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# IMPROVING EDUCATION THROUGH DEVOTION: A RELIGIOUS SOLUTION TO EASTERN TURKEY'S GENDER GAP

## ABSTRACT

Turkey has much room for improvement regarding women's education opportunities—particularly in eastern Anatolia. Despite the Turkish Republic's outward secular appearance, Islamic law plays an increasingly important role in society. A potential solution to the government's sluggish progress on gender equality may lie in the utilization of their religious directorate (*Diyanet*). The *Diyanet* could issue *fatwas* sympathetic to women's rights, which may more effectively reach the conservative eastern Turkish population.

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## INTRODUCTION

In the summer of 2016, a bloody coup attempt against the democratically elected Turkish government drew the world's attention. Ostensibly, the military responded to what it perceived as the slow creep of Islamist policies within secular Turkey.<sup>1</sup> The coup highlighted for

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1. See Mustafa Akyol, *Who Was Behind the Coup Attempt in Turkey?*, N.Y. TIMES (July 22, 2016), [https://www.nytimes.com/2016/07/22/opinion/who-was-behind-the-coup-attempt-in-turkey.html? \[https://perma.cc/2QYD-G6RT\]](https://www.nytimes.com/2016/07/22/opinion/who-was-behind-the-coup-attempt-in-turkey.html? [https://perma.cc/2QYD-G6RT]).

the world the simmering tensions between conservative and liberal Islamic philosophies in Turkey. As the only predominantly Muslim nation to adopt secularism as a founding legal principle, the implications for the Turkish legal system are legion.<sup>2</sup> The cultural and legal impacts reverberate across Turkish society and may affect the rights of Turkish women.<sup>3</sup> Under President Recep Tayyip Erdoğan's administration and the ruling Justice and Development Party (AKP), Turkey has made significant progress in the field of women's rights.<sup>4</sup> For example, during the 2004 amendments to the Civil Code, the AKP included comments from women's rights organizations.<sup>5</sup> Ultimately, the AKP advocated for and passed thirty amendments that directly benefited the status of Turkish women.<sup>6</sup> Amendments such as Article 105 now explicitly define sexual harassment generally and in the workplace.<sup>7</sup> Nevertheless, there is much room for improvement with regard to, for example, the advancement of women's rights concerning education.

While this Note does not call for the implementation of *Sharia* law for the secular Turkish legal system, it would be naive to ignore the swinging pendulum of change. President Erdoğan's politics indicate that the AKP—and the political base—support a more traditional, Islamic interpretation of the law.<sup>8</sup> This Note advocates for the adoption of progressive *fatwas*<sup>9</sup> directed at improving the gender gap in education within Eastern Turkey.<sup>10</sup> This solution provides President Erdoğan and the religiously conservative AKP with an Islamic-rooted framework that both comports with Islamic legal

2. See BERNARD LEWIS, WHAT WENT WRONG? THE CLASH BETWEEN ISLAM AND MODERNITY IN THE MIDDLE EAST 106 (2002).

3. See Akyol, *supra* note 1.

4. See Seval Yildirim, *Gender and Resistance in Turkey: On Myths of Liberty and Salvation*, 18 J. GENDER, RACE & JUST. 399, 416 (2016).

5. *Id.* at 417.

6. See, e.g., Metin Yeğenoğlu & Simten Coşar, *The AKP and the Gender Issue: Shuttling between Neoliberalism and Patriarchy*, in SILENT VIOLENCE: NEOLIBERALISM, ISLAMIST POLITICS AND THE AKP YEARS IN TURKEY 181 (Simten Coşar & Gamze Yücesan-Özdemir eds., 2012).

7. Turkish Criminal Code, Law No.: 5237 Official Gazette, art. 105, 12 Oct. 2004 No. 25611, enacted: 26 Sept. 2004.

8. See Ömer Taşpınar, *Turkey: The New Model?*, BROOKINGS INST. (Apr. 25, 2012), <https://www.brookings.edu/research/turkey-the-new-model> [<https://perma.cc/NLB5-DQUB>] (commenting that before the AKP, all of Turkey's Islamic political parties were shut down by either military coup or judicial decree, yet this party has survived and flourished).

9. A *fatwa* is a legal response to a specific question; *fatwa* authors employ several jurisprudential tools to justify their legal opinion. See Mona Siddiqui, *Mahr: Legal Obligation or Rightful Demand?*, 6 J. ISLAMIC STUD. 14, 14 (1995).

10. As the Note will address, only *muftis* or other members of the *Ulema* are qualified to issue *fatwas* and conduct Islamic jurisprudence. Consequently, any analysis of Islamic texts within this Note is offered for academic purposes and not intended as any form of actual jurisprudence.

teachings (satisfying conservative constituents) and one that empowers women with specific educational opportunities. There is room for slight, methodical variations within the Turkish government that can achieve both ends. A move for change is all the more significant, as a signatory of United Nations Convention on the Elimination of Discrimination against Women (CEDAW), Turkey has a legal obligation to put policies into practice and submit national reports every four years to the U.N.<sup>11</sup> Strong advancement on gender equality keeps Turkey in good favor with the U.N. and EU,<sup>12</sup> which provides President Erdoğan and the AKP with positive press and more political capital and provides much-deserved opportunities to Turkish women.

First, this Note will identify the successes and roadblocks of the Turkish educational system concerning women. Second, the Note will briefly detail the mechanics of Islamic jurisprudence and its contrasts with the secular Turkish legal system, including the creation of Turkey's *fatwa*-issuing<sup>13</sup> Religious Directorate. Finally, the Note will advocate for specific educational policies via *fatwa*, supported by the Hanafī school and Shia legal school.

## I. THE TURKISH EDUCATION SYSTEM AND WOMEN

### A. *The Education System Structure*

In modern Turkey, “[e]ducation through age 14 or the eighth grade is free, universal, and compulsory.”<sup>14</sup> The nation improved education with drastic changes to its civil code in 2002.<sup>15</sup> Part of President Erdoğan’s educational reforms during this time centered on “raising pious generations” through a refocusing away from traditional, secular educational models in favor of a more religious orientation.<sup>16</sup> The 2012 reforms also eliminated the Ministry of

11. Press Release: Turkey Is Only Society in Islamic World Where State Abandoned Shariah, Delegation Tells Women’s Anti-Discrimination Committee, U.N. Press Release WOM/935 (Jan. 17, 1997), <http://www.un.org/press/en/1997/19970117.wom935.html> [<https://perma.cc/MP26-EU8G>].

12. See Firdevs Melis Cin & Melanie Walker, *Reconsidering girls’ education in Turkey from a capabilities and feminist perspective*, 49 INT’L J. EDUC. DEV. 134, 136 (2016).

13. See Siddiqui, *supra* note 9.

14. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, TURKEY: 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 34 (Apr. 8, 2011), <https://www.state.gov/j/drl/rls/hrrpt/2010/eur/154455.htm> [<https://perma.cc/Q6MZ-7TEX>] [hereinafter COUNTRY REPORT].

15. See Svante E. Cornell, *The Islamization of Turkey: Erdoğan’s Education Reforms*, TURK. ANALYST (Sept. 2, 2015), <http://www.turkeyanalyst.org/publications/turkey-analyst-articles/item/437-the-islamization-of-turkey-erdo%C4%9Fan%E2%80%99s-education-reforms.html> [<https://perma.cc/EQ6G-MPYH>].

