circular to all provinces on May 27, 1915, ordering that attacks on soldiers' properties be prevented. See BOA. DH. EUM. 2. Şb. 35/1 (142) 14 Mayıs 1331 (27 May 1915).

64 Ahmed Emin described traditional forms of moral surveillance of women in a neighborhood as “collective guardianship,” see Yalman, *Turkey in the World War*, 232. See also chapter three on the issue of collective responsibility for protecting morality.

War executed it. The punishment for a rape crime involving a soldiers' female relative (usually his daughter or wife) was three years of hard labor. The offender faced harsher penalties if he had resorted to violence, caused damage (either physical and mental), or committed the rape together with another offense such as theft or breaking into private property. In such cases the punishment could increase to up to seven years of hard labor accompanied by the loss of one's civil rights (*hukûk-u medeniyyeden ıskat*) in addition to paying all the expenses of the witnesses and the court. As a general rule, court martial decisions included the public disclosure of the offender (*teşhir*) as part of the punishment. In some cases, soldiers themselves were the perpetrators of such crimes and were punished according to the Ottoman Penal Code as well as the Military Penal Code. The cases below illustrate the decisions in such tribunals.

The case of Menevişe [*sic*], a soldiers' wife from the village of Çakıl near the town of Harput, was brought before the martial court in Elaziz. A certain Hacı İbrahim was accused of breaking into her house and raping her. The court sentenced him to three years of hard labor based on Article 198 of the penal code. The decision was approved by an imperial order on May 20, 1916. The Ministry of War was the executor of the order.<sup>65</sup> In another case, the Konya court martial tried a certain Hacı Hüseyin for the abduction and defloration of Feride, the sister of the soldier Mehmed. Hacı Hüseyin was sentenced in absentia to death – moreover, the confiscation of his property was ordered – according to the Article 206 of the penal code. The court decision arrived at the grand vizierate signed by Enver Pasha. The vizierate approved the court decision but decided to retry Hacı Hüseyin upon his arrest.<sup>66</sup> In another case, Dimitri was sentenced to three years of hard labor after he was accused of raping a fourteen-year-old daughter of a soldier.<sup>67</sup> In another case, a Circassian refugee named Hasan broke into a soldier's wives house in the night and raped her. The court martial of Izmir sentenced him to seven years of hard labor based on the Article 198 of the Penal Code, relieved him

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65 BOA. İ. DUİT. 171/12 7 Mayıs 1332 (20 Mayıs 1916).

66 BOA. İ. DUİT. 174/20 2 Haziran 1333 (2 Haziran 1917).

67 BOA. İ. DUİT. 173/59 21 Teşrinievvel 1332 (3 November 1916).

of his civil rights, and charged him court expenses together with the expenses of witnesses (amounting to 249 piasters).<sup>68</sup> In another case, a certain İbrahim abducted a soldier's wife and raped her.<sup>69</sup> He was sentenced to the same punishment as Hasan. In a case of abduction and rape, the court martial of Ankara sentenced a perpetrator to five years of hard labor.<sup>70</sup> The court martial of Ankara sentenced two townsmen accused of raping Azime, a soldier's wife, to three years of hard labor.<sup>71</sup> However, if rape was not accompanied by abduction or breaking and entering, the standard punishment was three years of hard labor.

In a case before the Izmir martial court, the perpetrator was a soldier while the victim was the wife of another soldier. A labor battalion sergeant named İsmail had raped Cemile, the wife of the soldier Veli, and the court sentenced him to five years of hard labor according to Article 198 of the penal code, demoted his military rank, and relieved him of his civil rights.<sup>72</sup> There are many cases in which soldiers were the perpetrators of rapes ranging from statutory rape to forced intercourse with fellow townswomen. They were sentenced to heavy penalties such as the confiscation of their property, dismissal from duty (in the case of homosexuality), and the standard penalty of hard labor.<sup>73</sup>

For an example of an adultery case – intercourse with the consent of both parties – Hatice's trial in the Ankara martial court can be examined. A soldier's wife, Hatice, was involved in consensual intercourse with Osman, a fellow townsman from her village of Kuruçay. She became pregnant, and in order not that it not be revealed, she committed feticide. The martial court in Ankara sentenced Hatice to fifteen years of hard labor on June 22, 1917, based on Article 174 of the penal code.<sup>74</sup>

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68 BOA. İ. DUİT. 171/99 9 Temmuz 1332 (22 July 1916).

69 BOA. İ. DUİT. 171/68 26 Haziran 1332 (9 July 1916).

70 BOA. İ. DUİT. 171/10 7 Mayıs 1332 (20 May 1916).

71 BOA. İ. DUİT. 171/28 11 Mayıs 1332 (24 May 1916).

72 BOA. İ. DUİT. 171/7 27 Mayıs 1332 (9 June 1916).

73 For such cases see, BOA. İ. DUİT. 171/41 11 Mayıs 1332 (24 May 1916) , İ.DUİT. 171/35 18 Mayıs 1332 (31 May 1916), İ. DUİT. 171/33 15 Mayıs 1332 (28 May 1916).

74 BOA. İ. DUİT. 171/66 22 Haziran 1332 (5 Temmuz 1916).

These cases are abundant in the Prime Ministry Ottoman Archives. The main duty of the martial courts was to ensure that the current Ottoman Penal Code was thoroughly applied; it was not to introduce new law on the punishment of sexual assault. The involvement of the Ministry of War indeed served this purpose as it was actively involved in the trial processes.

