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. The coup highlighted for

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. The cultural and legal impacts reverberate across Turkish society and may affect the rights of Turkish women. 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. For example, during the 2004 amendments to the Civil Code, the AKP included comments from women’s rights organizations. Ultimately, the AKP advocated for and passed thirty amendments that directly benefited the status of Turkish women. Amendments such as Article 105 now explicitly define sexual harassment generally and in the workplace. 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. This Note advocates for the adoption of progressive fatwas directed at improving the gender gap in education within Eastern Turkey. This solution provides President Erdoğan and the religiously conservative AKP with an Islamic-rooted framework that both comports with Islamic legal

3. See Akyol, supra note 1.
5. Id. at 417.
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.\textsuperscript{11} Strong advancement on gender equality keeps Turkey in good favor with the U.N. and EU,\textsuperscript{12} 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\textsuperscript{13} Religious Directorate. Finally, the Note will advocate for specific educational policies via fatwa, supported by the Hanafi 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.”\textsuperscript{14} The nation improved education with drastic changes to its civil code in 2002.\textsuperscript{15} 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.\textsuperscript{16} The 2012 reforms also eliminated the Ministry of

\textsuperscript{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).
\textsuperscript{13} See Siddiqui, supra note 9.
\textsuperscript{16} Id.
Education’s cosponsorship of imam training in secondary schools.\(^{17}\) Now, the Turkish Government’s Religious Directorate (Diyanet) has exclusive control over several hours per day of religious instruction for each Turkish student.\(^{18}\) 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.\(^{19}\)

As of 2015, the Turkish government has achieved a primary education rate of 97.08% for males and 97.12% for females.\(^{20}\) 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.\(^{21}\)

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

**B. Women in Eastern Turkey**

The Turkish government has made several important international commitments to women’s rights, but Turkish laws are “often
enacted without full consideration for their impact on gender equality or women’s political and economic participation.”27 As Turkey’s secular legal tradition embraces a “collectivist society,” cultural and legal values shift dramatically as one migrates from West to East Turkey.28 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.29

Further, eastern Turkey lacks many basic infrastructural facilities that make it difficult for students of both genders to attend regular schooling.30 The influence of Islamic norms and religious pressure from the conservative sector has resulted in the disparate treatment of women as compared to men.31 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.32 On the surface, the male-to-female dropout rate is sixty-six percent to seventy-two percent, respectively.33 This gap widens, however, in the East. Turkey’s gender gap overall places it 130th out of 145 countries, according to the 2015 Global Gender Gap Index of the World Economic Forum.34 “Turkey ranks 105th in educational attainment, 105th in political empowerment, and 131st (sic) in economic participation and opportunity.”35

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

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.
35. U.N. WOMEN, supra note 27.
increasingly conservative society.” Čelikel observed that “[w]omen’s rights are [moving] backward as much as [religious] conservatism is increasing in society.” The rising conservative tide has dire, physical implications for Turkish women. 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 . . . ”

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.” This conservative interpretation encourages girls to see education as irrelevant for them and to develop lower aspirations about education. Young girls internalize this cultural sentiment, causing a lack of enthusiasm for education. The conservative attitude silences the girls and forces them to adapt to families’ conservative preferences and limit what is possible in their lives. 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
misnomer. 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. The Qur’an is the bedrock of the classical Islamic legal system. With over 500 verses pertaining to legal matters, however, the text is not comprehensive. To fill this gap, Islamic legal scholars rely on the words and deeds of the Prophet, or Sunnah. Followers passed the Prophet’s words and deeds from generation to generation through oral tradition. 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.

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. The adjudicator would consult with either the Qur’an or hadith. 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). Interpreters often use qiyas for unprecedented legal questions by comparing the contemporary situation to a ruling that pertains to an existing case of law. More than any other form of legal interpretation, qiyas offer scholars and judges the widest latitude when interpreting cases involving progressive or new ideas.

Today, Islamic jurists often use reasoning from the Qur’an and Sunnah to derive new rules of law—a process called ijtihad. The

45. Id.
47. Id.
48. Id.
49. Id.
50. Id.
52. Melchert, supra note 46, at 902.
53. Id. at 903.
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.” 57 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.” 58 One, therefore, may bifurcate Islamic law into two groups: divine texts (Qur’an and Sunnah) and Islamic positive law (customs, statutes, and case law). 59 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. 60 Modern day *ijtihad* “argues that Islamic law is inherently fluid and evolutionary within the bounds of the Qur’an and the Prophet’s Sunnah,” 61 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* 62 for the purpose of legislation and enforcement. 63 *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. 64 In the modern era, *takhayyur* is widely used as “a means of flexibility and choice among the rulings of the existing *madhhabs*.” 65 Under Ottoman rule, Turkish Islamic scholars primarily subscribed to the *Hanafi* School of legal interpretation—eventually producing *Kânûnnâmes* (codification of Ottoman dynastic
Hence, from an early stage, Turkish rulers employed the Hanifists to combine secular and religious laws for the good of the empire. At times, the Ottoman state endorsed fatwas from local religious scholars.