16. *Id.*

Education's cosponsorship of imam training in secondary schools.<sup>17</sup> Now, the Turkish Government's Religious Directorate (*Diyanet*) has exclusive control over several hours per day of religious instruction for each Turkish student.<sup>18</sup> As for 2012 reforms that directly impact women's education, one law permits parents to homeschool their children beginning in the fourth grade; in rural areas, however, this causes many families to pull their young girls out of state-run schools so they may conduct domestic labor at home.<sup>19</sup>

As of 2015, the Turkish government has achieved a primary education rate of 97.08% for males and 97.12% for females.<sup>20</sup> These statistical achievements, however, fail to account for the gender differences in full-time and part-time attendance; women are much more frequently out of school than their male counterparts.<sup>21</sup>

Since the AKP's rise to power, Turkish schools have increased their levels of religious education.<sup>22</sup> The imam-hatip high schools are public schools that provide a combination of general higher education and preparatory training for religious staff.<sup>23</sup> According to government sources, most Turks send their children to such schools to receive a modern education.<sup>24</sup> The government asserts that such schools are partly responsible for the positive numbers concerning greater access for women in the educational system.<sup>25</sup> Yet, these reforms have done little to impact swaths of young women in the less urban eastern half of Turkey.<sup>26</sup>

### *B. Women in Eastern Turkey*

The Turkish government has made several important international commitments to women's rights, but Turkish laws are "often

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17. *Id.*

18. *Id.*

19. *Id.*

20. Cin & Walker, *supra* note 12, at 136.

21. *Id.* at 134 (positing that many Turkish families in eastern Anatolia must migrate for work and keep their young girls at home as a source of free labor); see ORG. FOR ECON. COOPERATION & DEV., EDUCATION AT A GLANCE 2013, TURKEY (2013), [http://www.oecd-ilibrary.org/education/education-at-a-glance-2013\\_eag-2013-en](http://www.oecd-ilibrary.org/education/education-at-a-glance-2013_eag-2013-en) [<https://perma.cc/4VSP-9XD8>] [hereinafter EDUCATION AT A GLANCE] (stating that between the ages of 15 through 29, 50 percent of Turkish women are neither employed nor in education or training compared to just 20 percent of men).

22. See BEKIR S. GÜR, WHAT ERDOĞAN REALLY WANTS FOR EDUCATION IN TURKEY: ISLAMIZATION OR PLURALIZATION? 2 (2016), [http://studies.aljazeera.net/mritems/Documents/2016/3/17/c2a0ade5d313404ab8500c9ebb0375d3\\_100.pdf](http://studies.aljazeera.net/mritems/Documents/2016/3/17/c2a0ade5d313404ab8500c9ebb0375d3_100.pdf) [<https://perma.cc/9EQT-9B82>] (including imams and *hatips* (orators/preachers)).

23. *Id.* at 5.

24. *Id.*

25. *Id.*

26. See, e.g., Cin & Walker, *supra* note 12, at 140.

enacted without full consideration for their impact on gender equality or women's political and economic participation."<sup>27</sup> As Turkey's secular legal tradition embraces a "collectivist society," cultural and legal values shift dramatically as one migrates from West to East Turkey.<sup>28</sup> Unlike its modern and economically wealthy twin, the eastern half of Turkey is more rural and much more conservative in cultural attitudes and Islamic interpretation.<sup>29</sup>

Further, eastern Turkey lacks many basic infrastructural facilities that make it difficult for students of both genders to attend regular schooling.<sup>30</sup> The influence of Islamic norms and religious pressure from the conservative sector has resulted in the disparate treatment of women as compared to men.<sup>31</sup> Evidencing this conservative trend, "only 17% of . . . girls who attend[] compulsory schooling for . . . [g]rades 1–8 continue . . . [on] to high schools or vocational schools"—a rate much lower than that of their male counterparts.<sup>32</sup> On the surface, the male-to-female dropout rate is sixty-six percent to seventy-two percent, respectively.<sup>33</sup> This gap widens, however, in the East. Turkey's gender gap overall places it 130<sup>th</sup> out of 145 countries, according to the 2015 Global Gender Gap Index of the World Economic Forum.<sup>34</sup> "Turkey ranks 105<sup>th</sup> in educational attainment, 105<sup>th</sup> in political empowerment, and 131<sup>th</sup> (sic) in economic participation and opportunity."<sup>35</sup>

Now, with the recent military coup attempt, the shift towards a more hardline Islamic government particularly jeopardizes women's educational opportunities and independence from men. One Turkish academic, Aysel Çelikel, head of the Support for Contemporary Living Association, or ÇYDD, stated that "the high increase in the number of murdered women stems from gender inequality and Turkey's

27. UN Women presents gender review of key laws to Turkish Parliament, U.N. WOMEN (May 12, 2016), <http://eca.unwomen.org/en/news/stories/2016/05/un-women-presents-gender-review-of-key-laws-to-turkish-parliament> [<https://perma.cc/49TF-2ZNS>] [hereinafter U.N. WOMEN].

28. Cin & Walker, *supra* note 12, at 137.

29. *See id.*

30. *Id.* at 135.

31. *See id.* at 137 (stating that "women occupy subordinate places to males; they carry out household activities in the private sphere; female leisure activities within the public sphere are not tolerated . . . [and] [m]ale superiority is maintained through honour and shame codes."); EDUCATION AT A GLANCE, *supra* note 21, at 1; John O'Dwyer et al., *Expanding educational access in Eastern Turkey: A new initiative*, 30 INT'L J. EDUC. DEV. 193, 200 (2010).

32. O'Dwyer et al., *supra* note 31, at 200–01.

33. *Id.* at 193.

34. WORLD ECON. FORUM, TURKEY (2015), <https://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=TUR> [<https://perma.cc/F4T7-2MC2>].

35. U.N. WOMEN, *supra* note 27.

increasingly conservative society.”<sup>36</sup> Çelikel observed that “[w]omen’s rights are [moving] backward as much as [religious] conservatism is increasing in society.”<sup>37</sup> The rising conservative tide has dire, physical implications for Turkish women.<sup>38</sup> Further, education plays a direct role in the level of safety a woman may expect as “[s]ome 55.8 percent of women who have no education or have not finished primary education are subjected to violence, while 27.2 percent of women with at least a high school diploma or higher are the victims . . . .”<sup>39</sup>

In rural Turkey, gendered norms of the conservative population severely constrain access to education for girls, as many families see “the co-educational school as a serious threat, attach little value to girls’ education, or fear that their family honour might be damaged if someone molests their daughters.”<sup>40</sup> This conservative interpretation encourages girls to see education as irrelevant for them and to develop lower aspirations about education.<sup>41</sup> Young girls internalize this cultural sentiment, causing a lack of enthusiasm for education.<sup>42</sup> The conservative attitude silences the girls and forces them to adapt to families’ conservative preferences and limit what is possible in their lives.<sup>43</sup> The aforementioned statistics strongly indicate that the AKP’s educational policies are failing in eastern Turkey. Specifically, the dropout rates and violence against young women illustrate a central government unable to improve the situation. Acknowledging secularism’s failed attempt, a religious framework may offer a more effective solution to Turkey’s educational gender gap.

## II. ISLAMIC AND TURKISH LAW

### A. An Overview of Islamic Jurisprudence

While those unfamiliar with Islam believe Islamic law (sharia) and Islamic jurisprudence (*fiqh*) are similar concepts, this is a

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36. *Murder a fact of life for women in Turkey*, GREEK TURKISH FORUM HOME (Feb. 21, 2011), <https://www.tapatalk.com/groups/greekturkishfr/murder-a-fact-of-life-for-women-in-turkey-t10630.html> [<https://perma.cc/H4BL-DJXF>].

37. *Id.*

38. According to a government study titled “Research on Domestic Violence against Women in Turkey,” 41.9 percent of Turkish women are subjected to physical and sexual violence. Women at a “low-income level” are assaulted at a rate of 49.9 percent, while the number for higher-income women is still high, at 28.7 percent.