### § 4.3 Punishing “Unfaithful” Wives: The Adultery Bill of 1916

Cases of infidelity involving soldiers’ wives was a major concern in combatant countries. Although these cases were treated as crimes, infidelity and adultery are mutually established relationships, and thus there is no victim. As Lisa M. Todd stated in her article on German women and sexual infidelity, this kind of relationship troubled German authorities:

As we have seen again and again, whether in reports of a teenager flirting with soldiers in Düsseldorf or a married woman sneaking around with a Russian in Regensburg, it was not so much the sexual activity that disturbed Germans, it was the fact that many of these women were entering affairs of their own free will - engaging in intimate activities because they wanted to, not out of marital or financial obligation.<sup>75</sup>

The imagery of wives who were “enjoying their lives” openly contradicted the service that was expected from them.

During the First World War, a remarkable measure by combatant countries to protect morality was to segregate women on the homefront from prisoners of war (POWs) and from soldiers that arrived from the colonies. In Germany, radical measures were taken to prevent the interaction of women with POWs working in industry or agriculture, such as declaring the names of “immoral” women in newspapers and taking legal measures beyond public sanctions.<sup>76</sup> Based on the Prussian Siege Law of 1851, German authorities

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75 Todd, “The Soldier’s Wife Who Ran Away with the Russian,” 277.

76 Grayzel, *Women and the First World War*, 67. Todd called this situation “press pillory.” See Todd, “The Soldier’s Wife Who Ran Away with the Russian,” 269.

introduced measures to prevent contact between POWs and civilians. Todd stated that thousands of German women were arrested as a result of relationships with POWs.<sup>77</sup> Furthermore, on the local level, the names of these “promiscuous” women were posted on the church doors as public humiliation. German authorities identified these cases of “moral decline” in German society with “national decline.”

One reason for this tendency to conflate female licentiousness and national decline was the pervasive, albeit contested, bourgeois code of sexual behavior and separate spheres, both of which were predicated on the innate purity and sobriety of women. For many Germans, ‘Deutsche Frau - Deutsche Treue’ was more than a truism. The immoral behavior of war wives seemed to challenge that image. War-time reports increasingly complained that “the scandalous behavior of German women is starting to tarnish our reputation abroad.” One of the roles of the wartime German woman was to express the gravity of the situation at the front by the seriousness of their activities on the homefront. Women's chief tasks therefore included preserving the moral bedrock of society on which to build a successful postwar nation.<sup>78</sup>

In another context, the war was characterized by fear of the “mixture of races” due to the mobilization of men in the colonies. Black troops in the United States and the French colonial army were considered threats to the preservation of morality on the homefront. Nonwhite troops were isolated from white ones even in their place of work. Especially in France, Senegalese troops were both praised for their skill as warriors, but at the same time these “savage qualities made them a potential sexual and moral threat to the French civilians.”<sup>79</sup> A similar attitude was present in the British army vis-à-vis Indian troops. It was feared that the war would eliminate established inequali-

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77 Todd, “The Soldier’s Wife Who Ran Away with the Russian,” 264.

78 Ibid., 271.

79 Grayzel, *Women and the First World War*, 74.

ties between white women and Indian men.<sup>80</sup> Not only men but also the women of colonized regions were a danger. An Australian government minister declared that “Cairo will do infinitely more harm to Australia than all the Turks will do in Gallipoli.”<sup>81</sup> Race and nation appeared as further standards for moral control.

In the Ottoman Empire, the connotations of adultery were similar to those in other major combatant countries with respect to moral decline. However, the concerns did not result from interaction among foreign nationals or POWs with Ottoman women. Mostly it was due to the consensual relationships of soldiers’ wives. In this regard, I evaluate a legislative attempt by the Ottoman Ministry of War that indicates the growing concern for preventing adultery among the female relatives of soldiers, particularly their wives. I believe that this attempt has remained unexplored because the bill was not enacted. However, this detail does not change the fact that such an attempt by itself importantly reveals the extent of the “problem” and the willingness of the military to intervene in sexuality in the name of protecting family.

Almost a year after the martial courts were authorized to try sexual assault cases involving soldiers’ families, a new debate started concerning the authorization of Military Chiefs of the Recruitment Offices (*ahz-ı asker şube-yi reisi*) and high-ranking commanders to litigate in adultery (*fi’il-i şen’i*) cases – that is to say, whether military men should be able to file complaints and initiate a legal process on behalf of soldiers against their unfaithful wives. On April 26, 1916, the Ministry of War presented a draft of a new provisional law that supplements the earlier one regarding the protection of soldiers’ families. The draft read,

according to Article 201 of the Penal Code, adultery charges can be brought only by the husband, or by parents (legal guardians) in the husband’s absence. If no complaints are filed by these parties, the martial courts cannot undertake an investigation. The fact that sol-

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80 Ibid., 76.

81 Ibid., 72.



diers fighting on the battlefield or taken as prisoners of war have no means to file complaints raises the issue of the morale of soldiers. And because allowing soldiers' female relatives who commit adultery to go unpunished would provoke protests in the public opinion, a bill appears to be vital that would substitute the complaints of husbands or parents with those of the highest ranking military commanders and the Chiefs of Recruitment Offices in order to protect the honor of soldiers.<sup>82</sup>

Although the bill was not enacted, debate over the bill strikingly relates to the morality concerns. On one hand, initiatives taken by the Ministry of War enlarged the purview of public realm, bringing private cases under the jurisdiction of martial courts. On the other, once this distinction between public and private was blurred, the notion within Ottoman law on family affairs – which strictly defined the boundaries of private and public matters – was invalidated. From this point of view, morality, honor, and family cases stood in the center between public and private law.

