THE INTERACTION BETWEEN ISLAMIC LEGAL METHODOLOGIES AND SOCIAL CONTEXT IN THE LIGHT OF THE CONTEMPORARY PRACTICE OF *IFTĀ'*

A Case Study of Two Institutions

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ABSTRACT

The non-binding Islamic legal rulings or opinions (*fatwās*), which are issued by Muslim scholars or Islamic religious institutions in response to questions asked by Muslim individuals may be said to represent the most dynamic genre of (past or present) Islamic legal literature. It was traditionally the case that the practice of *iftā'* resided in the individual authority and effort of Muslim scholars. However, after national and international Islamic religious institutions were established at the beginning of the twentieth century, this practice has largely become the responsibility of specific bodies tasked with issuing *fatwās*. Saudi Arabia's Dār al-Iftā' (the General Presidency of Scholarly Research and Iftā') and Turkey's Diyanet (the Presidency of Religious Affairs) are concrete products of the twentieth century. Both institutions provide an idiosyncratic insight into the practice of *iftā'* and more specifically its development and application within two very different societies. One of the primary concerns of this thesis is therefore to identify the authority, function and role of the two institutions and their official *fatwās* in their respective environments.

The thesis compares the *fatwās* issued by the two institutions with the intention of determining which Islamic legal concepts and methodologies are applied. In addition, the discussion will also assess how the institutions interpreted authoritative sources of Islamic law and the process through which they came to arrive at divergent, and even opposed, interpretations. The thesis provides insight into the dynamic interconnection and interaction between Islamic legal methodologies and societal realities by examining these two Islamic modern institutions and focusing on their legal interpretation or edicts (*fatwās*). The active dimension of Islamic law is visibly rendered within the cultural, legal, political and social context in which the *fatwā* mechanism provides new regulations and rulings. The analysis converges upon the proposition that differences of opinion do not derive from the fundamental Islamic legal sources, the Qur'an and Sunna, but can instead be traced back to the different contextual environments in which the *fatwās* emerged, thus illustrating the strong connection between contextual elements and Islamic legal methodologies. In analysing *fatwās* issued by the two institutions on similar subjects within a comparative framework, I seek to explore the interaction between Islamic legal methodologies and the contexts in which they are applied. I therefore provide a contextual and methodological analysis of contemporary *fatwās* issued by the two institutions.

After identifying four thematic criteria (the predominant *madhhab* affiliation, legal systems, political structures, and social presumptions and cultural practices), the thesis then

proceeds to identify the points at which the two institutions converge and diverge in each of these respects. The study also uses the *fatwās* to demonstrate how the two institutions employ different Islamic legal concepts and principles when addressing identical issues. Finally, the thesis seeks to introduce an advanced comparative model for the study of *fatwās* that encompasses institutions (as social and religious interpreters), Islamic legal theories and methodologies (as an essential source of the law) and the social context in which *fatwās* emerge.

I envisage that a comparative analysis of the Dār al-Iftā' and the Diyanet will encourage academic researchers to investigate the institutionalised *iftā'* practice and to explore differences of opinion in the modern world. Institutionalised *fatwās* are important elemental materials that provide considerable insight into the points at which Islamic law encounters rapidly changing socio-cultural, socio-legal and socio-political circumstances.

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INTRODUCTION

Islamic law and its contemporary implementation have been engaged by a broad range of recent studies. A number of contemporary scholars maintain that in the aftermath of the formative period (from the time of the Prophet until the Abbāsid period), Islamic law has become increasingly immutable and rigid, in large part because it has been cut off from wider economic, political and social developments. Schacht argues:

> "Islamic law, which until the early 'Abbāsid period had been adaptable and growing, from then onwards became increasingly rigid and set in its final mould…Taken as a whole, Islamic law reflects and fits the social and economic conditions of the early 'Abbāsid period but has grown more and more out of touch with later development of state and society."[1]

For Schacht, the transition from a system of *ijtihād* to one of *taqlīd* accounts for the increasing rigidity of Islamic law which prevents it from keeping pace with actual practice.[2] From this perspective, contemporary Islamic law is viewed as a legal system or set of rulings which does not have a sufficiently flexible epistemology which enables it to productively engage with contemporary challenges and needs. Islamic law may be mistakenly represented or delineated as an immutable, inflexible and speculative system of religious thought, fully imbued with idealistic norms.[3] This view continues to exert influence despite the fact that the *fatwā* mechanism has demonstrated its ability to adjust to the challenges of modernity. The significant impact that the *fatwā* mechanism has had upon the development of Islamic law appears to have been overlooked. The contribution of *fatwās* to the emergence of a system that is adjusted to the changing needs of Muslim communities is obscured by a line of argument that has a very specific interpretation of Islamic legal doctrines and the feasibility of Islamic law. This author, however, argues that the dynamic character of Islamic law is revealed in the social context. Crucially then, the *fatwā* mechanism arrives at new regulations and rulings by evaluating contextual realities and utilizing the legal methodologies of Islamic law. Muhamad observes:

> "A *fatwa* declaration is a mechanism that allows new rulings to be introduced into *sharia* law. It is a product of Islamic scholars' (*ulama*) interpretation and adaptation of Qur'anic verses

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[1] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: The Clarendon Press, 1964), 75.
[2] Ibid, 69-71.
[3] Some scholars and academicians stringently argue that Islamic law represents a speculative product of Muslim jurists and scholars. According to this view, Islamic law consists utterly of idealistic norms disconnected from worldly affairs of Muslim societies. One of the prominent authorities in the area of Islamic law, N. J. Coulson is among these scholars. Arguably, he claims: "The elaboration of *Sharī'a* doctrine was the result of a speculative attempt by pious scholars, working during the first three centuries of Islam, to define the will of Allāh. In self-imposed isolation from practical need and circumstances they produced a comprehensive system of rules, largely in opposition to existing legal practice, which expressed religious ideal." See N. J. Coulson, "The State and the Individual in Islamic Law," *The International and Comparative Law Quarterly* 6, no. 1 (1957), 57 accessed March 13, 2018, http://www.jstor.org/stable/pdf/755895.pdf?refreqid=excelsior:7b063c56d7ca6c74f4e095f793b995b1.

> and *hadith* on contemporary issues, rather than an explicit doctrine from the Qur'an and *hadith*."[4]

The *fatwā* mechanism clearly demonstrates that the connection between Islamic law and the Qur'an and Sunna has never ceased to exist. This mechanism can also function as a form of *ijtihād* which enables Islamic institutions or Muslim scholars to apply, interpret and utilise Islamic legal doctrines, methods and sources when pursuing contemporary goals and objectives.

From the 20th century onwards, the establishment of modern Islamic institutions has substantially contributed to the institutionalisation and standardisation of Islamic knowledge. Despite the restrictions imposed on the autonomy of Muslim scholars (*'ulamā'*) by modern states, individual governments have significantly expedited to install their own institutions and tasked then with the production of Islamic knowledge. In many cases, this has resulted in the institutionalisation and standardisation of Islamic knowledge and practices, in which the collective resources of the schools of law (*madhhab*s) have been privileged over any particular *madhhab*.[5] In undermining the comprehensive authority of the schools of law, institutionalisation has given rise to alternative forms of authority within the sphere of Islamic law. Zaman observes:

> "The schools of law carry less overarching authority than they did a century ago, even in regions whose inhabitants continue to adhere to them, with the consequence that the 'ulama' whose authority was long tied to the *madhhab*, have been forced to look for alternative loci of authority. These alternatives have assumed many forms, but they are unified by a shared tendency toward a new institutionalisation of authority."[6]

The institutionalisation process established the grounds for an adoption of the collective *fatwā* issuances through organisational bodies although some individual scholars continued to offer *fatwā*s rooted within their own learned authority. More recently, these institutions have widened to provide forums for collective legal deliberations and explanations of issues pertaining to Islamic law.[7] Their scholarly explanations upon the different problems of believers have commanded substantial attention upon the grounds that they are believed to indicate a form of collective *fatwā*. Egypt's Dār al-Iftā' (the Egyptian Organisation for Granting Legal Opinions) is a recognised example of institutionalised authority. It was

[4] Nazlida Muhamad, "*Fatwa* Rulings in Islam: A Malaysian Perspective on Their Role in Muslim Consumer Behaviour," in *Handbook of Islamic Marketing*, ed. Özlem Sandıkcı and Gillian Rice (Cheltenham: Edward Elgar Publishing, 2011), 35.
[5] Muhammad Qasim Zaman, "'Ulama'," in *Islamic Political Thought: An Introduction*, ed. Gerhard Bowering (Oxford: Princeton University Press, 2015), 259.
[6] Ibid, 259-260.
[7] Ibid, 260.

originally established in 1895 with the intention of standardising the issuance of legal opinions and stamping them with an official imprimatur (this innovation occurred even though, just two years previously, the Deoband madrasa had founded its own Dār al-Iftā' in India).[8] In 1924, the Turkish Republic founded the Presidency of Religious Affairs (Diyanet), with the intention of drawing upon the political and social potential of religion.[9] Although the Diyanet continues to be subject to various legislative constraints, it has assumed an active role in educating and enlightening Turkish Muslims about their religion and Islamic law, with collective *fatwās* making an important contribution in this respect. Saudi Arabia's Dār al-Iftā' (the General Presidency of Scholarly Research and Iftā'), which was established by a royal decree of King Sa'ūd Ibn 'Abd al-'Azīz Āl Sa'ūd in 1953,[10] is another institution that can assert a claim to collective *fatwās* and *ijtihād*.

At the international level, the two *fiqh* academies, both of which are sponsored by Saudi Arabia, are also worth mentioning as forums for collective *fatwās* and collective *ijtihād* and have important contributions to make in both respects. The Fiqh Academy of the Muslim World League, whose headquarters are based in Mecca, was established with the intention of bringing together leading Muslim scholars from across the world to examine various legal issues and promulgate legal decisions upon the basis of their collective deliberation.[11] The International Islamic Fiqh Academy, which was established in 1983, was founded under the auspices of the Organisation of Islamic Conference (OIC).[12] More recent institutional innovations include the Fiqh Council of North America (FCNA), which was established in 1986 with the intention of providing legal guidance to the continent's growing number of Muslims,[13] and the European Council for Fatwā and Research (ECFR) which was founded in 1997 to issue collective *fatwā*s.[14] Asia's *fatwā* boards include Pakistan's Council of Islamic Ideology and Malaysia's Islamic Religious Council (Majlis Agama Islam) and National

[8] Zaman, "'Ulama'," 260 and Muhammad Qasim Zaman, *Modern Islamic Thought in a Radical Age: Religious Authority and Internal Criticism* (Cambridge: Cambridge University Press, 2012), 93.
[9] Berna Zengin Arslan, "State and Turkish Secularism: The Case of the Diyanet," in *The Religious and the Political: A Comparative Sociology of Religion*, ed. Bryan S. Turner (Cambridge: Cambridge University Press, 2013), 208.
[10] Muhammad al-Atawneh, *Wahhābī Islam Facing the Challenges of Modernity: Dār al-Iftā in the Modern Saudi State* (Leiden: Brill, 2010), 8.
[11] Zaman, *Modern Islamic Thought in a Radical Age*, 93.
[12] Ibid, 93.
[13] Yusuf Talal DeLorenzo, "The Fiqh Councilor of North America," in *Muslims on the Americanization Path?* ed. Yvonne Y. Haddad and John L. Esposito (Oxford: Oxford University Press, 2000), 69.
[14] Alexandre Caeiro, "Transnational Ulama, European Fatwas, and Islamic Authority: A Case Study of the European Council for Fatwa and Research," in *Producing Islamic Knowledge: Transmission and Dissemination in Western Europe*, ed. Martin van Bruinessen and Stefano Allievi (Abingdon: Routledge, 2011), 122, 131.

Fatwa Committee.[15] Similar bodies have also been established in Jordan, Kuwait, Lebanon, Sudan and other countries.

These institutions embody a wider trend in which religious norms are becoming increasingly standardised and there is a growing interest in collective *fatwā*s and collective *ijtihād*.[16] Zaman observes:

> "While ijtihād has long been viewed as the exercise of an individual jurist's mental faculties and legal acumen to arrive at new rulings on matters not hitherto regulated by the foundational texts, the 20th century has seen increasing initiatives toward making this a collective venture."[17]

During the twentieth century, many Muslim countries formally launched their own religious establishments, with the consequence that the practice of *iftā'* became increasingly characterised by the emergence of *fatwā* committees, in which more than one *muftī*, or Muslim scholar, affirm the same *fatwā*. Skovgaard-Petersen has sought to discuss this process of institutionalisation with reference to modern states and their desire to monopolise the production of Islamic knowledge.[18] While the institutionalisation of the practice of *iftā'* (formulating an Islamic legal interpretation or opinion) has been generally undertaken by modern states, a number of other factors impact upon this process. Growing contemporary knowledge and the fact that Muslim scholars lack a general knowledge of the cultural, scientific and social contexts that relate to their fields, have also contributed to the institutionalisation of producing Islamic knowledge and issuing *fatwās*.[19] These two factors are perhaps the clearer impediments to the desire to produce feasible, relevant and up-to-date Islamic legal rulings in the modern world. Taking into account the fact that the practice of

[15] For further insight into the collective *fatwā* and collective *fatwā* institutions, see Mohammad Abdalla, "Do Australian Muslims Need a Mufti? Analyzing the Institution of *Ifta* in the Australian Context," in *Law and Religion in Public Life the Contemporary Debate*, ed. Nadirsyah Hossen and Richard Mohr (Oxon: Rutledge, 2011), 219-220, Zaman, *Modern Islamic Thought in a Radical Age*, 92-107, Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā* (Leiden: Brill, 1997), 284-286 and Muhammad K. Masud, Brinkley Messick and David S. Powers, *Islamic Legal Interpretation: Muftis and Their Fatwas* (Cambridge: Harvard University Press, 1996), 8-15, 26-32.
[16] Zaman, "'Ulama'," 260.
[17] Ibid.
[18] Skovgaard-Petersen, *Defining Islam*, 22.
[19] Zulfiqar Ali Shah, *Iftā and Fatwa in the Muslim World and the West* (London: The International Institute of Islamic Thought, 2014), 1. There are a number of other reasons that anticipate the establishment of Islamic juristic bodies and religious institutions. Ahmad observes that the growth and specialization of knowledge makes the issuance of Islamic answers and legal rulings increasingly challenging. It is increasingly incumbent upon scholars to understand available data and various cultural and social contexts. This is complicated by the fact that the scholars lack the required language skills and are often based some distance from the contexts to which they refer. There is a constellation of factors which impede upon the aspiration to produce applicable Islamic legal rulings and opinions (*fatwās*) in the contemporary world. For further insight into the factors that lead to the establishment of institutions that practice collective *iftā'*, refer to Imad-ad-Dean Ahmad, "Shuratic *Iftā'*: The Challenge of Fatwa Collectivization," in *Iftā and Fatwa in the Muslim World and the West*, ed. Zulfiqar Ali Shah (London: The International Institute of Islamic Thought, 2014), 33-34.

iftā' is a mechanism that applies Islamic law to existing realities, the institutionalisation of this practice may provide Muslim scholars with a scholarly forum in which they can practice collective *ijtihād*. These scholarly forums, which are brought into effect through the institutionalisation of the practice of *iftā'*, may assist the issuance of applicable and viable *fatwās* that require the amalgamation of knowledge of Islamic law and cultural realities, local customs and scientific/technological developments. It can accordingly be argued that modern Islamic institutions which issue *fatwās* embody the unification of Islamic legal theory and social practices in the modern world and therefore bring out continuity and change in clearer perspective.

The transition from imperialism to nation-states drastically changed the world. The new geopolitical, political, scientific and technological realities belonging to the changing world demand a fresh look at and a re-valuation of the authentic texts, the Qur'an and Sunna, and some aspects of the Islamic legal tradition. Islamic religious institutions were established in their local and regional environments in order to engage these changes and produce applicable, appropriate and consistent Islamic legal rulings and opinions (*fatwās*). However, it is important that there are a number of contextual and environmental parameters and elements that implicitly shape the legal thought of Muslim scholars who function in these religious establishments. In his evaluation of the Islamic juristic tradition, Shah points out this when he writes:

> "But there were problems even with the original juristic tradition which was formulated and fixed during the first three Islamic centuries. There was so much political tumult and social turmoil going on during those years that the jurists' legal outlook and thinking process could not have escaped their surroundings."[20]

Even though Shah focuses upon the legal thought of early Muslim scholars, the particular context of each institution may still implicitly emerge as influential tacit elements that impact how the authentic texts are understood, interpreted and applied by these religious institutions. The implicit interactive relation between these contextual tacit elements and Islamic legal methodologies deployed by Islamic religious institutions is a key component of the current study. The author endeavours to cast light upon this interaction between Islamic legal methodologies and contextual environments throughout the present study.

With the intention of demonstrating and justifying the connection between the methods of Islamic law and social surroundings, this study provides a methodological and

[20] Shah, *Iftā and Fatwa*, 2.

contextual analysis of contemporary *fatwā*s that have respectively been issued by the Dār al-Iftā' (the General Presidency of Scholarly Research and Iftā') in Saudi Arabia and the Diyanet (the Presidency of Religious Affairs) in Turkey. These two institutions reflect a growing orientation to issue *fatwās* in a manner which enables them to function as a foundation for collective *fatwās* and collective *ijtihād*. The "collective" character of *fatwās* may foster trust in the authenticity and reliability of religious knowledge produced by these institutions. Zaman underscores the reliable dimension of collective *fatwās* when he writes:

> "[c]ollective *ijtihād* offers the possibility of pooling together the resources of scholars who would supposedly be inadequate on their own but are more credible as a collective."[21]

In common with Zaman, Qaraḍāwī prioritises collective *ijtihād* upon the grounds that it is more authentic and sound than its individual counterpart. Earnestly, he proceeds to assert that addressing important legal problems, especially those pertaining to public affairs, and providing appropriate Islamic legal solutions for them require Muslim scholars' collective scholarly efforts.[22] In his view, the establishment of an international Islamic scientific council of *'ulamā'* (*majma' ilmī Islāmī*), an autonomous body that is independent of any governmental and political pressures, is an important precondition for the practice of collective *ijtihād*.[23]

Those who advocate collective *ijtihād* as a means of determining new Islamic legal rulings in contemporary global societies frequently provide different supporting justifications. A number of scholars claim that this type of *ijtihād* is in harmony with the Qur'anic principle of consultation (*shūrā*)[24] and the practice of the Companions of the Prophet. Qaraḍāwī, for instance, refers to specific traditions, such as the Prophet's response to 'Alī Ibn Abī Ṭālib, when he asked what should be done when the Qur'an and Sunna do not provide guidance upon a particular problem. The Prophet counselled 'Alī to consult scholars and other believers conversant with the problem and not to make any decision on his own.[25] Qaraḍāwī also points to several consultations conducted by Abū Bakr and 'Umar Ibn al-Khaṭṭāb, the first two caliphs.[26] As Qaraḍāwī and Zaman observe, the collective character of

[21] Zaman, "'Ulama'," 261.
[22] Yusuf al-Qaraḍāwī, *Al-Ijtihād al-Mu'āṣir bayna al-Inḍibāṭ wal- Infirāṭ* (Beirut: al-Maktab al-Islāmī, 1998), 103.
[23] Ibid, 104.
[24] This Qur'anic principle is based on the Q. 42: 38 which reads: "And those who have responded to the call of their Lord, and established regular prayer; And who (conduct) their affairs by mutual consultation; Who spend out of what We bestowed on them for living." This verse, motivating Muslims to conduct their affairs through consultation, is the main divine and legal ground for those who put forward the idea of collective *ijtihād*.
[25] Al-Qaraḍāwī, *Al-Ijtihād*, 103.
[26] Ibid, 103-104.

this type of *ijtihād* further reinforces its authenticity and credibility. Finally, perhaps, the most incentive factor is conceivably based on the realisation that no single scholar is likely to be able to attain all knowledge that is required to resolve the contemporary challenges. [27]

The Dār al-Iftā' and the Diyanet both embody the arena of collective *ijtihād* and function as institutionalised loci for the promulgation of *fatwās* in their local and regional contexts. However, it is first essential to acknowledge the differences within their cultural, legal, political and social environments. The Dār al-Iftā' is a state-dependent institution that has been selected with the intention of examining how the *fatwā* mechanism functions within the Saudi Islamic state and context. Its history can be traced back to the 1950s, when increasing oil revenues precipitated a series of administrative and bureaucratic reforms. The Dār al-Iftā' is the country's pre-eminent religious body that provides advice to the King and also issues official *fatwās* on behalf of the Saudi Government.[28] In 1971, it was restructured by a royal decree of King Fayṣal, and an unprecedented number of Saudi senior scholars were selected to serve in this religious body which operated within the scope of the Saudi State Administration.

In Saudi Arabia, Islamic law has an essential and crucial place in the state legislation, since the Saudi judicial and constitutional system depends on Islamic law. The Qur'an and sunna constitute the foundational basis of its constitution. Article 7 of the Basic Regulations for Governance (*al-Niẓām al-Asāsī lil-Ḥukm*) clearly states:

> "Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State."[29]

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[27] Al-Alwani, in outlining his theory of *fiqh al-'aqalliyat* (minority jurisprudence) on the basis of collective *ijtihād*, observes: " "Fiqh For Minorities" is a collective discipline and should not be practiced on an individual basis. It is multifaced, with differing aspects that render any individualistic approach potentially perilous. The fiqh side of it requires appropriate treatment of facts and issues. No treatment can be correct without consideration of all aspects of the matter in question, a task that cannot be completely fulfilled by a single individual. It requires the collective input of several scientists and specialists from different social and religious disciplines. These people need to scrutinise and study the issue from all angles, especially those of a general nature, that affect the future of Muslim minorities, in order to articulate the problems accurately and seek their solutions in fiqh." See Taha Jabir al-Alwani, *Towards a Fiqh for Muslim Minorities: Some Basic Reflections*, trans. Ashur A. Shamis (London: The International Institute of Islamic Thought, 2003), 34-35. There are also other scholars who refer to this reason for the necessity of collective *ijtihād*. See Ahmad, "Shuratic *Iftā'*," 34, DeLorenzo, "The Fiqh Councilor of North America," 68, and Aznan Hasan, "An Introduction to Collective Ijtihad (Ijtihad *Jama'i*): Concept and Applications," *The American Journal of Islamic Sciences* 20, no. 2 (2003), 34-38, accessed April 01, 2018, https://i-epistemology.net/v1/attachments/709_Ajiss20-2%20-%20Hasan%20-%20An%20Introduction%20to%20Collective%20Ijtihad.pdf.

[28] Al-Atawneh, *Wahhābī Islam*, 21.

[29] "Basic Law of Governance," Article 1, *Royal Embassy of Saudi Arabia,* March 1, 1992, accessed October 08, 2015, https://www.saudiembassy.net/basic-law-governance.

Taking into account Saudi Arabia's sharī'a-based legal system, it can be inferred that the Dār al-Iftā' and its Islamic legal decisions, opinions and statements (*fatwās*) play crucial role within the country's legal and social system. Perhaps to a greater extent than any other country within the Muslim World, the Dār al-Iftā' is closely involved within the State's judicial, legal, political and social procedures – for this reason, its *fatwās* are pre-eminent in the formulation of Saudi Arabia's legal regulations and its cultural and social norms.

The Diyanet, in contrast, functions within an ultra-secular Muslim state. On March 3, 1924, the Caliphate, which had previously provided politico-religious leadership to the Muslim-Sunni community, was abolished, and the Diyanet was established (on the same day) and tasked with conducting religious services in Turkey.[30] Even after Islam's constitutional status as the state religion was abolished (in 1928) and the principle of secularism was inserted into the Constitution (in 1937), the Diyanet continued, and still continues, to be directly engaged in religious affairs. Despite the incorporation of this religious institution into the State's administrative and institutional structure, secularism has remained a defining feature of the Turkish Republic. For example, Article 2 of the current constitution (which was put in place in 1982, two years after an attempted military coup) clearly states:

> "The Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notion of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, ..."[31]

The irrevocable status of secularism is very clearly established by Article 4 of the same Constitution ("…the characteristics of the Republic in Article 2 … shall not be amended, nor shall their amendment be proposed)."[32] However, even within a state that retains such a strong commitment to secularism, the practice of *iftā'* continues to directly apply to the Muslim segment of the society. The Diyanet's status as a state-dependent religious institution lends a quite different significance to Turkish secularism.

In Turkey, the Diyanet is the official voice of Islam, and it issues Islamic legal opinions and interpretations (*fatwās*) under the auspices of the democratic secular system. The transition from emperorship to republicanism changed the socio-cultural and socio-

[30] Talip Küçükcan, "Are Muslim Democrats a Threat to Secularism and Freedom of Religion? The Turkish Case," in *The Future of Religious Freedom: Global Challenges*, ed. Allen D. Hertzke (Oxford: Oxford University Press, 2013), 274 and Gazi Erdem, "Religious Services in Turkey: From the Office of *Şeyhülislām* to the *Diyanet*," *The Muslim World* 98, no. 2-3 (2008), 275, accessed February 01, 2017, http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00216.x/full.
[31] "The Constitution of Republic of Turkey, 1982," Article 2, accessed September 16, 2016, https://global.tbmm.gov.tr/docs/constitution_en.pdf.
[32] "The Constitution of Republic of Turkey, 1982," Article 4.

political realities of Turkey, and this system introduced new values that indelibly impacted the Diyanet's Islamic legal decisions, explanations, rulings and statements. A closer examination of the Diyanet, a state-funded institution of the Republic of Turkey, and its *fatwās* provides considerable insight into how Islamic law is adjusted to Turkish society in an attempt to bridge the gap between religious and secular values. The institution's official *fatwās* are in any case not formulated in a vacuum, as they are adjusted to Turkey's cultural, epistemological, political and social realities. As a mechanism that conducts the issuance of Islamic legal interpretations and rulings (*fatwās*), the Diyanet is a versatile institution that enables the Muslim community to retain an attachment to Islamic legal rulings and values within a democratic and secular system. A closer engagement with the Diyanet and its *fatwās* may provide considerable insight into how Islamic law retains its relevance for Muslims who live within a secular system.

It should be noted that a number of academics and scholars maintain that the Dār al-Iftā' and the Diyanet are subservient bodies only exist in order to satisfy the desires of the Saudi ruling house and the Turkish administrative governments, respectively. The dependence of these institutions upon the state has resulted in strong and severe criticisms being aimed towards participating scholars, who are frequently characterised as regime puppets or "scholars of power".[33] These criticisms notwithstanding, the two institutions occupy an authoritative position in the production of Islamic legal knowledge within their respective environments. In acknowledging this, the current study seeks to move beyond the limitations of these critical observations. Both the Dār al-Iftā' and the Diyanet are particularly well-placed to provide institution-based models that demonstrate how the practice of *iftā'* is conducted in the modern world across different Muslim societies. More specifically, the two institutions also represent two extremes within the Muslim world – the Dār al-Iftā' vigorously functions under an explicitly Islamic government, the Kingdom of

[33] For further insight into the criticisms that have been directed towards the Dār al-Iftā', see Al-Atawneh, *Wahhābī Islam*, 45-50 and Quintan Wiktorowicz, "Anatomy of the Salafi Movement," *Studies in Conflict &Terrorism* 29 (2006), 221-228, accessed January 04, 2018, http://archives.cerium.ca/IMG/pdf/WIKTOROWICZ_2006_Anatomy_of_the_Salafi_Movement.pdf. The Diyanet has been criticised for being a political tool that strengthens incumbent governments. See Arslan, "State and Turkish Secularism," 213, and Ahmet Erdi Öztürk, "Turkey's Diyanet under AKP Rule: From Protector to Imposer of State Ideology?" *Southeast European and Black Sea Studies* 16, no. 4 (2016), 620, accessed April 04, 2017, http://dx.doi.org/10.1080/14683857.2016.1233663. In addition, some academics and scholars maintain that the Diyanet conflicts with the Republic of Turkey's secular character. See İştar B. Tarhanlı, *Müslüman Toplum, "Laik" Devlet: Türkiye'de Diyanet İşleri Başkanlığı* (İstanbul: Afa Yayınları, 1993), 71-150.

Saudi Arabia, while the Diyanet influentially operates under an ultra-secular democratic system, the Republic of Turkey.

The institutions that are engaged in this study and their associated Islamic legal interpretations and opinions (*fatwās*) help to bring out the interactions between the authoritative texts (the Qur'an and Sunna); Islamic legal theories and methodologies that are used by both institutions to derive legal rulings from the authoritative sources; and the respective social contexts in which the two institutions officially operate. In simultaneously engaging with the *fatwā* as legal discourse and social instrument, the current study seeks to identify how Muslim scholars within these institutions tackle the practicalities and challenges of operating within specific social environments.

The institutions that are examined in this work have received some scholarly engagement. This is especially the case with the Dār al-Iftā', where a substantial array of scholarly studies and literature about it already exist. However, the Diyanet's *fatwā*s and the Islamic legal methodologies that it deploys in the process of issuing a *fatwā* have rarely been subject to close attention. In addition, to the best of the author's knowledge, the two institutions have never been directly compared to each other. In making this comparison, the study mainly adopts an analytical and illustrative, rather than exhaustively descriptive, approach. The two countries (Saudi Arabia and Turkey) provide important insight into the different functions, positions and status of *fatwā*s issued by the two institutions within the national legal systems of the two countries and their wider social context. In addition, the administrative, legal and political attributes of the two countries potentially bring to light additional factors that influence the legal thought of Muslim scholars within the Dār al-Iftā' and the Diyanet. Perhaps, the institutions brought together in this study epitomise a fairly broad picture of key trends, tensions and dynamics which surround the issuance of *fatwā*s for various audiences living in distinct cultural, social, legal and political environments. This is one of the reasons why the two institutions have been selected – it is conceived that their *fatwā*s and legal justifications will align with the attributes of the respective environments and the precise exigencies that communities encounter. This comparative examination of the *fatwā*s will provide new insight into the question of how Islamic legal interpretations and opinions are interpreted and produced for different audiences in divergent communities during the twenty-first century.

Researchers in Islamic studies have devoted a considerable amount of time to the study of understanding of Islamic legal theory (*uṣūl al-fiqh*) and analysis of judicial judgements - contemporary *fatwā*s have also featured in these analyses, albeit to a lesser extent. Most of these studies tend to focus on written documents from pre-modern archives and some modern *fatwā*s. However, these contributions are limited by the fact that they tend to focus upon the forms and procedures of *fatwā*s rather than their contents and methodology.[34] Of the studies that examine *fatwā*s, few attempts to engage with the interaction between Islamic legal theory and the social context. In engaging at this point, this study will instead attempt to contribute to an improved understanding of the interpretative process and the possibility of legal change in the area of Islamic law.

Several recent works on *fatwās* have captured the attention of academics in both the Muslim world and the West. David S. Powers's ground-breaking study seeks to analyse a complex system of legal decision-making by drawing strongly upon *Kitāb al-Mi'yār*, a voluminous collection of *fatwās* that were compiled by al-Wansharīsī (d. 1508), a fifteenth century Mālikī scholar.[35] His analysis of the *fatwās* highlights the complex and dynamic interplay between the legal and social values of society. In offering a detailed and multi-faceted account of selected *fatwās*, Powers explores the application of Islamic law in fourteenth and fifteenth-century North Africa by demonstrating how *fatwās* can be used to explore the historical-legal context in which jurists issued their rulings. Colin Imber examines the *fatwās* of Ebu's-su'ud (d. 1574), who is widely recognised as the jurist who successfully reconciled Ḥanafī law and Ottoman secular law. This evaluation of Ebu's-su'ud's *fatwās*, which were issued during the time of the Ottoman Empire, provide an overview both of the Ḥanafī legal doctrine and the interrelationship between sacred law (the Ḥanafī school) and secular law (derived from custom and developed through imperial decrees).[36] These two contributions demonstrate the importance of *fatwās* as a source for the study of Muslim legal and socio-cultural history. Brinkley Messick's *Calligraphic State: Textual Domination and History in a Muslim Society* (1993) approaches Yemenite *fatwās* from an anthropological perspective and focuses upon the close links between everyday workings of "sharī'a society" and Yemenite Muslims' understandings of the written and spoken words. *Islamic Legal Interpretation: Muftis and Their Fatwas* (1996), which is compiled and edited by Masud,

[34] Al-Atawneh, *Wahhābī Islam*, XVII.
[35] David S. Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002), 4.
[36] Colin Imber, *Ebu's-su'ud: Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), 24.