*Id.*

39. *Id.*

40. Cin & Walker, *supra* note 12, at 140.

41. MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH 287 (2000).

42. *See id.*

43. *Id.* at 288–89.

misnomer.<sup>44</sup> Sharia encompasses the rituals, religious beliefs, and legal framework of Islam; conversely, *fiqh* is a subset of sharia and pertains to the understanding of sharia, or legal theory.<sup>45</sup> The *Qur'an* is the bedrock of the classical Islamic legal system.<sup>46</sup> With over 500 verses pertaining to legal matters, however, the text is not comprehensive.<sup>47</sup> To fill this gap, Islamic legal scholars rely on the words and deeds of the Prophet, or *Sunnah*.<sup>48</sup> Followers passed the Prophet's words and deeds from generation to generation through oral tradition.<sup>49</sup> Scholars call this the *hadith* and require the reciter to list along with the Prophet's words the entire oral chain linking the speaker with the Prophet.<sup>50</sup>

Under Islamic jurisprudence, or *fiqh*, if a problem were to arise in the community, the parties would appeal to the "scholars in theology and law" called *ulema*.<sup>51</sup> The adjudicator would consult with either the *Qur'an* or *hadith*.<sup>52</sup> If these two sources failed to provide an adequate answer, then the judges could use other items in the Islamic jurisprudence toolkit: analogy (*qiyas*) or community (*ijma*).<sup>53</sup> Interpreters often use *qiyas* for unprecedented legal questions by comparing the contemporary situation to a ruling that pertains to an existing case of law.<sup>54</sup> More than any other form of legal interpretation, *qiyas* offer scholars and judges the widest latitude when interpreting cases involving progressive or new ideas.<sup>55</sup>

Today, Islamic jurists often use reasoning from the *Qur'an* and *Sunnah* to derive new rules of law—a process called *ijtihad*.<sup>56</sup> The

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44. Hossein Esmaeili, *The Nature and Development of Law in Islam and the Rule of Law Challenge in the Middle East and the Muslim World*, 26 CONN. J. INT'L L. 329, 340 (2011).

45. *Id.*

46. Christopher Melchert, *Islamic Law*, 23 OKLA. CITY U. L. REV. 901, 902 (1998).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. Nathan B. Oman, *Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization*, 45 WAKE FOREST L. REV. 579, 589 n. 55 (2010).

52. Melchert, *supra* note 46, at 902.

53. *Id.* at 903.

54. Carl Sharif El-Tobgui, *The Epistemology of Qiyas and Ta'lil Between the Mu'tazilite Abu 'L-Husayn Al-Basri and Ibn Hazm Al-Zahiri*, 2 UCLA J. ISLAMIC & NEAR EASTERN L. 201, 281 n.1 (2002–03).

55. *Id.* at 282.

56. L. ALI KHAN & HISHAM M. RAMADAN, CONTEMPORARY *IJTIHAD*: LIMITS AND CONTROVERSIES 1 (2011). Until recently, most legal scholars considered the Ottoman period to have closed the "gate of *ijtihad*" and have mechanically applied Islamic law without much consideration for contemporary customs; modern scholars such as Wael Hallaq, however, have thoroughly proved through detailed Ottoman court records that *ijtihad* was widely accepted and practiced. See JUDITH E. TUCKER, IN THE HOUSE OF THE LAW:

process of *ijtihad* “cannot be used to undermine or modify the Qur’an or the Prophet’s Sunnah.”<sup>57</sup> Nevertheless, it does allow modern Muslim nations “to use [certain] sources of law, such as constitutions and legislation, [which are] compatible with Islamic divine texts.”<sup>58</sup> One, therefore, may bifurcate Islamic law into two groups: divine texts (*Qur’an* and *Sunnah*) and Islamic positive law (customs, statutes, and case law).<sup>59</sup> The first group is sacred and unchanged for all eternity, whereas various Islamic societies located in different areas, time periods, and cultures may mold Islamic positive law.<sup>60</sup> Modern day *ijtihad* “argues that Islamic law is inherently fluid and evolutionary within the bounds of the Qur’an and the Prophet’s Sunnah,”<sup>61</sup> and Turkey’s molding of Islamic legal tradition is no exception.

Turkish legal history has a long relationship with another aspect of Islamic jurisprudence: *takhayyur*. The term *takhayyur* means the selection and preference of a particular ruling or opinion from a *madhhab*<sup>62</sup> for the purpose of legislation and enforcement.<sup>63</sup> *Takhayyur* was a popular convention among Ottoman authorities during the codification of the *Mejelle* in 1876 and other laws because it allowed legal scholars to select convenient legal principles from different schools.<sup>64</sup> In the modern era, *takhayyur* is widely used as “a means of flexibility and choice among the rulings of the existing *madhhabs*.”<sup>65</sup> Under Ottoman rule, Turkish Islamic scholars primarily subscribed to the *Hanafi* School of legal interpretation—eventually producing *Ḳānūnnāmes* (codification of Ottoman dynastic

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57. KHAN & RAMADAN, *supra* note 56, at 1.

58. *Id.* at 1–2.

59. *Id.* at 2.

60. *Id.*

61. *Id.* at 3. See generally Shaista P. Ali-Karamali & Fiona Dunne, *The Ijtihad Controversy*, 9 ARAB L. Q. 238 (1994).

62. A *madhhab* is a school of thought within Islamic jurisprudence. See Christie S. Warren, *Lifting the Veil: Women and Islamic Law*, 15 CARDOZO J.L. & GENDER 33, 52 (2008); *The Amman Message*, AMMANMESSAGE.COM, <http://ammanmessage.com/the-amman-message-full> [https://perma.cc/FWG2-DPPJ] (confirming in 2005 that Islamic scholars recognize four Sunni schools (Hanafi, Maliki, Shafi’i, and Hanbali) and two Shia schools (Ja’fari and Zaidi) and the Ibadi and Zahiri School)).

63. Mohammad Hashim Kamali, *Shari’ah And Civil Law: Towards A Methodology of Harmonization*, 14 ISLAMIC L. & SOC’Y 391, 406 (2007).

64. *Id.* The *Mejelle* was the Ottoman Civil Code, which acted as “a digest or restatement of the law.” Ya’akov Meron, *The Mejelle Tested by its Application*, 5 ISR. L. REV. 203, 203 (1970).

65. Kamali, *supra* note 63, at 406. Several different Islamic schools of thought bloomed after the disillusionment in the Islamic world during the mid-seventh to mid-eighth centuries. See JOHN L. ESPOSITO, *WOMEN IN MUSLIM FAMILY LAW* 2 (1982).

law).<sup>66</sup> Hence, from an early stage, Turkish rulers employed the Hanifists to combine secular and religious laws for the good of the empire.<sup>67</sup> At times, the Ottoman state endorsed *fatwas* from local religious scholars.<sup>68</sup>

A *fatwa* is a religious ruling from a *mufti*, which is a religious scholar.<sup>69</sup> Traditionally, Muslims would ask the *mufti* for a legal opinion on a specific matter; the *mufti* would then use all of his mental power to provide an opinion that conformed to the tenets of Islamic law.<sup>70</sup> The opinion, called a *fatwa*, was not binding on the recipients.<sup>71</sup> The method of legal interpretation, however, can create a binding *fatwa*. Generally, *fatwas* created using *ijtihad* are considered non-binding because a *mufti* could arrive at an incorrect answer; the Prophet did not want to bind believers to an erroneous decision.<sup>72</sup> In contrast, *fatwas* that are the result of *ijma* may become binding as long as the scholarly community remains in agreement.<sup>73</sup> Aside from the method of *fatwa* creation (*ijtihad* versus *ijma*), scholars could also choose which texts to rely upon.<sup>74</sup>

The *Hanafi* jurists issued *fatwas* based on a wide range of interpretive methods. The Ottoman jurist Khayr al-Din often used a mix of traditional and progressive sources when drafting a *fatwa*.<sup>75</sup> Occupying the other end of the *Hanafi* *fatwa* spectrum, the scholar al-Imadi stayed closer to the traditional, authoritative texts, rarely straying from accepted legal sources.<sup>76</sup> The new Turkish democratic government would maintain this tradition despite the Ataturk Nationalists' best efforts to stamp it out.<sup>77</sup>

Finally, in classical Islam, the ability to issue a *fatwa* was not granted to just anyone—only *muftis* retained this knowledge and

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66. Samy Ayoub, *We're Not in Kūfa Anymore: The Construction of Late Hanafism in the Early Modern Ottoman Empire, 16th–19th Centuries CE* 28 (2014) (unpublished Ph.D. dissertation, University of Arizona).

67. *Id.* at 28–29; see HAIM GERBER, *STATE, SOCIETY, AND LAW IN ISLAM: OTTOMAN LAW IN COMPARATIVE PERSPECTIVE* 62 (1994).