Again, the context of war is crucial for making sense of military intervention in such a delicate issue. The possible grounds for this intervention can be summarized as follows: First, many women who seeking financial help or a means of protection engaged in extramarital relationships, or else they were encouraged to have such relationships as a fate better than prostitution. Second, rumors of unfaithful wives deeply affected the morale of soldiers and in many cases resulted in their desertion. Third, the lack of protection for soldiers' families, especially for women, discredited the propaganda of the Ottoman government during the First World War. For example, leaflets dropped by British planes provoked soldiers by mentioning unfaithful wives and hungry children on the homefront.<sup>83</sup> Of course, not all extramarital relationships were the result of wartime hardship; there were consensual relationships in the absence of dominant males. The draft law on adultery

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82 BOA. BEO. 4430/332225 13 Nisan 1332 (26 April 1916). See Appendix C, Quotation 5.

83 Quoted in: Akin, "The Ottoman Home Front during World War I," 161.

was aimed at preventing such voluntary relationships by charging the military with the policing morality.

The draft required approval of the Council of State to be enacted. The Council of State consulted with the Ministry of Justice on the feasibility of such a regulation. Eventually, the Ministry of Justice prepared a detailed inquiry into the possible consequences of the bill and concluded that it was not proper to issue it as a law. The statement of the Ministry of Justice argued that adultery offenses belong to the realm of private law, but the bill prepared by the Ministry of War would bring the issue into the purview of criminal law. This point was central to the issue of the legal and social status of soldiers' female relatives. Is the promise to protecting families valid in cases where the woman was in a voluntary relationship with other man? If so, whose rights should be protected: those of the women or the soldiers?

The Ministry of Justice listed two main arguments against the bill. The first issue concerned the elimination of the agency of husbands. Accordingly, if local military officials could be litigants, this would result in ignoring the rights of the husband to claim or disclaim charges made on his behalf. Second, the statement emphasized the "nature of adultery" with reference to "moral degeneration." It was asserted that moral degeneration does not appear suddenly; therefore, it needs to be observed over time. According to the statement, only the close relatives of a woman can ascertain moral degeneration and take action accordingly. The only person to decide whether to file a complaint and consider it thoroughly is the husband, because he is the only one who knows the bitter consequences of accusing his wife of adultery. Thus, the husband was expected to behave meticulous enough to bring the case to the court. The statement bitterly criticized the adultery bill in the sense that it substituted litigators (husband or parents) with military authorities, thus forcing prosecution offices to try women who had allegedly committed adultery. Under usual conditions, if someone other than the husband or parents informed prosecutors of adultery cases, their claims would remain as an act of informing, *ihbar*. However, if the draft were accepted and military authorities gained the right to open cases on behalf of husbands or parents, prosecution offices would have to charge the woman immediately. The military was seeking the right to be the sole authority over the control of ex-

tramarital relationships, as if it were a party to – that is, “victim of” – the crime. Accordingly, transferring adultery cases from private to criminal law would result in conflicts. The Ministry of Justice clearly noted that while private cases can be dropped by the decision of the litigator, public cases remain open until a final decision is made. The statement also referred to the elimination of the power of civilian authorities. While a mechanism of denunciation was in effect for adultery cases in which prosecutors had discretionary power to decide whether a case should be taken to court, the draft law proposed that the complaints – *şikayet* – of military officials were equivalent to those of husband or parents. Therefore, the discretionary power of civilian authorities would be eliminated. Another point of objection was that the bill contradicted the principle of “unity of law.” It would apply only to a certain social group in specific cases. For these reasons, the Ministry of Justice opposed the adultery bill. The Council of Ministers, deferring to the reports of the Ministry of Justice and the Council of State, rejected the draft law proposed by the Ministry of War.<sup>84</sup> For our purposes, the draft shows the willingness of military authorities to regulate male/female relationships based on concerns about protecting morality so that these relationships would not harm mobilization efforts.

My contention is that the authorization of military courts to try sexual assaults of soldiers’ female relatives was the beginning of subsequent interventions into the family during the First World War. It was followed by unsuccessful legislation – the Adultery Bill – and continued with a more deliberate step: the Family Decree of 1917. The objections of the Ministry of Justice summarized above would partly be eliminated in the legislation on family formation and dissolution.

#### § 4.4 The Ottoman Rights of Family Decree of 1917

The Ottoman Rights of Family Decree of 1917 (*Hukuk-u Aile Kararnamesi*) is among the most controversial legislation of the war. First, its content and

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84 BOA. MV. 203/34 1334 Za 15 (13 Eylül 1916).

particularly its articles regarding women's right to divorce constitute an on-going debate in the literature.<sup>85</sup> Second, the timing of the introduction of family reform raises an important question: why did Ottoman governments bypass family reform in the age of the Tanzimat and introduce it only during the turmoil of the First World War?<sup>86</sup> The literature on the Family Decree has emphasized two dynamics in answer to this question: one, the ruling party benefited from wartime conditions and issued a family law that had long been on its agenda, and two – less emphasized in the literature – wartime conditions necessitated the profound change in state intervention in the realm of the family. To present a balanced view, it is possible to claim both are true. The family issue and reform had been on the agenda of intellectuals since the mid-nineteenth century, but the social conditions that war brought about constituted the foundation for family reform. The war affected many families, caused great disturbances in the formation and dissolution of families, and diminished the basic functions of the family. A recent study by Nihan Altınbaş argues that social conditions were central to legislation on the family.<sup>87</sup> She considers the modernist motives of the ruling party in addition to the expectations of Muslim middle-class women including the construc-