A fatwa is a religious ruling from a mufti, which is a religious scholar. 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. The opinion, called a fatwa, was not binding on the recipients. 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. In contrast, fatwas that are the result of ijma may become binding as long as the scholarly community remains in agreement.

Aside from the method of fatwa creation (ijtihad versus ijma), scholars could also choose which texts to rely upon. 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. 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. The new Turkish democratic government would maintain this tradition despite the Ataturk Nationalists’ best efforts to stamp it out.

Finally, in classical Islam, the ability to issue a fatwa was not granted to just anyone—only muftis retained this knowledge and
authority. 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. The muftis set their own professional standards without much government regulation. 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. 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. 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.

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.” 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. In the beginning of the Islamic era, women were just as educated as many men, held professional jobs, and participated in war and combat.

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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’ah?, in SHARI’AH 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).
toward women’s rights and gender democracy.\textsuperscript{87} 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 . . . .”\textsuperscript{88} 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 . . . .”\textsuperscript{89} 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.\textsuperscript{90} 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.\textsuperscript{91} This almost exclusively male club of legal scholars, therefore, caused “the suppression of the Qur’an’s message of gender equality.”\textsuperscript{92} Ironically, many women served as a large donor group for Islamic legal education during the early centuries of Islam.\textsuperscript{93} Fatima Mernissi, in \textit{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.”\textsuperscript{94} She does recognize, however, that not all scholars spoke of women in the same misogynistic voice.\textsuperscript{95} 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.

\begin{footnotes}
\footnotetext[87]{TUCKER, supra note 56, at 3.}
\footnotetext[88]{AN INTERPRETATION OF THE QUR’AN, supra note 84, at 40.}
\footnotetext[89]{TUCKER, supra note 56, at 3.}
\footnotetext[90]{Mohammad Fadel, \textit{Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought}, 29 INT. J. MIDDLE EASTERN STUD. 185–204 (1997).}
\footnotetext[91]{See id.}
\footnotetext[92]{See id.}
\footnotetext[93]{Ann Lambton, \textit{Awqâf in Persia: 6th–8th/12th–14th Centuries}, 4 ISLAMIC L. & SOCY 298, 300 (1997) (“Although the ultimate purpose of a \textit{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 \textit{awqaf} were both rich and poor, powerful and weak. Those for which we have records are mainly \textit{awqaf} 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 \textit{awqaf}] in the 6th–8th/12th–14th centuries in Yazd, Fârs and Kirmân. A notable feature is the number made by women.”).}
\footnotetext[94]{See Fadel, supra note 90, at 185.}
\footnotetext[95]{Id.}
\end{footnotes}
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.\(^{96}\) The Turkish judicial system is an amalgamation of Western legal systems—mostly continental European.\(^{97}\) The system is almost devoid of any Eastern or religious viewpoints.\(^{98}\) This was not always so.

Before Ataturk, 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.\(^{99}\) 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.\(^{100}\) 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.\(^{101}\)

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.\(^{102}\) 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.”\(^{103}\) 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.\(^{104}\)

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.\(^{105}\)

\(^{96}\) Ackerman, supra note 77.

\(^{97}\) See Esin Örücü, 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.


\(^{100}\) 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. Judges are to evaluate laws based not on Islamic jurisprudence, but through the Constitution and statutes. The judiciary, therefore, operates as the traditional “check” on the other branches of government commonly seen in the West. 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.” Employing ijtihad and takhajjur, the Diyanet has issued fatwas on all manner of issues. 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.” 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. This separation effectively ended the presence of Sharia law in the adjudication of everyday disputes, 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. The secular Turkish state retains tight control over religion and leaves “imams with little leeway to create their own interpretation of religion.” Since 2010, the AKP has quadrupled...
Diyanet’s budget to two billion dollars, with the “[d]irectorate now issuing fatwas on demand, as well as wading into political issues and backing up . . . AKP position[s],” such as monitoring Turkish immigrants. The AKP also permits the Diyanet to run a twenty-four-hour news channel and maintain social media accounts across several platforms. 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. 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. 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. Unlike