68. Ayoub, *supra* note 66, at 15.

69. Salma Taman, *An Introduction to Islamic Law*, 16 EUR. J.L. REFORM 221, 242 (2014).

70. *Id.*

71. See KHALED ABOU EL FADL, *THE SEARCH FOR BEAUTY IN ISLAM: A CONFERENCE OF THE BOOKS* 46 (2006).

72. See Taman, *supra* note 69, at 240.

73. See *id.* at 233.

74. *Id.* at 241.

75. See TUCKER, *supra* note 56, at 16–17 (stating that al-Din would cite authority from the *Qur'an*, contemporary *fatwas*, and even local custom when generating his own *fatwas*).

76. *Id.* at 17.

77. See Elliot Ackerman, *Atatürk Versus Erdoğan: Turkey's Long Struggle*, NEW YORKER (July 16, 2016), <https://www.newyorker.com/news/news-desk/ataturk-versus-erdogan-turkeys-long-struggle> [<https://perma.cc/R3AG-JHW6>].

authority.<sup>78</sup> Scholars from the *ulama* also performed the role of *mufti* to issue juristic opinions for individuals much in the same way that people seek out legal advice from lawyers in the modern period.<sup>79</sup> The *muftis* set their own professional standards without much government regulation.<sup>80</sup> Due to the non-binding nature of *fatwas*, a Muslim dissatisfied with a *mufti*'s ruling is free to ask a second or third *mufti* for another *fatwa*.<sup>81</sup> In the modern period, however, some governments have regulated the qualifications for *muftis* and use statutory authority to give *fatwas* binding authority over the Muslim population.<sup>82</sup> The Turkish government, however, has no statutory authority placing *fatwas* on the level of civil law; *fatwas* are non-binding, and Turkish Muslims must decide whether to implement them.<sup>83</sup>

### B. Women in Traditional Islamic Jurisprudence

As the foundational text for Islam, the *Qur'an* plainly supports the equality of men and women: "Men and women who have submitted, believed, obeyed, are truthful, steadfast, reverent, giving in charity, fasting, guarding their private parts and remembering Allah often, Allah has prepared for them forgiveness and a great reward."<sup>84</sup> Viewed through the lens of seventh-century Arabia, the *Qur'an* was uniquely progressive in the field of gender equality, bestowing new legal rights on women such as financial support during divorce, property inheritance rights, and full contract rights as a party in a legal agreement.<sup>85</sup> In the beginning of the Islamic era, women were just as educated as many men, held professional jobs, and participated in war and combat.<sup>86</sup> The Prophet's revelation illuminated a path

78. TUCKER, *supra* note 56, at 13–14.

79. MOHAMMAD HASHIM KAMALI, *SHARI'AH LAW: AN INTRODUCTION* 174 (2008).

80. *Id.* at 175.

81. *Id.*

82. See, e.g., Syariah Criminal Offences (Federal Territories) Act 1997 s. 9 (Malay.).

83. M. Hakan Yavuz, *Turkey: Islam without Shari'a?*, in *SHARI'A POLITICS: ISLAMIC LAW AND SOCIETY IN THE MODERN WORLD* 146, 164 (Robert W. Hefner ed., 2011). Another Muslim-majority democracy, Indonesia, has a similar arrangement where state-sponsored *muftis* or *imams* generate *fatwas* for the nation that are non-binding. Although, there is debate whether Law No. 19 of 2008 concerning Sharia securities does, in fact, constitute a binding regulation independent of state legislation. See Mujaid Kumkelo et al., *Harmonization Patterns and Positivism of Fatwa Into Indonesian National Law: Study On The Renewal Fatwa of Mui In Islamic Law*, 41 J. L., POLY & GLOBALIZATION 232, 238 (2015).

84. AN INTERPRETATION OF THE QUR'AN 423 (Majid Fakhry trans., 2000); see also THE CAMBRIDGE COMPANION TO THE QUR'AN 255 (Jane Dammen McAuliffe ed., 3d ed. 2008).

85. FARID ESACK, *THE QUR'AN: A USER'S GUIDE* 180–81 (2005).

86. Afaf Marsot, Book Review, 15 J. L. & RELIGION 525, 525 (2000–01) (reviewing HAIFAA A. JAWAD, *THE RIGHTS OF WOMEN IN ISLAM: AN AUTHENTIC APPROACH* (1998)).

toward women's rights and gender democracy.<sup>87</sup> At times, the *Qur'an* is quite specific concerning women's legal rights: ". . . and women have rights equal to what is incumbent upon them according to what is just . . ." <sup>88</sup> Much of what the Prophet Muhammad initially taught "was quickly modified . . . or completely lost as the political leaders and scholars of the first few centuries of Islam shaped tradition . . ." <sup>89</sup> The devil to equality, so to speak, was in the details.

The *Qur'an* makes numerous references to the equality of men and women; many Muslim feminists argue that a gender-neutral belief system lies at the center of Islam and that centuries of male-dominated legal interpretation have obscured it.<sup>90</sup> Scholars argue that the traditional verse-by-verse method of *Qur'anic* study, combined with its domination by male practitioners, marginalized female scholarly access to understanding revelation.<sup>91</sup> This almost exclusively male club of legal scholars, therefore, caused "the suppression of the Qur'an's message of gender equality."<sup>92</sup> Ironically, many women served as a large donor group for Islamic legal education during the early centuries of Islam.<sup>93</sup> Fatima Mernissi, in *The Veil and the Male Elite*, instead argues that stricter forms of interpretation prevailed because male scholars feared subjectivity—leaving the door "wide open to the manipulation of revelation through interpretation."<sup>94</sup> She does recognize, however, that not all scholars spoke of women in the same misogynistic voice.<sup>95</sup> Nevertheless, the interpretive vehicle matters—whether a strict reading of the *Sunnah* or broader use of *qiyas* and *ijtihad*. As noted above, female voices have firm, historical roots in Islam. Consequently, the Turkish religious establishment could harness this powerful narrative for positive change.

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87. TUCKER, *supra* note 56, at 3.

88. AN INTERPRETATION OF THE QUR'AN, *supra* note 84, at 40.

89. TUCKER, *supra* note 56, at 3.

90. Mohammad Fadel, *Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought*, 29 INT. J. MIDDLE EASTERN STUD. 185–204 (1997).

91. *See id.*

92. *See id.*

93. Ann Lambton, *Awqāf in Persia: 6th–8th / 12th–14th Centuries*, 4 ISLAMIC L. & SOC'Y 298, 300 (1997) ("Although the ultimate purpose of a *waqf* had to be charitable the objects to which, and the beneficiaries to whom, the proceeds might be given, were many and various. The founders of *awqāf* were both rich and poor, powerful and weak. Those for which we have records are mainly *awqāf* made by the rich and powerful for the benefit of *madrasas*, mosques, hospitals and other public buildings, often constructed by themselves—the age was one of great buildings. . . . [L]ocal rulers, their ministers and others [founded many *awqāf*] in the 6th–8th/12th–14th centuries in Yazd, Fārs and Kirmān. A notable feature is the number made by women.").

94. *See* Fadel, *supra* note 90, at 185.

95. *Id.*

*C. The Turkish Legal System and Religious Directorate*

In contrast to traditional Islamic law, secularism is the foundation for the Turkish Constitution and legal system.<sup>96</sup> The Turkish judicial system is an amalgamation of Western legal systems—mostly continental European.<sup>97</sup> The system is almost devoid of any Eastern or religious viewpoints.<sup>98</sup> This was not always so.

Before Atatürk, the Ottoman period saw the first transition from state-sponsored Islamic law under the absolute rule of the Sultan to a more Westernized rule of law.<sup>99</sup> In particular, the Ottoman reformers saw Islam as a roadblock to their plans to convert the military, legal system, and government into a more European-based model.<sup>100</sup> It was not until the collapse of the empire and ratification of the constitution in the twentieth century that the Turkish state fully embraced Western secularism.<sup>101</sup>

After the Assembly ratified the new Turkish Constitution in 1924, they amended the document four years later to remove any mention of Islam as the state religion.<sup>102</sup> The constitutional framers realized, however, that if they completely purged Islam from the government, Islam would grow unchecked and “inevitably retain its hold over the society.”<sup>103</sup> From the 1928 framers to the 1982 constitutional assembly, therefore, Islam has enjoyed a small presence within the Turkish government under the control of the constitutionally created Directorate of Religious Affairs, otherwise known as the *Diyanet*.<sup>104</sup>

Despite the existence of the *Diyanet*, Turkey still enjoys a relatively Western judiciary. The constitutional framers heavily molded the Turkish legal system after the Continental System.<sup>105</sup>

96. Ackerman, *supra* note 77.

97. See Esin Öricü, *A Synthetic and Hyphenated Legal System: The Turkish Experience*, 1 J. COMP. L. 261, 261–62 (2006) (stating “[t]he legal culture is a synthesis of predominantly Swiss, German, Italian and French legal cultures”).