Messick, and Powers, is perhaps the most important collection of *fatwā* studies which offers a comprehensive account of the political and social applications of *fatwās*. In emphasizing how *fatwās* have helped Islamic legal thinking to adjust to new issues and practices, this contribution explores how Islamic jurists (*muftīs*) and their legal interpretations (*fatwās*) establish a crucial link which conjoins the practice and theory of Islamic law and provide practical guidance to a given community. The editors present a detailed explanation in the introduction which respectively defines the history of the practice of *iftā'*, clarifies the differences between *muftīs* (Muslim scholars) and *qāḍīs* (judges) and assesses the role of the *fatwā* in applying Islamic law to everyday Muslim life.[37] The fourth part of the book, which contains a significant number of the *fatwās* issued in the nineteenth and early twentieth centuries and their analysis, casts light on how the practice of *iftā'* have fared in modern times.[38]

It is something of a surprise to note that few scholars have engaged with the Dār al-Iftā' (literally 'the house of *fatwās*'), *fatwās* and *muftīs*. Notable exceptions include Jakob Skovgaard-Petersen's history of the Dār al-Iftā' in Egypt and Muhammad al-Atawneh's engagement with the issuance of *fatwās* by the Dār al-Iftā' in Saudi Arabia, which were respectively published in 1997 and 2010.[39] Skovgaard-Petersen's *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā* established a valuable precedent for a more analytical approach to the contemporary Muslim legal systems; more specifically, to modern religious institutions in the Muslim world. The book introduces an elaborative analysis of the institution's relationship to Egypt's Islamic political discourse by examining representative samples of *fatwās* in their social and political context. The office represents a well-defined religious post in Egyptian society and serves as the spokesperson of an official Islam within the framework of existing state law. Skovgaard-Petersen argues that although state *muftīs* preserved the interest of the state, they undertook the role of defending the faith in the face of the onslaught of secularisation.[40] Accordingly, the Egyptian Dār al-Iftā' emerges as an influential mechanism that has endeavours both to Islamise society and to revive Islamic law by bringing all sorts of human action into the sphere of *fiqh* (jurisprudence). Skovgaard-Petersen's work introduces an important analytical work that critically describes and examines the reciprocal relationship between the Dār al-Iftā' and

[37] Masud et al., *Islamic Legal Interpretation*, 3-32.
[38] Ibid, 221-310.
[39] Skovgaard-Petersen, *Defining Islam for the Egyptian State*, and Muhammad al-Atawneh, *Wahhābī Islam*.
[40] Ibid, 26-27.

state. Some scholars have examined contemporary *fatwās* with the intention of clarifying their intellectual, legal and practical roles to Muslims resident in non-Muslim territories. Alan Verskin, in providing an accessible anthology of translated *fatwās* which span from the fourteenth to the twenty-first century and engage a wide range of geographical contexts, provides an account which reiterates the relationship between social, political and legal context and the construction of specific legal-theological opinions. The section on minority jurisprudence (*fiqh al-aqalliyyāt*) provides considerable insight into the evolution of *fiqh al-aqalliyyāt* by presenting broader juristic *fatwās* on Muslim minorities and the question of *hijra* (emigration).[41] Similarly, Said Fares Hassan also assesses the role of *fatwā* in the development of *fiqh al-aqalliyyāt* by introducing the legal interpretations (*fatwās*) of some Muslim scholars, most notably Ṭahā Jābir al-'Alwānī and Yūsuf al-Qaraḍāwī.[42]

At the time of writing, there is no comprehensive comparative study of Islamic modern institutions and their *fatwās*. Within the literature, it is more usual for these institutions and their legal explanations to be engaged upon an individual basis. The most relevant studies of Saudi Arabia's Dār al-Iftā' and its *fatwās* have been contributed by Khaled Abou El Fadl, Muhammad al-Atawneh and Frank Vogel. Abou El Fadl presents a number of the Dār al-Iftā''s *fatwās* that relate to women and maintains that they are symptomatic of the conservative and inaccurate application of Islamic law by a coercive authority.[43] He seeks to critique these contemporary *fatwās* by evaluating their underlying assumptions. Al-Atawneh studies the content and methodology of the Dār al-Iftā's *fatwās* by evaluating the interaction between context and text.[44] The book first presents the institutional history of the Dār al-Iftā', the role of *muftīs* in both Saudi society and government, and the methods and arguments applied by these official *muftīs* in formulating *fatwās*. In addition, the author provides a substantial introductory account of pre-1971 Islamic legal history and theory from the perspective of the Ḥanbalī school of law as understood and interpreted by the Wahhābī *'ulamā'*. He focuses mainly on the *fatwās* issued by the institution during the period from 1971 to 1999 and presents a substantial number of case studies that engage with such important issues as the role of women, television, internet, banks and medical technology. Numerous examples of *fatwās* and their profound methodological analysis illustrate the case

[41] Alan Verskin, *Oppressed in the Land: Fatwās on Muslims Living under Non-Muslim Rule from the Middle Ages to the Present* (New Jersey: Markus Wiener Publishers, 2013), 113-148.
[42] Salih Fares Hassan, *Fiqh al-Aqalliyāt: History, Development and Progress* (New York: Palgrave Macmillan, 2013), 57-119.
[43] Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority, and Women* (Oxford: Oneworld Publications, 2001), 170-171.
[44] Al-Atawneh, *Wahhābī Islam*, 35-149.

studies. Al-Atawneh demonstrates that the *'ulamā'* limited change in some of the case studies, while in other instances, they provided new interpretations of the sharī'a by often applying the Islamic legal principle of *maṣlaḥa* (public interest) as legal justification. The author's main goal is to investigate and evidence how the challenges faced by the Dār al-Iftā' are resolved by the *'ulamā'* while applying the Wahhābī interpretations of the sharī'a to the new circumstance of the late twentieth century.[45] Al-Atawneh concludes his work by arguing that the official Saudi *'ulamā'* can sometimes display flexibility on economic, political, technological and medical issues, referring to *fatwā* examples and their rulings on matters like television, organ transplantation and autopsy. In his view, the official Saudi *'ulamā'* have become more willing to apply analogy (*qiyās*), public interest and other legal methodological tools and may be more open to considering Islamic legal interpretations and rulings provided by Sunni scholars outside the Ḥanbalī-Wahhābī school of thought when evaluating controversial and challenging contemporary issues. The book provides an important contribution to the history and present-day situation of Islamic law in contemporary Saudi Arabia. Vogel's short article introduces three *fatwās* issued by Ibn Bāz, the former Grand Muftī of Saudi Arabia that relate to the legal status of divorce and demonstrates the complementary function of *fatwā* in the application of the sharī'a.[46] In addition to his article, Vogel's detailed and perceptive *Islamic Law and Legal System: Studies of Saudi Arabia* provides insight into the actual functioning of various Saudi institutions as well as the Dār al-Iftā' in the legal system of Saudi Arabia. In his broad-based approach, he thoroughly explains how *fatwās* issued by the institution were actually applied as the basis for laws in court cases and in turn assumed complementary role in Saudi judicial system.[47]

As for the Diyanet in Turkey, there is no detailed study of the Diyanet's *fatwās* or the process through which it issues *fatwās*. Şamil Dağcı's short article focuses upon the decisions of the High Board of Religious Affairs (HBRA) from a methodological perspective and seeks to question whether those decisions can be implemented as *fatwās*.[48] Sami Öcal's article complements this important contribution by providing an analysis of the Diyanet's *fatwās* on

[45] Al-Atawneh, *Wahhābī Islam*, XIII and XVII.
[46] Frank Vogel, "The Complementarity of Ifta' and Qaḍā': Three Saudi Fatwas on Divorce," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick and David S. Powers (Cambridge: Harvard University Press, 1996), 262-269.
[47] Frank Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden: Brill, 2000), 115-117 and 222-278.
[48] Şamil Dağcı, "Din İşeri Yüsek Kurulu Karalarına Fetva Konseptinde Bir Yaklaşım," *Diyanet İlmi Dergi* 38, no. 4 (2002), 11.

the creed, deeds and faith of believers.[49] Mustafa Bülent Dadaş's recent article (*the Fatwā Policies of the High Board of Religious Affairs*) analyses *fatwās* issued by the Diyanet with the intention of identifying whether the High Board of Religious Affairs, the Diyanet's highest advisory and decision-making body, follows a specific and systematic procedure during the issuance of a *fatwā*.[50] He begins by introducing the types of Islamic legal explanations, opinions and interpretation have been issued by the Diyanet before proceeding to set out the history of the institution, the specification of its duties within the Turkish Republic's Constitution and the process through which the HBRA issues a collective *fatwā*. Dadaş concludes by breaking *fatwās* down into two categories upon the basis of their contents.[51] The first category includes *fatwās* that relate to classical Islamic legal issues pertaining to ritual practices and religious norms, which were already fixed and formulated during Islamic law's formative and post-formative periods. The second category extends to a variety of complex contemporary issues (medical, scientific, social and technological problems) and modern innovations. In taking into account the two aforementioned categories, Dadaş brings his analysis to a conclusion by arguing that the Diyanet provides Islamic legal responses and opinions that are generally in accordance with the Ḥanafī school (*madhhab*) on classical Islamic legal issues; meanwhile, the institution seeks to resolve complex, contemporary and novel issues through the practice of collective *ijtihād*.

In addition to these contributions, the study will draw upon a number of official publications that have been produced by the Dār al-Iftā' and the Diyanet – these are the primary sources that will be drawn upon during the course of this study. These publications include books published by these institutions (individual and collective writings), official *fatwās* that are published on the respective websites and published research. Secondary sources include annunciations, published interviews (with official members of the two institutions) and sermons. Additional sources include books, official articles and periodicals that relate to the political and social interaction between the institutions and their environments.

[49] Sami Öcal, "From "the Fetwa" to "Religious Questions": Main Characteristic of Fetwas of the Diyanet," *The Muslim World* 98, no. 3 (2008), 324 -334, accessed November 30, 2015, http://0-web.b.ebscohost.com.lib.exeter.ac.uk/ehost/pdfviewer/pdfviewer?sid=0a112f02-7d86-40a3-8ccb-540438e5f0a5%40sessionmgr112&vid=0&hid=102.
[50] Mustafa Bülent Dadaş, "Kuruluşundan Günümüze Din İşleri Yüksek Kurulunun Fetva Siyaseti," *Türkiye Araştırmaları Literatür Dergisi* 13, no. 25-26 (2015), 37- 68.
[51] Ibid, 50.

Research Focus and Research Questions

The practice of *iftā'* is an important mechanism that is embedded within the Islamic legal tradition and that helps to provide Muslim communities with appropriate answers to their religious questions. It may help to ensure that Islamic law can be applied across different contexts. More specifically, the mechanism of *fatwā* functions as a legal instrument that helps Muslim scholars to transform divine legal injunctions, orders and prohibitions, which have each been revealed by the authoritative texts, into a practical language that can be easily comprehended by the Muslim public. The dynamism of Islamic law can therefore be attributed, in large part, to the legal interventions of *muftīs* (Muslim scholars or jurisconsults) ("[who] were central to that part of legal theory that deal with the modalities of transmitting the outcome of ijtihad from the domain of legal profession down to the public").[52] The *fatwā* may therefore be said to provide a jurisprudentially-founded response to the insinuation of critics who contend that Islamic law is immutable and stagnant. Hallaq, for example, refers to the importance of the practice of *iftā'* as a form of *ijtihād* that provides legal responses to contemporary problems facing Muslims ("the *fatwā*, reflecting the exigencies of the social order, was *instrumental in the ongoing process of updating and, indeed, amending* the standard legal doctrine as expressed in the *furū'*)."[53] Caeiro also describes how the *fatwā* mechanism functions as "a meeting point between legal theory and social practice".[54] In keeping with both of these contributions, the practice of *iftā'* can be broadly interpreted as a functional updating legal instrument and procedure that helps to address unprecedented issues within the scope of Islamic law. In operating as an updating mechanism, the practice of *iftā'* may provide responses and rulings that are directly applicable to the contemporary problems that confront Muslims. It may therefore be assumed that the *fatwā* mechanism enables, to a substantial extent, legal changes that contribute to the development of Islamic law.

However, instead of focusing upon the question of whether this particular instrument can precipitate changes within Islamic law, this study instead proposes to explore how the practice of *iftā'* has been implemented by the modern Islamic religious institutions. The study will be restricted to the Dār al-Iftā' in Saudi Arabia and the Diyanet in Turkey, along with

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[52] Wael B. Hallaq, "Ifta' and Ijtihād in Sunni Legal Theory: A Development Account," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick and David S. Powers (Cambridge: Harvard University Press, 1996), 33.

[53] Wael B. Hallaq, "From *Fatwās* to *Furū'*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, no. 1 (1994), 61, accessed March 03, 2015, http://www.jstor.org/stable/pdf/3399430.pdf?refreqid=excelsior%3A14bb4b8f98321893630d4f36943c4716.

[54] Alexandre Caeiro, "The Shifting Moral Universes of the Islamic Tradition of *Iftā'*: A Diachronic Study of Four *Adab al-Fatwā* Manuals," *The Muslim World* 96, no. 4 (2006), 661, accessed March 03, 2015, http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2006.00152.x/full.

their legal products (mainly *fatwās*). Both of these religious institutions experienced a process of centralisation and transformation, in which the established practice of *iftā'* (in general unofficially implemented by individual Muslim scholars) was replaced by formalised and institutionalised organisations. Although individual Muslim scholars continue to issue *fatwās* in both countries, this study primarily focuses upon official *fatwās* and official religious institutions. These engagements will, it is anticipated, provide important insights into how the practice of *iftā'* has undergone important shifts in modern times. In the contemporary world, this practice started to become part of state's political, legal or religious affairs in many Muslim countries, that is, it is no longer a matter for the private or individual *muftī*, as it was before. It was previously the case that *muftīs* would pronounce *fatwās* in the absence of ties to the political authorities.[55] Independence of the state was therefore a defining attribute of previous *muftīs*. However, the individualised *iftā*' process began to be collectivised and institutionalised at the beginning of the twentieth century in many Muslim countries.[56] Both the Dār al-Iftā' and the Diyanet are products of the twentieth century and are therefore linked into a wider context in which many Muslim countries experienced bureaucratisation, institutionalisation and modernisation in their economic, educational, legal and social fields. Since being established, the two institutions have actively issued Islamic legal opinions and interpretations (*fatwās*) with the intention of responding to religious questions by Muslims.

The two institutions are highly influential and command a substantial amount of prestige within their host societies. In operating within both institutions, Muslim scholars have formulated Islamic legal opinions and rulings that are closely aligned with the requirements of their respective societies. In seeking to address contemporary challenges through the issuance of Islamic legal interpretations (*fatwās*) and rulings, these scholars are profoundly influenced by their surrounding contexts. In converging upon the practice of *iftā'* by the Dār al-Iftā' and the Diyanet, along with the interplay between Islamic legal methodologies and social contexts, this study will focus upon the following questions:

1. How do the two institutions implement the practice of *iftā'* in their respective environments?
2. What are the roles and functions of *fatwās* issued by the two institutions in Saudi Arabia and Turkey?

[55] Masud et al., *Islamic Legal Interpretation*, 3.
[56] Skovgaard-Petersen, *Defining Islam*, 21-22, Al-Atawneh, *Wahhābī Islam*, 6-7 and Nico J. G. Kaptein, "The Voice of the *'Ulamā'*: *Fatwas* and Religious Authority," *Archives de Sciences Sociales des Religions* 49, no. 125 (2004), 120, accessed March 12, 2018, http://www.jstor.org/stable/30119298.

3. Do these institutions follow any specific procedure in formulating their own Islamic legal opinions and responses when they answer the religious questions presented to them?
4. Is there any interaction between the Islamic legal methodologies espoused by the Dār al-Iftā' and the Diyanet and the institutions' cultural, legal, political and social contexts?
5. Does functioning within an Islamic state or a democratic secular state significantly influence the practice of *iftā'* by the two institutions?
6. How do the different contextual readings of the authoritative sources of Islamic law by the two institutions affect their Islamic legal interpretations and rulings?

With the intention of answering these questions, this study separates the Dār al-Iftā' and the Diyanet before then bringing them together within a comparative framework that enables a cross-comparison of the two institutions. The author therefore seeks to demonstrate the different contextual factors that influence the two institutions to issue the antipodal *fatwās*, even when their attention is addressed to the same or similar issues. While the two institutions have produced a vast number of legal decisions (*fatwās*) and rulings, the comparative chapters of this study will focus upon the *fatwās* that the two institutions have issued upon similar subjects.

In the contemporary period, it is noticeable that the practice of *iftā'* has begun to be used for different purposes and to operate differently in various Muslim countries, with this variation often being related to the social, political and legal significance of Islamic law, or sharī'a. If Islam is declared to be the official religion of any Muslim country and its legal system is based either completely or partially upon Islamic law, modern Islamic religious institutions will play an important role in the legal system and their official *fatwās* will exert considerable influence, even to the point of functioning as binding and enforceable laws within some countries. For instance, in Malaysia, whose legal system derives from British common law and Islamic law, the National Fatwa Committee is responsible for issuing *fatwās* at the national level.[57] Once the *fatwā* issued by this Committee has been approved by the Islamic Religious Council and the Sultan, it will be published in the Gazette and

[57] Ahmed Akgunduz, *Islamic Law in Theory and Practice* (Rotterdam: IUR Press, 2010), 290-291.

announced to the public. Upon being published in the Gazette, the *fatwā* becomes an enforceable regulation that is binding upon all people and authorities within the state.[58]

In instances where the practice of *iftā'* functions as a form of legislation, the *fatwā* mechanism is, as is the case in Malaysia, used as part of the legislative process, with specific application to matters pertaining to Islamic law. While classical law generally establishes a *fatwā* as a voluntary, non-binding Islamic legal ruling, it can, in some Muslim countries, become a binding law that applies to all Muslim residents. It is possible, in referencing the role of Islamic law within the national legal system, to situate Muslim countries in one of three categories. The first category includes countries that enforce Islamic law as their national law – relevant examples include Iran, Mauritania, Pakistan, Saudi Arabia and Sudan. These countries proclaim themselves to be Islamic and generally apply Islamic law in the classical sense. In Pakistan, for example, the Council of Islamic Ideology was created with the intention of providing appropriate Islamic legal solutions to contemporary problems, in addition to extending advice to the Parliament, President and the Provincial Assemblies as to whether a proposed law is compatible with the principles of Islamic law.[59] However, the Islamic legal recommendations that the institution makes to the central government and the provincial governments, despite vested with the authority of determining if any law disregards or violates the principles of Islamic law, does not possess legal validity and therefore remains optional until the legislature agrees to implement it.[60] It may therefore be asserted that Pakistan's Council of Islamic Ideology functions as a legislative advisory body or a supervisory council during the legislative process.[61] In contrast to Malaysia's National Fatwa Committee, the Council of Islamic Ideology does not issue official *fatwās* that have been addressed by individual Muslims; instead, it objectively analyses controversial issues that have been referred to it by the Governor of a Province, the National Assembly, the President or a Provincial Assembly,[62] for whom it formulates Islamic recommendations (*fatwās*) or solutions. The second category includes secular states which exclude Islamic law from their national constitutions and legal system – relevant examples include Azerbaijan,

[58] Zaini Nasohah et al., "Standardisation of Fatwa in Malaysia: Management and Problems," *Advances in Natural and Applied Sciences* 6, no. 6 (2012), 923-925 and 927-928, accessed March 02, 2018, http://www.aensiweb.com/old/anas/2012/923-929.pdf.
[59] Manzooruddin Ahmed, "Islamic Aspects of the New Constitution of Pakistan," *Islamic Studies* 2, no. 2 (1963), 258-260, accessed March 20, 2018, http://irigs.iiu.edu.pk:64447/gsdl/collect/islamics/import/v2i25.pdf.
[60] "The Council of Islamic Ideology Government of Pakistan," in *Functions as per Article 230 of the Constitution*, accessed March 10, 2018, http://cii.gov.pk/aboutcii/function.aspx.
[61] Ahmed, "Islamic Aspects," 260-261.
[62] Ibid, 261.

Chad, Kosovo, Senegal and Turkey. The third and final category includes countries that attempt to simultaneously incorporate Islamic and secular law by applying one form of law to specific areas – relevant examples include Bangladesh, Egypt, Jordan, Kuwait and Malaysia. While these countries frequently declare Islam to be their "state religion," they cannot be considered to be, as in the cases of Iran, Saudi Arabia and Sudan, Islamic states. This categorisation situates Saudi Arabia and Turkey at two antipodal extreme ends: Islamic and secular. In this regard, the two countries exemplify the socially, politically, legally and culturally divergent societies. The influence of these contextual parameters and elements upon the practice of *iftā'* that are carried out by the Dār al-Iftā' and the Diyanet will be analytically examined in a comparative framework with the intent of bringing out the interaction between Islamic legal methodologies and environmental contexts.

Saudi Arabia is a country that uses Islamic law in its legal system, and Islamic legal issues therefore have a crucial bearing upon its governmental and legal system. In this system, the Dār al-Iftā' and its official *fatwās* can be said to represent the formal legal position of the state on issues relating to Islamic law. The official *fatwās* issued by the Dār al-Iftā', in applying sharī'a in Saudi Arabia, normally assume a complementary role.[63] When the Dār al-Iftā' was established, the Saudi-Wahhābī *'ulamā'* were incorporated into Saudi Arabia's administrative and bureaucratic system. As al-Atawneh observes, this incorporation officially increased their authority and power within the state administrative machinery.[64] It is nonetheless clear that operating within the framework of an Islamic state provides the Dār al-Iftā' with a unique authority and power in several spheres, in particular those relating to legal, religious and social matters. Islamic decisions, statements and opinions (*fatwās*) issued by the institution have a crucial impact upon the Saudi judicial system and even political affairs.

The Diyanet, as an Islamic religious institution, does not have a clear counterpart in any other Muslim country. The presence of this religious institution in a secularised country is unique to Turkey. In operating within a secularised environment, the Diyanet's engagement with Islamic legal issues may conceivably take into account a range of considerations which include Islamic legal methodologies and principles and also the political values and social and legal structures of Turkish society.[65] The Diyanet can be said to be an intellectual religious platform that seeks to bridge religious and secular values, and

[63] Vogel, "The Complementarity," 262-269.
[64] Al-Atawneh, *Wahhābī Islam*, 36-37.
[65] Emir Kaya, "Balancing Interlegality Through Realist Altruism: Diyanet Mediation in Turkey," PhD diss., (University of London, 2011), 18.

which is underpinned by a holistic Islamic legal view that conjoins Islamic ethical values and legal principles. The society and state in which the Dār al-Iftā' operates diverges substantially from the framing context of the Diyanet, and the practice of *iftā'* in both instances is accordingly defined by different aims, dynamics and impacts.

In comparing the two institutions, this study does not seek to determine legal sustainability or validity of the *fatwās* issued by the two institutions. Instead, this study proposes to investigate the contextual and environmental factors that influence the Islamic legal methodologies adopted by the two institutions. In undertaking this investigation, it proposes to examine *fatwās* issued by the institutions from a contextual and methodological perspective. The methodological evaluation reveals the juristic evidence and Islamic legal methodologies that establish the basis of argument in the examined *fatwās*; the contextual evaluation instead attempts to unravel the interpenetrating interplay between these Islamic legal methodologies that were applied in the *fatwās* and the contextual influences that shape the legal thinking of Muslim scholars in the two institutions.

Research Methodology and Structure

Various methods are utilized in the study of *fatwās* and are selected in accordance with divergent research objectives. Al-Atawneh provides an analysis of the analytical, comparative and descriptive methods that are used to study official Saudi *fatwās*. In classifying the content of *fatwās* into two categories (religious, social and traditional norms) (modern innovations), he draws upon the comparative method which reveals the convergence and divergence of the classical texts of Islamic law and the Dār al-Iftā's *fatwās*.[66] Powers provides an analytical and historical exposition of *fatwās* in order to explore the complex and dynamic interplay between the legal and social values of the society from which they were produced.[67] In common with Powers, Hassan examines how *fatwās* have impacted on the development of *fiqh al-aqalliyyāt* by applying textual legal analysis from a historical perspective.[68] Skovgaard-Petersen presents a study of the history of Egyptian Dār al-Iftā' and seeks to demonstrate the influence of this institution and its *muftīs* within Egyptian politics and society.[69] He mostly focuses upon the *fatwās* issued by the Egyptian Dār al-Iftā' during the 19th and 20th century along with the personal biographies of the state *muftīs*. In addition to providing the historical analysis, Skovgaard-Petersen also draws upon a contextual analysis

[66] Al-Atawneh, *Wahhābī Islam*, XXI.
[67] Powers, *Law, Society, and Culture*, 9-11.
[68] Hassan, *Fiqh al-Aqalliyāt*, 3-4.
[69] Skovgaard-Petersen, *Defining Islam*, 34-35

method to demonstrate how the *fatwās*, in being applied as an Islamic legal instrument, has contributed to the formulation of an easily applicable, rational and simple version of Islam.[70]

The literature review engenders three main approaches that can be applied as possible methodologies in the study of modern Islamic religious institutions and the analysis of their Islamic legal interpretations and rulings (*fatwās*). In the first instance, the historical descriptive methodology is largely used to describe and explain religious institutions along with their development within specific environments over time. In order to better address the development and functions of religious institutions in their local and regional settings, this method will be employed in the current study – it assumes a particularly prominent role in Chapter Two (which traces the historical background of the Dār al-Iftā from the inception of the Saudi-Wahhābī alliance until 2015) and, meanwhile, Chapter Three (which provides a detailed history of the Diyanet by mainly focusing upon the constitutional and legal regulations that establish the institution's administrative and organisational structure).

Fatwās are important religio-legal texts which provide a comprehensive understanding of the interrelationship between law and society. Scholars have recently become increasingly aware that the analysis of religious texts requires the application of multiple approaches in order to answer a particular question. Islamic legal texts, including *fatwās*, are multi-dimensional and multi-textured documents and should therefore be approached from multiple angles as this enables a fuller exploration of the interconnection of Islamic legal methodologies and social context. Contextual analysis and legal-hermeneutical analysis provide the second and third approaches that are largely applied in the study of *fatwās*. In acknowledging that the *fatwās* examined in the study are Islamic legal texts, the current study consciously applies both approaches in order to examine the interaction between legal methodologies and social context. The actual analysis of *fatwās* occurs across two levels. Firstly, analysis of the *fatwās* seeks to analyse their utilization of Islamic legal theory (*uṣūl al-fiqh*) by undertaking a legal-hermeneutical evaluation of each *fatwā*. This legal-hermeneutical approach clarifies how Islamic legal theories, methodologies, principles and maxims are used during the formulation of *fatwās*, and therefore implicitly seeks to answer the question of whether they are still applicable and practicable to the challenges which confront Muslims in the contemporary period. When evaluating the surveyed Islamic legal interpretations and rulings (*fatwās*) from a methodological perspective, classical Islamic

[70]Skovgaard-Petersen, *Defining Islam*, 35.

legal theories and methodologies are systematically applied as a framework of reference. In the second instance, the social context is engaged in order to provide insight into the complex and dynamic interaction between the *fatwās* and the society from which they emerged. In each case, it is demonstrated how legal thought and society influence and shape each other. The analysis of social context helps to provide insight into a number of the socio-cultural, socio-legal and socio-political factors which have influenced the legal edicts or interpretations of the two institutions – accordingly emphasis is mainly placed upon the textual interpretation of the examined *fatwās* and the contextual analysis of each *fatwā*.

In addition to historical descriptive, legal-hermeneutical and contextual analyses, the current research uses a comparative methodology to make the influence of social context upon the practice of *iftā'* more explicit. In referring to the Dār al-Iftā' and the Diyanet, it is guided by the insight that the two institutions operate in fundamentally different societies (the Dār al-Iftā' operates under an extremely Islamic country, Saudi Arabia, while the Diyanet works in an ultra-secular Muslim country, Turkey). This allows for a comparison of how the practice of *iftā'* are implemented by the mentioned two institutions in two antipodal societies; of what the role of *fatwās* is in these two societies; and of to what extent the different social, cultural and legal environments affect the *fatwās* produced by the two institutions, along with the Islamic legal methodologies they follow.

In undertaking contextual evaluation, this research seeks to explore and portray the cultural, legal, political and social contexts in which the two institutions issue their *fatwās*; however, this in itself is not sufficient to determine how contextual elements and parameters impact Islamic religious institutions and their Islamic legal products, most notably *fatwās*, in the modern world. With the intention of demonstrating the dynamic, albeit often implicit, influence of these contextual elements on Islamic religious institutions and their issued *fatwās*, this study seeks to undertake a direct comparison of the Dār al-Iftā' and the Diyanet. This comparative methodology is intended to provide insight into how the different cultural, legal, political and social elements within the two countries have shaped the *fatwās* issued by the two institutions. Chapters Four and Five, in directly comparing the two institutions, provides a comparative conceptual framework that explains why different Islamic legal interpretations and rulings (*fatwās*) issued by the two institutions emerge in response to the same or similar subjects. In engaging at a theoretical level, the comparative methodology seeks to demonstrate how the *fatwā* mechanism functions in different countries, along with key divergences within the practice of *iftā'*, as performed by the Dār al-Iftā' and the Diyanet.

At a practical level, the comparative approach also helps to clarify how a specific Islamic legal problem, such as female leadership, is evaluated and solved within Saudi Arabia and Turkey; in addition, it also highlights the cultural, legal, political and social factors which come into play when the two institutions issue their *fatwās*.

As would be expected, it is necessary to set out specific criteria and points in order to compare the two institutions as the comparative possibilities are endless. In extending from the aforementioned research questions, four thematic areas have been identified in order to compare the two institutions. These are:

1. The interaction between the mainstream *madhhab* affiliation of society and Islamic legal methodologies, principles and theories adopted by the Dār al-Iftā' and the Diyanet.
2. The effect of the legal systems upon the function of *fatwā* in both Saudi and Turkish societies.
3. The reflection of the political systems of the two countries within the issued *fatwās*.
4. The influence of cultural practices (or customary aspects) and social values of both societies upon the issued *fatwās*,

The themes of this comparative analysis seek to uncover the cultural, legal, political and social dynamics that underpin the relationship between the two institutions and their environments. In addition, they also provide insight into the contextual and textual components of the *fatwās* issued by the two institutions. A number of factors contribute to the formation of a *fatwā*, but the contextual and textual components are the main constitutive elements that combine Islamic legal methodologies and social realities in any given instance. In adopting an analytical and comparative method, the study attempts to demonstrate the interaction between the main constitutive elements of *fatwās* that have been produced by the two institutions within the respective societies. The current research uses comparative methodology and textual legal analysis as the main methodological tools which bring together relevant literatures with the intention of contextualizing and comparing them. The advantage of these methods is that they demonstrate the interactions and tensions between the authoritative texts and the intellectual, interpretative and legal communities in which these institutions function.

This study consists of five chapters. Chapter One outlines, with reference to primary Islamic sources and works written by contemporary and traditional scholars, the origin and meaning of *fatwā*. In addition, the discussion will also engage with the contemporary practice of *fatwā*. With the intention of bringing out important continuities and changes, three types of *fatwā* (collective, public and state *fatwās*) that are practised within the two countries will be defined in general terms.

Chapter Two examines Saudi Arabia's Dār al-Iftā', one of the most widely recognised institutions in the Islamic world. This chapter will mainly focus upon its history, and past and present products, and it will mainly approach the Dār al-Iftā' from two different angles: 1) its creation, environment (socio-legal and socio-political), functions and power structure; 2) its *fatwā* issuance procedure and *fatwās*. The practice of *iftā'* will be discussed with reference to the pre-institutionalised period of the Saudi-Wahhābī *'ulamā'* (1744-1953), the institutionalisation of the Saudi-Wahhābī *'ulamā'* (1953-1971) and the reconfiguration of the Dār al-Iftā' (1971-1993) – each stage corresponds to the historical development of the practice of *iftā'* within Saudi Arabia. The socio-cultural, socio-legal and socio-political environment of the institution is emphasised to as great an extent as possible in order to demonstrate its influence upon the Dār al-Iftā' and its *fatwās*. The chapter places particular emphasis upon the authority and performance of the Dār al-Iftā', the institution's *fatwā* issuance procedure and the institution's symbiotic relationship with the Saudi government.