118. Cornell, supra note 116.
119. Çitak, supra note 112, at 620.
Sunni Muslims, the Shia believe that the Prophet’s nephew, Ali, was his chosen successor and the first legitimate Caliph.\textsuperscript{121} 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.\textsuperscript{122} During the end of the ninth century, the twelfth Shia Imam disappeared, and the Shia await his return.\textsuperscript{123} In the interim, Shia clerics rely heavily on \textit{ijtihad}.\textsuperscript{124} The Shia population of eastern Turkey subscribes to the Ja’fari school of jurisprudence.\textsuperscript{125} This school places a heavy emphasis on \textit{ijtihad} and, unlike other minority schools, is widely respected as a source of jurisprudence.\textsuperscript{126} In eastern Turkey, the Shia operate their own mosques and employ approximately seventy imams in the region.\textsuperscript{127}

Another religious group that maintains a similar devotion to the lineage of Ali in eastern Turkey is the \textit{Alevis}.\textsuperscript{128} Unlike the Shia, however, \textit{Alevis} 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.\textsuperscript{129} Regarding the stature of women, the \textit{Alevis} community considers itself more “progressive” than the Sunni majority; veils are not worn, nor are women segregated in the classroom or workplace.\textsuperscript{130} By no means an insignificant minority, the \textit{Alevis} account for almost twenty percent of the Turkish population.\textsuperscript{131} These two religious groups, orthodox Shia and \textit{Alevis}, together comprise the religious majority in eastern Turkey.\textsuperscript{132}

The Turkish government’s treatment of the \textit{Alevis} 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 \textit{Alevis} population.\textsuperscript{133}
the post-Ottoman Kemalist period, the Turkish government continued to view and treat the Alevis as a distinct “other” population, resulting in a significant social gap between Sunnis and Alevis.\textsuperscript{134} The recent rise of Islamism within Turkey’s central government has caused a resurgence in Alevis practices, with many believers founding Alevis religious societies.\textsuperscript{135} In response to recent perceived threats from Kurdish independence movements, Turkish nationalists have attempted to claim the Alevis as a “pre-eminently Turkish expression of Islam.”\textsuperscript{136} Under this recent dogmatic shift, therefore, the government would consider all Alevis as ethnically and racially Turkish.\textsuperscript{137} The Sunni-controlled Diyanet has coordinated a campaign to persuade the Alevis that they are part of one Turkish Muslim entity.\textsuperscript{138}

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.\textsuperscript{139} 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.\textsuperscript{140} HanafI law, however, does permit a woman “the right to give herself in marriage without recourse” to her male protectors.\textsuperscript{141} From this relatively strong legal position, women—according to the Hanafi jurists—were additionally entitled to a larger swath of property and inheritance rights.\textsuperscript{142} Although this area of

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

\textsuperscript{135} Zeidan, \textit{supra} note 128, at 78.

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

\textsuperscript{137} Id.

\textsuperscript{138} Id.


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

\textsuperscript{142} Siddiqui, \textit{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.”\textsuperscript{143} 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 \textit{ijtihad} by the imams.\textsuperscript{144} This emphasis on \textit{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.”\textsuperscript{145} This juristic opinion is not surprising, given the flexible nature of \textit{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 \textit{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 \textit{fatwas}. It is critical to note that the Diyanet does not limit its jurisprudence strictly to the Hanafi school.\textsuperscript{146} For example, the Diyanet broke with

\begin{itemize}
\item \textsuperscript{143} Id. at 185.
\item \textsuperscript{144} Powell, supra note 139, at 475.
\item \textsuperscript{146} Powell, supra note 139, at 480.
\end{itemize}
Hanafi tradition when, in 2005, it appointed two women as vice-muftis.\(^{147}\) In breaking with Hanafi interpretation, the Diyanet seeks a balance between secularism and republicanism, which may include muftis using broad public policy arguments.\(^{148}\)

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.\(^{149}\) 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.”\(^{150}\) 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.\(^{151}\) Within seconds, the Diyanet sent President Erdoğan’s message to 110,000 religious personnel across the nation.\(^{152}\)

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.\(^{153}\) 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.
\(^{152}\) Id.
\(^{153}\) van Bruinessen, supra note 136, at 247.
notably, Kurdish and Zaza elements within the Alevis population vehemently resent the Diyanet. In a rebuff to the Diyanet’s Turkish nationalism overtures, some Kurdish authors have “emphasized the presence of Iranian elements in Alevism.” These groups perceive the Diyanet as a Sunni-majority tool to control them and advocate for a parallel directorate catering to the Alevis population. Further, the Alevis do not receive any state funding through the Diyanet because the Alevis worship in Cem Houses rather than state-run mosques.

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 Alevis 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 Alevis religious establishment without providing direct funding to the sensitive issue of Alevis 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. The AKP, however, shut down these schools during the 2012–2013 educational reforms. 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.”