98. *Id.* at 261.

99. See Ihsan Yilmaz, *State, Law, Civil Society and Islam in Contemporary Turkey*, 95 MUSLIM WORLD 385, 387–88 (2005).

100. *Id.* at 386–87.

101. *Id.* at 387.

102. See INTRODUCTION TO TURKISH LAW 31 (Tuğrul Ansay & Don Wallace, Jr. eds., 5th ed. 2005).

103. *Id.*

104. *Id.* at 31–32 (eight principle reform laws are offered permanent protection from the Constitutional Court in order to maintain certain secular ideals within the government: secular education and civil marriage, use of the Turkish alphabet and numerals, free use of the hat, abolition of dervish convents, removing certain titles, and outlawing certain garments).

105. *Id.* at 13.

Yet, because prior cases from higher courts are not binding—as in the English/American systems—there is a strong legal tradition to follow prior rulings from the Constitutional Court.<sup>106</sup> Judges are to evaluate laws based not on Islamic jurisprudence, but through the Constitution and statutes.<sup>107</sup> The judiciary, therefore, operates as the traditional “check” on the other branches of government commonly seen in the West.<sup>108</sup> This does not mean, however, that the system is completely devoid of any Islamic influence.

The Constitution forbids Islamic law within the Turkish legal system, yet the *Diyanet* “bases its arguments on officially non-recognized Islamic legal and jurisprudential sources.”<sup>109</sup> Employing *ijtihad* and *takhayyur*, the *Diyanet* has issued *fatwas* on all manner of issues.<sup>110</sup> Despite the State’s efforts to bifurcate political Islam and personal Islam, “it is practically impossible to keep the distance between the civic domain and the religious any longer.”<sup>111</sup> Notably, the government statutorily charges the *Diyanet* with the administration and maintenance of the religious apparatus; adjudicating legal cases, however, remains outside of its mandate.<sup>112</sup> This separation effectively ended the presence of *Sharia* law in the adjudication of everyday disputes,<sup>113</sup> but Islamic jurisprudence remains crucial to the *Diyanet*’s other mission-administering Islam.

The *Diyanet* acts as the government’s religious ministry, reporting directly to the Prime Minister, and the ministry is responsible for 86,000 mosques and the salaries of the imams, *muftis*, and muezzins.<sup>114</sup> The secular Turkish state retains tight control over religion and leaves “*imams* with little leeway to create their own interpretation of religion.”<sup>115</sup> Since 2010, the AKP has quadrupled

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106. *Id.*

107. *Id.* at 42.

108. INTRODUCTION TO TURKISH LAW, *supra* note 102, at 42.

109. Yilmaz, *supra* note 99, at 391.

110. *Id.* at 391, 393–94 (stating that the HCRA’s *fatwas* have commented on “fasting and traveling by train, the stock exchange, taxes, *halāl* meat, marrying non-Muslims, . . . court divorce, polygamy, nationalism, unemployment benefits, inflation, interest, customs taxes, bribery, depositing money in banks in non-Muslim countries, selling alcohol in non-Muslim countries, gambling in *dār al-harb*, sterilization, plastic surgery, using perfumes, abortion, *ijtihad*, military service, organ transplantation, prayers (*salāt*) on buses, VATs, mortgages, European Union, golden teeth, alcohol in medication, eau de cologne, interest, inflation, insurance, feminism, *nikāh*, and fertility clinics.”).

111. *Id.* at 394.

112. Zana Çitak, *Between ‘Turkish Islam’ and ‘French Islam’: The Role of the Diyanet in the Conseil Français du Culte Musulman*, 36 J. ETHNIC & MIGRATION STUD. 619, 621 (2010).

113. Istar B. Gözaydın, *Diyanet and Politics*, 98 MUSLIM WORLD 216, 218 (2008).

114. *Id.*

115. DAVID SHANKLAND, ISLAM AND SOCIETY IN TURKEY 29 (1999).

*Diyanet*'s budget to two billion dollars, with the "[d]irectorate now issu[ing] *fatwas* on demand, as well as wading into political issues and backing up . . . AKP position[s]," such as monitoring Turkish immigrants.<sup>116</sup> The AKP also permits the *Diyanet* to run a twenty-four-hour news channel and maintain social media accounts across several platforms.<sup>117</sup> With President Erdoğan's post-coup consolidation of power, one can only imagine the *Diyanet* will become ever more obedient to the conservative Islamic agenda.<sup>118</sup> Therefore, understanding the *Diyanet* and *fatwa* interpretation by the Turkish community is paramount to understanding potential solutions to the gender gap in Turkey's educational system.

### III. DELIVERANCE THROUGH THE *DIYANET*

The Turkish government has used the *Diyanet* to achieve political and economic goals on previous occasions. The *Diyanet* created the Coordination Committee of Muslim Turks in France to maintain political oversight of Turkish immigrants abroad.<sup>119</sup> As such, employing the *Diyanet* to create legally justifiable *fatwas* advancing political goals such as women's rights is not unrealistic or improbable. The *Diyanet* is well-suited to draft the *fatwas* for a myriad of reasons, namely the following: 1) religion plays an important role in Eastern Turkey; 2) the HanafI school and Shia schools offer greater elasticity; and 3) the directorate possesses immense financial and cultural resources.

#### A. Religious Power in Eastern Turkey

Unlike its western twin, the eastern half of Anatolia is comprised of a much more conservative and pluralistic population. This pluralism and the differences between minority groups and the Sunni-majority cause many to entrench themselves within their minority identity. While the majority of Turks are Sunni Muslims, a significant Shia population resides in eastern Turkey—some 300,000 people.<sup>120</sup> Unlike

116. Svante Cornell, *The Rise of Diyanet: the Politicization of Turkey's Directorate of Religious Affairs*, TURK. ANALYST (Oct. 9, 2015), <https://www.turkeyanalyst.org/publications/turkey-analyst-articles/item/463-the-rise-of-diyanet-the-politicization-of-turkey%E2%80%99s-directorate-of-religious-affairs.html> [<https://perma.cc/49JA-W6U2>]; see also Çitak, *supra* note 112, at 620; David Lepeska, *Turkey Casts the Diyanet: Ankara's Religious Directorate Takes Off*, FOREIGN AFFAIRS (May 17, 2015), <https://www.foreignaffairs.com/articles/turkey/2015-05-17/turkey-casts-diyanet> [<https://perma.cc/VFB6-SQK3>].

117. Lepeska, *supra* note 116.

118. Cornell, *supra* note 116.

119. Çitak, *supra* note 112, at 620.