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- 85 For instance, Judith Tucker concentrated on whether the Family Law was a step towards gender equality and the limitation of male social power. She compared the old and new regimes with regard to marital rights, marriage obligations, and female-initiated divorce in Ottoman Syria and Palestine. She concluded that the Ottoman Family Law of 1917 did not expand women's right to divorce because the previous application of the Hanafi doctrine was already quite flexible. See Tucker, "Revisiting Reform." A comprehensive review of the literature on the Family Decree of 1917 is beyond the scope of this study. For a survey of this literature, see Altınbaş, "Marriage and Divorce in Early Twentieth Century Ottoman Society: The Law of Family Rights of 1917," 2–9. On an analysis of the Family Decree from the point of changing understanding of governmentality, see Martykánová, "Matching Sharia and 'Governmentality'."
- 86 This question, as far as I could tell, was posed in one of the first accounts of the Family Decree: Findikoğlu, "Aile Hukukumuzun Tedvini Meselesi." In fact, during the Tanzimat era several steps were taken by the government to remove the burden of traditions such as "brideprice" from marriage ceremonies. See Alkan, "Tanzimat'tan Sonra 'Kadın'ın Hukuksal Statüsü," 90–91; Ortaylı, "Ottoman Family Law and the State in the Nineteenth Century," 327.
- 87 Altınbaş, "Marriage and Divorce in the Late Ottoman Empire," 114–125.

tion of the nuclear family among the reasons for the introduction of a family law. She also mentions that the new family law allowed remarriage for lower-class women who had lost their husbands, by which they could make a living, constituting another reason for the introduction of the family law.<sup>88</sup> İlber Ortaylı's article evaluates the Family Decree within the context of legal developments and the adoption of a modern legal system throughout the nineteenth century.<sup>89</sup> He considers the Family Decree to be part of the attempts at standardization by the Ottoman government (since the decree embraced all subjects of the Ottoman Empire regardless of religious affiliation) starting from the time of Mahmud II.<sup>90</sup> He emphasizes the role of modernist ideology in such institutional changes. "Changes in such institutions as marriage, divorce and inheritance oftentimes were surprisingly far-reaching. The essential importance of these changes lies in the presence behind them of a modernist ideology and of a debate supporting that ideology."<sup>91</sup> Accordingly, the Family Decree was a "natural outgrowth" of other financial and administrative reforms as well as social and legal changes initiated by the Tanzimat bureaucracy which brought about a new perspective on the family as a financial unit to be controlled and inspected by the state.<sup>92</sup> On the other hand, other scholars emphasize the religious nature of the decree – the articles were adapted from the four main Sunni schools – and claim that due to the religious underpinning of the legislation, it is misleading to evaluate it within the context of attempts at modernization. Fındıkoğlu argues against this line of thought and presents the abolishment of the decree in 1919 upon the opposition of both Muslims and non-Muslim religious scholars as proof that the decree was neither welcomed nor accepted as a "religious" text.<sup>93</sup> The religious underpinning of the legislation, according to him, as well as to other

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88 Ibid., 116.

89 Ortaylı, "Ottoman Family Law and the State in the Nineteenth Century."

90 Ibid., 321–322.

91 Ibid., 322.

92 Ibid., 324.

93 Fındıkoğlu, "Aile Hukukumuzun Tedvini Meselesi," 709.

scholars, was just a means of eliminating religious opposition and legitimizing the legislation.<sup>94</sup>

Instead of dealing with these questions, I direct my attention to aspects that situate family reform in the wider context of discourses of moral decline. To this end, the following pages answer two questions: How did critiques of dominant social values and norms play a role in the introduction of family reform? How were moral concerns and the idea of regenerating the family reflected in the legislation? To address the latter, I use the justificatory text (*esbâb-ı mucibe lâyihası*) together with the body of the legislation, while to answer the former, I present critical voices in the late Ottoman intelligentsia that paved the way for fruitful debate on the limits of Islamic Law and the role of social norms in Ottoman Muslim family formation.

#### 4.4.1 *Mores and Laws*

As mentioned earlier, the discourse on moral decline was associated with a so-called family crisis in the late Ottoman context. A close look at the works of late Ottoman intellectuals reveals narratives mostly centered on family and the relationships between men and women. The themes of the emancipation of women, family tragedy, critique of over-Westernization along with critique of backwardness were endemic to Ottoman literary works.<sup>95</sup> The destructive effect of war was reflected in themes calling for urgent discussion of national revival. A national revival was only possible by modernizing the family; however, the social values and superstitions of the society stood in the way. The main point of this theme is as follows: The ways of forming families (segregating women and men until marriage is realized) weakens the

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94 Aydın, *İslâm-Osmanlı Aile Hukuku*, 178.