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

Here, the \textit{Diyanet} and a progressive \textit{fatwa} may effect change. As stated above, the minority religious groups of eastern Turkey are receptive to broad and wide-ranging interpretations of Islam.\textsuperscript{164} \textsuperscript{162}. \textsc{Turkish Statistical Inst.}, http://www.turkstat.gov.tr/UstMenu.do?metod=temelist [https://perma.cc/A5B3-T597](click “Employment, Unemployment, and Wages”; then download the Excel spreadsheets).
\textsuperscript{163}. \textit{Id.}
\textsuperscript{164}. Rosemary R. Hicks, \textit{Translating culture, transcending difference? Cosmopolitan consciousness and \textsuperscript{165}. Siddiqui, \textit{supra} note 140, at 173.
\textsuperscript{166}. \textsc{Tucker}, \textit{supra} note 56, at 16–17.
\textsuperscript{167}. \textsc{Country Report}, \textit{supra} note 14.
\textsuperscript{168}. \textit{See id.}
\textsuperscript{170}. Nancy V. Baker et al., \textit{Family Killing Fields: Honor Rationales in the Murder of Women}, 5 \textsc{Violence Against Women} 164, 171 (1999).}

Ja’fari \textit{ijtihad} encased in a directorate \textit{fatwa} could have wide-ranging effects. Given the relatively liberal views of the Hanafi School concerning a woman’s need for a male protector, \textit{fatwas} advocating that girls attend boarding school could comport with traditional Islamic interpretation.\textsuperscript{165} The \textit{Diyanet} imams, practicing \textit{ijtihad}, would then need to ensure the \textit{fatwa} contained the proper textual basis—borrowing the style of their Ottoman predecessor, Khayr al-Din.\textsuperscript{166}

Despite these apparent synergistic elements to the proposed boarding school \textit{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.\textsuperscript{167} Though honor killings are rare in eastern Turkey compared to other parts of the Middle East, they do occur.\textsuperscript{168} 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.\textsuperscript{169}

To protect those women who would become exposed to the risk of honor killings because of their pursuit of boarding school, the \textit{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.”\textsuperscript{170} The \textit{fatwa}’s impact here lies in mitigating the community’s
negative association with a woman leaving her family to live at an educational institution. *Diyanet* imams have several Qur’anic verses from which to choose, such as: “If any of your women are guilty of lewdness, Take the evidence of four (Reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or Allah ordain for them some (other) way.”\(^{171}\) This *aya* does not advocate for violence as a remedy to perceived female impropriety.\(^{172}\) Rather, the harshest punishment is a form of house arrest.\(^{173}\) As the foundation for any religious ruling, this Qur’anic 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’anic 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.\(^{174}\) 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.\(^{175}\) 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.”\(^{176}\) The Turkish government’s legislative attempt to modify these laws garnered little success.\(^{177}\)

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


\(^{172}\) There is a vibrant debate among Muslim scholars regarding the progressive or restrictive nature of Qur’anic 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 'ALÎ, 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. The government admitted that there is still much room for improvement in rural Turkey to increase women’s involvement in economic and civil organizations. Whereas The Plan does contain provisions to reduce the informal economy responsible for the drop in women’s education levels, the statistics concerning female economic mobility have not significantly improved.

Here, the fatwa may bolster the government’s education policy objective more effectively than legislation. Because takhāyyūr permits Diyanet imams to pick jurisprudence from both the Hanafī and Ja’fārī schools (unlike legislation from Ankara), fatwas have a more organic grounding in the region. Basing the fatwa on a Hanafī/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 Alevis.

Coinciding with the issuance of a fatwa, the Diyanet should reintroduce the Alevi workshops that were prevalent in 2009 and 2010. In the past, the Diyanet directly engaged the Alevi population to achieve greater understanding and encourage Alevi participation in society. Here, the Diyanet could include presentations grounded in the Ja’fārī 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’anic sources could serve as the foundation for a Ja’fārī 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.’” Shia imams could use this aya as a foundation for the ijtiḥād process. Because ijtiḥād permits the scholar to include contemporary legislation,
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.” The roles of husbands and fathers routinely supersede the wants of their wives and daughters. 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.

186. TUCKER, supra note 56, at 151.
187. Id.
against women for perceived slights to family honor.\textsuperscript{188} Further, given Turkey’s modern legal code, \textit{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 \textit{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 \textit{Diyanet} possess the power to implement these much-needed reforms through progressive \textit{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.

\textbf{JOSHUA E. THOMAS*}


* JD Candidate, 2018, William & Mary Law School; BA, 2010 Vanderbilt University. I would like to thank Professor Christie S. Warren for her thoughtful comments and the Editorial Board of the \textit{Journal of Women and the Law} for their guidance during the writing process.