Chapter Three assesses Turkey's Diyanet from a historical perspective, and outlines the purposes which have underpinned its creation, functions and power structure. Its historical development is divided into four periods. Each period reflects how political attitudes towards the institution changed – significant developments that influenced the institution's administrative and organisational structure during each period are highlighted and set out in more detail. In presenting the history of the Diyanet, the chapter seeks to sketch a general background by referencing political and socio-religious perspectives. The analysis of political background sets out the environment within which official legislation and regulations pertaining to the Diyanet have developed. The discussion of these Diyanet-related state laws and regulations both clarify its administrative and organisational structure and also demonstrate how its activities have been impeded by the democratic secular state. The chapter then proceeds to delineate Turkey's religious and social structure, with the intention of demonstrating how the institution mediates between religion, society and state. In engaging at these points, the chapter sets out the wider context which the official *fatwās* were

issued. The *fatwās* issued by the religious institution are then analysed, examined and scrutinised in order to bring out the nebulous interaction between the Islamic legal methodologies applied in the examined *fatwās* and the secular democratic context of Turkish society. The procedure that this institution follows in issuing *fatwās* is then explained in order to demonstrate how it provides jurisconsultation to Muslims living in Turkey by technically formulating its own Islamic legal decisions, interpretations and rulings in a collective manner within the scope of its own organisational structure.

The second and third chapters discuss *fatwās* that have been issued by the Dār al-Iftā' and the Diyanet with the intention of examining how religious knowledge is produced in different cultural, legal, political and social contexts. In instances where further elaboration is required, the interactions between *fatwās* and their context will be presented through an analytical and descriptive approach. By virtue of the fact that these surveyed *fatwās* are actually products of a specific social context and time, they should be approached in their specificity in order to identify the socio-legal, socio-political and socio-religious parameters that have subtly guided the two institutions and their scholarly religious productions.

In general terms, these two chapters seek to identify the jurisprudential and theoretical methods that the two institutions apply when they issue official *fatwās*. Closer analysis clearly demonstrates how Islamic legal sources (the Quran, Sunna, consensus (*ijmā'*), Islamic legal legacy (*turāth*) and Islamic legal theory (*uṣūl al-fiqh*)) are applied by both institutions. If either of the two institutions evidences an affiliation to a particular legal school (*madhhab*) during the issuance of a *fatwā*, this is discussed specifically with reference to the examined *fatwās*. Both chapters draw on *fatwās* and their specific contexts in order to make important points about the relationship between religion, society and state in both countries. The chapters do not seek to engage with the entirety of *fatwās* issued by the two institutions but instead focuses upon *fatwās* that relate to the key issues.

Chapters Four and Five provide this study's original research. In building upon the preceding two chapters, which separately engaged the Dār al-Iftā' and the Diyanet, these two chapters adopt an advanced comparative model and approach to assess whether there is a connection between the *fatwās* issued by the two institutions and the broader legal, political and social context which frames their issuance.

Chapter Four compares the Dār al-Iftā' and the Diyanet from different perspectives and elaborates each point with reference to the specific *fatwās* that the Dār al-Iftā' and the

Diyanet have issued on the same or similar issues. The examined Islamic legal interpretations (*fatwās*) may provide insight into the factors which influence the issuance of legal edicts or interpretations, the manner in which the institutions interpret the authoritative texts and the functions of the *fatwā* within surrounding societies. A closer comparison is then made in parallel with the first two chapters, and direct references is made to Islamic legal methodologies and procedures, the legal and political system that operates within the two countries, and the contextual and cultural structures which frame the two institutions and their engagement in religious affairs.

Chapter Five provides a comparative analysis that engages with the *fatwās* relating to female leadership that were introduced by the two institutions. Translated versions of the *fatwās* (that elaborate Islamic legal rulings issued by the Dār al-Iftā' and the Diyanet) are presented in an appendix and then subjected to a variety of critical analyses in order to identify the assumptions, influences and reasons that cause the two institutions to arrive at almost diametrically opposed legal conclusions. A legal-hermeneutical analysis is employed by focusing upon the Islamic legal methodological framework of the *fatwās* that have been espoused by each institution. The purpose of this analysis is to determine the extent to which differences in the *fatwās* relating to women's leadership can be linked to Islamic legal sources (the Qur'an and Sunna) or hermeneutical principles and Islamic legal methodologies applied by the Dār al-Iftā' and the Diyanet. In addition, the examined *fatwās* conceivably demonstrate how general attitudes and perceptions about the role and status of women within two separate social environments may influence the manner in which the two institutions interpret the authoritative texts. In order to engage this question in more detail, common perceptions about gender and women in both countries will be briefly explained and interrogated through an analytical and critical approach. The chapter is specifically concerned with the question of how gender attitudes that are embedded within the given social contexts impact on the *fatwās*. The chapter addresses three main questions: 1) How are gender assumptions, attitudes and perceptions used by the two institutions to justify their issued *fatwās*? 2) To what extent can they be correlated with the hermeneutical principles and Islamic legal methodologies employed by the two institutions? 3) How do they shape the legal thinking of Muslim scholars who work within the two institutions?

This study of the *fatwā* mechanism builds upon the scholarly works of the Dār al-Iftā' and the Diyanet. It seeks to evaluate the *fatwās* issued by these two institutions with reference to their formative legal methodology and the surrounding cultural, environmental, legal,

political and social contexts. The former contributes to the understanding of *uṣūl al-fiqh* (Islamic legal theories and methodologies) and the latter to the comprehension of *fiqh* (Islamic jurisprudence). At a practical level, this analysis is focused upon the questions of how these Islamic modern institutions deal with the challenges of life and which contextual factors have influenced their legal edicts during the modern period. This study engages with the Dār al-Iftā' and the Diyanet from their establishment and extends up to 2015 – accordingly recent changes and developments within administrative arrangements, legal regulations and organisational structures will remain beyond its scope. The *fatwās* that are engaged in this study are generally selected from the Islamic legal decisions, resolutions, rulings and statements that were issued by the two institutions between 1970-2012. On rare occasions, reference will be made to *fatwās* promulgated before 1970, but *fatwās* issued after 2012 fall beyond the scope of this study.

Disclaimer

The current research is not normative. It does not seek to place a value judgement on the *fatwās* issued by the two religious institutions and nor does it seek to identify whether Islamic interpretations and opinions (*fatwās*) are "right" or "wrong". In evaluating the Islamic legal approaches, methodologies and theories applied by the two institutions, this study does not also seek to ascertain the authenticity, soundness or strength of these methods and theories; rather it is instead concerned with identifying how methods and theories that applied by the two institutions are influenced by, and related to, their environments.

CHAPTER 1

THE CHARACTERISTIC CHANGE WITHIN THE PRACTICE OF *IFTĀ'*: FROM INDIVIDUAL TO COLLECTIVE

Introduction

Many believers have a strong commitment to Islamic law because they view it as the ideal blueprint for Muslims which clearly delineates what can and cannot be done.[1] Having been formulated and moulded during the early centuries of Islamic history, classical Islamic law helped to guide individual believers and Muslim societies throughout the centuries. Although legal methodologies, principles and theories that were used by the early Muslim jurists and scholars continue to function as building blocks of Islamic law, there are presumably certain instruments and mechanisms that promote dynamism and progress within the framework of Islamic law. Masud et al. acknowledge the importance of the practice of *iftā'* as a revitalising practical mechanism in the Islamic legal system. They state:

> "While the more theoretical aspect of the shari'a is embodied in the literatures dealing with the "branches" of substantive law (*furū' al-fiqh*) and with the "roots" of legal methodology and jurisprudence (*uṣūl al-fiqh*), its more practical aspect is embodied in fatwas issued by muftis in response to questions posed by individuals in connection with ongoing human affairs."[2]

It is accordingly possible to argue that the practice of *iftā'* may be regarded as one mechanism that strengthens Islamic law by enabling it to issue fresh responses to dramatically changing circumstances.

In being established as one of the dynamic and useful mechanisms that introduce new norms and rulings within the scope of Islamic law, the practice of *iftā'* has the potential to establish interactions, interconnections and networks between Islamic legal theory and social context. *Fatwās* are perhaps the most explicit formulations of Islamic legal knowledge and ropinions that are issued in response to context-related questions. When properly studied, they potentially provide important insights into the dynamics, interactions and interconnections between Islamic legal theories and the local context in which Islamic legal knowledge is produced. Before focusing on the Dār al-Iftā' and the Diyanet, along with their Islamic decisions, legal statements and rulings (*fatwā*s), (the main concern of this study), the chapter will define *fatwā* and its components with the intention of contributing to a general understaning about the practice of *iftā'*.

[1] Caeiro, "Transnational Ulama," 121.
[2] Masud et al., *Islamic Legal Interpretation*, 4.

1. Definition of *Fatwā*

Islamic law (*sharī'a*) consists of *furū' al-fiqh* (Islamic jurisprudence and understanding) and *uṣūl al-fiqh* (Islamic legal sources, methodologies and theories).[3] The Qur'an and Sunna are the primary sources of Islamic law.[4] While the Qur'an is the Book of God which Muslims believe to be the last revelation of God that the Prophet Muḥammad literarily transmitted to Muslims in pursuit of his prophetic mission, the Sunna includes the actions, acquiescence and words of the Prophet Muḥammad, and it functions as the second essential source of Islamic law that was transmitted from generation to generation.[5] In being derived from the Qur'an and Sunna, Islamic law developed through human juristic efforts and subsequently became a comprehensive legal system that arranges almost every aspect of human life.[6] Muslims believe that the Qur'an contains the eternal, unchanged and undistorted words of God.[7] While the Sunna contains reports (*ḥadīths*) about the Prophet, his actions, exemplary behaviour, life and utterances, it is not identical to the Qur'an.[8] Vogel observes:

> "Together the ḥadīths become a scripture alongside the Qur'an, although of lesser status, since they do not represent the literal words of God, nor are they taken as unquestionably authentic."[9]

Here Vogel reiterates that while the Sunna is not the exact revealed words of God, it consists of transmissions about the Prophet's life, attitudes, personality and utterances. In drawing upon the Qur'an and Sunna, Muslims, and in particular Muslim scholars, learn to derive and identify God's revealed law (shar'īa). The process in which scholars seek to determine God's law by referring to these two authoritative sources is known *ijtihād* (the exertion of mental energy in the search for an Islamic legal opinion or ruling). During this interpretative process, scholars developed a number of Islamic methodologies and theories – these included the presumption of continuity (*istiṣḥāb*), the juristic preference (*istiḥsān*), the public interest (*maṣlaḥa*) and the blocking of illegitimate means (*sadd al-dharā'i'*). All Islamic legal

[3] Kamali, *Principles*, 1-3 and 8.
[4] Ibid, 1.
[5] Ibid, 14-15, 17, 44 and 46-47.
[6] Kamali, *Principles*, 7 and Masud et al., *Islamic Legal Interpretation*, 4.
[7] Ibid, 57-58.
[8] Ibid, 11-12.
[9] Vogel, *Islamic Law and Legal System*, 4. There is some certain difference between the Qur'an and Sunna, but the *'ulamā'* are unanimously agreed that the Sunna is the absolute second source of Islamic law. Kamali points out the place of Sunna and its legal value in Islamic law when he writes: "The ulama are unanimous to the effect that *Sunnah* is a source of *Sharī'a* and that in its rulings with regard to *ḥalāl* and *ḥarām* it stands on the same footing as the Qur'ān. The Sunnah of the Prophet is a proof (*ḥujjah*) for the Qur'ān, testifies to its authority and enjoins the Muslim to comply with it. The words of the Prophet, as the Qur'ān tells us, are divinely inspired (al-Najm, 53:3). His acts and teachings that are meant to establish a rule of *Sharī'ah* constitute a binding proof." Kamali, *Principles*, 48. Further explanation on the nature of Sunna and its validity as an Islamic legal source and as an Islamic legal proof, see Kamali, *Principles*, 44-47 and 48-57.

apparatuses, methods, theories and principles that enable scholars to derive Islamic legal norms, rulings and opinions from the authoritative textual sources are part of the *uṣūl al-fiqh,* which is the first part of Islamic law. The second part, *furū' al-fiqh*, is the end product of the *ijtihād* process that is undertaken by Muslim scholars who are competent, proficient, qualified and capable of interpreting the authoritative textual sources and deriving laws from these sources. To put it differently, the legal rulings, opinions and scholarly interpretations of efficient Muslim scholars on any legal issue or matter constitutes the second branch of Islamic law. In this two-component structure of Islamic law, the practice of *iftā'* appears as a point of confluence that brings together *furū' al-fiqh* (Islamic jurisprudence and understanding) and *uṣūl al-fiqh* (Islamic legal theories and methodologies). The practice of *iftā'* is therefore a mechanism that Muslim scholars, in responding to a simple or controversial issue raised by Muslims, apply to Islamic legal methodologies, principles and tools associated with *uṣūl al-fiqh* in order to produce Islamic opinions and rulings.

Etymologically, the term "*fatwā*" can be traced back to the Arabic "*fatā*", which means young (also adolescent and juvenile) or opinion.[10] Ibrahim et al., in referring to the various words that derive from this origin, provide a lexical description. They state:

> "…*al-ifta'*, *al-futya*, *al-futwa* and *al-fatwa* refer to 'giving answer, or a reply, stating the decision of the law, respecting a question, or a commonly used, a notification or an explanation of the decision of the law, or, in respect of a particular case, given by a *faqih*."[11]

Badawi and Abdel-Haleem, in the *Arabic-English Dictionary of Quranic Usage* provide further clarification. They state: "[*fatā* (f-t-y) is] youthfulness, youth, to be youthful, (of an infant/child) to reach youthfulness; vigour, to be vigorous; to formulate an opinion, counsel, to counsel, to give an opinion."[12] "[In addition, of] this root, seven forms occur 21 times in the Qur'an: *yuftī* five times; *tastaftī* six times; *fatā* four times; *fatayān* once; *fityatun* twice; *fityān* once and *fatayāt* twice."[13] Even though the word "*fatwā*" is not directly used in the Qur'an, its derivate forms, which include the verb (*yastaftūnaka* (asking a valid answer) and *yuftīkum* (giving a valid answer)) are explicitly indicated here. Examples include the Q. 4: 127 ("And they request from you, [O Muhammad] (*yastaftūnaka*), a [legal] ruling concerning

[10] Hans Wehr, *Arabic-English Dictionary*, ed. J. Milton Cowan, 696.
[11] B. Ibrahim, M. Arifin, S. Z. Abd Rashid, "The Role of *Fatwa* and *Mufti* in Contemporary Muslim Society," *Pertanika Social Sciences & Humanities* S, no. 23 (2015), 316, accessed March 13, 2018, http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2023%20(S)%20Nov.%202015/28%20JSSH%20Vol%2023%20(S)%20Nov%202015_pg315-326.pdf.
[12] Elsaid M. Badawi and Muhammed Abdel Haleem, *Arabic-English Dictionary of Qur'anic Usage* (Boston: Brill, 2008), 693.
[13] Ibid, 693.

women. Say, "Allāh gives you (*yuftīkum*) a ruling about them…") and the Q. 4:176 ("They request from you a [legal] ruling (*yastaftūnaka*). Say, "Allāh gives you a ruling (*yuftīkum*) concerning one having neither descendants [as heirs].")[14] These applications of its derivate forms in the Qur'an clarify that the word "*fatwā*" refers to an elucidation, guidance, opinion or ruling. A further derivative form is also referenced by the Q. 12:41 ("… The matter has been decreed about which you both inquire (*tastaftiyāni*).") Here the derivative form (*tastaftiyāni*) conveys the meaning of interpreting a dream – it can therefore be perceived as the act of seeking advice or guidance upon an ideal object or an unusually difficult problem.[15] In the Qur'anic usage, *istiftā'* simply refers to the asking and answering of a question, the interpretation of an occurrence or the seeking of clarification.[16]

At the level of terminology, "*fatwā*" can be said to refer to an Islamic legal interpretation or ruling that is issued by a qualified and authoritative Muslim scholar (generally known as "*muftī*"). It is an Islamic legal tool that is used by efficient and proficient Muslim scholars to clarify any issues that arise among Muslims or in Muslim societies. Hallaq approaches the practice of *iftā'* and its components through the prism of classical Islamic law. He observes:

> "In its basic form, a *fatwā* consists of a question (*su'āl*, *istiftā'*) addressed to a jurisconsult (*muftī*), together with an answer (*jawāb*) provided by that jurisconsult. When the question is drafted on a piece of paper – as was the general practice – the paper becomes known as *ruq'at al-istiftā'* or *kitāb al-istiftā'*, and once an answer is given on the same sheet of paper, the document becomes known as *ruq'at al-fatwā*."[17]

The Oxford Dictionary of Islam defines *fatwā* as an "authoritative legal opinion given by a mufti (legal scholar) in response to a question posed by an individual or a court of law."[18] Masud further underlines the importance of *istiftā'* during the production of *fatwā*s. He observes:

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[14] The Q. 4: 127 provides detailed Islamic legal rulings that relate to orphaned women and their divorce, property and marriage, while the Q. 4:176 provides a legal answer to a question that relates to inheritance.
[15] Ibrahim et al. also refer to some *ḥadīths* that emphasize the practice of *iftā'*. See Ibrahim et al., "The Role of *Fatwa* and *Mufti*," 317-318. Masud et al. also assert the existence of this practice in the *ḥadīth* literature. See Masud et al., *Islamic Legal Interpretation*, 6.
[16] In addition to the words which derive from *fatwā*, there are other words in the Qur'an that are equivalent with the word *fatwā* and which refer to a question-and-answer process. For example, *yas'alūnaka* can be interpreted as being almost synonymous with *fatwā*. Refer to Muhammad Khalid Masud, "The Significance of *Istiftā'* in the *Fatwā* Discourse," *Islamic Studies* 48, no.3 (2009) 342, accessed March 14, 2018, https://www.jstor.org/stable/pdf/20839171.pdf?refreqid=excelsior:b28d1cc1b41fa858b5e5246e77c9bf92.
[17] Hallaq, "From *Fatwās* to *Furū'*," 31.
[18] "Fatwa" in *The Oxford Dictionary of Islam*., ed. John L. Esposito, *Oxford Islamic Studies Online*, accessed March 16, 2018, http://www.oxfordislamicstudies.com/article/opr/t125/e646.

> "[*I*]*stiftā*' means to inquire, but in Islamic legal usage it has come to stand for submitting a petition or a request for a *fatwā*, a considered opinion in religious and legal matters."[19]

In developing an anthropological approach, Agrama presents the *fatwā* as an ethical praxis. He observes:

> "The fatwa, as a practice of discerning and of saying the right words at the right times, mediates multiple temporalities in which a self is embedded in order to keep and advance it on an ethical path that has become obscured from it."[20]

In presenting the *fatwā* in this form, Agrama implicitly invokes the desire of an ordinary Muslim to maintain a connection with Islamic ethical values. Skovgaard-Petersen makes the same point ("[a]s the established "Q & A" exercise in the Islamic tradition, the consultation for a fatwa (*istiftā'*) is the mundane activity through which Islamic norms, ethics and jurisprudence are spread.").[21] In being applied as a traditional Islamic legal instrument, the practice of *iftā'* can be acknowledged as an ethical legal formulation that is produced during the consultation process between a lay Muslim and a Muslim scholar. Ibrahim et al. make an important point by referring to the instrumentality of the *fatwā* in providing Islamic legal explanations to issues that arise from Islamic law to confront Muslims ("[*f*]*atwa* is an instrument under Islamic law that facilitates clarification on Shariah rulings regarding new circumstances").[22] To put it more succinctly, the term *fatwā*, when applied in Islamic legal terminology, entails an answer, explanation or interpretation that has been given by authoritative and qualified Muslim scholars in response to questions pertaining to religious affairs or matters that have been presented by Muslims.

A lay Muslim who seeks to act in accordance with the law of God (*sharī'a*) approaches a qualified Muslim scholar with a specialisation in the area of Islamic law when he/she encounters a complex, difficult or perplexing situation. The individual's main aim is to obtain an Islamic legal ruling in response to his/her problem. In engaging with this intention, the applicant explains the problem and situation that he/she encountered to the Muslim scholar and in turn asks for an Islamic legal opinion or ruling that relates to the proximate

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[19] Masud, "The Significance of *Istiftā'*," 342.
[20] Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa," American Ethnologist 37, no. 1 (2010), 14, accessed March 17, 2018, http://onlinelibrary.wiley.com/doi/10.1111/j.1548-1425.2010.01238.x/epdf.
[21] Jakob Skovgaard-Petersen, "A Typology of Fatwas," *Die Welt Des Islams* 55, no. 3-4 (2015), 278, accessed March 20, 2018, http://0-booksandjournals.brillonline.com.lib.exeter.ac.uk/docserver/journals/15700607/55/3-4/15700607_055_03-04_s002_text.pdf?expires=1521595789&id=id&accname=id23025&checksum=344B1C80901FB8E85C253F4BF392621C.
[22] Ibrahim et al., "The Role of *Fatwa* and *Mufti*," 322.

issue. Within the parameters of this process, the applicant is known as *mustaftī*; the Muslim scholar who answers the question is referred to as *muft*ī, the question is termed *istiftā'* while the answer of the Muslim scholar is designated as a *fatwā*. The interlude between the asking of a question and the obtaining of an Islamic legal answer (between *mustaftī* and *muftī*) falls under the heading of the practice of *iftā'*. Every component of this practice has its own specific function. *Istiftā'*, for example, determines the scope of a particular *fatwā* – the *fatwā* is therefore restricted to the issue or matter which is indicated in the *istiftā'*.[23] The *istiftā'* is also a medium that helps to convey new issues which have arisen in a society, which are then conveyed to the *muftī* or religious authorities – in this specific instance, it appears as an informative communication tool that keeps *muftīs* informed of specific exigencies within society. Masud also highlights the dynamism of *istiftā'* ("[*i*]*stiftā'* ensured the discursive development of *Fiqh*. It brought day to day problems to the notice of the *muftīs*").[24] The *muftī* is a qualified authority who conveys the interpretation of Islamic law to the applicant and his/her activity during the *fatwā* process is a key component of the practice of *iftā'* – this applies because he/she is the capable scholar to exercise *ijtihād* and derive an Islamic legal ruling from the authoritative sources of Islamic law. During the *iftā'* process, the *mustaftī* both initiates and concludes the interaction: he/she addresses his/her question to a *muftī* and he/she is ultimately responsible for deciding whether to pursue the *muftī*'s advice. The interaction between the *muftī* and the *mustaftī* can be broadly characterised as a negotiation in which the *mustaftī* presents his/her problem while expending considerable effort in the process of explaining it; meanwhile, the *muftī* commits his/her energy to find a clear and practicable solution. The interpretative process in the practice of *iftā'* is foregrounded within this reciprocal interaction. Agrama further clarifies:

> "[a]lthough the relationship between mufti and questioner is an asymmetrical one, muftis, as guides, share responsibility with the questioners they guide. It is a shared responsibility rooted in reciprocal conditions of perplexity and uncertainty – perplexity of the fatwa seeker about what to do and uncertainty of the mufti what to say."[25]

The proposition that the practice of *iftā'* is a bargain between the two agents suggests that the *muftī* and *mustaftī* find their way in combination. The issued *fatwā*, meanwhile, is the product of the communication/negotiation between the *mustaftī* and the *muftī*. In fulfilling this

[23] Masud et al., *Islamic Legal Interpretation*, 22.
[24] Masud, "The Significance of *Istiftā'*," 349.
[25] Agrama, "Ethics, Tradition, Authority," 13.

function, the *fatwā* appears as a compass that enables Muslim individuals, and in particular lay Muslims, to advance towards a Muslim prototype that has been set out by God.[26]

After attaining a *fatwā*, the questioner has two options, which are adduced in accordance with his/her satisfaction with the *fatwā*.[27] If the questioner is content and is mentally and spiritually satisfied with the *fatwā*, he/she ought to follow the *fatwā* outlined by the *muftī*. If this is not the case, he/she should find another Muslim scholar and solicit his/her question as a second choice.[28] After obtaining Islamic legal advice from a *muftī*, the questioner is free to choose whether or not to follow the issued *fatwā* – here the *fatwā* presents itself as a non-binding Islamic ruling that is given to the questioner.[29] The religiosity of the individual questioner –whose pious conscience and creed purely seek to know and then obey the intended law of God – is the root principle of obedience to the *fatwā* or the Islamic legal advice issued by a Muslim scholar.

In the practice of *iftā'*, the aim of the *muftī* is not to derive a general and universal law that is valid in and applicable to all contexts and times; rather, it is instead to expound the decrees of the authoritative texts (the Qur'an and Sunna) and to demonstrate the revealed law of God, with adjustments for place and time. Masud therefore asserts that "both *fatwā* and court judgements should be regarded as limited in their application; they are not universally applicable."[30] Here it should however be noted that there is a slight difference between the application of a *fatwā* and a court judgement (*ḥukm*). It is potentially the case that *fatwās* can be applied more broadly than court judgements – if this is the case, it would suggest that the *fatwā* can be followed by those who are confronted by a similar problem to the *mustaftī*. In contrast, a court judgement is only binding upon the claimant, defendant and litigants that are involved in the lawsuit.

It is likely that the practice of *iftā'* can be traced back to the time of first Muslims who asked direct questions to the Prophet and received answers during his lifetime.[31] It has already been noted that the use of the term *istiftā'* and its derivate forms, along with the term *yas'alūnaka* (they ask you), within the Qur'an is not only intended to signify the existence of a *fatwā* prototype; to the same extent, it also demonstrates that the practice of *iftā'* was

[26] Agrama, "Ethics, Tradition, Authority," 14.
[27] Masud et al., *Islamic Legal Interpretation*, 26.
[28] Ibrahim et al., "The Role of *Fatwa* and *Mufti*," 322.
[29] Masud, "The Significance of *Istiftā'*," 358.
[30] Ibid, 344.
[31] Masud et al., *Islamic Legal Interpretation*, 5-6.

applied during the time of the Prophet.[32] Hallaq has therefore argued that the Prophet Muḥammad and his Companions were the first practitioners of *iftā'*.[33] The practice was preserved by the Muslim scholars in succeeding generations; however, in early Islamic history, the process of *iftā'* (formulating a *fatwā*) and the issuance of *fatwā* were practiced by individual and independent Muslim jurists and scholars.[34] However, subsequent to the late nineteenth century, this individual and non-governmental legal practice began to be superseded by institutional religious bodies or establishments.[35] Especially during the modern period, many Muslim states have sought to control the mechanism of *fatwā* by instituting national religious organisations that conduct religious affairs and issue *fatwās*. The Muslim world witnessed a rapid proliferation of modern religious institutions which dispense *fatwās*, whose interventions greatly contribute to the dynamism of Islamic law and, to a more limited extent, to the regulation of local and regional practices.

To a substantial extent, the connection between Islamic legal doctrine and practice in the development of Islamic law has been filled by the practice of *iftā'*. Hallaq's seminal article demonstrates how *fatwās* can help to deal with new issues and bring about legal change by updating the connection between Islamic law and the social reality of Muslim societies.[36] Hallaq's contribution can be further extended into the proposition that the practice of *iftā'* provides Muslim scholars with a practical mechanism that enables them to adapt Islamic law to the everyday needs of Muslims by producing Islamic legal rulings that address controversial and modern changes. There is obviously a complex and interlocking relationship between *fatwās* and their surrounding social context. Kaptein refers to the dynamic connection between the practice of *iftā'* and social context. He observes:

> "… it can be said that *fatwas* constitute a meeting, and in many cases a compromise, between the ideals of the Holy Law, as expressed by the *'ulamâ'*, and the reality of daily life, as expressed by the believers."[37]

Skovgaard-Petersen further clarifies that "…fatwa collections have been seen as a literature stemming from the depths of authentic social life in Muslim societies throughout the ages."[38]

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[32] For a more detailed explanation concerning the existence of the practice of *iftā* during the time of the Prophet and after his demise among the Companions, refer to Masud et al., *Islamic Legal Interpretation*, 3 and 5-8 and Hallaq, "From *Fatwās* to *Furū'*," 63-65.
[33] Hallaq, "From *Fatwās* to *Furū'*," 63.
[34] Masud et al., *Islamic Legal Interpretation*, 5, and 7-10
[35] Ibid, 27.
[36] Hallaq, "From *Fatwās* to *Furū'*," 29, 38 and 61-62.
[37] Kaptein, "The Voice of the *'Ulamâ'*," 115.
[38] Skovgaard-Petersen, *Defining Islam*, 5.

In both of these presentations, there is a clear acknowledgement that the *fatwā* mechanism enables unchanging Islamic legal doctrines to be adapted to novel circumstances.

A twofold significance can be attributed to the practice of *iftā'* in Islamic law. In the first instance, it appears as an Islamic legal mechanism that enables Muslim scholar to creatively formulate legal-religious views of controversial issues, important doctrinal questions and social changes. It enables a simultaneous engagement with changes and continuities within the lives of Muslims. The practice establishes a connection between Islamic law and contemporary life. In the second instance, a substantial number of *fatwās* issued through the practice of *iftā'* have assisted Muslims from various backgrounds to arrange their affairs and lives in accordance with Islamic law.

In operating as a legal instrument in Islamic law, the practice of *iftā'* is less familiar than the court procedures, and the issued *fatwās* generally tend to be confused with the court judgements (*ḥukms*). The clarification of key differences and similarities can help to offset the threat of any potential confusion and to establish the conceptual framing and function of the *fatwā* in both Islamic law and Muslim societies.

2. Differences between *Fatwā* of a *Muftī* (Islamic legal advice of a Muslim scholar) and *Ḥukm* of a *Qāḍī* (Judgement of a Judge)

The *fatwā*s and *ḥukm*s are legal rulings that are respectively outlined by *muftīs* and *qāḍī*s at the conclusion of their *ijtihād* efforts. Even though they are both instruments through which the Islamic legal system applies these legal rulings and explanations, there are certain differences that need to be set out in more detail. Ibn Qayyim al-Jawziyya (d.1350), the Ḥanbalī scholar, has sought to define these differences. He observes:

> "[The muftī's] fatwā states a general divine law (*sharī'a 'āmma*) concerning both the requestor and others. As for the judge (*ḥākim*), his ruling (*ḥukm*) is particular and specific (*juz'ī khaṣṣ*), not extending to anyone but the two parties. The muftī opines in a ruling that is generally worded and generally applicable (*ḥukm 'āmm kullī*), that to one who does so-and-so is applicable such-and-such, or one who says so-and-so is obliged to do such-and-such. The qāḍī makes a particular judgement (*qaḍā' mu'ayyan*) upon a particular person, and his judgement is specific in terms and obligatory, while the fatwā of the scholar is general in terms and not obligatory."[39]

Taking into account Ibn Qayyim's identification of clear differences that distinguish the *fatwā* and *ḥukm*, three distinguishing features can be identified. Firstly, the practice of *iftā'* does not produce neither compulsory nor obligatory results – accordingly compliance with Islamic legal advice (*fatwā*) is ultimately the responsibility of the questioner, even in

[39] Cited from Vogel, *Islamic Law and Legal System*, 16-17.

instances where a *fatwā* is issued by a *muftī* appointed by the state.[40] In contrast, a *ḥukm* given by a *qāḍī* culminates in a specific verdict whose observation is compulsory for both the claimant and defendant.[41] Because the *ḥukm* is adjudicated by a judge (*qāḍī*) in a state court, which is a state legislative branch responsible for resolving disputes between its subjects, the state has the power to implement and enforce judgements issued by *qāḍīs.*[42] A *ḥukm*, in contrast with a *fatwā*, therefore requires the state intervention in order to execute the result of a prosecution process.