120. See Niyazi Öktem, *Religion in Turkey*, 2002 BYU L. Rev. 371, 373–74 (2002).

Sunni Muslims, the Shia believe that the Prophet's nephew, Ali, was his chosen successor and the first legitimate Caliph.<sup>121</sup> The Shia believe that the leader of the faith and the state must come from the Prophet's household; therefore, the Shia Imam exists without sin, and he is considered infallible.<sup>122</sup> During the end of the ninth century, the twelfth Shia Imam disappeared, and the Shia await his return.<sup>123</sup> In the interim, Shia clerics rely heavily on *ijtihad*.<sup>124</sup> The Shia population of eastern Turkey subscribes to the Ja'fari school of jurisprudence.<sup>125</sup> This school places a heavy emphasis on *ijtihad* and, unlike other minority schools, is widely respected as a source of jurisprudence.<sup>126</sup> In eastern Turkey, the Shia operate their own mosques and employ approximately seventy imams in the region.<sup>127</sup>

Another religious group that maintains a similar devotion to the lineage of Ali in eastern Turkey is the *Alevi*s.<sup>128</sup> Unlike the Shia, however, *Alevi*s do not fast during the Holy Month of Ramadan, they do not participate in the pilgrimage to Mecca, nor do they pray five times a day.<sup>129</sup> Regarding the stature of women, the *Alevi*s community considers itself more "progressive" than the Sunni majority; veils are not worn, nor are women segregated in the classroom or workplace.<sup>130</sup> By no means an insignificant minority, the *Alevi*s account for almost twenty percent of the Turkish population.<sup>131</sup> These two religious groups, orthodox Shia and *Alevi*s, together comprise the religious majority in eastern Turkey.<sup>132</sup>

The Turkish government's treatment of the *Alevi*s minority in eastern Turkey has produced suspicion and animosity. This mutual distrust dates back to the Ottoman period when the central government began to persecute segments of the *Alevi*s population.<sup>133</sup> During

121. See KAMALI, *supra* note 79, at 87.

122. *Id.*

123. *Id.* at 88.

124. *Id.* at 89.

125. See Pinar Tremblay, *Turkish Shiites fear growing hate crimes*, AL-MONITOR (July 11, 2014), <https://www.al-monitor.com/pulse/originals/2014/07/tremblay-turkish-shiites-sectarian-hate-crime-isis-syria.html> [<https://perma.cc/SD88-PAKB>].

126. See *The Amman Message: Summary*, OFFICIAL WEBSITE OF THE AMMAN MESSAGE, [http://ammanmessage.com/?option=com\\_content&task=section&id=5&Itemid=34](http://ammanmessage.com/?option=com_content&task=section&id=5&Itemid=34) [<https://perma.cc/69N6-8S2N>].

127. See U.S. DEP'T STATE, *TURKEY: INTERNATIONAL RELIGIOUS FREEDOM REPORT 2004* (2004), <https://www.state.gov/j/drl/rls/irf/2004/35489.htm> [<https://perma.cc/BC7W-V7P2>].

128. See generally David Zeidan, *The Alevi of Anatolia*, 3 MIDDLE EAST REV. INT'L AFF. 74 (1999).

129. *Id.* at 76.

130. *Id.*

131. SHANKLAND, *supra* note 115, at 136.

132. See Zeidan, *supra* note 128, at 74.

133. Albert Doja, *A Political History of Bektashism from Ottoman Anatolia to Contemporary Turkey*, 48 J. CHURCH & ST. 423, 434–35 (2006).

the post-Ottoman Kemalist period, the Turkish government continued to view and treat the *Alevi*s as a distinct “other” population, resulting in a significant social gap between Sunnis and *Alevi*s.<sup>134</sup> The recent rise of Islamism within Turkey’s central government has caused a resurgence in *Alevi*s practices, with many believers founding *Alevi*s religious societies.<sup>135</sup> In response to recent perceived threats from Kurdish independence movements, Turkish nationalists have attempted to claim the *Alevi*s as a “pre-eminently Turkish expression of Islam.”<sup>136</sup> Under this recent dogmatic shift, therefore, the government would consider all *Alevi*s as ethnically and racially Turkish.<sup>137</sup> The Sunni-controlled *Diyanet* has coordinated a campaign to persuade the *Alevi*s that they are part of one Turkish Muslim entity.<sup>138</sup>

### B. HanafI Views on Women

Both the Shia schools and the HanafI School hold critical places in any Islamic-centered solution for women’s advancement. As the dominant school for Turkey’s Sunni population and the primary school of the *Diyanet*, any solution must conform to HanafI juristic principles.<sup>139</sup> In many ways, the HanafI School appears more elastic in its teachings than other Islamic legal schools. For instance, both the *Maliki* and *Shafi’i* legal schools do not bestow an inherent right on women to choose their own marriage partners without the consent of a male protector.<sup>140</sup> HanafI law, however, does permit a woman “the right to give herself in marriage without recourse” to her male protectors.<sup>141</sup> From this relatively strong legal position, women—according to the HanafI jurists—were additionally entitled to a larger swath of property and inheritance rights.<sup>142</sup> Although this area of

134. See DALE F. EICKELMAN, *THE MIDDLE EAST: AN ANTHROPOLOGICAL APPROACH* 286 (2nd ed. 1989); Zeidan, *supra* note 128, at 75.

135. Zeidan, *supra* note 128, at 78.

136. Martin van Bruinessen, 56 *BIBLIOTHECA ORIENTALIS* 246, 247 (1999) (reviewing KARIN VORHOFF, *ZWISCHEN GLAUBE, NATION UND NEUER GEMEINSCHAFT: ALEVITISCHE IDENTITÄT IN DER TÜRKEI DER GEGENWART* (1995)).

137. *Id.*

138. *Id.*

139. See Russell Powell, *Evolving Views of Islamic Law in Turkey*, 28 *J. L. & RELIGION* 467, 480 (2012–13).

140. Mona Siddiqui, *The Concept of Wilaya in HanafI Law: Authority versus Consent in al-Fatawa al-‘Alamgiri*, 5 *Y.B. ISLAMIC & MIDDLE EASTERN L.* 171, 173 (1998).

141. *Id.* Although the HanafI School is arguably more liberal in this respect, it does require that there be *kafa’ah* (equality between husband and wife). If *kafa’ah* is not present, then male protectors may prevent the marriage. See also TUCKER, *supra* note 56, at 51 (explaining marriage arrangements for females under HanafI law).

142. Siddiqui, *supra* note 140, at 183–84.

Islamic law contains strong elements of its patriarchal beginnings, “[t]he HanafI notion . . . illustrates the importance of accepting and respecting a woman’s right in some of the fundamental issues of marriage.”<sup>143</sup> These relatively liberal jurisprudential views may provide the necessary room to expand women’s political rights utilizing a HanafI foundation.

### C. Shia Schools’ View of Women

Despite significant differences in belief, the Shia schools hold a similarly equal view of women’s rights to education as that of the HanafI School. The predominant Shia school within eastern Turkey is the Ja’fari school that places an emphasis on *ijtihad* by the imams.<sup>144</sup> This emphasis on *ijtihad* and independent reasoning has permitted the Ja’fari school to remain quite flexible. For example, unlike many of the other schools, Ja’faris “view mature women as coequals with their male counterparts and legally competent to make their own marriage decisions, regardless of their fathers’ approval.”<sup>145</sup> This juristic opinion is not surprising, given the flexible nature of *ijtihad* and the wide latitude afforded Shia imams as the Shia await the return of the Hidden Imam.

### D. Employing the Diyanet

Employing jurisprudence from both the HanafI and Ja’fari schools, the *Diyanet* should issue progressive *fatwas* designed to increase women’s access to education in eastern Turkey. First, the *Diyanet* already operates the religious administration with flexibility and creativity. Second, the *Diyanet* has the resources necessary to reach the target population. Third, the recent thaw in tensions between the *Diyanet* and religious minorities makes now the optimal time for reconciliation.

#### 1. The Flexible Nature of the Diyanet

The *Diyanet* already possesses the necessary religious and bureaucratic machinery to issue culturally progressive *fatwas*. It is critical to note that the *Diyanet* does not limit its jurisprudence strictly to the HanafI school.<sup>146</sup> For example, the *Diyanet* broke with

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143. *Id.* at 185.

144. Powell, *supra* note 139, at 475.

145. Leila P. Sayeh & Adriaen M. Morse, Jr., *Islam and the Treatment of Women: An Incomplete Understanding of Gradualism*, 30 TEX. INT’L L. J. 311, 326 n.97 (1995).