95 For a good summary of these literary works, see Mardin, "Super Westernization in Urban Life in the Ottoman Empire in the Last Quarter of the Nineteenth Century." For an epistemological evaluation of Tanzimat novels, see Parla, *Babalar ve Oğullar*. In Cem Behar and Alan Duben's work one can follow how family tragedies were reflected in the narratives of the turn-of-the-century novelists. See Duben and Behar, *Istanbul Households*. Also see Zafer Toprak's analysis of novels focused on family and women in the context of the late nineteenth century and the early twentieth century: Toprak, *Türkiye'de Kadın Özgürlüğü ve Feminizm (1908-1935)*.

foundations of the family resulting in an unhappy marriage. Spouses remain bound to each other because divorce is not welcomed in the society. This unhappy environment such couple's children who reproduce this unhappiness in every sphere of their lives. The values of such families have no rational basis; roles and responsibilities of family members are not defined. The children are not sufficiently educated within the family (due to the early marriage or simple ignorance of the parents), and they reproduce the same problems in their own families.

The crisis of family came to be associated with the crisis of morality because the foundations of the family as an institution are integral to the values of a given society. For instance, what prevented women and men from getting to know each other before marriage? The answer is the moral codes of the society. What prevented women from taking an active role in Ottoman public space? Why did Muslim women not work outside their homes in the cities? These questions are multiple, but the answer is more or less the same. Eventually, norms had to change in order to regenerate the Ottoman family and strengthen the idea of family reform. The Family Decree is a result of these concerns attempting to change the perception of morality, recognize the "will" of women, and define duties and rights, both of which are strongly related to morality. The First World War revealed hideous realities and functioned as an engine for legal and perceptual change in the realm of the family. But how does one change the norms that constitute the basis of law-making? Islamic Law had claimed the realm of the family for hundreds of years; how could secular powers intervene in this sphere without provoking an enormous reaction? I believe two factors played important roles: first, new interpretations of lawmaking in Islam, and second, the discourse of the salvation of the nation. While the former enabled the possibility of reform in the family, the latter strengthened it by emphasizing wartime circumstances and linking the well-being of the family with that of the nation. The persistence idea was that the degeneration of Muslim families – and thus the foundation of Muslim society – had occurred to an extent that family reform was inevitable.

Without intellectual debates challenging traditional sources of law, family reform was impossible. The advocates of family reform, most of whom were

Turkish nationalists, agreed on the superiority of Islamic Law and spoke within a theological framework. They took mores (*örf*) that had prevailed in old Turkish communities as significant inputs for lawmaking. This, indeed, increased the tension between the Islamists and nationalists. Both the Islamists and nationalists shared the assumption that Muslim civilization was in decline. Both agreed on the need for reforms to overcome this problem. According to Berkes, the core of the debate was to identify the limits of Islamic Law so that areas for reform could be clearly defined. Berkes states that “in spite of their docility and progressiveness,” the Islamists opposed to limiting the areas covered by Şeriat because the “real Şeriat, they knew, was shielded by a thick cultural crust containing elements ranging from the form of government to the mode of cleaning one’s teeth.”<sup>96</sup> For Islamists there were no areas that Islamic Law excludes. Indeed, the debate was of fundamental importance in critical years on which the fate of the empire depended.

Ziya Gökalp, the chief theorist of the nationalists and a well-known advocate of family reform, formulated his thoughts on the idea that mores (*örf*) have an important place in the codification of Islamic Law.<sup>97</sup> By giving examples from the history of the Islam (including its early years) as well as from the golden age of the Ottoman Empire, he emphasized the major role of mores upon which the rulers relied. Contrary to Islamists arguments on the need for a “pure” adaptation of Islamic Law, he reserved a space for mores in lawmaking in order to realize family reform. He claimed that mores should be regarded as equally important as classical sources of Islamic Law in order that the law be widely accepted in society. By attaching importance to the “words of the rulers,” he sought to eliminate the “divine” interpretation upon which Islamic scholars relied. Emphasizing the need for change, he stated the importance of new values for shaping the new codification. Inevi-

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96 Ibid.

97 He coined the term *ictimâî usûl-u fikh* as a method of harmonizing religious interpretation with social needs and customs in society. Accordingly, he claimed the customs and needs should be more central in lawmaking. See the discussion between Islamists and Turkists on the sources of lawmaking: Şener, “İctimai Usul-i Fikh Tartışmaları.” Also see Berkes, *The Development of Secularism in Turkey*.



tably, these values needed to be compatible with the modern world and the social realities of Ottoman society. Mansurizade Said, who was a professor of jurisprudence, strengthened the thesis of Gökâlp regarding the authority of legislators over the sanction or prohibition of polygamy in Islam.<sup>98</sup> It is possible to argue that this debate over the sources of law, the authority of legislators, and the compatibility of the law with modern times paved the way for the Family Decree. As the old moral order was in decline, progressive norms and values in the shape of mores acted as principles of lawmaking.

On the other hand, discourses on the relationship between the regeneration of family and that of the nation constituted another point of departure in the justification of family reform. Similar assertions were made during the Balkan Wars in the Ottoman press. Eyal Ginio's work on the Ottoman culture of defeat in the aftermath of the Balkan Wars presents how feelings of revenge and loss of honor were combined with discourses on national awakening and the renewal of the nation.