Second, a *fatwā* normally seeks to resolve a questioner's internal conflicts; in contrast, a *ḥukm* is generally addressed to external problems, such as relations between two parties.[43] Vogel has further clarified this key difference between the *muftī* and *qāḍī* ("…the muftī is concerned with facts in the internal forum of conscience, the qāḍī only with the facts in the external forum of the court").[44] A *fatwā* provides an Islamic legal advice or a ruling by mainly assessing internal dimensions of any issue in order to resolve an inward (*bāṭin*) conflict of the questioner (although here it should be clarified that it may require an evaluation of the circumstances in which individuals live). A *ḥukm* is instead the end result of the evaluation of real and apparent proofs (although here it should be recognised that the *qāḍī* nonetheless attempts to understand the intentions of the two parties by reviewing actual evidence).[45] Qarāfī (d. 1285), the Mālikī scholar, provides further clarification by observing that the *qāḍī*'s interpretative work, when judging, resides in the evidential *ḥujjāj*, which includes acknowledgement, oath and testimony; meanwhile, the *muftī* relies upon *adilla* that encompass indications and proofs in textual sources of Islamic law – this includes both the Qur'an and the *ḥadīth* literature.[46]

Third, a *fatwā* is usually requested privately by a single individual but provides a general ruling to the problem in question. As Ibn Qayyim observes, a *fatwā* includes a more general ruling that can be applied to all similar cases, thus benefitting individuals who face similar problems. Conversely, a *ḥukm* is a binding legal verdict for people engaged in a specific occurrence between two parties – for this reason, the *qāḍī*'s judgement does not

[40] Vogel, *Islamic Law and Legal System*, 17.
[41] Ibid.
[42] Masud et al., *Islamic Legal Interpretation*, 3.
[43] Ibid, 18.
[44] Vogel, *Islamic Law and Legal System*, 17.
[45] Aḥmad ibn Idrīs al-Qarāfī, *Al-Iḥkām fī Tamyīz al-Fatāwā 'an al-Aḥkām wa Taṣarrufāt al-Qāḍī wa al-Imām* (Beirut: Maktab al-Maṭbū'āt al-Islāmiyya bi-Ḥalab, 1995), 46-56 and Masud et al., *Islamic Legal Interpretation*, 18.
[46] Ibid, 56.

extend to anyone other than the two parties involved in the specific case.[47] A *fatwā*, by its very nature, has a communicative and informative quality that provides access to Islamic legal knowledge in the form of a considered and voiced opinion; in addition, the authority of a *fatwā* is general (*'āmm*) and potentially extends beyond the circumstances of the given questioner to govern all equivalent cases – however, these two features notwithstanding, it is not a universally valid legal ruling. Masud observes:

> "…both the judgements of *qāḍīs* and the *fatwās* of the *muftīs* addressed specific cases, which were not considered of lasting importance. These cases could not be generalised to become norms which would be universally applicable to all case."[48]

However, some scholars have, in asserting the transcendent character of *fatwās*, claimed precisely the opposite. Hallaq observes:

> "…the *fatwā* was not merely an ephemeral legal opinion or legal advice given to a person for immediate and mundane purposes but also an authoritative statement of the law that was considered to transcend the individual cases and its mundane reality."[49]

This assertion does not however acknowledge Masud's observation that the application of *fatwās* is constrained by circumstances, social realities and time. The rulings that are derived through the *ijtihād* efforts of the *muftīs* cannot be generalised as universal norms and nor can they, by virtue of their context-specific character, be regarded as universally applicable rules. Upon this basis, it can be ascertained that Hallaq's argument relates to the magnitude of *fatwās* that contribute new materials to the existing body of Islamic legal doctrines rather than their rulings.[50] In specifically emphasising this point, he observes that "[p]rimary and secondary *fatwās* incorporated into *furū'* works reflect the growth and change in the doctrine of the school (*madhhab*)".[51] This establishes that the issuing of *fatwā*s can be considered as an essential mechanism that enables Islamic law to, from both a doctrinal and practical perspective, align itself with changing circumstances. A further noticeable difference between *fatwā* and *ḥukm* arises within their respective jurisdictions – to this extent, it is clear that the former has a wider jurisdictional scope.[52] This is illustrated by the fact that matters such as '*ibādāt* (ritual practices and religious duties) are excluded from the realm of *qaḍā'*, despite the fact that they are an essential part of Islamic law. The relevant explanations,

[47] Masud et al., *Islamic Legal Interpretation*, 18-19.
[48] Masud, "The Significance of *Istiftā'*," 362.
[49] Hallaq, "From *Fatwās* to *Furū'*," 34.
[50] Ibid, 50-52 and 55-56.
[51] Ibid, 61. Hallaq refers to the categorization of *fatwā* collections when he writes primary and secondary *fatwās*. In primary *fatwās*, the question and answer are retained, more or less, in their original form and content, while the question and answer have undergone systematic alteration in secondary *fatwās*. See Hallaq, "From *Fatwās* to *Furū'*," 31-32.
[52] Masud et al., *Islamic Legal Interpretation*, 18.

rulings and statements relating to ritual practices mostly appear in *fatwās* and *fiqh* manuscripts.[53] Taking into account these aforementioned differences between *ḥukms* and *fatwā*s, it can be observed that *fatwā* is an informative, non-binding and optional legal opinion, whereas *ḥukm* is a binding, enforceable and judicial verdict.

While there are important continuities with the Islamic legal tradition, it is essential to remember that the era between the nineteenth and twenty-first centuries represents different characters from legal perspective across the Muslim world. The practice of *iftā'* was a particularly instructive reference point in this regard, as it transformed from an individual into a collective practice. This was just one embodiment of an ongoing confrontation between Islamic jurisprudence (*usūl al-fiqh*) and modernity. In addition to individual Muslims scholars (*'ulamā'*), religious institutions, whether official or unofficial, have emerged as new authority figures in the area of Islamic law. For the most part, the practice of *iftā'* began to be collectively implemented by modern Islamic religious institutions after the twentieth century, with this representing a clear divergence from previous convention, in which it was conducted by individual Muslims scholars.

3. Institutionalisation of the Practice of *Iftā'*

During the early history of Islamic law, the *fatwā* institution was independent of the state. The earlier *muftīs* themselves carefully regulated this institution, which mostly operated outside of government control or supervision.[54] For this reason, *muftīs* were placed at the apex of the legal hierarchy, where they generally acted as "the guardians of the law and of the community at large".[55] Hallaq has further reiterated this independent character in the implementation of the practice of *iftā*' ("[t]he government stood in the periphery of their profession… A *muftī*, as a rule, did not need the government's approval to engage in *iftā'*. All he needed was the approval of his peers.").[56] However, after the eleventh century, public *muftī* offices began to be instituted alongside the private vocation of *iftā'*. For example, in eleventh-century Khorasan, the *Shaykh al-Islām* of a city was assigned as the official head of its local *'ulamā'*; meanwhile, some official *muftīs* were also appointed to the appeal courts of provincial capitals in the Mamluk Sultanate.[57] During to the Ottoman Empire, the practice of

[53]Masud et al., *Islamic Legal Interpretation*, 18 and 19-20.
[54] Masud et al., *Islamic Legal Interpretation*, 3.
[55] Hallaq, "From *Fatwās* to *Furū'*," 59.
[56] Ibid.
[57] Muhammad Khalid Masud, Joseph A. Kéchichian, Brinkley Messick, Joseph A. Kéchichian, Ahmad S. Dallal and Jocelyn Hendrickson, "Fatwā," in *the Oxford Encyclopedia of the Islamic World. Oxford Islamic Studies Online*, accessed March 28, 2018, http://www.oxfordislamicstudies.com/print/opr/t236/e0243.

iftā' was integrated into the hierarchical bureaucratic system of the Empire, and this established the office of the *Shaykh al-Islām* in 1424.[58] Most notably within the Sunni tradition, the practice of *iftā'* began to lose its independent character from the ideological and physical control of the state and became incorporated into the bureaucratic machinery of the state. However, the practice of *iftā'* was still individually shouldered and performed by Muslim scholars (*muftīs*) who worked privately or in the public offices of *iftā'* almost until the twentieth century.

The period from the nineteenth to the twentieth century coincided with major transformations within Muslim societies across the world. The decline in the centralised power of the Ottoman Empire and its ultimate collapse resulted in colonial domination being exerted over Muslim countries and the concomitant reordering of socio-political and social-legal configurations. The expansion of colonial power resulted in a gradual decline in the significance of the practice of *iftā'*[59] – however, even during this period, some *fatwās* were effectively used to resist colonial hegemony and advance various national independence struggles. The nineteenth century provided numerous examples of *fatwās* being used in this manner. For example, during the Algerian anti-French rebellion that was led by 'Abd al-Qādir al-Jazā'irī (d. 1883), al-Jazā'irī requested the esteemed '*ulamā'* of Fes to issue *fatwās* that would promote emigration from the French-controlled parts of Algeria and the initiation of an uprising, or *jihād*, that would resist French colonial power in the region.[60] Although he succeeded in obtaining the *fatwās*, the initiation ultimately resulted in his arrest. In response, the French authorities obtained a counter *fatwā*, which stated that Muslims subject to the rule of non-Muslims were not obliged to rebel as long as they were permitted to freely practice their religion.[61]

In the aftermath of attaining independence, many Muslim nation-states sought to establish their own modern administrative, bureaucratic, and institutional systems, with the intention of meeting economic, legal, political and social needs within their own societies. During this era of modernity, many Muslim countries either established national religious

[58] Talip Ayar, *Osmanlı Devletinde Fetvâ Eminliği (1892-1922)* (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2014), 14-15 and Masud et al., *Islamic Legal Interpretation*, 11-12.
[59] Masud et al., *Islamic Legal Interpretation*, 26-27.
[60] Danish Faruqi, "The Spiritual Reformist Thought of the Amir 'Abd al-Qādir al-Jazā'irī' in the Eyes of His Western Interpreters: A Critical Historiographical Review" (MA thesis, Washington University, 2012), 17-18.
[61] Masud et al., "Fatwa."

institutions, who were then tasked with organising religious affairs and issuing *fatwās* or restructured existing religious bodies in their own regions.[62]

In many Muslim countries, the practice of *iftā'* became increasingly bureaucratized, institutionalized and modernized. The Egyptian Dār al-Iftā', which was established in 1895, was one such example, having issued *fatwās* in response to government queries on state policies and the concerns of Muslims resident in the country since its establishment.[63] In Lebanon, the Dār al-Fatwā was created in 1922, when it was tasked with administering religious schools, issuing Islamic religious advice and opinions specific to the Sunni community and supervising mosques.[64] The Indonesian Council of 'Ulamā' (*Majelis Ulama' Indonesia*) meanwhile has issued *fatwās* and advised the Muslim community on contemporary issues since 1975.[65] Other relevant examples include Jordan's General Iftaa' Department in Amman, Turkey's Diyanet, Saudi Arabia's Dār al-Iftā' and Singapore's Fatwā Committee of Islamic Religious Council. These newly-established national religious institutions have conducted religious affairs and have also sought to promote a form of official national Islamic understanding through issued *fatwās*, and prepared sermons, religious occasions and publications.

Many of these national religious institutions are closely aligned with either the incumbent government or the state. In addition, there are also a number of international non-governmental religious institutions that exercise the practice of *iftā'*. At the international level, the Islamic Research Academy (which was opened at al-Azhar University), Jeddah's Organisation of Islamic Conference (OIC) and Mecca's Muslim World League are among the most influential and prestigious international Islamic religious academies and organisations that are established across the Muslim world.[66] These organisations research controversial Islamic legal subjects and discuss a range of complex issues that currently confront Muslims, with the intention of identifying and developing Islamic legal rulings and solutions. A further example is provided by the Islamic Fiqh Academy, which is an academy based in Jeddah, Saudi Arabia, whose works are engaged with a wide range of complex issues which include AIDS, birth control, credit cards, human cloning, human rights, incorporeal rights, inflation and changes in the value of currency, insurance and re-insurance, male doctors treating

[62] Masud et al., *Islamic Legal Interpretation*, 27-28.
[63] Skovgaard-Petersen, *Defining Islam*, 28.
[64] Raphaël Lefèvre, "Lebanon's Dar al-Fatwa and Search for Moderation," *Carnegie Endowment for International Peace*, accessed March 26, 2018, http://carnegieendowment.org/sada/?fa=57627.
[65] Kaptein, "The Voice of the *'Ulamâ'*,"121.
[66] Masud et al., *Islamic Legal Interpretation*, 27.

female patients, milk banks, resuscitation equipment, the payment of *zakāt* (alms tax) to the Islamic solidarity fund, sales on instalments, the transplantation of brain, nervous system cells and genital organs, the use of the fetus as a source of transplant, traffic accidents and women's role in developing Muslim society.[67] These subjects were then extensively deliberated, over the course of discussions which extended from a second to a twelfth session, which were held in the Hashemite Kingdom of Jordan, the Kingdom of Saudi Arabia, the Sultanate Brunei Darussalam, the State of Bahrain, the State of Kuwait and the United Arab Emirates. The Islamic Fiqh Academy then issued Islamic legal recommendations and resolutions on each specific topic, which were developed through the practice of collective *ijtihād*.[68] The Council also drew upon the contributions of lay experts and scholars in the fields of astronomy, economics and medicine before issuing its recommendations and resolutions.[69] The engagement of the knowledge of experts and scholars from other fields is a significant development and change within the issuance of *fatwās*, which reflects how specialised modern knowledge and associated disciplines have impacted upon the practice of collective *iftā'*.

The contemporary situation within the Muslim world reiterates that the practice of *iftā'* has become established as a central institution that brings Islamic legal solutions to contemporary issues, along with the challenges that currently confront Muslims resident in both Muslim and non-Muslim countries.[70] Many Muslim countries have established their own religious institutions before tasking them with the practice of *iftā'* along with other religious responsibilities. However, it should be noted that the function, position and role of these institutions, vary from one Muslim country to another in accordance with the place and position of Islamic law in these countries. Despite evidencing a clear continuity as answers to questions in general sense, the practice of *iftā'* appears to have experienced significant changes in the modern period.[71]

Kaptein's study, which considers the mediums through which *fatwās* are transmitted to the Muslim public and the methods through which Muslim scholars issue *fatwās*, engages

[67] Islamic Fiqh Academy (Jeddah), *Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000* (Jeddah: Islamic Development Bank, 2000), I-XI, accessed on March 30, 2018, https://uaelaws.files.wordpress.com/2012/05/resolutions-and-recommendations-of-the-council-of-the-islamic-fiqh-academy.pdf.
[68] Ibid.
[69] Ibid.
[70] Agrama, "Ethics, Tradition, Authority," 3.
[71] For a further detailed explanation concerning the continuities and changes in the practice of *iftā'* in modern times, see Masud et al., *Islamic Legal Interpretation*, 26-32.

with the practice of *iftā'* in the Indonesian context. He classifies *fatwās* into four categories: traditionalist *fatwās*, modernist *fatwās*, collective *fatwās*, and other forms of religious advice.[72] In a more comprehensive manner, Skovgaard-Petersen identifies six types of *fatwās*: ephemeral, school, court, public, state and collective *fatwās*.[73] He then clarifies these six types of *fatwās* with reference to their basis of authority and particular relevance to issues of health and medicine today. When Kaptein's and Skovgaard-Petersen's typologies are compared, "modernist *fatwās*" and "other forms of advice" may, within Skovgaard-Petersen's *fatwā* typology, come to match the public and state *fatwās*. According to their explanation about the collective *fatwā*, the hallmark aspect of this type results from the combined efforts of Muslim scholars.[74] Kaptein's and Skovgaard-Petersen's *fatwā* typologies provide grounds for assuming that the state *fatwā* (the modernist *fatwā*) and the collective *fatwā* have become established as a prominent common practice of *iftā'* which conducted by either governmental or non-governmental Islamic religious establishments in the contemporary world.

The public, state and collective *fatwā*s, which are the key priority of this thesis, are important Islamic legal practices performed by Saudi Arabia's Dār al-Iftā' and Turkey's Diyanet. These three types of *fatwās* substantively illustrate several recent changes and trends within the practice of *iftā'* that have been generally implemented by the national and state-dependent religious institutions. These three types of *fatwā* will now be briefly explained and framed in general perspective, with the intention of grounding a futher understanding of the institution-based *iftā'* practice.

a. Public *Fatwā* and State *Fatwā*

Both public and state *fatwā*s may be perceived as the most recent iteration of modern changes and developments within the traditional practice of *iftā'*. The history of Islamic law establishes that the public *fatwā* can be compared with public announcements associated with state affairs, which include the declarations of new rulers.[75] Skovgaard-Petersen's typologies of *fatwā*s establish that the public *fatwā* is an Islamic legal opinion either published in print or in other modern mass media.[76] Upon issuing this type of *fatwā*s, Muslim scholars seek to make a controversial and specific legal point clear and easily comprehensible to a broader

[72] Kaptein, "The Voice of the *'Ulamâ'*,"116-121.
[73] Skovgaard-Petersen, "A Typology of Fatwas," 279-284,
[74] Ibid, 120.
[75] Ibid, 282.
[76] Ibid.

target group. In contrast to the traditional *fatwā*-making process, Muslim scholars consider the general ethical and legal principles of Islamic law rather than the individual circumstances of the questioner (*mustaftī*). This engagement of Muslim scholars transforms this type of *fatwā* into a general public statement that clarifies a specific issue, matter or problem.

The public and state *fatwā*s share many features, to the point of almost being identical. This is why Skovgaard-Petersen places the state *fatwā* under the category of the public *fatwā* while defining this type of *fatwā* as "a *fatwā* given by a mufti who has been appointed [as] the official mufti [by] the state".[77] The main difference between the public and state *fatwā* originates within the issuing party. The public *fatwā* can be issued by private or state-appointed *muftīs*, while the state *fatwā* should only be officially issued by state *muftīs*. Accordingly, the public *fatwā* is broader than the state *fatwā* in its scope, that is, the state *fatwā* may be accepted as a subset of the public *fatwā*. Skovgaard-Petersen contends that the main distinguishing feature which sets public and state *fatwās* apart is that they transcend the nexus between the *muftī* and *mustaftī* and is addressed to more comprehensive audiences, who appear as the real recipients of the *fatwā*.[78] The *fatwās* issued in the two categories are addressed to a broader target group, and Muslim scholars, who are fully cognisant of the situation, place a strong emphasis upon the issuance of generally applicable and valid *fatwās*. However, it is conceivable that the type of the state *fatwā* may, in both an official and social sense, be an influential instrument that helps to articulate and defend the state interest while embedded a nationwide comprehension of religion. Skovgaard-Petersen has previously reflected upon the noticeably instrumental character of these *fatwās* in backing and legitimising some certain activities and political policies of Muslim states. He observes:

> "In many countries, the very fact that the state law was considered insufficiently Islamic led to a sustained interest in fatwas as a valuable extralegal source of legitimacy. Most Muslim states realised the importance of having a national public sphere with national media, including in the field of religion. To demonstrate territorial integrity, and bolster their domestic religious legitimacy, many countries instituted the office of state mufti."[79]

In common with Skovgaard-Petersen's argument, Kaptein also reiterates the extent to which the state-dependent religious institutions (or the state *fatwā*) function as a critical legitimising soft power. He asserts:

[77] Skovgaard-Petersen, "A Typology of Fatwas," 283.
[78] Ibid, 282-283.
[79] Ibid, 283.

> "As far as the involvement of the *'ulama'* in the state apparatus is concerned, it may be said that the administrators, both in colonial era and after independence, have always been aware of the potential political power of the *'ulama'*, and therefore have always sought ways to use the authority of the *'ulama'* to legitimize state policy."[80]

The state *fatwā* may therefore function to legitimise the political powers. However, this feature is not widely evidenced within this type of *fatwā*, as Skovgaard-Petersen and Kaptein claim – this is because the legitimising role of the state *fatwā* may change in accordance with the position of Islamic law within the legal system of Muslim countries.[81] It is possible that Kaptein and Skovgaard-Petersen mistakenly overlooked this subtle distinction when seeking to demonstrate how the state *fatwā* helps to generally legitimise the legal, political, social and religious policies of any Muslim state. To take one example, Turkey's Diyanet, as a state-dependent institution, issues Islamic legal explanations, rulings and statements that are identical to the state *fatwā*, but its rulings lack the Islamic legal power and political influence to legitimise the state's policies within the Turkish Republic's secular legal and political system.[82] However, the situation is different for Muslim states that either declare Islam to be the official state religion or self-identify as Islamic. As Skovgaard-Petersen observes, state *fatwās* officially issued by state-dependent Islamic religious institutions or state-appointed *muftīs* provide a legal foundation for policies implemented by the state.[83] *Fatwās* issued by the Egyptian Dār al-Iftā' and the Saudi Dār al-Iftā' generally reinforce the authority of the state and, to this extent, can be conceived as exemplary models of Islamic religious institutions that were established by Muslim states with the intention of attaining support for their state policies and bolstering their domestic religious legitimacy.[84] Taking into account the fact that groups opposed to the government issue their own *fatwās*, state *fatwās* present themselves as the state-sided rope in a 'tug-of-war' between the governments and domestic political dissidents. Consequently, state *fatwās* in some Muslim countries can be theorised as a mechanism that reduces the impact of *fatwās* issued by anti-government groups in contested and divided political environments.

b. Collective *Fatwā*

During the twentieth and twenty-first centuries, when many Muslim countries restricted the scope of Islamic law to the personal and family spheres, the practice of *iftā'* emerged as an important mechanism of Islamic jurisprudence which provides Muslims with

[80] Kaptein, "The Voice of the *'Ulamâ'*,"125.
[81] Masud et al., *Islamic Legal Interpretation*, 27.
[82] M. Hakan Yavuz, "Tukey: Islam without Shari'a?" in *Shari'a Politics: Islamic Law and Society in the Modern World*, ed. Robert W. Hefner (Indiana: Indiana University Press, 2011), 165-166.
[83] Skovgaard-Petersen, "A Typology of Fatwas," 283.
[84] Al-Atawneh, *Wahhābī Islam*, 52-54 and Skovgaard-Petersen, *Defining Islam*, 27-30.

Islamic legal guidance on controversial and novel subjects.[85] In the contemporary period, the concept of collective *ijtihād* has come to function as the principal means of arriving at consultative decisions through both international and national Islamic religious institutions and organisations. It can be inferred that the collective *fatwā* is the final consequence of the collective *ijtihād* exercised by authorised, competent and efficient Muslim scholars who function within international or national religious bodies.

In contemporary times, increases in knowledge have undoubtedly contributed to the spread of scientific specialization.[86] This development has been particularly apparent in relation to the practice of *iftā'*, where it has compelled many Muslim scholars to work collectively, rather than individually, when producing Islamic legal knowledge or deriving Islamic legal rulings from the authentic sources. DeLorenzo observes:

> "While admitting that all expertise has its limits, the classical jurists held that the unrestricted mujtahid needs to be familiar with the entire range of legal issues, while the restricted mujtahid needs only to have knowledge of the issues which pertain to his field of specialization. In modern times, given the way that human knowledge and interests have literally increased in every direction it is less than realistic to suppose that anyone, however gifted, could acquire the sort of knowledge necessary to make him or her an unrestricted mujtahid."[87]

This contribution suggests that it is presumptive to advance the conclusion that the collectivisation and institutionalisation of the practice of *iftā'* is a product of modernity which has become increasingly accentuated during the modern period of Islamic law.

Taking into account modern realities, the contemporary practice of *iftā'* has entailed that Muslim scholars engage upon a collective basis when addressing any controversial legal issue – over time, this helped to produce the concept of a collective *fatwā*, which Skovgaard-Petersen defines as being "given not by an individual mufti, but by a group of muftis who have reached a consensus (*ijmā'*) on the issue".[88] At both the international and national levels, there are important religious bodies, institutions and organisations which provide Muslim scholars with a forum or a platform through which they can collectively assess a controversial issue and derive an appropriate collective *fatwā*. Skovgaard-Petersen implicitly laments the shortage of these intellectual Islamic legal platforms.[89] However, he does not take into account the fact that almost every national-level religious institution that has been

[85] Masud et al., *Islamic Legal Interpretation*, 30 and Skovgaard-Petersen, "A Typology of Fatwas," 284.
[86] Masud et al., *Islamic Legal Interpretation*, 30.
[87] DeLorenzo, "The Fiqh Councilor of North America," 68.
[88] Skovgaard-Petersen, "A Typology of Fatwas," 284.
[89] Ibid, 284.

officially established by Muslim states produces its *fatwās* upon a collective rather than individual basis. In the contemporary world, this may be perceived as one of the changing features of the *fatwā* that helps to partially distinguish it from the individual practice of *iftā'*, as understood in the classical sense of Islamic law. Some of the collective *fatwās* issued by each of the organisations (governmental/non-governmental; national/international) have had a substantial impact at the international level – this was particularly true of the collective *fatwās* issued by al-Azhar University's Islamic Research Academy (which is based in Cairo) and the Muslim World League (which is based in Mecca). In addition, within several Muslim countries, these types of *fatwās* are powerful enough to substantially shape state legislation and policies – examples include Malaysia's National Fatwa Committee and Saudi Arabia's Dār al-Iftā'.

The normal procedure of issuing a collective *fatwā* begins with the preparation of a working agenda, including a list of topics. This agenda is sent to the members of the Muslim organisations beforehand (at least a week or a month or a year) in order to request information from the members and prepare a study that relates to the topics listed on the agenda. At a determined date, the members of the Muslim religious institutions convey and then discuss the issues listed on the working agenda with the intention of issuing a generally valid *fatwā* or making a general statement. In addition, the collective *fatwā* may also include a consultation process that draws upon specialist knowledge from an expert in his/her field. After discussing and evaluating the issue in question and, if necessary, consulting an expert, the decision (*qarār*) is normally issued upon the basis of a majority vote within collective *fatwā*-issuing bodies.

Taking into account the procedure through which a collective *fatwā* is issued, it is possible to identify a number of changes and developments within the practice of *iftā'*. In the first instance, there is a terminological paradigm-shift from the term *fatwā* to the term *qarār*. As Skovgaard-Petersen notes, "[t]he collective fatwa-issuing bodies often employ the term *qarārāt* (decisions) for fatwas that are issued after studies, preparations and discussion."[90] In the second instance, a variation of a democratic voting scheme is procedurally incorporated into the *fatwā*-making process and in the third, the practice of *iftā'* begins to take the form of a collective effort between Muslim scholars that operate within governmental or non-governmental Islamic religious institutions.

[90] Skovgaard-Petersen, "A Typology of Fatwas," 285.

It should be noted that the collective character of this type of *fatwā* may serve to, in comparison to other individual *fatwās*, increase its authority, credibility and validity.[91] Al-Qaraḍāwī echoes this sentiment by asserting that an opinion decided by a group of Muslim scholars is substantially preferable to the view of an individual Muslim scholar because of the advantage that derives from mutual consultation.[92] This type of consultation, he contends, prevents Muslim scholars who perform the practice of collective *iftā'* from neglecting some certain aspects of the issue under discussion and encourages them to sufficiently engage different dimensions of problem.[93] In echoing this sentiment, Skovgaard-Petersen argues that "[having appeared] in the second half of the 20th century, the collective fatwa can be considered an attempt to procure or deliver fatwas with a degree of authority that is not readily challenged".[94] Taking these observations into account, it can be argued that *fatwās* produced through the mutual efforts of Muslim scholars may be more authentic, credible and solid than those put in place by a single Muslim scholar.

Even today, the *fatwā* mechanism is one of the main instruments that produces Islamic legal rulings and accommodates Islamic law to new circumstances and situations. A *fatwā* can be interpreted as an immediate answer of Islamic law that responds to the challenges and exigencies that confront Muslims in the modern world. At first appearance, this mechanism in and of itself underwent incremental developments and changes due to the differences in time and the changing conditions of society (*li-ikhtilāf al-'aṣr wa li-taghayyur aḥwāl an-nās*). The above-mentioned three variations of *fatwā* may testify, to a certain extent, to the changing and thriving nature of the contemporary practice of *iftā'* in the modern period.

Conclusion

It is generally agreed that the practice of *iftā'* continues to play a significant role within contemporary Muslim societies. While deviations within the practice of *iftā'* can be identified, this does not detract from the importance of the practice for Muslims in the

[91] In focusing upon religious authority and the types of *fatwās* in Indonesia, Kaptein states: "… in the Muhammadiyyah a *keputusan*, which forms the end of long formal deliberations, is regarded as expressing more authority than a *fatwā*." When writing the term "*keputusan*", Kaptein refers to a decision that reached at the end of regular meetings of the Majlis Tarjih, a special board of the Muhammadiyyah that was charged with the issuance of Islamic legal interpretation, opinion, decisions and rulings as well as *fatwās*. These *keputusans* are the product of the collective effort of the members of Muhammadiyyah, and the decisions (*keputusans*), Kaptein argues, are more authoritative and credible than other forms of *fatwās*, especially than those *fatwās* issued by only one individual Muslim scholar, in the specific context of Indonesia. See Kaptein, "The Voice of the *'Ulamā'*," 121, 124, and 126.

[92] Al-Qaraḍāwī, *Al-Ijtihād*, 103-105.

[93] Ibid, 103.

[94] Skovgaard-Petersen, "A Typology of Fatwas," 284.

modern world. A *fatwā* is not just a melting pot of Islamic legal methodologies and social realities. Instead it is part of an ongoing hermeneutical and intellectual effort of Muslim scholars that has been addressed to Islamic legal norms and their applicability. As Agrama demonstrates, the practice of *iftā'* is not only a legal tool for the introduction of new thinking and new rulings in the area of Islamic law. To a certain extent, it also appears as an influential mechanism that conjoins ordinary Muslims to Islamic law.[95]

It is perhaps the case that this independent and private practice enables Muslims to continue to live in accordance with Islamic law by connecting Islamic legal theory to social practices. It can also be asserted that the practice of *iftā'* is an Islamic legal instrument that forms Islamic legal rulings before conveying their content to Muslims. This instrument is normally applied in order to initiate solutions in the realm of economic and medical issues, new social practices and scientific/technological developments. However, in the process, the interpretative authority has begun to pass from the hands of individual Muslim jurists and scholars to the collective bodies of international and national religious establishments.

In a development that became particularly pronounced after the nineteenth century, the practice of *iftā'* underwent, as a result of the interventions of modern Muslim nation-states that sougth to control almost every aspect of society and to legitimise their existence by invoking extra-legal Islamic sources, an institutionalisation, modernisation and nationalisation process.[96] As a result, many Muslim states launched their own religious institutions. These modern state-dependent religious institutions in turn instituted the practice of *iftā'* as a state-delivered public service.

During the second half of the twentieth century, international religious centres and organisations began to, through the voluntary efforts of Muslim scholars, institutionalise. This process was initiated with the intention of issuing *fatwās* and disseminating these authoritative and functional Islamic legal decisions across the Islamic world. Within both governmental and non-governmental religious institutions, Islamic legal decisions, rulings and statements (*fatwās*) were initiated through the collective effort of Muslim scholars who functioned within these religious establishments – as a consequence, the practice of *iftā'* became synonymous with a collectivisation process during the modern period. Additionally, new forms of *fatwā* have begun to appear in the area of Islamic law, while other Islamic

[95] Agrama, "Ethics, Tradition, Authority," 13-14.
[96] Skovgaard-Petersen, *Defining Islam*, 22.

decisions and legal statements which closely resemble the *fatwā* have begun to be issued by either state-dependent or state-independent religious establishments that generally operate upon a collective basis. These changes and developments in the practice of *iftā'* do not only demonstrate the possibility of change in the area of *uṣūl al-fiqh* (Islamic legal methodology and jurisprudence); to the same extent, they also render this practice as an effective instrument that produces Islamic legal rulings by combining Islamic legal principles and social reality.

At this point, one can emphasise the increasing need for a collective effort between Muslim scholars which takes place in a collegial body and embodies a variation of collective *ijtihād* in the modern world. In many parts of the Muslim world, including both Saudi Arabia and Turkey, Muslim scholars came to realise that the complexities of modern life that require interdisciplinary skills and mental energies that far outstrip the capacities of any single Muslim scholar in search of an Islamic legal opinion. Saudi Arabia's Dār al-Iftā' and Turkey's Diyanet were selected as case studies with the intention of demonstrating that Islamic legal resolutions, statements and *fatwās* have their own distinct cultural and environmental impacts that operate within an interrupted circle of arguments and interpretation, in which social, political, legal and cultural contexts, legal rulings and legal theories assume their own distinctive role and interact.