146. Powell, *supra* note 139, at 480.

Hanafi tradition when, in 2005, it appointed two women as vice-*muftis*.<sup>147</sup> In breaking with Hanafi interpretation, the *Diyanet* seeks a balance between secularism and republicanism, which may include *muftis* using broad public policy arguments.<sup>148</sup>

Aside from breaking with Hanafi tradition, the *Diyanet* is also able to employ *takhayyur*. The concept of *takhayyur* is not new to the region and the *Diyanet*; *talfiq*, also called “patching,” permits the combination of two separate Islamic schools to form one particular ruling or doctrine.<sup>149</sup> Turkish religious scholars have been familiar with *talfiq* from the time of the Ottoman legal system. This ability to choose interpretations from different schools empowers the *Diyanet* to use the most progressive *Ijtihad* opinions from the Hanafi and Ja’fari scholars. Such flexibility can yield cultural results that promote women’s education in eastern Turkey.

### 2. *The Societal Influence of the Diyanet*

Due to recent support from the AKP, the *Diyanet* retains an immense amount of influence over Turkey. The *Diyanet* doubled its staff to over 150,000 employees in 2015; the *Diyanet* budget is now “40 percent more than the Ministry of the Interior’s and equal to those of the Foreign, Energy, and Culture and Tourism ministries combined.”<sup>150</sup> The Turkish people and government perceive the *Diyanet* as so important that, during the first few hours of the 2016 coup attempt, President Erdoğan ordered the *Diyanet* to play pro-government prayers at all mosques.<sup>151</sup> Within seconds, the *Diyanet* sent President Erdoğan’s message to 110,000 religious personnel across the nation.<sup>152</sup>

### 3. *Opportunities for Reconciliation with the Diyanet*

The issuance of progressive *fatwas* provides the *Diyanet* with the opportunity to engage in a much-desired *détente* with religious minorities. In the past decade, the *Diyanet* cultivated a negative image among certain eastern Turkish minority groups.<sup>153</sup> Most

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147. *Id.*

148. *Id.* at 480–81.

149. See KAMALI, *supra* note 79, at 95.

150. Lepeska, *supra* note 116.

151. Pinar Tremblay, *How Erdogan used the power of the mosques against coup attempt*, AL-MONITOR (July 25, 2016), <https://www.al-monitor.com/pulse/originals/2016/07/turkey-coup-attempt-erdogan-mosques.html> [<https://perma.cc/WXF4-UBLS>].

152. *Id.*

153. van Bruinessen, *supra* note 136, at 247.

notably, Kurdish and Zaza elements within the *Alevi*s population vehemently resent the *Diyanet*.<sup>154</sup> In a rebuff to the *Diyanet*'s Turkish nationalism overtures, some Kurdish authors have "emphasized the presence of Iranian elements in Alevism."<sup>155</sup> These groups perceive the *Diyanet* as a Sunni-majority tool to control them and advocate for a parallel directorate catering to the *Alevi*s population.<sup>156</sup> Further, the *Alevi*s do not receive any state funding through the *Diyanet* because the *Alevi*s worship in Cem Houses rather than state-run mosques.<sup>157</sup>

Rather than drive religious minorities away from the government, the *Diyanet* could use the progressive *fatwas* as an inclusive measure among eastern Turkey's population. Adding Shia and various *Alevi*s imams to the *Diyanet* would provide the *fatwas* with religious credibility and bolster the *Diyanet*'s tarnished image. Given the *Diyanet*'s immense budget, the administration could allocate funds to assist the *Alevi*s religious establishment without providing direct funding to the sensitive issue of *Alevi*s Cem Houses.

#### 4. Practical Applications of the Fatwas

Moving from the theoretical to the practical, the *Diyanet* should apply the progressive *fatwa* strategy to two pressing issues concerning women's education: 1) government boarding schools, and 2) involuntary domestic vocations. Regarding boarding schools, the Turkish government initially established state-funded female primary boarding schools for low-income girls in eastern Turkey.<sup>158</sup> The AKP, however, shut down these schools during the 2012–2013 educational reforms.<sup>159</sup> Erdoğan stated, "it is pedagogically and psychologically more appropriate for children to stay with their families during their education years in order to be raised in a family environment."<sup>160</sup>

The 2012–2013 reforms were a "regressive step for girls' education since the majority of girls in these schools are from economically and socially disadvantaged families where they have to [engage in] domestic work, provide child labour, and are deterred from attending school."<sup>161</sup> Turkish Government data reflects that after the school closings, the education gap widened—so too did the gender pay gap, with data showing Turkish women falling drastically behind their

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154. *Id.*

155. *Id.*

156. *Id.*

157. Öktem, *supra* note 120, at 388.

158. Cin & Walker, *supra* note 12, at 135.

159. *Id.*

160. *Id.*

161. *Id.*

male counterparts.<sup>162</sup> Further, as of June 2017, the Turkish Government estimated that “housewife” related duties excludes one-third of working age adults from the workforce.<sup>163</sup> Truly, the 2012–2013 AKP reforms caused a dramatic backslide among women’s education opportunities in eastern Turkey.

Here, the *Diyanet* and a progressive *fatwa* may effect change. As stated above, the minority religious groups of eastern Turkey are receptive to broad and wide-ranging interpretations of Islam.<sup>164</sup> Ja’fari *ijtihad* encased in a directorate *fatwa* could have wide-ranging effects. Given the relatively liberal views of the Hanafī School concerning a woman’s need for a male protector, *fatwas* advocating that girls attend boarding school could comport with traditional Islamic interpretation.<sup>165</sup> The *Diyanet* imams, practicing *ijtihad*, would then need to ensure the *fatwa* contained the proper textual basis—borrowing the style of their Ottoman predecessor, Khayr al-Din.<sup>166</sup>

Despite these apparent synergistic elements to the proposed boarding school *fatwa*, conservative resistance is still likely. In conservative families, those preventing a woman from attending school after the governmental discretionary period are very often close male relatives.<sup>167</sup> Though honor killings are rare in eastern Turkey compared to other parts of the Middle East, they do occur.<sup>168</sup> One study reiterated the common understanding that the vast majority of honor killings are perpetrated by a woman’s brothers, followed by fathers, and then the fathers’ brothers and their sons.<sup>169</sup>

To protect those women who would become exposed to the risk of honor killings because of their pursuit of boarding school, the *fatwa* does provide a potential solution: “the role of the larger community is very important in traditional honor killings; such killings are highly unlikely unless the transgression becomes known in the community.”<sup>170</sup> The *fatwa*’s impact here lies in mitigating the community’s

162. TURKISH STATISTICAL INST., <http://www.turkstat.gov.tr/UstMenu.do?metod=temel> list [<https://perma.cc/A5B3-T597>] (click “Employment, Unemployment, and Wages”; then download the Excel spreadsheets).

163. *Id.*

164. Rosemary R. Hicks, *Translating culture, transcending difference? Cosmopolitan consciousness and Sufi sensibilities in New York City after 2001*, 10 J. ISLAMIC L. & CULTURE 281, 288 (2008).

165. See Siddiqui, *supra* note 140, at 173.

166. See TUCKER, *supra* note 56, at 16–17.

167. See COUNTRY REPORT, *supra* note 14.

168. See *id.*

169. Gideon M. Kressel et al., *Soricide/Filiacide: Homicide for Family Honour*, 22 CURRENT ANTHROPOLOGY 141, 142–43 (1981).

170. Nancy V. Baker et al., *Family Killing Fields: Honor Rationales in the Murder of Women*, 5 VIOLENCE AGAINST WOMEN 164, 171 (1999).

negative association with a woman leaving her family to live at an educational institution. *Diyanet* imams have several Qur'annic verses from which to choose, such as: "If any of your women [a]re guilty of lewdness, Take the evidence of four (Reliable) witnesses from amongst you [a]gainst them; and if they testify, [c]onfine them to houses until [d]eath do claim them, [o]r Allah ordain for them [s]ome (other) way."<sup>171</sup> This *aya* does not advocate for violence as a remedy to perceived female impropriety.<sup>172</sup> Rather, the harshest punishment is a form of house arrest.<sup>173</sup> As the foundation for any religious ruling, this Qur'annic verse provides *Diyanet* imams with a reference point for using *ijtihad*. Turkish laws against domestic violence and assault in general may bolster a *Diyanet* imam's progressive jurisprudence. The resulting *fatwa* would receive wide distribution among the eastern Turkish community. Further, related *fatwas* based on Qur'annic verses that advocate for women's education could strengthen the curriculums for both boys and girls in public schools. Expanding the *fatwa*'s communications footprint, the religious ministry's social media presence and weekly sermons on these matters could provide significant coverage to reach most of eastern Turkey.