Frequently aired in the Ottoman literature of defeat were the notions of awakening and renewal. These keywords involved a far-reaching reappraisal of Ottoman politics and society that would include a reformulation of the most basic definitions and categorizations of Ottoman community. Regeneration of the Ottoman nation seemed to many Ottoman authors the only way to emerge from the disaster. Under exceedingly difficult circumstances related to the catastrophe in the Balkans, they were now contemplating a new and better future for the Ottoman nation. To convince the people to regenerate it was necessary to awaken them (*intibah*).<sup>99</sup>

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98 Mansurizade wrote: "Just as neither telegraphs nor telephones need a fatwa, nor are they subject to any sharia provision, the sharia could not prescribe permissibility in matters of marriage, divorce, and polygamy. The legislator can very well enact laws on them in accordance with the desires of the nation and of the age." See Mansurizade Said. "Taaddüd-ü Zevcat İslamiyette Men Olunabilir," *İslam Mecmuası*, No. 8, (1914), 233-38. Also discussed in Berkes, *The Development of Secularism in Turkey*, 391.

99 Ginio, *The Ottoman Culture of Defeat*, 131.

In the “Ottoman literature of defeat,” the regeneration of the nation was not independent of that of the family and of women.<sup>100</sup> For commentators, social reform was necessary for political success. A contemporary woman writer, Mükerrerrem Belkıs, explicitly argued that remaining ambivalent about demolishing old customs – particularly insisting on the segregation of the sexes until marriage – amounted to treason.<sup>101</sup> The discourses on “saving the nation” during both the Balkan Wars and the First World War were a pretext to demand state intervention in the family sphere. Serpil Çakır shows that contemporary women writers correlated defeat on the battlefield with desperation at home – that is, with the environment in which the soldiers grew up.<sup>102</sup> In this line of thought, happiness in the family was key to success in battle. One of the major arguments Ziya Gökalp makes in his series of articles on the family morality was that the principle of equality in politics can only be realized if equality in the family is established.<sup>103</sup> According to him, the Family Decree was an outcome of this concern.

As discussed earlier, the war tested the vulnerability of Ottoman Muslim families to the burdens of war. Especially in the countryside, increasing numbers of adultery, abduction, and rape cases strengthened this view. A close look at the articles of the Family Decree as well as its justificatory text (*esbâb-ı mucibe lâyihası*) allows us to interpret the rationale behind the decree and to establish links between discourses of moral decline and the need for family reform. First, a serious problem in the countryside regarding the formation of families was marriages made under coercion that were generally followed by abductions (particularly of minor girls). Tüccarzade addressed this problem which for him signified moral decline in the provincial areas. “We are aware of the conditions in the big cities. It is also not good what is happening in even the small towns of Anatolia. There, most cases [of moral decline] manifest themselves in the shape of abductions of girls and adul-

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100 Ibid., 121.

101 “Vatanın selameti için yapılacak bu teşebbüslerde evham vatana hıyanetliktir.” Mükerrerrem Belkıs, “Muzur Adetleri Yıkma Farzı,” *Kadınlar Dünyası*, No: 83, 1329 (1913), 2.

102 Çakır, “Meşrutiyet Devri Kadınlarının Aile Anlayışı.”

103 Ziya Gökalp, “Aile Ahlakı-3: Konak,” *Yeni Mecmua*, No: 12-17, 1917.

tery.”<sup>104</sup> Article 57 of the Family Decree attempted to prevent such marriages by invalidating marriage contracts signed under coercion. The justificatory memorandum (*esbab-ı mucibe layihası*) gives clues about how this article came to be introduced.

Many Muslim women have been abducted and forced violently to marry unworthy people, and the attempts of families to save these girls have failed, thus resulting in huge disasters. On the other hand, the doctrine of İmam Şafii opposes such marriages; therefore, [it] was adopted in Article 57 to prevent such misconduct.<sup>105</sup>

Previously, the Hanefi school accepted even marriages contracted under coercion.<sup>106</sup>

Second, the Family Decree addressed the problem of adolescent education in the family. As the *esbâb-ı mûcibe layihası* puts it, early marriage was one main reason for the “degeneration of the Muslim community” (*İslam unsurunun tedennîsi*) in Ottoman society. “Less-educated” adolescents make a family and establish a lifestyle without being capable of controlling it. Strikingly, the *esbâb-ı mâcibe lâyihası* underscored wartime as the moment of breakdown when family formation and family life in Ottoman society became unsustainable.

Although the authorities of Islamic law endorsed the marriages of children arranged by their tutors and such marriage contracts were conducted up to now, given the changing conditions in our era, a different attitude is deemed necessary. That is to say, in every era, and above all in this era in which the struggle to survive has become extreme, the first duty of parents to their children should be to educate

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104 “Büyük şehirlerimizde cereyan eden ahvâl meçhulumuz değil. Anadolu’da en küçük kasabalara kadar cereyan eden ahvâl de pek iyi değil. Ora mehâkiminde cereyan eden deavinin nısfından ziyadesi kız kaçırmak, fi’il-i şen’i vukûatı teşkil ediyor.” Tüccarzade, “Aile Hayatımızda Avrupalılaştırmanın Tesiri,” 234.

105 “Münakahat ve Müfakat Kararnamesi Esbab-ı Mucibe Layihası.” See Appendix C, Quotation, 6.

106 Aydın, *İslâm-Osmanlı Aile Hukuku*, 192.

them and raise them to be strong in this world of battles and to form a proper family, but our parents keep neglecting education and the instruction of their children, either to see them marry or – that they gain inheritance rights – to arrange marriage contracts when the kids are in the cradle. Eventually, these poor children who are ignorant of the world are married and their catastrophic future is determined in marriage ceremonies. These children who never attended a school, cannot read or write in their native language, do not know the principles of religion, are establishing families that are born to die, condemned to decompose in the first months of the marriage. This is one of the reasons why families in our country are not established on strong foundations.<sup>107</sup>

The *esbab-ı mucibe layihası* emphasized concerns for the marriage of minor girls in particular.