CHAPTER 2

GENERAL PRECIDENCY OF SCHOLARLY RESEARCH AND IFTĀ' (DĀR AL- IFTĀ') IN SAUDI ARABIA

Introduction

Islam is deeply embedded within Saudi Arabia's political settlement. The Qur'an and Sunna are the country's constitution, and Islamic law (sharī'a) is the main foundation of its legal system.[1] Because power is rooted within an alliance between *'ulamā'* (religious scholars) and *'umarā'* (political leaders or the Saudi dynasty), the Saudi state can be argued to combine religious and dynastic elements. Bureaucratization, institutionalization and modernization, which were each sparked by the discovery of oil, have added a further layer of complexity to the relationship between the modern Saudi state and religion, and interactions between the polity, religion and society.[2] While the institutionalization of the *'ulamā'* has undoubtedly heightened dependency upon the Saudi regime, it is more likely that a symbiotic relationship conjoins the dynasty and *'ulamā'* in contemporary Saudi Arabia. The official religious institution puts in place the basis of this symbiotic relationship and bestows ideological legitimacy upon the State.

The institutionalization and modernization process within Saudi Arabia has instituted an arrangement in which the official religious establishment has begun to be represented by the General Presidency of Scholarly Research and Iftā' (henceforth: Dār al-Iftā'). This is an official entity whose Islamic legal statements (*fatwās*) and religious erudition have underpinned the Saudi legal system and social life since its establishment. The Dār al-Iftā' stands at the confluence point of the Saudi legal system, politics and society. The history of the Dār al-Iftā' is superimposed upon sustained interactions between the Dār al-Iftā' (the Saudi *'ulamā'*) and the Saudi dynasty. For this reason, the institutional history, Islamic predisposition and structure of the Dār al-Iftā' can be presumed to provide an insight into its socio-legal, socio-political, and socio-religious positioning within the Saudi state.

This chapter addresses itself to the question of whether the Dār al-Iftā' implements a consistent, legitimate and coherent Islamic legal methodology within the Saudi state. It also asks a number of additional questions with the intention of bringing out the interaction

[1] Royal Decree A/90, March 1, 1992. See "The Basic Law of Governance," Royal Embassy of Saudi Arabia, March 1, 1992, accessed October 08, 2015, https://www.saudiembassy.net/basic-law-governance#Chapter%20One:%20General%20Principles.
[2] Ayman Al-Yassini, *Religion and State in the Kingdom of Saudi Arabia* (Colorado: Westview Press, 1985), 20, 32, 42-43, 59, 98-105, 109 and 130.

between the Islamic legal theory adopted by the Dār al-Iftā' and the Saudi social context. These questions relate to the role of the Dār al-Iftā' and *fatwās* within the Saudi legal system, the independence of the Dār al-Iftā' from the Saudi dynasty during the issuance of a *fatwā* and the institution's engagement with Islamic legal challenges encountered by Muslims. A closer engagement with these questions will provide insight into the interaction between the Dār al-Iftā' and the Saudi government (or the King), along with the relationship between the Dār al-Iftā's Islamic legal theory and the social context.

This chapter divides into three subsections. A brief history of the Dār al-Iftā' in Saudi Arabia brings out shifts within the relationship between Saudi *'ulamā'* (religious scholars) and *'umarā'* (political leaders). This demonstrates how the authority and power of the Dār al-Iftā' within the Saudi legal system, society and state has gradually reduced. Attention then turns to the institution's organizational structure. This is an essential contribution as it provides insight into the continued salience of *fatwās* within the law-making process. The discussion then engages with the process through which the institution issues a *fatwā*. In general terms, this chapter seeks to engage the Islamic legal understanding of the Dār al-Iftā. It also provides insight into the role of the institution and its *fatwās* in Saudi society, along with the jurisprudential system and the social context of Saudi Arabia.

1. The Symbiotic Relationship between the *'Ulamā'* and *'Umarā'*: The Formation of the General Presidency of Scholarly Research and Iftā' (Dār al-Iftā') in Saudi Arabia

The historical alliance of 1744 between Shaykh Muḥammad Ibn 'Abd al-Wahhāb, the founder of the Wahhābī movement, and Muḥammad Ibn Sa'ūd, the predecessor of the Saudi dynasty, established the basis for the formation of the first Saudi state.[3] This alliance has

[3] Al-Yassini, *Religion and State*, 25, Guido Steinberg, "The Wahhabiya, Saudi Arabia and the Salafist Movement," in *Islamic Movements of Europe: Public Religion and Islamophobia in the Modern World*, ed. Frank Peter and Rafael Ortega (London: I.B. Tauris & Co. Ltd, 2014), 38, John S. Habib, "Wahhabi Origins of Contemporary Saudi State," in *Religion and politics in Saudi Arabia: Wahhabism and the State*, ed. Mohammed Ayoop and Hasan Kosebalaban (London: Lynne Rienner Publishers, 2009), 57-58, Tobi Craig Jones, "Religious Revivalism and Its Challenge to the Saudi Regime," in *Religion and Politics in Saudi Arabia: Wahhabism and the State*, ed. Mohammed Ayoop and Hasan Kosebalaban (London: Lynne Rienner Publishers, 2009), 110-111 and M. J. Crawford, "Civil War Foreign Intervention, and the Question of Political Legitimacy: A Nineteenth-Century Sa'ūdī Qāḍī's Dilemma," *International Journal of Middle East Studies* 14, no. 3 (1982), 227-232, accessed September 06, 2016, https://www.jstor.org/stable/pdf/163672.pdf?seq=1#page_scan_tab_contents, This historical alliance between Shaykh Muḥammad Ibn 'Abd al-Wahhāb and Muḥammad Ibn Sa'ūd is also referenced in the *khuṭba* of 1982 (religious sermon) delivered by Shaykh 'Abd al-'Aziz b. 'Abd Allāh Āl-Shaykh. See *Corner of the Grand Mufty*, the Khutbah of 1402 A.H. accessed September 06, 2016, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=3&searchScope=15&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=1110981011001051011100991010321161110321141171081011 14#firstKeyWordFound.

since then remained intact.[4] Ibn ‘Abd al-Wahhāb’s mission was sustained by his descendants, who are known as the Āl al-Shaykh family, and their authorization as the Grand Muftī was handed down from father to son.[5] In furthering the Saudi dynasty, the Āl al-Shaykh family have actively participated in the practice of *iftā’* alongside other eminent *muftīs*, most of whom were educated or trained by members of the Āl al-Shaykh family.[6] In 1926, after Ḥijāz was conquered by Ibn Sa‘ūd, the Ḥijāzi *‘ulamā’* participated in the alliance with the ’*umarā’* by issuing a *fatwā* that sanctioned Ibn Sa‘ūd’s authority and sovereignty and urged all Muslims in the region to obey this new ruler.[7] Although non-Āl al-Shaykh *‘ulamā’* were included in the mutual interdependence between the Saudi dynasty and the *‘ulamā’*, the Āl al-Shaykh family maintained a historical monopoly over the highest religious posts in the state for a considerable period of time.[8] However, there has been a noticeable decline in the number of *‘ulamā’* belonging to the family of Āl al-Shaykh since the 1940s.[9] Al-Yassini and al-Atawneh suggest that one possible reason for this decline is the desire of the Saud regime to weaken the monopoly and power of the Āl al-Shaykh family over religious discourses – this would be achieved by opening up the closed circle to less prominent families.[10] Shaykh ‘Abd al-‘Azīz Ibn Bāz (d. 1999), for instance, was from outside this religious nobility, and yet ascended to the position of the highest religious authority (the Grand Muftī), a position he occupied until his death in Saudi Arabia. His ascent epitomises the opening up of this closed religious circle and the breakdown of the Āl al-Shaykh family’s monopoly upon religious discourse.

At the beginning of the establishment of the first Saudi state, the Āl al-Shaykh family were merely the class of the *‘ulamā’* who had formed an alliance with Muḥammad Ibn Sa‘ūd. The religious sphere was reserved for Shaykh Muḥammad Ibn ‘Abd al-Wahhāb and his descendants (the family of Āl al-Shaykh) – however, the Āl al-Shaykh family’s privileged position was increasingly challenged once the official religious institution was established.[11] When Shaykh ‘Abd al-‘Azīz Ibn Bāz was designated as the Grand Muftī, the position of privilege and its associated religious power most likely transferred to the official *‘ulamā’*.

[4] Vogel, *Islamic Law*, 207.
[5] Al-Atawneh, *Wahhābī Islam*, 42-47.
[6] Al-Madawi al-Rasheed, *Contesting the Saudi State: Islamic Voices from a New Generation* (Cambridge: Cambridge University Press, 2007), 28-33, Al-Yassini, *Religion and State*, 44-48, Al-Atawneh, *Wahhābī Islam*, 5 and 29.
[7] Afshin Shahi, *The Politics of Truth Management in Saudi Arabia* (New York: Routledge, 2013), 77 and Al-Yassini, *Religion and State*, 49.
[8] Al-Atawneh, *Wahhābī Islam*, 11-12.
[9] Al-Rasheed, *Contesting the Saudi State*, 28-33 and Al-Yassini, *Religion and State*, 71.
[10] Al-Yassini, *Religion and State*, 71-72 and Al-Atawneh, *Wahhābī Islam*, 29.
[11] Al-Yassini, *Religion and State*, 42-43 and 71-72.

Like the *'ulamā'* exclusively deriving from the Āl al-Shaykh family, the official *'ulamā'* would have been concerned with sustaining the mutual alliance and interdependence between *'ulamā'* (religious scholars) and *'umarā'* (political leaders) within the wider context of the modern Saudi state.[12] It is important to acknowledge this mutual dependence of *'ulamā'* and *'umarā'* because it continues to influence the interaction of religion and politics and provides considerable insight into the Saudi-Wahhābī interaction and their mutual co-existence as semi-autonomous bodies within contemporary Saudi Arabia. Al-Rasheed affirms this when she notes that: "…in the twenty-first century, Wahhabiyya continues to support the power it created and defended. In its official version, Wahhabiyya is the discourse of power legitimization."[13] The interdependency between the *'ulamā'* and the Saudi ruling power, and the authority and legitimacy which derive from this interaction establish them as the principal agents charged with determining and controlling the interpretation of Islamic legal sources and the content of legal regulations that govern the life of Saudi society. However, different circumstances and contexts have conceivably impacted upon their authority and legitimate scope of intervention.[14] Changing circumstances have produced shifts in the relationship between the Saudi regime and the *'ulamā'* since 1744, when the historical alliance between Ibn 'Abd al-Wahhāb and Muḥammad Ibn Sa'ūd was first established.

In Saudi Arabia, the established working relationship between *'ulamā'* and *'umarā'* at one point refers to the significance of *fatwā* and the fundamental role played by its institution. This developed relationship fused politics and religion and instituted a comprehensive system of government that exerts control over Saudi political, public, religious and social life. The working agreement between *'ulamā'* and *'umarā'* established the practice of *iftā'* as a mechanism that formulizes legal, moral and social codes. Al-Atawneh acknowledges the impact of the working relationship upon the practice of *iftā'* when he observes:

> "In Saudi Arabia, the issuance of fatwās (*iftā'*) is linked to the historical alliance of 1744 between Shaykh Muḥammad Ibn 'Abd al-Wahhāb (d. 1792), the founder of the Wahhābī movement, and Muḥammad Ibn Sa'ūd (d. 1765), the forefather of the Saudi dynasty. Based on this alliance, Ibn Sa'ūd became the political leader (Amīr), while Ibn 'Abd al-Wahhāb became the supreme religious authority (Imām): the spiritual leader, chef judge, grand muftī and official administrator of religious affairs under the rule of Ibn Sa'ūd (r. 1744 - 1765) and his son 'Abd al-'Azīz (r. 1765 - 1803)."[15]

[12] Later in this chapter, the transmission of the power of the *'ulamā'* to the only official *'ulamā'* is discussed in light of official documents, such as royal decrees and *fatwās*, that support and corroborate merely the mutual relationship between the Saudi government and the official *'ulamā'*.
[13] Al-Rasheed, *Contesting the Saudi State*, 4.
[14] Jones, "Religious Revivalism," 110-111.
[15] Al-Atawneh, *Wahhābī Islam,* 1.

Because Ibn ‘Abd al-Wahhāb’s authority was as persuasive and dominant as that of the political leaders (Muḥammad Ibn Sa‘ūd and his son, ‘Abd al-‘Azīz Ibn Sa‘ūd), his *fatwās* exerted an important influence over both socio-cultural norms and legal practice during the period 1745-1818.[16] These *fatwās* were usually implemented by the Committee for Commanding Right and Forbidding Wrong (*Hay’at al-Amr bil Ma’rūf wa al-Nahī ‘an al-Munkar*, whose members were selected by the Shaykh himself), and they functioned as an intermediary mechanism which consolidated the relationship between religion and politics.[17] During this period, the legitimacy of political power mainly derived from the *‘ulamā’*, and the authority and prestige of the *‘ulamā’* generally originated within the Saud dynasty’s support. Al-Rasheed observes how religious indoctrination during this period provided a model of political subservience by producing ‘acquiescent’ and ‘domesticated’ subjects.[18] Following on from this observation, it may justifiably be asserted that these *fatwās* were consciously drawn upon in order to instil political compliance and loyalty to the Saudi state and political authority.

When King ‘Abd al-‘Azīz Ibn Sa‘ūd (r. 1932 - 1953) declared Saudi Arabia to be a unified kingdom in 1932, there was not a noticeable impact upon the pre-existing traditional religious structure, which was grounded within the relationship between *‘ulamā’* and *’umarā’*. It was actually the discovery of oil in 1937 that had a much more substantial impact upon the country’s economic, religious, political and social development.[19] Economic prosperity necessitated the introduction of modern administrative systems.[20] The institutional development of the State had a strong impact upon religious organizations and structures, and particularly upon the practice of *iftā*’. Mouline acknowledges this in noting that the religious space was, along with the petroleum industry, one of the first social sectors to adopt formal organizations.[21] The administration of oil revenues therefore produced a process of institutionalization that in turn impacted the religious establishment.

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[16] Al-Atawneh, *Wahhābī Islam*, 2, and Al-Yassini, *Religion and State*, 31.
[17] Al-Atawneh, *Wahhābī Islam*, 2.
[18] Al-Rasheed, *Contesting the Saudi State*, 29.
[19] Shahi, *The Politics of Truth Management*, 71-73.
[20] Al-Atawneh, *Wahhābī Islam*, 8.
[21] Ibid, 8. See also Nabil Mouline, *The Clerics of Islam: Religious Authority and Political Power in Saudi Arabia*, trans. Ethan S. Rundell (London: Yale University Press, 2014), 142, accessed on June 04, 2016,http://reader.vlebooks.com/reader/open?accId=10344&cite=1&isbn=9780300206616&maxCopy=31&maxPrint=31&mmLimit=0&notes=1&pageLimit=0&shareLink=%2F%2FWWW.VLEBOOKS.COM%2FVLEWEB%2FPRODUCT%2FINDEX%2F438536&startPage=0&timestamp=2016-06-03T23%3A04%3A04&userId=524879&watermark=++++++++++++++++++++++++++++++++EXETER%2FW

During the 1950s, the country experienced a series of administrative and bureaucratic reforms. The institutionalization of the practice of *iftā'* was part of this reform process which began when King ʻAbd al-ʻAzīz Ibn Saʻūd designated Shaykh Muḥammad Ibn Ibrāhīm Āl al-Shaykh as the State Grand Muftī on December 18, 1952. One year later, King Saʻūd Ibn ʻAbd al-ʻAzīz Āl Saʻūd (r. 1953-1964), the King's successor, established the first official *iftā'* institution, which was entitled *Dār al-Iftā' wa al-Ishrāf ʻalā al-Shu'ūn al-Dīniyya* (Institute for the Issuance of Religious Legal Opinions and the Supervision of Religious Affairs).[22] This was a significant development because, for the preceding centuries (1745-1953), following the well-known Saudi-Wahābī pact of 1744, the practice of *iftā'* had, in accordance with the Saudi-Wahābī agreement of 1744, been conducted informally.[23] The attempt to institutionalize the Kingdom's religious structure opened the way towards an official interpretation of the sharīʻa and the issuance of *fatwās* in Saudi Arabia. The Grand Muftī, Shaykh Muḥammad Ibn Ibrāhīm Āl al-Shaykh[24] was designated as the head of the newly established Dār al-Iftā', and the institution operated under his chairmanship until his death in 1969. Up until this point, the Dār al-Iftā' served an important and influential function in religious matters by issuing thousands of *fatwās* that played an important role in the formulation of the Saudi state's cultural, legal, moral and social norms. The establishment of this religious institution was a significant moment in the relationship between the *'ulamā'* and *'umarā'* because it marked the point at which the *'ulamā'* lost their independence and began to become a state-controlled institution that was subservient to the state, most notably in the field of politics.[25] With regard to political issues, it can be described as a manifestation of an official religious organization that operates under the Saudi regime rather than as an autonomous association that is located within Saudi society. The Saudi regime reinforced its control over the political sphere by incorporating the *'ulamā'* into government institutions. However, the *'ulamā'* continued to exert political influence between the 1950s and the 1970s. The active participation of the *'ulamā'* in the struggle for power between Saʻūd Ibn ʻAbd al-ʻAzīz Āl Saʻūd and Fayṣal lends further credence to the proposition that the *'ulamā'* and their *fatwās* helped to depose King Saʻūd Ibn ʻAbd al-ʻAzīz Āl Saʻūd . On March 22, 1964,

FNAAXV4QNLVBFFNTXBUB2NYY2VHNLBON0Q0PQ++++++++++++++++++++++++++++++&token=qUoUZo%2biWmH2ibBHoAYYPNGM2uI%3d.

[22] ʻAbd al-Raḥmān al-Shalhūb, *Al-Niẓām al-Dustūrī fi al-Mamlaka al-'Arabiyya al-Saʻūdiyya bayna al-Sharīʻa al-Islāmiyya wal-Qānūn al-Muqāran* (Riyadh: Maktabat Fahd al-Waṭaniyya, 1999), 218 and Mouline, *The Clerics of Islam*, 138.

[23] Al-Atawneh, *Wahhābī Islam*, 16.

[24] Shahi, *The Politics of Truth Management*, 73.

[25] Al-Yassini, *Religion and State*, 78-79.

the senior *'ulamā'* issued a *fatwā* that provided an authoritative instruction that operated under the principle of *maṣlaḥa 'āmma* (general public interest) – this dethroned Sa'ūd Ibn 'Abd al-'Azīz Āl Sa'ūd and legitimately enthroned Fayṣal.[26]

In the religious sphere, the bureaucratization and modernization could not be completed until 1971 for two reasons. Firstly, King Fayṣal (r.1964 -1975) required the support and endorsement of the *'ulamā'* in his struggle for power, and the Saudi regime seriously considered deploying the *'ulamā'*s religious authority in order to further its own goals. During the labour riots, which occurred between 1962 and 1966, the *fatwās* issued by senior *'ulamā'* endorsed both the royal family and its continued authority.[27] King Fayṣal also drew upon the support of the *'ulamā'* to initiate a range of important innovations, which included the construction of Saudi Arabia's first television station in 1965.[28]

Secondly, reform was also frustrated by Shaykh Muḥammad ibn Ibrāhīm Āl al-Shaykh, the Grand Muftī, and more specifically by his charismatic personality, broad institutional power and symbolic capital.[29] When Shaykh Muḥammad ibn Ibrāhīm ascended to become the head of the Dār al-Iftā', he also assumed the offices of Grand Muftī and Chief Qāḍī, and was appointed as the supervisor of girls' education. Because Ibrāhīm Āl al-Shaykh struggled, in spite of his best intentions and efforts,[30] to prevent the regime's intervention in the religious sphere, any action by the regime would not only threaten its legitimacy but also its very existence. The practice of *iftā'* was closely linked with Shaykh Ibrāhīm Āl al-Shaykh's authority during the 1950s and 60s.[31] Under his leadership, the Dār al-Iftā' became a highly personalized institution that was inseparable from his authoritative, effective and strong leadership. At this point, King Fayṣal was probably reluctant to implement a reform of

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[26] Āmin Sa'id, *Fayṣal al-'Azim: Nashātuhu – Sīratuhu – Akhlāquhu - Bay'ahu - Iṣlaḥātuhu - Khaṭbuhu* (Riyadh: Maṭābi' Najd al-Tijārīyah, 1970), 71-76 and Simoon Henderson, *After King Abdullah Succession in Saudi Arabia* (Washington: the Washington Institute for Near East Policy, 2009), 5, accessed on June, 12, 2016, https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus96_Henderson.pdf, Nabil Mouline, "Enforcing and Reinforcing the State's Islam: The Functioning of the Committee of Senior Scholars," in Saudi Arabia in Transition: Insights of Social, Political, Economic and Religious Change, ed. Bernard Haykel, Thomas Hegghammer and Stéphane Lacroix (New York: Cambridge University Press, 2015), 51 and Habib, "Wahhabi Origins," 60.

[27] Mouline, "Enforcing and Reinforcing," 54.

[28] Ibid.

[29] Mouline, *The Clerics of Islam*, 148-9. Shaykh Muḥammad ibn Ibrāhīm was an influential figure in Saudi Arabia during his term of office. As the Grand Muftī of Saudi Arabia, he informally heard appeals. Vogel points his strong power when he says: "…it seems a single scholar—again Muḥammad ibn Ibrāhīm—had all the powers of the supreme judicial authority." See Vogel, *Islamic Law and Legal System*, 91.

[30] Mouline, *The Clerics of Islam*, 149.

[31] Under the chairmanship of Shaykh Muḥammad Ibn Ibrāhīm, many *fatwās* were issued, a considerable number of which were compiled and published under the title "*Fatāwā wa-rasā'il samāḥat al- Shaykh Muḥammad ibn Ibrāhīm Āl al-Shaykh*" for the first time in 1978. See Al-Atawneh, *Wahhābī Islam*, 9.

the *iftā* council, for the reason that it would require directly intervening in the existing religious establishment.

On August 29 1971, two years after the death of Shaykh Muḥammad Ibn Ibrāhīm, King Fayṣal issued a Royal Decree that led to the formation of two new agencies: *Hay'at Kibār al-'Ulamā'* (Board of Senior *'Ulamā'*; henceforth: BSU) and *al-Lajna al-Dā'ima lil-Buḥūth al-'Ilmiyya wal-Iftā'* (Permanent Committee for Scientific Research and Legal Opinion; henceforth: CRLO).[32] King Fayṣal's reform policy, which was set out in his widely acknowledged "Ten Point Program",[33] sought to restructure the Dār al-Iftā' by incorporating these two new agencies and creating a new *iftā'* council.[34] The proliferation of government agents and ministries made it possible to reallocate some functions of the *'ulamā'* among the newly-established institutions and ministries; however, this did not make it possible to diminish or even eliminate the influence of the Dār al-Iftā' or the *'ulamā'* within Saudi public life. Because the Saudi constitutional system and judiciary are grounded within the Qur'an and Sunna, Islamic law establishes the backbone of state legislation. This is clearly and unequivocally specified in Articles 1, 7, and 23 of the Basic Regulations of Governance (*al-Niẓām al-Asāsī lil-Ḥukm*), which were put in place in 1992, respectively. Article 1 states:

> "The Kingdom of Saudi Arabia is a sovereign Arabic Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, the Holy Qur'an, and the Sunna (Traditions of the Prophet (PBUH)."[35]

Meanwhile, Article 7 clarifies:

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[32] Kingdom of Saudi Arabia, *Niẓām wa-lā'iḥat sayr al-a'māl fi Hay'at Kibār al-'Ulamā'*, Royal Decree A/137, August, 29, 1971, accessed June25, 2016, http://www.cojss.com/article.php?a=301, Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 218-9. See also *English Translations of Permanent Committee For Scholarly Research and Ifta' of K.S.A: Second* Collection, vol. 01 of 11, (Portal of the General Precedency of Scholarly Research and *Ifta'* of Kingdom of Saudi Arabia), accessed June 03, 2016, https://7531a518474347b7217919bf850a09d8d839d214.googledrive.com/host/0B0BtG87kjnKbajZ4RDNTOGtjaTg/salafaloma.com_en_01_Majmoo_alFatawa_IFTAA_COLL02.pdf and Joshua Teitelbaum, *Holier Than Thou: Saudi Arabia's Islamic Opposition* (Washington: the Washington Institute for Near East Policy, 2000), 18-19.

[33] This "Ten Point Program" has the following aspirations: 1. To promulgate a Fundamental Law, establishing the relationship between the ruler and those being ruled, and to define State administration; 2. To regulate the provincial administration; 3. To establish a Ministry of Justice; 4. To establish an *iftā'* council; 5. To propagate Islam (*da'wa*); 6. To reform the Committee for Commanding Right and Forbidding Wrong; 7. To improve the nation's quality of life; 8. To issue new regulations accommodating new social developments and economic changes; 9. To promote financial and economic development; and 10. To abolish slavery in the Kingdom. See Al-Atawneh, *Wahhābī Islam*, 9-10. For an English translation of the program, see "Ministerial Statement of 6 November 1962 by Prime Minister Amir Faysal of Saudi Arabia," *Middle East Journal* 17, no. 1/2 (1963), 161-162, accessed June 03, 2016,http://0-www.jstor.org.lib.exeter.ac.uk/stable/pdf/4323561.pdf?_=1468274273021 and al-Yassini, *Religion and State*, 110.

[34] Shahi, *The Politics of Truth Management*, 75 and al-Atawneh, *Wahhābī Islam*, 9-10.

[35] Royal Decree A/90, March 1, 1992.

> "Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State."[36]

Finally, Article 23 states:

> "The State shall protect the Islamic creed, apply the Sharia, encourage good and discourage evil, and undertake its duty regarding the Propagation of Islam (Da'wa)."[37]

These Articles conceivably establish that the Dār al-Iftā' can be accepted as the main interpretative mechanism of Islamic legal sources – this applies because the institution is the highest official administrative religious authority responsible for issuing legal edicts and opinions based on Islamic law. In further clarifying this point, Vogel observes:

> "The board's decision (referring to the BSU's opinions) seems to have a near-legislative effect on judicial decisions. It is impossible to know exactly the extent of qāḍī conformity to the board's decisions, but qāḍīs whom I heard mention such decisions seemed to accept their holdings axiomatically."[38]

At this point, it should be noted that the practice of *iftā* and the function of adjudication (*qaḍā'*) implicitly complement each other. This feature is further reiterated by Vogel's observation that the *qāḍīs* evidence, to at least some extent, a clear respect for the *fatwās* issued by the Dār al-Iftā' (in particular the BSU) and therefore seek to incorporate them into the Saudi judicial procedure.[39] In addition, the Dār al-Iftā' also maintains its connection with, and influence over, the judiciary system, and these two features take various forms. The fact that many members of the BSU have simultaneously served in high-ranking judicial positions could conceivably be interpreted as confirmation of the Dār al-Iftā's impact upon the judicial and legal system. For instance, Shaykh Ṣāliḥ b. Laḥaydān, one of the prominent members of the BSU, assumed the presidency of the Permanent Board of Supreme Judicial Council (*Majlis al-Qaḍā al-A'lā*) during the period 1992-2009.[40] Shaykh Bakr b. 'Abd Allāh Abū Zayd, one of the previous members of the BSU, served as a general deputy for the Ministry of Justice until the end of 1991, and was also appointed as a representative of the Kingdom at the International Islamic Fiqh Assembly.[41] Shaykh 'Abd Allāh b. Muḥammad b. Ibrāhīm Āl al-Shaykh, the current member of the BSU, was assigned to the Ministry of Justice by Royal

[36] Royal Decree A/90, March 1, 1992.
[37] Ibid.
[38] Vogel, *Islamic Law and Legal System*, 115-116.
[39] Vogel, *Islamic Law and Legal System*,7-8 and 115-117 and Vogel, "The Complementarity of Ifta' and Qaḍā'," 262 -263 and 268-269.
[40] Vogel, *Islamic Law and Legal System*, 83 and Al-Atawneh, *Wahhābī Islam*, 23.
[41] *English Translations of Permanent Committee for Scholarly Research and Ifta' of K.S.A: Second* Collection, vol. 01 of 11, (Portal of the General Precedency of Scholarly Research and Ifta' of Kingdom of Saudi Arabia).

Decree 2/125 in 1992;[42] in addition, Shaykh ‘Abd Allāh b. Sulaymān al-Manī’, one of the BSU’s most prominent current members, has also served as a judge of the Western region of Mecca.[43] Al-Atawneh further reiterates the authority and power of the *‘ulamā’* and, by extension, the Dār al-Iftā’. He observes:

> “In any event, the ‘ulamā’ … continue to exercise influence in several areas, including nearly all legal and religious affairs. They have even managed to gradually increase their power by expanding their control over other State ministries and various religious agencies, national and international, such as: the Ministry of Justice; the Ministry of Islamic Affairs and Endowments, Call and Guidance; the Ministry of Pilgrimage; the *Muṭawwi‘a*; … and, finally, the World Muslim League and the World Assembly of Muslim Youth.”[44]

Because the highest judicial and religious positions continue to be held by the BSU members, it is possible to assert that the Dār al-Iftā’ still continues to maintain its influence and authority, at least over the Saudi judiciary and the religious and social spheres. In particular, it should be noted that the official *fatwās* of the institution, which are legally complementary, play a central role in shaping legal regulations and orienting internal policies.

The institutionalization of the Dār al-Iftā’ was largely completed by the 1993 recentralization, in which King Fahd’s royal decree reintroduced the office of Grand Muftī (*al-Muftī al-‘Āmm*)[45], which had been suspended for roughly two decades after the death of Shaykh Muḥammad ibn Ibrāhīm, the Grand Muftī, in 1969. Shaykh ‘Abd al-‘Azīz ibn Bāz was assigned to this position and served as the permanent chairmen of both the BSU and CRLO, representing the highest *iftā’* authority until his death. The reestablishment of this office resulted in the recentralization of the contemporary practice of *iftā’*, and all *iftā’* institutions being placed under the office’s control. When Ibn Bāz died in May 1999, Shaykh ‘Abd al-‘Azīz b. ‘Abd Allāh Āl al-Shaykh was appointed as the State Grand Muftī and the Chairman of both the BSU and the CRLO. These two public agencies are currently led by Shaykh ‘Abd al-‘Azīz b. ‘Abd Allāh Āl-Shaykh, the State Grand Muftī .

In the Saudi legal system, the *fatwās* issued by the Dār al-Iftā’, and in particular the BSU, perform a complementary role in the application process of Islamic law. Upon this basis, it may be asserted that there is an established institutional cooperation between the

[42] Shaykh ‘Abd Allāh b. Muḥammad b. Ibrāhīm Āl al-Shaykh, The Shūra Council, accessed November 01, 2017, https://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/CV/Abdullah+Bin+Mohammed+Bin+Ibrahim+Al-Sheikh/.
[43] His Eminence Shayhkh ‘Abdullah ibn Mani’, Member Scholars of the Permanent Committee for Ifta’, accessed November 05, 2016, http://www.alifta.com/Fatawa/MoftyDetails.aspx?languagename=en&Type=Mofty&section=tafseer&ID=6.
[44] Al-Atawneh, *Wahhābī Islam*, 37.
[45] Ibid, 30.