Not only could progressive *fatwas* provide women with safe boarding schools, but a *fatwa* may also encourage rural families to permit their daughters to participate in more schooling. Until the eighth grade, Turkish boys and girls maintain roughly similar levels of participation in public education.<sup>174</sup> Around the ninth grade, however, participation levels diverge. The Ministry of Education admits that many Turkish girls are unable to achieve their full economic potential due to their involuntary employment in family-run agricultural businesses.<sup>175</sup> Many young girls work in agricultural sectors not covered by current Turkish labor laws, "such as agricultural workplaces with fewer than 50 workers or the informal economy."<sup>176</sup> The Turkish government's legislative attempt to modify these laws garnered little success.<sup>177</sup>

In response to the education gap, the Turkish government passed the Program for the Protection of the Family and Dynamic Population

171. 'ABDULLAH YÜSUF 'ALĪ, THE MEANING OF THE HOLY QUR'ĀN 189 (11th ed. 2004).

172. There is a vibrant debate among Muslim scholars regarding the progressive or restrictive nature of Qur'annic interpretation. To a Western reader, this *aya* may appear incongruent with modern feminist theory. In reality, this *aya* merely provides the basis of a juristic opinion. Under *ijtihad*, the *mufti* may greatly expand the rights of women and include modern-day feminist theory present in Turkish laws or customs. This synthesis of classical and modern Islamic interpretation is the essence of the *fatwa* argument.

173. See 'ALĪ, *supra* note 171, at 189.

174. O'Dwyer et al., *supra* note 31, at 201.

175. See COUNTRY REPORT, *supra* note 14.

176. *Id.*

177. Cin & Walker, *supra* note 12, at 134.

Structure (hereinafter “The Plan”). The Plan embodies the Turkish government’s efforts to jump-start the AKP’s procapitalist economic reforms with a goal of full implementation by 2023.<sup>178</sup> The government admitted that there is still much room for improvement in rural Turkey to increase women’s involvement in economic and civil organizations.<sup>179</sup> Whereas The Plan does contain provisions to reduce the informal economy responsible for the drop in women’s education levels,<sup>180</sup> the statistics concerning female economic mobility have not significantly improved.<sup>181</sup>

Here, the *fatwa* may bolster the government’s education policy objective more effectively than legislation. Because *takhayyur* permits *Diyanet* imams to pick jurisprudence from both the Hanafi and Ja’fari schools (unlike legislation from Ankara), *fatwas* have a more organic grounding in the region. Basing the *fatwa* on a Hanafi/Shia foundation, the *Diyanet* could encourage pious families to permit their daughters to engage in state-approved industries outside of the home. In order to ensure the widest form of acceptance, the *fatwa*’s drafters should consult the legal scholars of prominent Shia imams and the religious leaders of the *Alevi*s.

Coinciding with the issuance of a *fatwa*, the *Diyanet* should reintroduce the *Alevi*s workshops that were prevalent in 2009 and 2010.<sup>182</sup> In the past, the *Diyanet* directly engaged the *Alevi*s population to achieve greater understanding and encourage *Alevi*s participation in society.<sup>183</sup> Here, the *Diyanet* could include presentations grounded in the Ja’fari school of jurisprudence. The presentations should aim to provide a religious justification for permitting women to continue with their education after the eighth grade. Several Qur’annic sources could serve as the foundation for a Ja’fari interpretation. For example, in the twenty-eighth *sura*, the *Qur’an* reveals: “besides them he found [t]wo women who were keeping [b]ack (their flocks). He said: ‘What is the matter with you?’ They said: ‘We cannot water ([o]ur flocks) until the shepherds [t]ake back (their flocks): And our father is [a] very old man.’”<sup>184</sup> Shia imams could use this *aya* as a foundation for the *ijtihad* process. Because *ijtihad* permits the scholar to include contemporary legislation,<sup>185</sup>

178. REPUBLIC OF TURK. MINISTRY OF DEV., THE TENTH DEVELOPMENT PLAN 2014–2018 1 (2014).

179. *Id.* at 24.

180. *Id.* at 166–67.

181. See generally Cin & Walker, *supra* note 12.

182. Derya Özkul, *Alevi “Openings” and Politicization of the “Alevi Issue” During the AKP Rule*, 16 TURKISH STUD. 80, 85 (2015).

183. *Id.*

184. ‘ALĪ, *supra* note 171, at 966–67.

185. KHAN & RAMADAN, *supra* note 56, at 1–2.

information and reasoning from The Plan is also helpful. Consequently, a Shia imam may address a Turkish woman's right to finish her secondary education through *ijtihad* based on the Qur'an and The Plan's literature discussing the benefits of women in the workforce. To ensure uniformity across Islamic sects, the *Diyanet* imams, using the concept of *takhayyur*, could then adopt the Ja'fari juristic opinion for dissemination to the Sunni population as well.

A counterpoint to creating a pro-boarding school *fatwa* lies in the Hanafi School's narrow interpretation of female agency. The pre-Republican Hanafi jurists interpreted laws concerning a woman's coming of age from a strictly "male vantage point."<sup>186</sup> The roles of husbands and fathers routinely supersede the wants of their wives and daughters.<sup>187</sup> Therefore, in the realm of female exploration outside of the home, the Hanafi School provides little progressive assistance. Consequently, this proposed *fatwa* will need to utilize *takhayyur* and rely primarily on Shia jurisprudential roots.

### CONCLUSION

Incrementally liberal *fatwas* provide a real and viable solution to Turkey's education gender gap. The *Diyanet*, with its imams thoroughly schooled in the Hanafi legal tradition combined with participation from the Shia and *Alevis* communities, can effectively issue such interpretations. Gradualism is key to altering entrenched conservative values in eastern Turkey. A *fatwa* can assuage fears of daughters living outside of the home by relying on Hanafi and Shia jurisprudence. Women scholars are making their voices heard. The recent inclusion of two women in the *Diyanet* evidences the AKP's receptivity to feminist causes. Arguably, the conservative population may not approve of boarding schools, but providing a religious justification for girls' education bolsters already-existing support.

Second, changing cultural attitudes toward women and domestic duties via *fatwa* provides Turkish women with more educational opportunities. Using *takhayyur* to glean the most flexible juristic opinions from the Hanafi and Ja'fari schools, *Diyanet* imams could advocate for women's empowerment. This Note highlights but a minute sampling of verses that jurists could employ in *fatwa* issuance. Admittedly, women who fail to conform with cultural attitudes and attempt to continue their schooling against their families' wishes face physical violence. Again, *fatwa* may provide a solution. There is ample Qur'annic basis for abstaining from the use of violence

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186. TUCKER, *supra* note 56, at 151.

187. *Id.*

against women for perceived slights to family honor.<sup>188</sup> Further, given Turkey's modern legal code, *ijtihad* permits a synthesis of classical and secular legal interpretation. The modern Muslim, Turkish community has a voice in the imam's jurisprudence. The government and *Diyanet* should listen to this voice through these classical Islamic legal frameworks.

President Erdoğan and the AKP have made great strides in the improvement of education and closing the gender gap. Their efforts of late, however, have stalled. The conservatism of eastern Turkey is ripe for a new religious message from local mosques. The *Diyanet* possess the power to implement these much-needed reforms through progressive *fatwas*. For the sake of Turkish women, the nation's relations with Europe, and the AKP's political future, President Erdoğan would do well to embrace religious minorities in Turkey to form a cohesive, Islamic message for the future.

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188. Qasim Rashid, *The Islamic Solution to Stop Domestic Violence*, HUFFINGTONPOST (Mar. 5, 2012, 11:45 AM), [https://www.huffingtonpost.com/qasim-rashid/islamic-solution-to-end-domestic-violence\\_b\\_1307305.html](https://www.huffingtonpost.com/qasim-rashid/islamic-solution-to-end-domestic-violence_b_1307305.html) [<https://perma.cc/FV3U-9KUQ>].

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