The wife and husband, in constituting a family and managing it, shall act together. While boys are allowed to spend time playing in the streets, girls of the same age are overwhelmed by the greatest burden in human society: being a mother and the manager of a family. These poor girls, whose physical constitution is not yet sufficiently complete to be a mother, live in misery all their lives and suffer anxiety. The children to which they give birth are vulnerable and nervous, causing the gradual degeneration of the Muslim community.<sup>108</sup>

For the first time in the history of the Ottoman Empire, the decree recognized adolescents as new category. Previously, Sharia law acknowledged only two categories: childhood and adulthood. The law forbade the marriage of children under a certain age irrespective of the consent of their families. This age limit was twelve for boys and nine for girls, and the age for independent marriages without consent of the families was seventeen for women and

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107 “Münakahat ve Müfarakat Kararnamesi Esbâb-ı Mûcibe Lâyihası.” See Appendix C, Quotation, 7.

108 Ibid. See Appendix C, Quotation 8.

eighteen for men. In this way, not only were child marriages prevented, but an intended change in family norms was triggered. The family had to educate children and prepare them for the future. This was the formulation that was believed would improve the standards of Muslim families and thus of the Ottoman nation.

The problem of remarriage was another issue that related the Family Decree to discourses on morality. Since marriages were not registered in Islam and were maintained only as a verbal promise, the only proof of marriage was the testimony of witnesses. In their absence, women or their families might claim that she was not married. The *esbâb-ı mûcibe lâyihası* particularly emphasized the situation of women who remarried while she already had a husband. Women or their families might take advantage of the absence of husbands due to the war and establish (or in some cases be forced to establish) new marriage contracts for various reasons. By means of the decree, the government sought to control marriage contracts by charging courts with the task of announcing the marriage before judges and finalizing the marriage contract in the absence of objections. So far, scholars have interpreted this point in the legislation as an attempt to standardize marriage and control over population. However, as can be seen in the *esbâb-ı mûcibe lâyihası*, the real reason behind this measure was to prevent remarriages which had become widespread especially in the countryside. “Many frauds have occurred due to the lack of a proper way of making such an important contract, thus resulting in the remarriages of women despite the Sharia’s orders. Therefore, the Article 37 is being introduced.”<sup>109</sup>

Such remarriages binding women to another man in the absence of her husband were arranged by village elders or relatives.<sup>110</sup> As far as I could find

109 Ibid. “böyle mühim bir akdin intizam dairesinde cereyan etmemesinden pek çok yolsuzluklular husûle gelmiş ve mevâni-i şeriyyesi olan nice kadınların icra-yı akd ile eşhas-ı sairenin ibtal-i hukuku cihetine gidilmiştir. 37inci madde bu yüzden konuldu.”

110 Celal Nuri addressed this problem in his work *Kadınlarımız* (Our women) in 1911. According to him, the vast autonomy of the husband in Islamic Law contributed to the degeneration of Muslim families. As there were no legal impositions such as civil law limiting the authority of the husband in cases of divorce, remarriage, and illegitimate children, the family remained in disarray, see Nuri, *Kadınlarımız*.

in the archives, letters arrived to various offices from soldiers as well as their wives claiming that married women were forced to marry again (or sometimes willingly did so) in the absence of their husband during the Balkan Wars.<sup>111</sup> In order to prevent this, marriages had to be registered so that the rights of the husband as well as those of the wife could be preserved in the circumstances of war. The registry would also include information about the *mehr*, the amount to be paid to the woman in case of divorce in order to guarantee her livelihood. Moreover, another article was introduced to allow the remarriage of those women who had lost their husbands at war or whose husbands had gone missing in the course of the war. Accordingly, if a husband is lost during the war, the wife will be considered out of wedlock after the combatant countries sign the armistice and one year passes after the prisoners of war on both sides go back to their homeland. If a woman married without following this rule and her first husband reappeared, her second marriage was invalidated. If she did follow the rule and the husband, who was considered to have died during the war, appeared later on, the second marriage would still be invalidated. Those who married or witnessed the marriage of already married women would be sentenced to imprisonment of up to three years.

Another issue signifying the relationship between morality concerns and the Family Decree was the prevention of temporary marriages. The Article 55 of Family Decree strictly banned temporary marriage contracts (*nikah-ı mut'a* or *nikâh-ı muvakkat*). This practice was particularly common among Muslims. It was believed that if couples entered into a temporary marriage contract (in a religious vein) before having sexual intercourse, sex would not be considered a sin or as adultery. A madrasa teacher from Konya, Abdullah

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111 For instance, on April 17, 1913 a certain Aişe wrote a petition from Kastamonu claiming that village elders were forcing her to marry someone else since she had not received news from her husband who had been in the military service for a while. Although this case was during the Balkan Wars, such instances presumably increased during the First World War, see DH.H. 43/61 4 Nisan 1329 (17 April 1913). In another case, a soldier claimed that his fiancée had been forced to marry, and he asked an official investigation. The Ministry of the Interior Affairs decided to investigate the roles of the imam, *muhtar* and village elders and to punish them, see DH.H. 47/63 27 May 1913.