Saudi courts (as the judicial authority) and the Dār al-Iftā' (as an interpretative authority of Islamic legal sources.)[46] The institution's official *fatwās*, which may be legally compulsory or not, have also had an important impact upon the daily life of Saudi society since it was first established in 1953. Al-Shalhūb explains two aspects of these *fatwās* and their operation within Saudi society. He states:

> "… when the issue is not related to an individual, the *fatwā* [on that issue] becomes general. In both individual and general *fatwās*, we ought to take two factors into account. Firstly, the religious aspect – this arises from the fact that the *fatwā* might not be legally binding, but it is religiously binding for the *mustaftī* [an individual questioner]. Secondly, the question of whether the issued *fatwā* is legally binding or not. For all individuals, the obligation to obey the issued *fatwā* becomes legally binding either through the verdict of the *qāḍī* [judge] or the approval of the King."[47] [48]

This statement establishes that the *fatwās* of the Dār al-Iftā' do not only guard public morality but also operate as the legal complementary within the Saudi legal system. For instance, the death penalty for drug traffickers and smugglers became state law when King Fahd gave his assent. The legal code governing this matter originates within the *fatwā*, or the BSU's legal decision, which was discussed on February 02, 1987, at King Fahd's request.[49] In establishing execution as the last deterrent penalty for recidivist drug traffickers, smugglers and substance abusers, the BSU referred to the negative consequences of their actions on public health and the entire community. In setting out the legal rationale for this ruling, the BSU applies to the principle of the public interest (*maṣlaḥa*). The *fatwā* which sets out legal penalties for such crimes specifies:

> "He who promotes drugs, whether by manufacturing, imports, sales or procurement, must be punished by imprisonment, whipping, financial penalty, or all the aforementioned, as per judicial discretion. However, repeat offenders must be punished most harshly, even by execution, in order to protect society from them."[50]

This suggests that the BSU evaluates the aforementioned crimes under the penal category of *ta'zīr* (in which punishments are left to the discretion of judges or rulers). The death penalty as the last option of penalization has now been confirmed and put in place as a means to

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[46] Al-Atawneh, *Wahhābī Islam*, 30-31, Vogel, *Islamic Law and Legal System*, 115-117 and Vogel, "The Complementarity of Ifta' and Qaḍā'," 262-263 and 267-269.
[47] Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 221-222.
[48] Author's translation.
[49] The BSU decision No. 138 of February 02, 1987, accessed June 30, 2016, http://ar.islamway.net/article/17711/%D8%AD%D9%83%D9%85-%D9%85%D9%87%D8%B1%D8%A8-%D9%88%D9%85%D8%B1%D9%88%D8%AC-%D8%A7%D9%84%D9%85%D8%AE%D8%AF%D8%B1%D8%A7%D8%AA, al-Shalhūb, *Al-Niẓām al-Dustūrī*, 223-24 and Vogel, *Islamic Law and Legal System*, 266-267. For the translation of legal decision of the BSU, see al-Atawneh, *Wahhābī Islam*, 159.
[50] Cited from Al-Atawneh, *Wahhābī Islam*, 160. See original Arabic text the BSU decision No. 138 of February 02, 1987.

punish criminals who perpetrate drug abuse, smuggling and trafficking.[51] In quoting Ibn Taymiyya's approval for the execution of an individual who refused to give up the consumption of alcohol, BSU members sought to justify the inclusion of recidivist offenders within the *ta'zīr* penalty category.[52] This example reiterates that it is essential to consider how the Dār al-Iftā' actively influences Saudi society's legal laws, norms and regulations. In operating within a functioning Islamic legal system, the Dār al-Iftā' clearly exerts an intellectual effort to derive an Islamic legal ruling from the textual sources, and this sustains a smooth interaction between the religious scholars and rulers.

Scholars who study Saudi Arabia tend to adopt two different approaches to the actions of the Saudi rulers regarding to the Dār al-Iftā's incorporation into the State administration. Firstly, some of them argue that the State sought to weaken the *'ulamā's* monopoly on politics by establishing the Dār al-Iftā'. In the second instance, others maintain that the State's termination of the '*ulamā'*s autonomy and its replacement by an official institution actually enabled the *'ulamā'* to increase officially their influence over social, political and legal spheres. Al-Yassini, in describing Saudi Arabia as one among a few extreme examples in which a given political authority uses religion to control and reshape society, leans towards the first perspective (on the incorporation of the *'ulamā'* into the state administration). He clarifies:

> "The ulama became incorporated in state administration, and state laws regulate ulama activities. The state…does not tolerate an autonomous religious domain that may compete with it for the loyalty of citizens. Thus, the state extended its jurisdiction to the religious domain and utilized religious leaders to legitimate its policies."[53]

Al-Yassini clearly takes the view that the State only left devotional matters and the social sphere in the hands of the Dār al-Iftā', with the consequence that this initiated a bureaucratization and institutionalization process across Saudi Arabia.[54] Al-Rasheed stingingly adds:

> "The official *'ulama* failed to reflect on their own role in the modern Saudi state. They refrained from critically examining this role and tracing its evolving nature. Simply content with being guardian of the moral order while leaving political power in the hands of the ruling family and expanding class of bureaucrats and technocrats, they lacked self-consciousness and awareness. The Saudi *'ulama* accepted the *de facto* separation between religion and politics,

[51] Vogel, *Islamic Law and Legal System*, 266-268.
[52] In the *fatwā* probably to suppress and remove an excuse of doubt on the part of offenders of these crimes, it is stated: "[i]t is essential that the aforementioned penalties be promulgated prior to their implementation, as educational and preventative measures…" See the BSU decision No. 138 of February 02, 1987.
[53] Al-Yassini, *Religion and State*, XI.
[54] Ibid, 59-60, 75 and 78-79.

> while adopting a narrow definition of religion as all matters relating to personal conduct and *'ibadat* (worship)."[55]

This suggests that the ruling family put into effect a *de facto* separation between politics and religion while establishing a politically secular state but socially an Islamic society. Steinberg similarly insists that the Government's bureaucratization and modernization policies functioned to undermine the position and overall impact of the *'ulamā'* in both the political and religious spheres.[56] Over time, the institution and its scholars (*'ulamā'*) have come to focus upon issues which include the jurisprudence of the permissible and the forbidden (*fiqh al-halāl wa al-ḥarām*), the jurisprudence of worship (*fiqh al-'ibādāt*) and public morality, in the process becoming more removed from Saudi politics. The political isolation of the *'ulamā'* corresponded to a clear understanding between the *'ulamā'* and the Government which envisioned the separation of religion and politics. Consequently, what emerges from the first argument concerning the restructuring of the Saudi *iftā'* institution is that the *'ulamā'* have lost their power in the political sphere.

To a certain extent, the argument that the state restricted the political power of *'ulamā'* by subordinating them to an official institution appears to correspond closely to the range of bureaucratization and modernization activities that sought to subordinate the *'ulamā'* to the King. However, it is important to note that the official *'ulamā'*, conceived as guardians of religious legal interpretation, were never marginalized in the manner of their counterparts in the Arab-Muslim world. Although the incorporation of the *'ulamā'* into the state administration undermined part of their prerogatives during the 20th century, the *'ulamā'* increased its authoritative position by occupying official posts and positions.

The second argument, which relates to the incorporation of the *'ulamā'* into the state administration, has been engaged by Mouline and al-Atawneh, who offer an influential account that correlates the issue with the basic Wahhābī doctrines of governance and politics, which designates both the *'ulamā'* and the *'umarā'* as authority-holders (*wulāt al-'amr*). Mouline reiterates that the incorporation of *'ulamā'* into the state administration increased their influence in official and social spaces. He observes:

> "The ulama, as collective actors, did all they could to thwart Faysal's effort at fragmentation by individually overseeing the newly created institutions on behalf of the corporation. Starting in the late 1970s, they recuperated all of their prerogatives in the juridico-religious domain, strengthening their presence in the social space…

[55] Al-Rasheed, *Contesting the Saudi State*, 57.
[56] Steinberg, "The Wahhabiya, Saudi Arabia," 38.

> In other words, the clerical corps very rapidly adapted to the new situation. More particularly, it once again adopted a strategy that would allow it, not only to preserve its interests by significantly reinforcing its social base and organizational frameworks, but also to impose itself as a reliable, long-term partner of the political power."[57]

Al-Atawneh lends further support to this argument by noting that the transformation of the religious establishment from informal to formal may have enabled the *'ulamā'* to maintain their cooperation with the Saudi government while enabling them, as an officially recognized religious actor, to continue to participate in the power structure.[58] However, al-Rasheed and al-Yassini, in their consideration of the political implications arising from the institutionalization of the religious establishment, do not acknowledge the symbiotic relationship between the *'ulamā'* and the Saudi state or its embodiment within Wahhābī political doctrine. This is perhaps because, from the viewpoint of Wahhābī political theory, the institutionalization and optimization of the *'ulamā'* may be viewed as a reaction to ongoing socio-political changes which impacted Saudi Arabia and the wider world.

At this stage, it is important to focus on how Saudi Arabia's official Wahhābī *'ulamā'* articulated the doctrine of *siyāsa shar'iyya* (a fundamental legal doctrine that establishes the relationship between the regime and its subjects in an Islamic state) over the twentieth century. It strongly stressed the importance of obedience and acquiescence to rulers and was therefore consistent with the traditional approach advocated by predecessors.[59] This is also a

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[57] Mouline, *The Clerics of Islam*, 150.
[58] Al-Atawneh, *Wahhābī Islam*, 36-37.
[59] The Wahhābī doctrine has a political theory, which is based on Ibn Taymiyya, which holds that Muslims must obey the ruler even if he is a sinner. This means that the Saudi regime is free to arrange government in any way that it sees fit, as long as it does not violate the sharī'a. In Ibn Taymiyya's view, the only grounds for disobedience to a ruler emerges when he orders believers to violate the sharī'a – examples could include committing adultery (*zinā*), consuming alcohol or carrying out theft (*sariqa*). Ibn Taymiyya's *al-Siyāsa al-Shar'iyya*, a famous treatise, had provided the conceptual framework for contemporary Wahhābīs. He also defined the form of legitimate advice and exhortation by recognizing the right and duty of qualified individuals to offer exhortation to a ruler. Ibn Aqil, Ibn Farḥūn and Ibn Qayyim al-Jawziyya, all express similar views when addressing the *siyāsa shar'iyya* doctrine – this is shown by the fact that they all recognize and support the broad discretionary authority of the ruler, while citing the principle of *maṣlaḥa* as a basis. In early Wahhābī political theory, the government and the sharī'a emerge as the two foci of power. Within this political theory, it is based on the premise that the purpose of the government in Islam is to carry out the sharī'a 's dictates and injunctions. In line with this Wahhābī political theory, a temporal ruler becomes necessary to maintain and enforce the sharī'a and its dictates and obedience to him emerges as a religious obligation. This suggests that the ruler must consult the '*ulamā* who are in charge of interpreting God's will and determining the sharī'a's dictates. Even though Shaykh Muḥammad Ibn 'Abd al-Wahhāb established the foundation of the bilateral relation between the *'ulamā'* and the *umarā'*, he did not envisage the core feature of the Saudi-Wahhābī State. Al-Atawneh emphasizes this point: "Shaykh Muḥammad Ibn 'Abd al-Wahhāb (d. 1792) divided state hegemony between the *'ulamā'*, the authorities in matters of jurisprudence, and the ruling *'umarā'*, who were in power and presumably consulted the *'ulamā'*. In this *pas de deux*, enforcement of the Sharī'a requires a ruler committed to its tenets and the State also needs its ongoing support and legitimacy. However, as mentioned above, Ibn 'Abd al-Wahhāb neither provided a precise model of cooperation between the '*ulamā'* and the rulers, nor delineated the structure and functions of the Wahhābī state." However, the *pas de deux* between the *'ulamā'* and the rulers that was envisaged by Ibn 'Abd al-Wahhāb was developed and forged with the revitalization of traditional *siyāsa*

feature of contemporary Wahhābī *fatwās* and writings. During a symposium that was held in Riyadh's Fayṣal ibn Turkī Mosque, Ibn Bāz's offered a legal explanation in response to a question which asked how the 'authority-holders' in the Q. 4:59[60] should be understood, along with the question of whether this term relates to the *'ulamā'* or the *'umarā'*, and even applies if they are unjust. In this symposium, Ibn Bāz states:

> "Those in authority refer to Muslim scholars and rulers. Their orders should be followed if they agree with Shari'ah and should be disregarded if they disagree with Shari'ah. Thus, scholars and rulers should be obeyed in Ma'ruf because this serves to set things rights, spread security, help in carrying out the orders, give the oppressed their due rights, and deter the oppressors. On the other hand, disobeying rulers brings about corruption and injustice. Hence, those in authority – whether they are rulers or scholars – should be obeyed in Ma'ruf. The matter should go as follows: scholars shall explain the rulings of Allah, rulers shall enforce these rulings, and the people shall listen to their scholars and follow the orders of their rulers. If orders involving disobedience to Allah are given, whether from rulers or scholars, these orders shall not be followed. For example, if a ruler orders you to drink Khamr (intoxicant) or consume Riba (usury), do not obey him. Likewise, if a scholar orders you to disobey Allah, do not obey that order. Pious scholars do not give such orders. In short, obedience is obligatory in Ma'ruf."[61]

In any event that relates to politico-religious issues, the Wahhābī circle's doctrine of *siyāsa shar'iyya* is used both to buttress Saudi government policy and also to ensure total obedience to the Saudi ruler and, by extension, the official *'ulamā'*. The doctrine of *siyāsa shar'iyya* is straightforwardly described by the CRLO's *fatwā* ("[a]l-Siyasah Al-Shar'iyyah is [a] policy that based on the Qur'an and Sunnah, [about] the ruler administering justice and the subjects giving loyalty and obedience.")[62] This doctrine therefore establishes the relationship between

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shar'iyya doctrine by the contemporary official Wahhābī. See Crawford, "Civil War Foreign Intervention," 227-248, al-Atawneh, *Wahhābī Islam*, 37-42 and Al-Yassini, *Religion and State*, 30; for further insight into the similarity between the traditional Ḥanbalī *siyāsa shar'iyya* doctrine and the contemporary Wahhābī *siyāsa shar'iyya* doctrine, refer to Vogel, *Islamic Law and Legal System*, 204-205 and 207-212 and the 16th footnote of Al-Atawneh, *Wahhābī Islam*, 40. For an account of the progressive development of the doctrine of *siyāsa shar'iyya* from the time of rightly guided d four Caliphs to the twentieth century, refer to Vogel, *Islamic Law and Legal System*, 173-177 and 185-221 and Ann K. S. Lambton, *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory: The Jurists* (Oxford: Oxford University Press, 1981), 1-201, 242-264 and 307-316.

[60] The Q. 4:59 reads: "O who you believe! Obey Allah, and obey the Messenger (Muhammad), and those who charged with authority among you. If you differ about anything within yourselves, refer it to Allah and His Prophet (Muhammed) if you believe in Allah and the Last Day: That is the best and suitable final determination."

[61] Because of the length of the interview, a brief passage will be cited here. For the full interview in English, see Obeying rulers and scholars in Ma'rūf to set things right, in *Fatwas of Ibn Baz*, 7:115-119, accessed August 21, 2016, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=871&PageNo=1&BookID=14. For Arabic text of this interview, see Muḥammad b. Sa'd al-Shuway'ir, *Majmū' Fatāwā wa-Maqālāt Mutanawwia'* (Riyadh: Dār al-Qāsim, 2000), 7:115-119, accessed July 23, 2016, https://ia800308.us.archive.org/30/items/mfmmmfmm/mfmm07.pdf. and *al-Sharq al-Awsaṭ*, May 05, 1993. In the *fatwā*, the word *ma'rūf* is defined as "that which is judged as good, beneficial, or fitting by Islamic law and Muslims of sound intellect".

[62] Fatwā No. 15631 in *Fatwas of the Permanent Committee*, 23: 401, accessed September 06, 2016, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&Fatw

the Regime and its subjects by recognizing the broad authority of the King and occasionally takes the form of a political weapon that seeks to consolidate the ascendency and authority of both the Saudi Regime and the *'ulamā'*, who are its official moral and religious guardians.[63]

The contemporary official Wahhābī scholars have sought to delineate an intricate model of cooperation that conjoins the Dār al-Iftā and the Saudi Regime (the *'ulamā'* and the *'umarā'*) while constructing the structure of the Saudi-Wahhābī state and raising it over the alliance that combines these authority-holders.[64] This intricate cooperation establishes obedience to these authority-holders as binding, obligatory and akin to obeying God and his Prophet.[65] In this respect, it is possible to envisage that Ibn Bāz envisions obligatory obedience to royal decrees and rules not mentioned by the sharī'a – these could conceivably include regulations that govern employer-employee relations, traffic laws and other laws that have an individual or social benefit but which do not contradict the sharī'a.[66] The only exception concerning the obligatory obedience is when the authority-holders issue a decree in violation of the sharī'a. However, Ibn Bāz is clear that a Muslim does not rebel against a ruler who does not comply with Islamic law. In his view, the only exception is when Muslims have sufficient power to overthrow the negligent government or authority: this establishes that the permissibility of rebellion is linked to the ability of Muslims to topple a regime. If success can be guaranteed in advance, then revolt is permissible. Ibn Bāz clarifies:

> "If a ruler commits acts of clear disbelief, proven as such by evidence, and the people have the ability to topple him, to replace him with a pious ruler who enforces the Commands of Allah and supports the truth, they are permitted to do so."[67]

If this is not the case, a Muslim does not possess the right to actively oppose a ruler who violates the sharī'a; rather he should instead advance advice the ruler without violating the principle of Islamic law that relates to positive and negative commandments (*al-'amr wa al-*

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[63] Vogel, *Islamic Law and Legal System*, 173-175 and 179.

[64] The concept of cooperation between *'ulamā'* and *'umarā'* was originally outlined by Ibn Taymiyya in the Ḥanbalī school. He proposes a condominium of power by construing the Q. 4:59 as entailing obedience to those in authority – this is achieved by interpreting the term '*ulī al-'amr* to cover both *'umarā'* and *'ulamā'*. He therefore supports a reunification of *fiqh* (Islamic legal understanding) and *siyāsa* (Islamic politics). See Vogel, *Islamic Law and Legal System*, 203-205.

[65] Obeying rulers and scholars in Ma'rūf to set things right, in *Fatwas of Ibn Baz*, 7:115-119.

[66] Ibid.

[67] Ibid.

nahy).[68] Shaykh Ṣāliḥ b. Laḥaydān, an eminent member of the BSU and head of the Supreme Judicial Council, further reiterates the confidential dimension of advice:

> "*Nasiha* [advice, admonition] has certain conditions, principles, and rules of its own. One who wants to say everything that comes to mind without acting according to the rules of Islamic shari'a concerning *al-amr al-nahy* [positive and negative commandments] is one or the other: either a *jahil* [ignoramus], who must be taught; or an 'alim [man of knowledge], who has gone too far and therefore must be debated until he understands; if he remains obstinate, he must be restrained."[69]

The prerequisite for advising a ruler by gentle means helps to obfuscate the controversies, disagreements and strains between the Dār al-Iftā' and the Saudi Regime. While the cooperation between the Dār al-Iftā' and the Saudi Regime upon the foundation of the doctrine of *siyāsa shar'iyya* has resulted in strong criticism being directed towards the Dār al-Iftā' for issuing *fatwās* which support government policies during times of crisis, this prerequisite (any advice to a ruler should be given respectfully and in private) functions to obscure the strained relations between these two authority-holders. Al-Atawneh further underlines this point:

> "It would be amiss to think that the relationship between the senior muftīs and the Government is completely harmonious. The Wahhābīs favor discrete criticism of the ruler, and thus, make it difficult to learn about the tensions existing between the muftīs and the King."[70]

It is not entirely accurate to assert that the relationship between the Dār al-Iftā' and the Saudi Regime is coherent or cohesive. The actual relationship that pertains between the two authority-holders should be taken into account when *fatwās* issued by the Dār al-Iftā', and in particular those that pertain to political matters, are thoroughly examined from an Islamic legal perspective.

In addition, the doctrine of *siyāsa shar'iyya* that has been established by the official contemporary Wahhābī *'ulamā'* sets out an ongoing reciprocal relationship between the official *'ulamā'* and the *'umarā'* in the area of legislation and politics. The Dār al-Iftā', as the location of the official *'ulamā'*, performs an essential role in legitimizing the Saudi Regime's policies, particularly during times of crisis. However, the Saudi Regime is also compelled to consult the *'ulamā'*, who are authorized to clarify the tenets of the sharī'a by interpreting God's will, and to oversee the implementation of these interpretations. Al-Atawneh further

[68] Obeying rulers and scholars in Ma'rūf to set things right, in *Fatwas of Ibn Baz*, 7:115-119, Teitelbaum, *Holier Than Thou*, 104-8 and Al-Atawneh, *Wahhābī Islam*, 38-9.
[69] Cited from Teitelbaum, *Holier Than Thou*, 104.
[70] Al-Atawneh, *Wahhābī Islam*, 53.

reiterates this reciprocal relationship between the Dār al-Iftā' (*'ulamā'*) and the Saud Regime. He writes:

> "…, without the coercive power (*shawka*) of the state, religion is in danger; without Sharī'a , the state becomes a tyrannical organization. Thus, in an ideal state, the 'ulamā' and the 'umarā' cooperate: the former interprets God's will through the analysis and exegesis of His words, while the latter implements these interpretations. Consequently, authority is divided between the 'ulamā' and the 'umarā', both represented as authority-holders in Wahhabi doctrine."[71]

This harmonious relationship between the two emerges as a crucial factor that ensures the stability of the Saudi-Wahhābī state. Here it will be noted that the key emphasis is upon the political integration of the Dār al-Iftā', which is accordingly not conceived as a separate institutional entity that only provides religious legitimacy to government policies. To put it differently, the doctrine of *siyāsa shar'iyya* is conceivably the most important mechanism that helps to explain the reciprocal agreements and complementary cooperation between the Dār al-Iftā' and the Saudi Regime. While it provides unlimited power to the ruler, this doctrine also establishes the basis for the independence of the *'ulamā'* on matters that fall within their jurisdiction. It should be remembered that the official (or state-founded) and Wahhābī *'ulamā'* have functioned as a key part of the State's administrative and political apparatus. The power of the Saudi-Wahhābī state is tenuously divided between the *'ulamā'* (the authorities on matters of jurisprudence) and the *'umarā'* (the ruling class which supposedly consults the *'ulamā'*).

The Wahhābī movement (which is frequently referred to as 'the Salafī movement' by its followers) represents a diverse community and encompasses a broad range of opinions on issues such as *jihad*, obedience to rulers and political authority. Although Wahhābīs share a common religious creed, they diverge considerably on a number of controversial issues. Wiktorowicz generally classifies Wahhābīs into three groups according to their different interpretations over contemporary issues when he says:

> "The different contextual readings have produced three major factions in the community: the purists, the politicos, and the jihadis. The purists emphasize focus on nonviolent methods of propagation, purification, and education. They view politics as diversion that encourages deviancy. Politicos, in contrast, emphasizes application of the Salafi [Wahhābī] creed to the political arena, which they view as particularly important because it dramatically impacts social justice and the right of God alone to legislate. Jihadis take a more militant position and argue that the current context calls for violence and revolution."[72]

The official *'ulamā'* working in the Dār al-Iftā' and advocating the doctrine of *siyāsa shar'iyya* that attributes authority to both the *'ulamā'* and the *'umarā'* and that renders obedience to them as a religious obligation can be placed under the category of the purists in

[71] Al-Atawneh, *Wahhābī Islam*, 53.
[72] Wiktorowicz, "Anatomy of the Salafi Movement," 208.

Wahhābī movement identified by Wiktorowicz. Taking Wiktorovicz's description of this group into account, two basic parallels can be drawn with the official *'ulamā'* that operates within the Dār al-Iftā' and the purist Wahhābīs. Firstly, in both instances, there is an isolationist or antagonist attitude towards non-Muslims; secondly, there is a quietist and passive approach to political issues, and in particular to uprisings against incumbent rulers.[73] Both purists and the official *'ulamā'* strongly oppose active oppositional movements against government leaders upon the grounds that they are religious innovations without precedents in the prophetic model and derive from the West.[74]

Purist Wahhābī scholars dominate the religious establishment in Saudi Arabia, and they accordingly exert considerable influence over Saudi government policy and society. This enables them to promulgate their purist interpretation of Islamic legal issues and promote a disengaged and inactive political demeanor.[75] The Dār al-Iftā and its *fatwās* sustain the State's political structure and policies, and enshrine the doctrine of *siyāsa shar'iyya* that is adhered to by contemporary purist Wahhābī scholars. In replying to a question that sought to establish the legitimate rights and duties of a ruler, the CRLO further expounds the importance of obedience. It states:

> "It is worth mentioning that rebelling against the Islamic legal ruler is Haram (prohibited) even if the latter is Fasiq (some flagrantly violating Islamic law) so long as he is not in a clear state of Kufr (disbelief). Proof for this is a Hadith which is narrated on the authority of Ibn 'Umar (may Allah be pleased with them both) who said that he heard the Messenger of Allah (peace be upon him saying: {Whoever withdraws their hand from obedience 'to the Muslim ruler' will find no argument 'in their defense' when they stand before Allah on the Day of Judgment, and one who dies without having bound themselves by an oath of allegiance 'to a Muslim ruler' will die the death of one belong to the days of Jahiliyyah 'pre-Islamic time of ignorance'.} (Related by Muslim). It is also related by him: {Whoever dies having discarded their association with the main body of the 'Muslim' community, dies the death of one belonging to the Days of Jahiliyya.}"[76]

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[73] Wiktorowicz, "Anatomy of the Salafi Movement," 218-219. These two attributes of the purist Wahhābīs are set out in more detail in the *fatwās* of the Dār al-Iftā' which are examined later in this chapter.

[74] The BSU decision No. 93 of March 6, 2011, accessed June 20, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=ar&lang=ar&view=result&fatwaNum=&FatwaNumID=&ID=13350&searchScope=2&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=216167217132217133216184216167217135216177216167216170032217129217138032216167217132216168217132216167216175032217136216170216173216176216177032217133217134032216167217132216167216177216170216168216167216183216167216170032216167217132217129217131216177217138216169032217136216167217132216173216178216168217138216169032216167217132217133217134216173216177217129216169#firstKeyWordFound. This decision of the BSU is deeply discussed and analysed under the title "Hay'at Kibār al-'Ulamā' (Broad of Senior 'Ulamā')" in the chapter.

[75] Wiktorowicz, "Anatomy of the Salafi Movement," 221-222.

[76] Fatwā No. 17627 in *Fatwas of the Permanent Committee*, 23: 397-400, accessed September 06, 2016, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=9136&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&Page

In issuing this official *fatwā*, the Wahhābī religious establishment has provided the Saudi Government with considerable latitude by delegitimizing the rebellion and calling for support to be extended to the State's leaders. 'Abd Allāh b. Muḥammad Āl al-Shaykh, who is the previous Minister of Justice and the current chairman of the *Majlis al-Shū'rā* (Consultative Assembly), also stresses the importance of obligatory obedience to authority-holders, and particularly the Saudi Government. He states:

> "It is forbidden in Islam to raise a hand against the ruler. If he makes a mistake – even a big one like corruption, and that includes adultery or stealing or drinking – overthrowing him is prohibited…Overthrow of a ruler is not permitted, because when a people is without ruler the result is *fitna* – public disorder – and that is worse than corrupt rule. Obedience to [a] ruler is part of Muslim practice."[77]

The Wahhābī doctrine of *siyāsa shar'iyya* establishes how the fear of anarchy and civil war influenced the contemporary Wahhābī *'ulamā'* when they addressed themselves to the fundamental legal doctrine that formulizes the relationship between the regime and its subjects. Obligatory obedience to the Saudi government ensures political stability and enables the *'ulamā'* to retain their position in the state and implement their interpretation of Islamic law in Saudi society. It is obvious that the doctrine of *siyāsa shar'iyya* is the most important instrument in the hands of authority-holders, which renders the state as the final authority even on religious matters. This dual feature of the contemporary Saudi-Wahhābī state suggests that it might be more productive to analyse the social and devotional *fatwās* of the Dār al-Iftā'; in contrast to political *fatwās*, this will provide considerable insight into the institution's jurisprudential, methodological, social and theoretical approach. The official *fatwās* issued by Dār al-Iftā' provide a flexible legal mechanism that promotes the relationship between politics, religion and society; this institutes one of the most important legal sources of the Saudi State whose scope extends across a range of political, religious and social issues.

The BSU and the CRLO currently operate under the leadership of the State Grand Muftī. They both constitute the Dār al-Iftā' and serve as the official representative of the religious establishment and the supreme authority for promulgating religious legal rulings or *fatwās* (Islamic legal opinions). Article 45 of the 1992 Basic Regulations explicitly confirms that this institution is dependent upon the state and also elevates the Qur'an and the Sunna as the main textual sources that are consulted during the issuing of a *fatwā*. It states:

Path=&siteSection=1&searchkeyword=1110981011001051011100991010321161110321141171081011 14#firstKeyWordFound.

[77] Cited from Teitelbaum, *Holier Than Thou*, 103.

> "The Holy Qur'an and the Sunna (Traditions) of God's Messenger shall be the source for fatwas (religious advisory rulings). The Law shall specify hierarchical organization for the composition of the Council of Senior Ulema, the Research Administration, and the Office of the Mufti, together with their functions."[78]

It is therefore apparent that in any event that requires a religious legal verdict and opinion, the Dār al-Iftā' continues to play an important role in structuring the modern Saudi legal, social and cultural spheres, and in turn impacting the Saudi Government's political policies. The discussion will now proceed to set out the Dār al-Iftā's modes of operation and structure; this will in turn enhance and provide the further understanding of the extent of its activity in Saudi social space and of the ongoing complementary, reciprocally-beneficial partnership between this religious institution and the government.

A) Hay'at Kibār al-'Ulamā' (Board of Senior *'Ulamā'*)

The BSU consists of 21 *'ulamā'* (including the chairman) and it is the highest religious institution that delivers ultimate legal decisions relating to the sharī'a in Saudi Arabia.[79] Royal Decree A/137 establishes the functions of the BSU. It states:

> "[This institution] express[es] legal opinions based on the sharī'a regarding matters submitted to them by the King (*walī al-'amr*) and recommend[s] legal advice on religious matters [in order] to facilitate the King's decisions".[80]

Royal Decree A/137 also delineates that the BSU acts as an advisory body which provides assistance to the King's decisions on common law issues. It also decides whether any issue raised by the King and the Government fully complies with the sharī'a . Royal Decree A/137 specifies the issuance of legal opinions (on matters submitted by the King) and consultation as the BSU's foremost duties. However, it also, in alliance with the Council of Ministers, functions as the country's pre-legislative mechanism and provides an ideological shield to the Saudi dynasty.[81]

While the BSU is engaged with political and social questions that touch upon religious legitimacy, its responses mostly function to legitimate the government's position

[78] Royal Decree A/90, March 1, 1992.
[79] Seventeen *'ulamā'* were appointed to the first BSU, but this figure later increased to twenty-one. The other Royal Degree A/88 (of May 29, 2001) established a condition that the numbers of BSU members could not be lower than 12 or exceed 22. See Royal Degree A/88, May 29, 2001, 1, accessed June25, 2016, http://www.cojss.com/article.php?a=301. After the death of Shaykh Ibn Bāz in 1999, Shaykh 'Abd al-'Aziz b. 'Abd Allāh Āl-Shaykh was appointed as the Grand Muftī and the president of the BSU and the CRLO. The number of BSU members then rose to twenty-one (including the president). See al-Shalhūb, *Al-Niẓām al-Dustūrī*, 219-220, Al-Atawneh, *Wahhābī Islam*, 19, and Mouline, "Enforcing and Reinforcing," 58.
[80] Royal Decree A/137, August 29, 1971, 3. See also al-Shalhūb, *Al-Niẓām al-Dustūrī*, 220 and Ayman al-Yassini, "Saudi Arabia," in *Public Administration in the Third World: An International Handbook*, ed. V. Subramaniam (Connecticut: Greenwood Press, 1990), 194 and Al-Yassini, *Religion and State*, 71.
[81] Mouline, *The Clerics of Islam*, 150.

and defend state policy against any attack by internal divisive movements and foreign governments.[82] On 20 November, 1979, for instance, the seizure of Ka'ba, Mecca's Grand Mosque, compelled King Khalid (r. 1975-1982) to obtain religious guidance from the official religious establishment, and he therefore requested a *fatwā* from the BSU on the appropriate course of action.[83] The *fatwā* was issued on 24 November, 1979 by the BSU's members, who included Shaykh 'Abd al-'Azīz ibn Bāz and twenty-nine other prominent religious scholars.[84] The *'ulamā'* also attached a formal communique to the *fatwā* – this concisely explained the incident, along with the reason why the *fatwā* had been issued. The militants had taken control of the mosque and accused the official *'ulamā'* of supporting a Saudi government that routinely violated basic religious principles. The institution invoked Islamic legal principles regarding the sanctity of the Grand Mosque in return and called upon the militants to surrender.[85] Tellingly, the *fatwā* that was subsequently issued focused upon the question of whether the use of violence within the boundaries of sacred region, *ḥaram*,[86] was sanctioned by religion, rather than accusations directed to the official *'ulamā'* and to the government.

In addition to clarifying the legal basis which permits the Government to use force in cleaning the mosque from and in suppressing the rebels, the *fatwā* refers to two authoritative texts. First, it cites the Q. 2:191 ("But fight them not at the Holy Mosque unless they first fight you there. But if they fight you, slay them. Such is the reward of those who suppress the faith.")[87] The BSU's official *'ulamā'* relied upon this Qur'anic verse that condemns those infidels who profane holy places and that permits the fighting against them. Even though it is still unclear whether the insurgents or the security forces first opened fire, the *fatwā* clearly

[82] Mouline, *The Clerics of Islam*, 157-8.
[83] Al-Yassini, *Religion and State*, 127, Teitelbaum, *Holier Than Thou*, 19-21 and Joseph A. Kechichian, "The Role of Ulama in the Politics of an Islamic State: The Case of Saudi Arabia," *International Journal of Middle East Studies* 18, no. 1 (1996), 61-62 and 66-68, accessed July 17, 2016, http://0-www.jstor.org.lib.exeter.ac.uk/stable/pdf/162860.pdf.
[84] For an English translation of the *fatwā*, see Kechichian, "The Role of Ulama," 66-68. For further explanation of seizure of the sacred mosque, of its organizers and militants, and their objectives and ideology, see Al-Yassini, *Religion and State*, 125-129 and Pascal Ménoret, "Fighting for the Holy Mosque: The Mecca Insurgency," in *Treading on Hallowed Ground: Counterinsurgency in Sacred Spaces*, ed. C. Christine Fair and Sumit Ganguly (Oxford: Oxford University Press, 2008), 118-135, accessed November 09, 2017, http://0-www.oxfordscholarship.com.lib.exeter.ac.uk/view/10.1093/acprof:oso/9780195342048.001.0001/acprof-9780195342048-chapter-6#.
[85] Teitelbaum, *Holier Than Thou*, 20-21.
[86] This is an exclusively reserved zone for Muslims that encircled Ka'ba, the most sacred Grand Mosque. It is a sacred space in which the entrance of non-Muslims is forbidden and no blood could be shed. The Qur'anic verse (Q. 2:191) unequivocally prohibits any violence within the mosque, with the only exception being force as a means of defense. Also see Ménoret, "Fighting for the Holy Mosque," 125 and Al-Atawneh, *Wahhābī Islam*, 42-43.
[87] Kechichian, "The Role of Ulama," 66-68.

apportions blame to the militants.[88] This enabled the BSU to justify the proposition of a defensive fight, as set out in the Q. 2:191. Although the Qur'anic verse relates to infidels (*kuffār*), it is interpreted in a way that categorizes Muslims who encroached on the sacredness of Haram as infidels.[89] For this reason, the *'ulamā'* were careful not to imply that those who had captured the Grand Mosque were not Muslims; instead, the use of force against the rebels was presumably justified upon the basis of the Wahhābī doctrine of *siyāsa shar'iyya*, which urges Muslims not to revolt against their leaders. In the second section, the official *'ulamā'* refer to a *ḥadīth* ("He who comes to you while you are unanimous in your opinion and wants to divide you and disperse you, strike off his neck.")[90] The thirty *'ulamā'* maintained that these two authoritative texts provided a concrete legal basis for the use of force against an individual or person who commits sedition and create division by conniving against the legitimate authority. After obtaining approval from the BSU, the government ordered security forces to retake the holy by using armed force.

In addressing this *fatwā*, scholars have advanced several arguments. Some scholars maintain that the *fatwā* was only a strategic political tool that sought to strengthen the government's hand during the counterinsurgency operation initiated by the security forces. Ménoret describes the *fatwā* as a "symbolic measure" or an "official strategy" that was put into effect by the State in response to the rebellion: this suggests that its sanctioning power under Islam was not a foremost consideration.[91] In this regard, he argues:

> "The government's religious concerns and precautions (referring to the *fatwā*) were not groundless. Many within the army and National Guard initially refused to attack the Grand Mosque and asked to see the promised – but not yet written – *fatwa* of religious scholars."[92]

Rather than being a strategic political and military tactic, the *fatwā* may instead be conceptualized as a mechanism that enables the government to initiate crackdowns, measures and precautions in order to suppress insurgents. The fact that, at the beginning of the counterinsurgent operations, many soldiers and police officers within the security forces requested to see the official *fatwā* issued by the *'ulamā'* which provided them with

[88] Kechichian, "The Role of Ulama," 66. Ménoret observes that it is still unclear which side first began shooting. He writes: "It remains controversial even today to identify the person or persons who began using weapons in the sanctuary," However, he also acknowledges that it is higly likely that the insurgent was the first who opens fire. See Ménoret, "Fighting for the Holy Mosque," 129.
[89] F. Gregory Gause III, "Official Wahhabism and the Sanctioning of the Saudi-US Relations," in *Religion and Politics in Saudi Arabia: Wahhabism and the State*, ed. Mohammed Ayoop and Hasan Kosebalaban (London: Lynne Rienner Publishers, 2009), 138-139.
[90] Kechichian, "The Role of Ulama," 66-68.
[91] Ménoret, "Fighting for the Holy Mosque," 128 and 134.
[92] Ibid, 130.

permission to use their weapons inside the Haram undeniably demonstrates the legal power of the *fatwā* that mobilized the security forces. The extent to which the counterinsurgent operations would have been successful if such a *fatwā* were not issued is still an issue very much open to debate. Conversely, other scholars focus upon the *fatwā* itself and the application of Islamic legal methodologies by the *'ulamā'*. This engagement from an Islamic legal perspective instead leads them to argue that the coexistence of modernizing influences and traditional values is clearly identifiable within the fact that the *'ulamā'* placed particular emphasis upon the interest of the community. Kechichian, observes:

> "The 1979 *fatwa* issued subsequent to the Mecca takeover may thus be interpreted as a ruling which relied heavily on the "modernist" approach, clearly demonstrating the power of the King as well as the support of the public, to what was perceived to be in the best interest of the country."[93]

Kechichian argues that the attempt to accommodate rapid modernization is clearly evidenced in the fact that the *fatwā* places the interest of the entire community above religious considerations. However, closer inspection suggests that the *fatwā* derives from the Wahhābī doctrine of *siyāsa shar'iyya*. In opposition to Kechichian's assertion, the BSU members appear more inclined to apply the Islamic legal principle of *maṣlaḥa* by virtue of the Wahhābī doctrine of *siyāsa shar'iyya*; this appears to be the preponderant consideration, as opposed to the inclination or orientation towards the modernist approach that seeks to reform Muslim societies by specifically utilizing the principle of *maṣlaḥa* within scope of the objectives of the sharī'a (*maqāṣid al-sharī'a*).

Modernist or reformist Islamic legal movements have therefore generally adopted the principle of *maṣlaḥa* as a legal strategic tool, with the intentions of reconciling Islamic principles (both legal and moral) with aspects of modernity.[94] In contrast, the *fatwā* directly addresses a politically sensitive issue that is need of religious legitimacy while validating the use of physical force against those who spearheaded the violent insurrection in the sacred sanctuary. It achieves the protection of the established Saudi political authority by drawing upon the principle of *maṣlaḥa.* This is affirmed by the communique section of the *fatwā*, which describes the insurgents as "the clique who wanted to divide the Muslims and go against their Imam."[95] The *fatwā* also tacitly acknowledges that the Saudi government is a Muslim ruler that enforces the dictates, injunctions, and orders of the sharī'a – for this reason,

[93] Kechichian, "The Role of Ulama," 65.
[94] Al-Yassini, *Religion and State*, 15-18 and Kechichian, "The Role of Ulama," 64-65. For further explanation on the reformist Muslim scholars and their approaches, see Wael B. Hallaq, *Sharī'a : Theory, Practice, Transformation* (Cambridge: Cambridge University Press, 2009), 500-542.
[95] Kechichian, "The Role of Ulama," 68.

rebellion against its ruler is treason and a transgression of the sharī'a that demands obedience be shown to those in authority.[96] This further reiterates that the BSU members apply the principle of *maṣlaḥa* in accordance with the Wahhābī doctrine of *siyāsa shar'iyya*; this, rather than the need to balance the contradictions that emanate from the clash of modern and traditional Islamic legal understandings, is the preponderant consideration. The *fatwā* implicitly reveals the legal backing that the official *'ulamā'* extended to the Saudi dynasty on a sensitive issue in need of Islamic legal permission (on the use of force and weapons by government authorities within sacred spaces) – this makes it possible to conceive of the *fatwā* as a consolidation of the alliance between the political and religious establishments.

This interdependence of religion and state clearly echoes the Wahhābī doctrine of *siyāsa shar'iyya*. This political doctrine of modern Wahhābīsm sustains an ideology which establishes that religious power is to be exercised by the *'ulamā'* in cooperation with political figures who act pragmatically and accordingly enjoy a considerable degree of legal legitimacy as a result. It is therefore clear that the BSU's Islamic decisions, *fatwās* and statements legitimise the Saudi Regime's activities, juridical stances, political strategies and social interactions. To take another example, the BSU's *fatwā* sanctioned the deployment of the American army in Saudi Arabia during the First Gulf War.[97] While it incurred substantial criticism after issuing this confirmatory *fatwā*, the BSU provided invaluable support to the Saudi Regime on this political issue. This is why, even though it might be presumed to be hugely problematic for a Muslim power to seek protection from an 'infidel' country, the Regime requested a *fatwā* from the BSU. Despite the fact that the most distinctive Wahhābī character (it may be termed 'xenophobia') rendered seeking an infidel country's assistance against a "Muslim"[98] power difficult, the BSU assented receiving support from the USA. The members of the BSU clarify:

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[96] Kechichian, "The Role of Ulama," 67-68.

[97] For the translated English text of the *fatwā* which was broadcasted on Radio Riyadh on August 14, 1990, see "Ulema Council Supports Actions of King Fahd," *Foreign Broadcast Information Service-Near East & South Asia* [FBIS-NES], 90-157, August 14, 1990, p. 26, accessed August 14, 2016, http://0-infoweb.newsbank.com.lib.exeter.ac.uk/iwsearch/we/HistArchive/?p_product=FBISX&p_theme=fbis&p_nbid=M62Q5CDTMTQ3MTE5NjY1My42NzkyNzg6MToxMjoxNDQuMTczLjYuOTQ&p_action=doc&p_queryname=11&toc=true&p_docref=v2:11C33B0D5F860D98@FBISX-11CAD8A2EEA95BB8@2448118-11CAD8ACEF88AF98@32-11CAD8AD30FFAF98. The half of the *fatwā*, featured on 14 August, 1990, was translated in English. For this part, see Abdulaziz al-Fahad, "Commentary: From Exclusivism to Accommodation: Doctrinal and Legal Evolution of Wahhabism," *New York University Law Review* 79, no. 2 (2004), 518-9, accessed July 23 2016, http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-79-2-Al-Fahad.pdf.

[98] The term "Muslim" is used to refer to Iraqi forces, but the BSU's *fatwā* describes Iraqi forces as "the one who wants to commit aggression against [Saudi Arabia]". See "Ulema Council Supports Actions of King Fahd," 26.

> "[The amassing of Iraqi forces on the KSA border and the Iraqi invasion of Kuwait] had led to the people of authority in the Kingdom of Saudi Arabia to take measures to defend their country, its people, and its constituents from that to which their neighbor Kuwait was subjected and to demand the assistance of Arab and non-Arab states to fend off the expected danger and confront the expected aggression against the country."[99]

It was noticeable that the BSU sought to justify the action in relation to the threat which confronted the KSA. Equally, rather than directly alluding to the "Americans" or "Christians", they instead referenced "forces equipped with instruments capable of frightening and terrorizing the one who wanted to commit an aggression to this country,"[100] along with "the assistance of the one who has the ability to attain the intended".[101] With regard to the equivocation of the BSU's members, it is important to note that this *fatwā* represents an attempt by the official Saudi *'ulamā'* to address ongoing changes within a world system dominated by the nation-state. This is perhaps inconsistent with the argument of al-Fahad, who maintains that:

> "The Gulf War *fatwa* therefore should be seen as the culmination of a slow and painful process that transformed Wahhabism from a puritanical, exclusivist, and uncompromising movement into a more docile and accommodationist ideology that is more concerned with practical politics than ideological rigor."[102]

In contrast to a reconciliatory transformation of xenophobic Wahhābī ideology, the *fatwā* can instead be said to reflect the uncertainty which pervades the interaction between the traditional understanding of the *umma* (nation or community, usually a supra-national Muslim community united by a common history) and the modern nation-state. The notion of the modern nation-state and the complexities which adhere to the international relations of the Muslim World are new developments that are addressed and engaged by this *fatwā*. A closer examination however raises the question of whether the Council actually considers major changes in the world system or departs from inherited legal doctrines. The legal authoritative texts which underpin the judgement is also unclear (the *fatwā* merely states "[t]he Koran and the Prophet's sunnah have indicated that the need to be ready and take precaution before it is too late.")[103] However, the BSU's sixteen members are considerably more explicit in expressing tolerance towards the non-Arab soldiers charged with defending the Saudi Kingdom.[104]

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[99] "Ulema Council Supports Actions of King Fahd," 26.
[100] Ibid.
[101] Ibid.
[102] Al-Fahad, "Commentary: From Exclusivism to Accommodation," 516-517.
[103] "Ulema Council Supports Actions of King Fahd," 26.
[104] With the intention of clarifying how the BSU's members were affected by the concept of the modern nation-state and which legal evidences and principles were presented as the legal rationale for this legal ruling, the

Both cases (permission to use force in the Ka'ba Sanctuary (*al-ḥaram al-sharīf*) and the deployment of US troops in Saudi Arabia) clearly demonstrate how the BSU reinforces the relationship between the official *'ulamā'* and *'umarā'* by promoting the welfare of the Islamic state and supporting the policies of the Saudi Government. The language used in the two *fatwās* furthers the impression that the overriding priority is to protect the interests of the Saudi state (*umma*) by resorting to the principle of *maṣlaḥa 'āmma* and the notion of necessity (*ḍarūra*). The two *fatwās* therefore considerably strengthen the conclusion that both the BSU's members and the Saudi Regime were seeking to further advance the interests of the Saudi State and Nation. Further relevant examples include Saudi support for the Arab-Israeli peace process during the period 1993-95, the 2001 US intervention in Afghanistan[105] and the 2003 US invasion of Iraq.[106] These examples are particularly significant because they elevate the influence of major changes in the world system, modernity or the concept of the nation-state over the BSU, its legal explanation and membership. These examples are also instructive because they demonstrate how the BSU members (who are high-ranking members of the official *'ulamā'*) appeal to the Wahhābī doctrine of *siyāsa shar'iyya* and, in invoking the fear of anarchy and civil war, provide the rule with considerable discretion in foreign policy.

The Wahhābī doctrine of *siyāsa shar'iyya* has not only been used by BSU members to support the political authority during international crises; it has also been used to address internal conflicts within the state, and most notably those that arise within the interaction between the State and its subjects. During the so-called 'Arab Spring', the Saudi government asked the BSU to issue a *fatwā* on whether it was legitimate to publicly demonstrate against

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CRLO's legal research on similar issues (briefly discussed later in this chapter) and this *fatwā* of the BSU should both be extensively engaged from an Islamic legal perspective.

[105] For further insight into the *fatwās* relating to the Afghani leaders, people and *mujāhīds* (people striving in pursuit of a praiseworthy aim), refer to Ibn Bāz, "A Piece of Advice to the Afghani Leaders and People," in *Fatwas of Ibn Baz*, 8:247-250, accessed November 24, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=1052&PageNo=1&BookID=14.

[106] See "Liberating Kuwait from the Tyrant is a Great Bounty and victory from Allah against Tyranny, Aggression, and Apostasy," in *Fatwas of Ibn Baz*, 18:319-327, accessed November 24, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=3547&PageNo=1&BookID=14. For further insight into Ibn Bāz's explanation and *fatwā*, refer to Interview by al-Muslimun's Editor in-chief with His Eminence about "Reconciliation with the Jews," in *Fatwas of Ibn Baz*, 18:438-444, accessed November 24, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=3574&PageNo=1&BookID=14 and "Answering Questions Relating to the Earlier Discussion on Making Peace with the Jews," in *Fatwas of Ibn Baz*, 18:445-450, accessed November 24, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=3576&PageNo=1&BookID=14.

the regime. In response, the BSU issued a *fatwā* (on March 6, 2011)[107] which warned of the danger that deviant intellectuals, partisans and propagandists would cultivate disunity, factionalism and disorder within Saudi Arabia.[108] ‘Abd al-‘Azīz b. ‘Abd Allāh Āl al-Shaykh, the current Grand Muftī, in addition to eighteen other prominent official members of the BSU, approved this *fatwā*, which makes an important contribution by clarifying the Islamic legal principle of how the *walī al-’amr* should be advised. After initially stressing the importance of unity within Saudi society, the BSU states:

> “The preservation of the [unity] of the society is one of the greatest values or principles of Islam, which is the greatest commandment of God. Its relinquishment or abandonment is a great sin.”[109]

Unity within the Muslim community is therefore established as one of the fundamental Islamic legal values which is upheld by the Qur’an and Sunna. This argument is further supported by the authoritative textual sources, the five Qur’anic verses and three *ḥadīths*.[110] Yet, the *fatwā* straitens the notion of *umma* by implicitly referring to the significance of the unity of the Saudi society even though the textual references explicitly imply the unity of Muslim community in a general manner. Despite this omission, the *fatwā* proceeds to vigilantly underline the privileged position of the Saudi Kingdom in the Islamic world. It states:

> “The Kingdom has received a special advantage in the Islamic world because it is the qibla of the Muslims and it hosts the location of the two Holy Mosques. The Muslims, from every

[107] Shahi, *The Politics of Truth Management*, 77.
[108] The BSU decision No. 93 of March 6, 2011.
[109] Ibid.
[110] These verses are the Q. 3: 103, the Q. 3:105, the Q. 6:159, and the Q. 30: 31-32, respectively. In the Q. 3:103, God warns: “And hold fast, all of you together by the Rope of which Allah (stretches out for you), and do not be divided among yourselves (being Muslims); And remember with thanks Allah’s favor on you; For you were enemies and He joined your hearths together in love, so that by His Grace you became brethren; And you were on the brink to the Pit of Fire, and He saved you from it. Thus, does Allah make His Signs clear to you: That you may be guided.” The Q. 3: 105 reads: “Do not be like those who are divided among themselves and fall into dispute after receiving clear Signs. For them is a dreadful Penalty.” In the Q. 6:159, it is stated: “Verily, as for those who divide their religion and break it up into sects, you have no part in them in the least: Their affair is with Allah: He will tell them the Truth in the end of all that they did.” The Q. 30: 31-32 reads: “(O Mankind) you turn back in repentance to Him, and fear Him; Perform prayers regularly, and you do not be from those who join gods (with Allah). And you do not be from those who break up their religion and become (divided into) sects – Each sect becoming happy in that which is its own.” In addition to these Qur’anic verses, the *fatwā* also refers to the three *ḥadīths*, and states: “As to the principle of preserving the group (*jamā‘a* or society), the greatest commandment (bequest) of the Prophet to Muslims, whether publicly or privately, on that issue is his sayings: “The hand of God is with the congregation (*jamā’a*).” (narrated by Ibn ‘Īsā al-Tirmidhī (d. 892)) In his another saying, it was stated: “Whoever takes off his hand from obedience to Allah, he will meet Him on the Resurrection Day without having any proof for himself; and whoever dies while there were no *bay‘a* (oath of allegiance to a ruler) in his neck, his death would be that of the days of *jāhiliyya* (ignorance). (narrated by Muslim Ibn al-Ḥajjāj (d. 875)) The Prophet said: “… Whoever comes to you while you are unanimous in your opinion and wants to divide you and disperse you, strike off his head, whoever he may be.” (narrated by Muslim Ibn al-Ḥajjāj) See the BSU decision No. 93 of March 6, 2011.

> directions and corner [of the world], have been facing it, and they have also been visiting it during the ḥajj (pilgrimage) season and it has visitors throughout the year."[111]

In engaging at the internal level, the BSU members presumably seek to avert any criticism from being aimed at the Kingdom or themselves. This helps to clarify the claim that the privilege of serving the two Holy Mosques (Ka'ba in Mecca and al-Masjid al-Nabawī in Medina) endows Saudi Arabia with a unique position within the Islamic world. This also again reminds the reader of the Islamic credentials of both the Saudi ruler and State – obedience to this authority, it is again reiterated, is a religious obligation.

The *fatwā* then proceeds to cite *ḥadīths* narrated by Muslim ibn al-Ḥajjāj (d. 875) and Aḥmad ibn Ḥanbal (d.855) both are held up as legal textual evidence which demonstrate how the Prophet instructed his Companions and the Muslims upon the legitimate method of advising the *walī al-'amr*.[112] The quoted *ḥadīths* affirm that the method that achieves the public interest (*maṣlaḥa*) is the legitimate advice and counsel (*naṣīḥa*). It states:

> "Since the Kingdom of Saudi Arabia is based on the Qur'an, Sunna, and the oath of allegiance (*bay'a*) along with the unification of the society and obedience, the reform (*islaḥ*) and advice (*naṣīḥa*) are not present within the [illegitimate] demonstrations, methods, and styles which trigger sedition in and divide the society (*jamā'a*). This is why the country's earlier and present *'ulamā'* have prohibited these kinds of demonstrations and warned against them.
>
> The BSU therefore approves the prohibition of such demonstrations in this country. They would be legitimate if they achieved the public interest (*maṣlaḥa*) and did not result in any associated harm (*mafsada*). The legitimate advice is the Sunna of the Prophet, which was enacted by the Prophet and followed by his beloved Companions and their followers."[113] [114]

This statement clearly clarifies that the BSU was seeking to act in the best interests of the Saudi society or the Kingdom: this entailed, as the preceding discussion has demonstrated, applying the principle of *maṣlaḥa* in accordance with the Wahhābī doctrine of *siyāsa shar'iyya*. Demonstrations against the ruler are defined as acts that contradict the Book of God, the Sunna of His Prophet and the unanimity of the nation (*ijmā'*).[115] For this reason, the *fatwā* asserts that the public interest and reform will be only accomplished through advice

[111] The BSU decision No. 93 of March 6, 2011. In this quotation, the *qibla* means the direction that must be faced when a Muslim prays during *ṣalāt* (Muslim prayer). It is fixed as the direction of the Ka'ba in Mecca.
[112] The Prophet said: "The religion is sincere advice." It was asked: "To whom?" He said: "To Allah, His book, His messenger, and to the leaders of the Muslim and their common folk." (narrated by Muslim Ibn al-Ḥajjāj) In addition to this, the Prophet informed and confirmed of who advises the *walī al-'amr* (the leader of Muslims) and he said: "Allah is pleased for you to do these three things: that you worship Him without sharing anything with Him; that you hold on the rope of Allah wholly without dividing; and that you advise the leaders of the states." (narrated by Aḥmad ibn Ḥambal)." See the BSU decision No. 93 of March 6, 2011.
[113] The BSU decision No. 93 of March 6, 2011.
[114] Author's translation.
[115] The BSU decision No. 93 of March 6, 2011.

and counsel (*naṣīḥa*), both of which were established by the Prophet and then firmly pursued by his Companions and subsequently by their followers.

The Wahhābī doctrine of *siyāsa shar'iyya* establishes the principle that the authority-holders must be advised or warned secretly and not in public. This suggest that conflicts, tensions and strains will be rendered invisible and, by implication, a spirit of unconditional obedience will be inculcated across the Kingdom – this will apply irrespective of whether the ruler is debauched (*fāsiq*), despotic (*jā'ir*), just (*'ādil*) or tyrant (*ẓālim*). Even in those instances when the opinions and views of the BSU considerably diverge from the State, any differences will, in accordance with the Wahhābī doctrine of *siyāsa shar'iyya*, be conveyed in a subtle undertone.

However, the *fatwā* establishes that the BSU accepts the legitimacy of the Saudi government – this is made clear by its acknowledgement that the Government rules in accordance with Islamic law. After cautioning against the dangers of public protests, the BSU directly aligns itself with the Government by highlighting a range of precautions that should be undertaken by the State's administrative and executive authorities. For instance, the *fatwā* engages de facto cooperation between the official *'ulamā'* and the ruling royal family. It states:

> "The BSU stresses the importance of the legal, supervisory and executive bodies to fulfil their responsibilities, as stipulated by the regulations of the state and the directives of its leaders, in holding accountable those who fail to perform their duties."[116]

What is clearly revealing in the *fatwā* is that the highest official religious body has sided with the Saudi ruler against sources of disunity and factionalism within Saudi society. Despite the fact that there is no law that constricts the organisation of public demonstrations and protests, this *fatwā* – in addition to several others – could conceivably establish the basis of an unwritten ban on anti-government protests. This is one example of how the Saudi Government, with the active support of the official *'ulamā'*, seeks to suppress political opposition. In many respects, this close relationship can be said to be a continuation of what has come before.

In retrospect, the BSU's position on opposition movements and inflammatory public protests can be traced back to Royal Decree B/13876, which was issued one year prior to the

[116] The BSU decision No. 93 of March 6, 2011.

aforementioned *fatwā*.[117] This Royal Decree, which was issued by King ʻAbd Allāh (r. 2005 - 2015) on August 12, 2010, established that only officially approved religious scholars (e.g. BSU members) would be permitted to issue *fatwās* in Saudi Arabia.[118] The text of the Royal Decree, which was delivered to the Grand Muftī, Shaykh ʻAbd al-ʻAzīz b. ʻAbd Allāh Āl al-Shaykh, King ʻAbd Allāh initially quotes a number of Qur'anic verses. It then states:

> "Since this is the age of institutionalization as a basis for organizing worldly affairs, within the context of *Al-Maslahah Al-Mursalah* (unrestricted public interest), then religion is more entitled and worthier of such institutionalism within the context of its *Maslaha Mu'tabarah* (*Sharia'ah*-based public interest)."[119]

The Royal Decree reflects the King's desire to use the Islamic legal principle of *maṣlaḥa* to empower and institutionalize the official religious body within the Saudi legal system and wider society. By weaving his policy into the Qur'anic verses and scholarly Islamic legal methodologies, the King presumably wishes to pre-empt the criticism that the Royal Decree trespasses beyond the borders of Islamic law. This Royal Decree could be described as part of a homogenization and standardization process that seeks to enhance the ability of *fatwās* to operate in the service of the state. Shahi observes that the standardization of *fatwās* enhances the ability of the state to formulize public behaviour and thought and exert social control.[120] Upon this basis, it may be provisionally accepted that *fatwās* may streamline the religious consciousness and legal thought of Saudi society.

In arguing that empowering unqualified individuals to issue *fatwās* is inconsistent with Islamic law, the Royal Decree seeks to cancel the possibility that antithetical opinions and dissenting individual allegations will emerge – Boucek accordingly argues that the Royal Decree is just one example of how the State is working to establish its supremacy over the country's religious establishment.[121] However, it would not be entirely accurate to claim that the Saudi government has progressively sought to establish mechanisms that curb the official *'ulamā'*s legal and religious authority; rather, it would be more accurate to observe that the Royal Decree has empowered and reinforced the authoritative and competent position of the official religious institution, and in particular the BSU and its official religious scholars. The Decree states:

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[117] Royal Decree B/13876, August 12, 2010, accessed September 23, 2017, http://www.alifta.net/BayanNew.aspx?NewsID=86&Lang=en.
[118] Ibid.
[119] Ibid.
[120] Shahi, *The Politics of Truth Management*, 77.
[121] Chritopher Boucek, "Saudi Fatwa Restrictions and the State-Clerical Relationship," *Carnegie Endowment for International Peace*, accessed September 23, 2017, http://carnegieendowment.org/2010/10/27/saudi-fatwa-restrictions-and-state-clerical-relationship/6b81.

> "[T]he State…has founded *Shar'y* institutions with well-known tasks, which have been perfectly carried out ever since. However, some people belittle the role of such institutions and infringe on their jurisdictions. Beside this, some other people place themselves in the position to discuss and review these authorities according their own view points. Such people must be firmly dealt with and brought back to the right course. They must be made to understand how to respect the important role that our *Shar'y* institutions are playing, and to refrain from abusing them by overstepping their authority and raising doubts about their efficiency, as this constitutes a veiled call to weaken public esteem for them and an attempt to climb the ladder at the expense of reputation and estimation of our *Shar'y* institutions and of the scholars managing its affairs."[122]

In parallel with this statement, it is entirely plausible to suggest that the Royal Decree seeks to prevent illegal infringement on the jurisdiction power of the official religious institutions and seeks to achieve this by highlighting the authoritative position of the state's religious institutions and the competence of their staff, and in particular the official *'ulamā'*. There had previously been a competitive struggle between the official *'ulamā'* and unofficial *'ulamā'*, and this frequently created a chaotic situation in the area of issuing *fatwās*, especially when it comes to political issues, such as foreign policy, national defence and international affairs.[123] Al-Atawneh refers to the stirring and disturbing effects of *fatwās* which were issued by a number of ideological groups and unofficial *'ulamā'* over Saudi society and more specifically the relationship between the Saudi Government, the official *'ulamā'* and unofficial *'ulamā'* ("Official and unofficial muftīs, as well as other ideological groups in the Kingdom use fatwās to define and negotiate these links, stemming from the strong fusion of religion and state.")[124]

It would therefore be more exact to suggest that the Royal Decree seeks to make the BSU's *fatwās* more homogenized and standardized, with the intention of further enhancing their authority and efficacy. In direct opposition to Boucek's line of argument, the State perceptibly reinforces the jurisdiction and position of the State's authoritative religious institutions, and this diminishes the sanctioning power of *fatwās* issued by unqualified individuals and unauthorized religious scholars who are, whether knowingly or unknowingly, trespassing on the jurisdiction of these religious administrative bodies, and in particular the BSU. The Royal Decree can be viewed as a response to a series of contradictory, controversial and sometimes extremist *fatwā*s that have been issued by inefficient, uncertified

[122] Royal Decree B/13876, August 12, 2010.
[123] It is worth noting that a complete and detailed account of the contest between official and unofficial *'ulamā'* is outside the boundary of this study. Al-Atawneh and other scholars, however, provide a more in-depth breakdown on issues pertaining the confrontation of the official and unofficial *'ulamā'*. See al-Atawneh, *Wahhābī Islam*, 45-54, Vogel, *Islamic Law and Legal System*, 294-2997 and Wiktorowicz, "Anatomy of the Salafi Movement," 221-228.
[124] Al-Atawneh, *Wahhābī Islam*, XIV.

and unofficial individuals who operate outside the Dār al-Iftā'.[125] Individual *fatwās* given in private at the request of an individual are however exempted from this prohibition, upon the condition that they are communicated in private and delimited to the attention of the questioner and the scholar.[126] The Royal Decree concludes by instructing the Grand Muftī to identify the scholars who are suitably qualified to issue *fatwās*.[127]

As a result of this Royal Decree, at least three Islamic *fatwā* websites run by unofficial Saudi scholars were censured and blocked by the Saudi Communications and Information Technology Center (CITC); meanwhile, several similar web-sites voluntarily halted the issuance of *fatwās*.[128] A new *fatwā* supervisory committee, which is headed by Shaykh Ṣāliḥ b. Laḥaydān, has been formed within the body of the BSU[129] and tasked with supervising the issuance of *fatwās* and preventing unauthorized and unqualified scholars from encroaching on the jurisdiction of the state religious institutions. In the aftermath of the Royal Decree, the newly established supervisory committee, the Ministry of Islamic Affairs and the CITC have worked in close coordination while applying strict measures against anyone who violates the Royal Decree. For example, "Fatwas on Air," Shaykh 'Abd al-Muḥsin al-'Ubaykān's radio-program, was closed after it was found that he was not a BSU member.[130] The Saudi government has sought to take necessary steps against extremist and unauthorized figures who call the efficiency of the official *'ulamā'* into question. This Royal Decree signals a sudden shift in the relationship between the *'ulamā'* and *'umarā'*, with authority and power being restricted to the official *'ulamā'*.