Fevzi Efendi, who had joined the army during the First World War and also served as an imam, claimed that these contracts were quite common among the military ranks. In his memoirs which he wrote in Arabic, he titled one chapter *Morality in the Army* and started it with this sentence: “Damn the amorality of the members of the Islamic army and soldiers in this century.”<sup>112</sup> He claims that he witnessed many temporary marriages of military officers in Iraq: “In Hüseyinabad, a village near Hemedan, moral corruption and instances of temporary marriage (*mut’a*) increased further.”<sup>113</sup> He stated that official orders were introduced to prevent such cases and military commanders issued penalties to imams who took part in temporary marriages. These marriages, according to him, caused moral decay as well as the spread of venereal disease in the military.<sup>114</sup> Article 55 of the decree might be related to concern about the practice of temporary marriages which had especially increased with the mass mobilization of the army.<sup>115</sup>

Finally, enabling women to divorce under particular conditions (which had to be indicated by the women in the marriage contract) can also be evaluated within the framework of regenerating the family. A woman’s right to divorce, adopted from the Maliki school, was a distinctive point of the decree. In cases of disagreement, women gained the right to divorce with the consent of a “family council” appointed by the court. Women could also demand divorce on account of illness (including venereal disease), feeble-mindedness, and impotency, but only after a one-year period of recovery. This, I believe, was designed to dissolve those families that had lost their function for society – such as “reproduction” – and to enable the reformation of new families by empowering women to do so. Among the articles on

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112 “*Vā esefā ale’l-ahlāk fi ceysi’l-İslam fi hâze’l-asr!* Yaşadığımız yüzyılda İslam ordusu ve askerinde mevcut ahlaka yazıklar olsun!” Koçkuzu, *Çanakkale Cephesinde Bir Müderris*, 156.

113 “Hemedan’da Hüseyinabad köyünde iken ahlaki düşüklükler, geçici evlilikler (*mut’a*) daha da arttı.” *Ibid.*, 179.

114 *Ibid.*, 182–183.

115 On February 14, 1915, the Council of Ministers issued an official decree enacting mandatory retirement of amoral (*sui ahlak*) or incompetent (*adem-i liyakat*) members of the military. Although not expounded upon further in the document, such instances concerned immorality, see MV. 196/75 1333 Ra 29 (14 February 1915).

marriage, that on polygamy was the most debated. Although not forbidden, woman had the right to indicate whether she accepted polygamy. If she did not and the man insisted, she had the right to divorce. The Hanbeli school was taken as a basis for this article. Many Islamists opposed this point and claimed that at the end of the war there would be more women than men, so polygamy would be a social necessity.<sup>116</sup> However, for lawmakers the important thing was the regeneration of family, not the distribution of men and women according to the population ratio. In order to regenerate family, women first had to be empowered within marriage.<sup>117</sup>

Can legislation change norms in society? Or does law reflect norms that already exist in that society? We tend to think lawmaking is the result of structural change, not the converse. However, it seems that Ottoman intellectuals and reformers approached legislation as a way to introduce new family values and thus a new understanding of morality. This point, in fact, was in line with Durkheimian sociology, Durkheim's analysis of norms, and his pragmatic approach to science through which a prescription for the future is possible. According to this approach, an individual or group of people can solve the disparity between the rules of morality and the actual state of society.<sup>118</sup>

Morality and family reform were related in the sense that the problems of Ottoman family formation and dissolution were associated with moral decay. The advocates of family reform linked the wellbeing of adolescents, women, and men to those of the nation in order to legitimize the need for reform. On the other hand, that the Family Decree was inspired by these insights and concern about moral decline can be ascertained from its articles.

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116 Aydın, *İslâm-Osmanlı Aile Hukuku*, 192. Also see Scott Rank's article on the famous debate between Fatma Aliye and Mahmud Es'ad on polygamy in which Mahmud Es'ad defended polygamy as a means of maintaining a balanced ratio of women and men in the population. He also argued that men instinctively tend to marry multiple women, which according to him prevents immorality in society, Rank, "Polygamy and Religious Polemics in the Late Ottoman Empire."

117 For instance, Tüccarzade stated that only "law" can save Muslim women from their inferiority in society. Tüccarzade, "Aile Hayatımızda Avrupalılaştırmanın Tesiri," 235.

118 Stock-Morton, *Moral Education for a Secular Society*, 133.



## § 4.5 Concluding Remarks

This chapter addressed the relation of moral decline discourses and discourses on the Ottoman Muslim family in the context of the First World War. By linking the circumstances faced by Ottoman Muslim families during the war and the discourses of moral decline on the Ottoman homefront, I argue that state intervention in family had reflected concerns about moral decline. In cases of rape, sexual assault, and abduction, the victims asked for active state protection in return for their contribution to the war effort. I consider the Adultery Bill of 1916 as a further instance of state intervention into the family in order to protect homefront morality. Although the legislation was unsuccessful, the content of the bill caused intense debate on the extent of state's role in regulating sexual relationships. Finally, I evaluate the Family Decree of 1917 as part many attempts of the Ottoman government to protect families during the war. By establishing a close link between the well-being of the nation and that of the family, Ottoman intellectuals and reformers attributed great importance to moral values for the formation, dissolution, and function of families. As Salim Tamari asserted, we tend to see the destructive effects of the war, but there was an “unanticipated emancipatory impact” of the war “that opened up new social horizons,” as well.<sup>119</sup> Perhaps, the Family Decree of 1917 can be considered part of this side of the war.

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119 Tamari, *Year of the Locust*, 7.