With regard to the relationship between the official religious scholars (in particular the BSU) and the Saudi polity, it is conceivable that their relationship will continue for the foreseeable future. The prohibition of public protests and the Royal Decree that restricts the right to issue *fatwās* both provide clear evidence of a reciprocal relationship that continues to function. The protection extended by the ruling dynasty therefore, to a certain extent, enables the highest official religious authority to continue to exercise authoritative power. Upon this

[125] *Kingdom of Saudi Arabia: Criminal Laws, Regulations, and Procedures Handbooks* (Washington: International Business Publications, 2016), 58.
[126] Royal Decree B/13876, August 12, 2010.
[127] Ibid.
[128] *Kingdom of Saudi Arabia*, 58 and Boucek, "Saudi Fatwa Restrictions."
[129] Boucek, "Saudi Fatwa Restrictions."
[130] Taylor Luck, "Saudi Arabia Presses 'YouTube Imams' to Toe the Line on Yemen," *The Christian Science Monitor*, June 2, 2015, accessed 27 October, 2017, https://www.csmonitor.com/World/Middle-East/2015/0602/Saudi-Arabia-presses-YouTube-imams-to-toe-the-line-on-Yemen, "Saudi King Removes Senior Cleric from Royal Court Post," *Al-Arabiya News*, May 12, 2012, accessed October 26, 2017, https://www.alarabiya.net/articles/2012/05/12/213690.html and Boucek, "Saudi Fatwa Restrictions."

basis, it may be argued that the Wahhābī doctrine of *siyāsa shar'iyya* provides the most active, elastic and influential mechanism that grounds the mutual partnership between the official religious institution and the Government while also promoting social stability in the Saudi Kingdom.

As an established pre-legislative mechanism in Saudi Arabia, the BSU's decisions perform a crucial role in public affairs. In a number of cases pertaining to social themes, the BSU's decisions, which enjoy the approval of the King, underpin State laws. The BSU therefore actively participates in the legislation of the Saudi state when there are not authoritative legal rulings or sources that relate to the subjects in question.[131] It has already noted that the death penalty for drug traffickers derives from the BSU's legal decision (*fatwā*) which was issued on February 02, 1987.[132] In addition, the BSU determined that anybody who was found to have committed sabotage would be executed, and this legal decision was later used to resolve two cases that came before a Saudi Arabian court.[133] The *fatwā* was issued by the BSU's own initiative rather than at any request of neither the King nor the government agencies, so it has a peculiar and specific character.[134] 'Sabotage' was defined as actions which undermine the security of property (private or public) or the State and extended to activities such as the destruction of bridges, factories, hospitals, houses and mosques along with the hijacking or destruction of airplanes.[135] The commentary of Ibn Kathīr on the Q. 2: 204-205 and the commentaries of both Ibn Kathīr and al-Qurṭibī on the Q. 7: 56, each of which refers back to Q. 5: 32-33,[136] ascribe a particular significance to such acts of terrorism upon the grounds that they seek to destabilize the security of the nation and undermine religious faith.[137] Emphatically referring to the much more harmful, severe, and destructive

[131] Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 222-4.
[132] The BSU decision No. 138 of February 02, 1987.
[133] Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 224-5.
[134] The BSU decision No. 148 of August 25, 1988, accessed December 31, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=ar&lang=ar&view=result&fatwaNum=&FatwaNumID=&ID=3505&searchScope=2&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=217130216177216167216177032217135217138216166216169032217131216168216167216177032216167217132216185217132217133216167216161032216177217130217133#firstKeyWordFound.
[135] Vogel, *Islamic Law and Legal System*, 271-272.
[136] The Q. 5: 32-33 reads: "On that basis: We ordained for the Children of Israel that if anyone killed a person- Unless it be for murder or for spreading mischief in the land- It would be as if he killed all mankind (the people). Then although there came to them Our messengers with Clear Signs, yet even after that, many of them continued to commit excesses (and do injustices) in the land. The punishment for those who wage a war against Allah and His Messenger (Muhammad), and work hard with strength and taste for mischief through the land, is: Execution, or crucifixion, or the cutting of hands and feet from opposite sides, or exile from the land: That is their disgrace in this world, and their punishment is heavy in the Hereafter."
[137] The BSU decision No. 148 of August 25, 1988. Cited from Al-Atawneh, *Wahhābī Islam*, 162.

character of sabotage activities than that of brigandage crimes and to the necessity of declaring a deterrent penalty for sabotage crimes, the BSU states that the saboteur "must be executed."[138] By defining the phenomenon of terrorism as a greater kind of "corruption on the earth than that of highway robbery," the BSU places any types of sabotage and terrorist activities under the category of crimes that shall be punishable with the death penalty. Even though there was no royal decree or circular letter that requested the implementation of this *fatwā*, the 1988 and 1989 cases ultimately referred back to it.[139] Closer inspection suggests that official *fatwās*, and in particular the BSU's, perform a complementary role in the areas of adjudication and legislation, although the approval of the King is usually a necessary precondition.

Although it is led by the State Grand Muftī, the Board is administratively directed by a Secretary-General (*'Amīn 'Āmm*), who is responsible for managing BSU and establishing a connection between the BSU and the CRLO. The relevant Royal Decree states:

> "A secretary-general of the Broad is to be appointed by the Council of the ministers … to be responsible for the Board's administrative system as well as for the coordination between the Board and the Presidency of CRLO."[140]

It was normally the case that members of the BSU would be appointed from among the Saudi senior *'ulamā'*. However, non-Saudi *'ulamā'* also have the right to become a member of the BSU with some certain conditions and the King's approval.[141] Being Wahhābī (Salafī) is one of the important conditions to be appointed as a member of the BSU.[142] Since 1971, membership of the BSU has been open to *'ulamā'* from the four Sunni schools; despite this, the Ḥanbalī-Wahhābī *'ulamā'* – upon account of historical, political and social factors – constitute the majority of members. The Royal Decree A/137 establishes that the members of the BSU should be appointed by the King, with the option for an extension (the term of office usually extended to four years) to be granted by royal decree. The length of office term was determined to be four years, but the tenure of any member can be extended by royal decree.[143] The Royal Decree A/137 shifted the balance of power between the *'ulamā'* and the Saudi Government. This instituted a new working arrangement in which many of the BSU's

[138] The BSU decision No. 148 of August 25, 1988.
[139] Vogel, *Islamic Law and Legal System*, 271-272.
[140] Royal Decree A/137, August 29, 1971, 5-6.
[141] Royal Decree A/137, August 29, 1971, 2.
[142] Ibid.
[143] Royal Degree A/88, May 29, 2001, 1-3.

activities, most notably the appointment of its members, became directly subordinate to the King.[144]

The Board's *'ulamā'* meet twice a year to discuss topics submitted by the King and the CRLO, and to promulgate *fatwās* on an eclectic range of issues (which include the arts, politics, ritual practices, science, social life and technology).[145] The biannual meetings are generally held in the Dār al-Iftā' headquarters in Riyadh. Since the Dār al-Iftā' was re-established in 1971, the BSU has held more than 100 meetings. Proceedings and final decisions are recorded in a seven-volume edition ("*Abḥath Hay'at Kibār al-'Ulamā'* (*Research by the Board of Senior 'Ulamā'*)") which currently features on the organisation's website.[146] Some featured issues include:

- Ruling on banknotes,[147]
- Conditions of penalties associated with contracts,[148]
- Ruling on the utterance of three simultaneous divorces in one breath,[149]
- Ruling on *nushūz* (disobedience, disloyalty and ill conduct to husband or vice versa) and *khul'* (right of a woman to seek divorce),[150]
- Ruling on the dissecting of a dead body of a Muslim,[151]
- Limitation of dowry (*mahr*),[152]
- Birth control,[153]

[144] Shahi, *The Politics of Truth Management*, 76.
[145] Royal Decree A/137, August 29, 1971, 3-1 and Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 220.
[146] The resolutions or end decisions of the BSU between 2001 - 2004 were compiled in seven volumes and published in the website of the Dār al-Iftā'. See website at: http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=tree&NodeID=1&PageNo=1&BookID=1.
[147] Hukm al-Awrāq al-Naqdiyya, in *Majallat al-Buḥūth al-Islāmiyya*, 1: 88-93, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=18&PageNo=1&BookID=1.
[148] Al-Sharṭ al-Jazā'ī, in *Majallat al-Buḥūth al-Islāmiyya*, 1: 293-296, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=58&PageNo=1&BookID=1.
[149] Hukm al-Ṭalāq al-Thalāth bil-Lafẓ Wāḥid, in *Majallat al-Buḥūth al-Islāmiyya*, 1: 541-551, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=74&PageNo=1&BookID=1.
[150] Hukm al-Nushūz wal-Khul', in *Majallat al-Buḥūth al-Islāmiyya*, 1: 655-658, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=89&PageNo=1&BookID=1.
[151] Hukm al-Tashrīḥ Jathat al-Muslim, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 83-85, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=126&PageNo=1&BookID=1.
[152] Taḥdīd al-Mahr, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 489-493, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=197&PageNo=1&BookID=1.

- Codification of the most predominant statements of jurists (*fuqahā'*) concerning social transactions in order to oblige the judges to issue their verdicts accordingly,[154]
- Insurance,[155]
- Research on sales,[156]
- Research on the ruling of relocating a part of a cemetery's location to implement public interest, such a road extension or alike,[157]
- Mortgage (*rahn*),[158]
- Collection of alms-taxes (*zakāt*),[159]
- Cornea transplantation,[160]
- Writing the Qur'an in Latin Script.[161]

In addition to organising ordinary meetings, the BSU also has, subject to the coordinated contribution of the BSU and CRLO,[162] the ability to arrange special meetings in exceptional cases. During the period (1971-1995), the BSU arranged nine such meetings in response to issues which encompassed domestic affairs, international relations and Islamic legal matters.[163] At the conclusion of one extraordinary meeting, a *fatwā* was promulgated which condemned a militant group's (Ikhwān) attack on the Meccan Grand Mosque in 1979.[164] Prior

[153] Taḥdīd al-Nasl, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 529-531, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=207&PageNo=1&BookID=1.
[154] Tadwīn al-Rājiḥ min Aqwāl al-Fuqahā' li Ilzām al-Quḍa al-'Amal bihī, in *Majallat al-Buḥūth al-Islāmiyya*, 3: 231-239, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=297&PageNo=1&BookID=1.
[155] Al-Ta'mīn, in *Majallat al-Buḥūth al-Islāmiyya*, 4: 307-315, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=410&PageNo=1&BookID=1.
[156] Baḥth fī al-Buyū' in *Majallat al-Buḥūth al-Islāmiyya*, 4: 307-315, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=446&PageNo=1&BookID=1.
[157] Baḥth fī Ḥukm Iqtiṭā' juz' min al-Maqbara li-Maṣlaḥa 'āmma ka-Tawsi'a Ṭarīq wa Nahwahū, in *Majallat al-Buḥūth al-Islāmiyya*, 5: 14-24, accessed November 03, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=460&PageNo=1&BookID=1.
[158] Rahn, in *Majallat al-Buḥūth al-Islāmiyya*, 5: 101-102, accessed November 03, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=470&PageNo=1&BookID=1.
[159] Jibāyat al-Zakāt, in *Majallat al-Buḥūth al-Islāmiyya*, 6: 221-222, accessed November 03, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=638&PageNo=1&BookID=1.
[160] Naza' al-Qaraniyya min 'ayn Insān wa Zar'ahā fī 'ayn Ākhar, in *Majallat al-Buḥūth al-Islāmiyya*, 7: 37-38, accessed November 03, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=671&PageNo=1&BookID=1.
[161] Kitābat al-Muṣḥaf bil-Lugha al-Lātīniyya, in *Majallat al-Buḥūth al-Islāmiyya*, 7: 406-408, accessed November 03, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=748&PageNo=1&BookID=1.
[162] Royal Decree A/137, August 29, 1971, 1.
[163] Al-Atawneh, *Wahhābī Islam*, 23.
[164] Ibid.

to the Fourth International Conference of Women on September 15, 1995, another special meeting was arranged. At its conclusion, the BSU scholars abruptly rejected the Conference's agenda on the grounds that it contradicted Islamic legal principles and warned Muslims against attending.[165]

The organisation's operating procedures clearly establish that at least two-thirds of the BSU membership must be present in a meeting that normally continues for a week or longer.[166] In instances where specialist input is required, external experts (in fields as diverse as commerce, economics, medical treatment, science and technology) have participated in BSU meetings; however, in these circumstances, they are not permitted to vote, and their recommendations are excluded from the BSU's promulgated decisions, resolutions and statements. The 1971 Royal Decree observes:

> "In examining issues related to economic and social affairs, and public systems including bank, commerce and labor, members of the BSU should consult one or more specialists in the required areas under the condition that they do not have the right to vote. Both the BSU's Secretary-General and the CRLO's chairman might select and summon these experts."[167]

Experts therefore contribute to the understanding of BSU members when the discussion extends to unfamiliar subject matter. Once decisions, *fatwās*, recommendations and statements are confirmed by the absolute majority of the BSU's members, the BSU's Secretary-General and the CRLO initiate the publishing process. During the time when the office of the Grand Muftī was suspended, the biannual convention and its sessions were conducted and chaired by the five most senior members, with the first session of the meeting being presided over by the oldest BSU members.[168] After the Grand Muftī's office was re-established, the conventions have been overseen by the Grand Muftī.

A recent change in the BSU's membership occurred on December 3, 2016, when a royal decree was issued by King Salmān (r. 2015 - –), which appointed new members and

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[165] Declaration and warning against world conference on women, Beijing, in *Fatwas of Ibn Baz*, 9:203-204, accessed November 1, 2017, http://www.alifta.net/Fatawa/FatawaDetails.aspx?languagename=en&lang=en&IndexItemID=42704&SecItemHitID=46014&ind=20&Type=Index&View=Page&PageID=1209&PageNo=1&BookID=14&Title=DisplayIndexAlpha.aspx. See also Al-Atawneh, *Wahhābī Islam*, 23.

[166] Royal Decree A/137, August 29, 1971, 3. See also al-Shalhūb, *Al-Niẓām al-Dustūrī*, 220 and al-Atawneh, *Wahhābī Islam*, 21.

[167] Royal Decree A/137, August 29, 1971, 10.

[168] Al-Atawneh, *Wahhābī Islam*, 21.

extended the tenure of other members.[169] The current members (including the chairman) of the board are:

1. Shaykh ʻAbd al-ʻAzīz ibn ʻAbd Allāh Āl al-Shaykh (chairman)
2. Shaykh Ṣāliḥ ibn Laḥaydān
3. Shaykh Ṣāliḥ ibn Fawzān al-Fawzān
4. Shaykh ʻAbd Allāh ibn Muḥammad ibn Ibrāhīm Āl al-Shaykh
5. Shaykh ʻAbd Allāh ibn ʻAbd al-Muḥsin al-Turkī
6. Shaykh ʻAbd Allāh ibn Sulaymān al-Manī'
7. Shaykh Ṣāliḥ ibn Abd Allāh b. Ḥamīd
8. Shaykh ʻAbd Allāh ibn Muḥammad al-Muṭlaq
9. Shaykh Aḥmad Sayr Mubārakī
10. Shaykh Saʻad ibn Nāṣir Shathrī
11. Shaykh Muḥammad ibn ʻAbd al-Karīm al-ʻIsā
12. Shaykh ʻAbd al-Wahhāb ibn Ibrāhīm Abū Sulaymān
13. Shaykh ʻAbd Allāh Muḥammad ibn Saʻad Khanīn
14. Shaykh Yaʻqūb ibn ʻAbd al-Wahhāb b. Yusūf al-Bāhussayn
15. Shaykh ʻAbd al-Raḥmān ibn ʻAbd al-ʻAzīz Kulliyya
16. Shaykh Muḥammad ibn Ḥasan ibn ʻAbd al-Raḥmān ibn ʻAbd al-Laṭīf Āl al-Shaykh
17. Shaykh ʻAbd al-Karīm ibn ʻAbd Allāh ibn ʻAbd al-Raḥmān al-Khuḍayr
18. Shaykh Muḥammad ibn Muḥammad al-Mukhtār Muḥammad
19. Shaykh Sulaymān ibn ʻAbd Allāh Abā al-Khayl
20. Shaykh Jibrīl ibn Muḥammad ibn Ḥasan al-Baṣīlī
21. Shaykh Ṣāliḥ ibn ʻAbd Allāh b. Ḥamid ibn al-ʻAṣīmī.[170]

Most of the BSU's members have benefitted from a traditional education. Subsequent to being educated by an acknowledged Wahhābī scholar, the individual is established as an authority (*marjiʻ*) possessed of sufficient proficiency to be regarded as a BSU member.[171] They benefit from an informal network of scholarly lectures (which are known as *ḥalaqāt*) that provide education in diverse subjects which include *ḥadīth* (the report of a saying, action or acquiescence of the Prophet), *balāghat* (Arabic literature and rhetoric), *tafsīr* (Qur'anic commentary) and *usūl al-fiqh* (Islamic jurisprudence). A number of these scholars have proceeded to pursue higher degrees in Saudi universities or other academic institutions. Shaykh Ṣāliḥ ibn Fawzān al-Fawzān received instruction from Shaykh Hamūd ibn Sulaymān al-Ṭalāl before then attending and graduating from the Educational Institute of Buraydah and

[169] Royal Decree A/48, January 15, 2013. See also "Al-Tamdīd li-Arba'a Aʻḍāi' fil-Lajna al-Ḍā'ima lil-Fatwā wa Amrun Malikiyyun: Iʻāda Takwīn Hay'at Kibār al-ʻUlamā' bi-Ri'āsa Āl al-Shaykh wa 20 ʻUḍwan," *Al-Jazīra*, December 3, 2016, accessed October 24, 2017, http://www.al-jazirah.com/2016/20161203/ln39.htm.
[170] Royal Decree A/48, January 15, 2013.
[171] Al-Atawneh, *Wahhābī Islam*, 20.

the Faculty of Sharī'a in Riyadh (from which he received a M.A and PhD).[172] Shaykh 'Abd Allāh b. Muḥammad ibn Ibrāhīm Āl al-Shaykh initially received religious education from his father (Shaykh Muḥammad ibn Ibrāhīm Āl al-Shaykh, the State Grand Muftī) before then studying the interpretation of the Qur'an and Islamic jurisprudential principles under the guidance of Shaykh 'Abd al-Razzāq Afīfī.[173] He subsequently graduated from Sharī'a College in Riyadh (which later became the University of Imām Muḥammad Ibn Sa'ūd). He later studied at al-Azhar's University's Sharī'a and Law College, from which he received a M.A and PhD. [174] Shaykh 'Abd Allāh ibn Sulamān al-Manī' is another scholar who received two degrees (undergraduate and M.A) from Riyadh's University of Imām Muḥammad ibn Sa'ūd .[175] During the early 1950s, Islamic academic institutions and Saudi universities which provided sharī'a education began to be installed as part of the bureaucratization and institutionalization process,[176] and by the late 1990s the number of BSU members with M.A. and PhD degrees in religious studies had substantially increased.[177]

There are currently three sharī'a colleges that are located in three universities, specifically the Islamic University and Umm al-Qura University, both of which are based in Mecca and the Riyad-based University of Imām Muḥammad ibn Sa'ūd.[178] The sharī'a education in these universities sought to train scholars who would be capable of exercising various degrees of *ijtihād*.[179] The appointment of graduates from these universities to the Dār al-Iftā' is one clear indication of how the Saudi State's *'ulamā'* have been institutionalized. The monopoly of the Āl al-Shaykh family, through the policy upheld by the Saud Regime in

[172] Member Scholars of the Permanent Committee for Ifta', His Eminence Shaykh Salih ibn Fawzan Al-Fawzan, accessed June 03, 2016, http://www.alifta.net/Fatawa/MoftyDetails.aspx?languagename=en&ID=7.
[173] The Shura Council, Shaykh 'Abd Allāh b. Muḥammad b. Ibrāhīm Āl al-Shaykh, accessed November 01, 2017, https://www.shura.gov.sa/wps/wcm/connect/ShuraEn/internet/CV/Abdullah+Bin+Mohammed+Bin+Ibrahim+Al-Sheikh/.
[174] Ibid.
[175] *English Translations of Permanent Committee for Scholarly Research and Ifta' of K.S.A: Second* Collection, vol. 01 of 11, (Portal of the General Precedency of Scholarly Research and Ifta' of Kingdom of Saudi Arabia).
[176] Al-Yassini, *Religion and State*, 111-112.
[177] Al-Atawneh, *Wahhābī Islam*, 20.
[178] Farquhar gives a detailed explanation concerning the Islamic University of Medina by outlining its key aspects of establishment and evolution within the time and goes on to elaborate his research to show how this university and its missionary project acquired an influential place in global dynamics of religious revival and reform. He also states that some graduates of this university have been employed by the Dār al-Iftā', especially to assume the role of proselytizing outside Saudi Arabia. Mike Farquhar, "The Islamic University of Medina since 1961: The Politics of Religious Mission and the Making of a Modern Salafi Pedagogy," in *Shaping Global Islamic Discourses: The Role of al-Azhar, al-Medina and al-Mustafa*, ed. Masooda Bano and Keiko Sakurai (Edinburgh: Edinburgh University Press, 2015), 27.
[179] Vogel, *Islamic Law and Legal System*, 79-82. Vogel also defines the curriculum of these sharī'a colleges when he says: "…no longer aim just at a working knowledge of Ḥanbalī fiqh, but include study of all necessary religious sciences, the four fiqh schools, uṣūl al-fiqh, and the exercise of tarjīh." See Vogel, *Islamic Law and Legal System*, 79.

an attempt to prevent any group accumulating more power than itself, was substantially weakened by this institutionalization process.

B) *Al-Lajna al-Dā'ima lil-Buḥūth al-'Ilmiyya wal-Iftā'* (Permanent Committee for Scientific Research and Legal Opinion

The CRLO is the second branch of the religious official agency, which is known as the General Presidency of the Directorate of Scholarly Research and Iftā' (*al-Ri'āsa al-'Āmma li-Idārat al-Buḥūth al-Ilmiyya wal-Iftā'*). Prior to 1993, it had been known as the General Presidency of the Directorate of Scientific Studies for the Issuance of Fatwās and the Propagation of Islam and Religious Guidance (*al-Ri'āsa al-'Āmma li-Idārat al-Buḥūth al-Ilmiyya wal-Iftā', wal-Da'wa wal-Irshād*) and was possessed of powers which enabled it to operate as a far-reaching governmental *iftā'* agency.[180] It was specifically tasked with *da'wa* (the propagation of Islam) and *irshād* (religious guidance). In promoting *da'wa*, the Directorate conducted research on Islam and Wahhābīsm. In addition, it also trained preachers before appointing them to internal and international positions and also provided administrative and logistic aid to the BSU.[181] The Directorate's main objective was to disseminate Wahhābī doctrine and principles. With a view to achieving this end, it published books, magazines, pamphlets and periodicals which set out the Wahhābī theological and legal interpretation of Islam.[182] Important examples included the *Majallat al-Buḥūth al-Islāmiyya*[183] and *al-Da'wa*[184], both of which were published by the Directorate.[185] During 1993, the tasks of propagating Islam (*da'wa*) and providing religious guidance (*irshād*) were transferred to the Ministry of Islamic Affairs, Endowments, [Religious] Instruction and Preaching.[186]

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[180] In 1970, the name of *Dār al-Iftā' wal-Ishrāf 'alā al-Shu'ūn al-Dīniyya* (Institute for the Issuance of Religious Legal Opinions and the Supervision of Religious Affairs), which was established under the chairmanship of the Grand Muftī, Shaykh Muḥammad Ibn Ibrāhīm in 1953, was changed to be the General Presidency of the Directorate Scientific Studies for the Issuance of Fatwās and the Propagation of Islam and Religious Guidance (*al-Ri'āsa al-'Āmma li-Idārat al-Buḥūth al-Ilmiyya wal-Iftā', wal-Da'wa wal-Irshād*). See al-Shalhūb, *Al-Niẓām al-Dustūrī*, 219 and al-Atawneh, *Wahhābī Islam*, 24.

[181] Al-Yassini, *Religion and State*,70-71 and al-Atawneh, *Wahhābī Islam*, 24.

[182] Al-Yassini, *Religion and State*, 71.

[183] Since 1975, this periodical has been published with the intention of promoting the Wahhābī theological and legal perspective and condensing the Dār al-Iftā's collected *fatwā*s. See Mouline, *The Clerics of Islam*, 155 and Al-Atawneh, *Wahhābī Islam*, XX.

[184] This Islamic legal periodical was established through the commitment of the Grand Muftī Shaykh Muḥammad ibn Ibrāhīm and the financial and logistical support of the royal house. It soon became established as the foremost documentary source of the Wahhābī view and the Dār al-Iftā''s collected *fatwās*. It is still currently published as the CRLO weekly journal. See Mouline, *The Clerics of Islam*, 140 and Al-Atawneh, *Wahhābī Islam*, XX.

[185] Mouline, *The Clerics of Islam*, 155.

[186] Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 219.

Prior to this period, the Directorate possessed extensive privileges; however, its current role is now largely confined to the issuance of Islamic legal explanations, *fatwās* and statements and inspecting legal and theological publications such as *Majallat al-Buḥūth al-Islāmiyya*, its own official Internet website,[187] along with *fatwās* issued by the BSU and CRLO and books written by BSU members.[188] Although the Directorate is currently known as the General Presidency of Scholarly Research and Iftā' (*Al-Ri'āsa al-'Āmma li-Idārat al-Buḥūth al-'Ilmiyya wal-Iftā'*), a number of its key functions remain in place. These include the management of official scholars and the supervision of preachers and religious associations within the state.[189] In operating within this Directorate, the CRLO is the predominant actor focused upon scholarly research and the practice of *iftā'*.[190]

The functions of the CRLO, as stated by the 1971 Royal Decree, are to provide debates and discussions within the BSU with appropriate research materials and to conduct the practice of *iftā'* in matters of faith (*'aqā'id*), social transactions (*mu'āmalāt*) and worship (*'ibādāt*).[191] This clearly establishes that the CRLO's activities are confined to the micro-level social issues (e.g. everyday socio-religious questions). If the issue addressed to the CRLO falls outside of the micro-social domain and therefore is beyond the CRLO's field of competence, a research report must be prepared and submitted to the BSU by the CRLO's members.[192] To take one example, the CRLO probably prepared legal research on the stationing of U.S. forces in Saudi Arabia.[193] This research extensively drew upon the

[187] In 2007, the Dār al-Iftā' launched an official website which published *fatwās*. It provides quick and straightforward access to the *fatwās* which the institution has promulgated. Visitors are able to ask established Islamic scholars a range of questions. The site also includes a bank of *fatwās* issued by prominent Islamic scholars, with considerable space being set aside for the *fatwās* of Shaykh 'Abd al-'Aziz Ibn Bāz (d. 1999), Saudi Arabia's former Grand Muftī. See Abdallla, "Do Australian Muslims," 220 and Mouline, *The Clerics of Islam*, 155.
[188] Mouline, *The Clerics of Islam*, 155-156.
[189] Ibid.
[190] Al-Atawneh, *Wahhābī Islam*, 25.
[191] Royal Decree A/137, August 29, 1971, 4-5. See also Al-Atawneh, *Wahhābī Islam*, 25, and Mouline, *The Clerics of Islam*, 153-154.
[192] Royal Decree A/137, August 29, 1971. See also Mouline, *The Clerics of Islam*, 154.
[193] Shaykh 'Abd al-'Azīz Ibn Bāz, one of the most distinguished scholars in Saudi Arabia, was the head of the CRLO during this time. The CRLO members convened under his chairmanship and probably prepared the legal research pertaining to the deployment of the US army in Saudi Arabia. For further insight into the legal research, see Al-Shuway'ir, *Majmū' Fatāwā*, 7:359-361. For the English translation of this legal decision, see Elaborating of the Hadiths on the Trials of the End of Time in *Fatwas of Ibn Baz*, 7:359-361, accessed July 24, 2016, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=947&PageNo=1&BookID=14.

principle of *maṣlaḥa* and therefore emphasized the responsibility of the ruler, both as leader of the nation and the *Imām*, to maintain the public welfare.[194]

The legal evidence to which the *'ulamā'* applied was also derived from stories on the biography (*sīra*) of the Prophet. The *fatwā* refers to the Prophet's acceptance of assistance from 'Abd Allāh b. Urayqaṭ when returning from Ṭā'if to Mecca, along with the Prophet's request to receive aid from Muṭ'am b. 'Uday to guide him on the way to Medina – in both instances, aid was requested from non-Muslims.[195] The migration of Muslims to Ethiopia, a Christian land, was also cited as a legal justification for the deployment of American forces in Saudi Arabia.[196] The *'ulamā'* apparently grounded this *fatwā* within the analogy (*qiyās*) that the protection of Muslim inhabitants of Mecca provided a sufficient effective cause (*'illa*) for the migration of Muslims into Ethiopia. The protection of Kuwaiti and Saudi Arabian Muslims was therefore held to be equivalent to the Prophet's intention to protect Muslims from their enemies' persecution. Al-Atawneh maintains that the *'ulamā'* deliberately overlooked the *apodeictic* difference between these two occurrences (the migration into Ethiopia and the deployment of USA army in Saudi Arabia), most notably the fact that the Iraqi forces were Muslims. In al-Atawneh's view, these two historical events are utterly not similar; therefore, the *'ulamā'* made a blatant mistake by omitting this salient difference.[197] However, Al-Atawneh appears to overlook the fact that this research describes the Iraqi *dawlat* (country, nation or state) as *mulḥid* (atheist or unbeliever). The legal research is quite clear on this. It states:

> "It is obligatory upon Muslim scholars to reconcile the texts, not to make them seem contradictory. The Ba'ath nation [or Iraqi state] is more dangerous to the Muslims than the Christian nation, because it is apparent that atheists are more indulged in Kufr than the people of the Scripture. What has been committed by the Ba'thist ruler of Iraq against Kuwait exposes his extreme malic and plot against Islam and Muslims.
>
> It should be noticed that some people assume that seeking the help of disbelievers is considered supporting them. But this is not the case, because seeking their help differs from taking them as allies."[198]

Although he criticizes this legal research for introducing a legal paradox, al-Atawneh himself makes this same error in referring to the Iraqi forces as 'Muslims' in his Islamic legal analysis associated with this legal research. Because the CRLO's legal research refers to

[194] For further insight into the Islamic legal analysis of this legal explanation, refer to Al-Atawneh, *Wahhābī Islam*, 43-45.
[195] Al-Shuway'ir, *Majmū' fatāwā*, 7:360-1.
[196] Ibid, 7:361.
[197] Al-Atawneh, *Wahhābī Islam*, 44-5.
[198] Elaborating of the Hadiths on the Trials of the End of Time in *Fatwas of Ibn Baz*, 7:359-361.

Kuwait's occupiers as 'atheists', al-Atawneh's criticism can easily lead to a misunderstanding. The legality of the Saudi Government's request for military aid was determined in accordance with Islamic regulations that relate to the solicitation of assistance by Muslims from unbelievers under the condition of necessity (*ḍarūra*).[199] In order to deal with an extremely serious political issue that has a clear religious implication, the principle of necessity (*ḍarūra*) was explicitly invoked to justify the deployment of the US army in Saudi Arabia. In addition, this legal research reawakens the Muslim political debate over the implicit contradiction between the concept of nation-state and the traditional understanding of *umma* and *dār al-Islām* (abode of Islam). Neither the CRLO's legal research nor the BSU's *fatwā* directly engage with the larger issue of the modern nation-state; however, by envisaging a legal basis for the stationing of U.S. forces in Saudi Arabia, the legal research in fact engaged with the issue of the nation-state and political interests among world, and even Muslim, nations. Nafi highlights the complexities which adhere to some traditional Islamic legal terms when they are conceived within the wider context of a modern world system dominated by the nation-state. He states:

> "During the past century, *dār al-Islām* has lost much of its political power and influence around the world; the nation state has emerged as the basic unit of the global political system; relations between nations have become subject to international laws, regardless of the effectiveness or morality of these laws; and unprecedented movement of people across the globe has made the geographical basis of *dār al-Islām* obsolete."[200]

Despite the heated debates that the *fatwā* has occasioned, it is clear that the BSU should not be denounced purely for supporting the policies of the Saudi Government. The national interests and international relations of the Saudi state are quite clearly confusing, tortuous and multifaceted, to the point where they could not have been formulated by the members of the BSU and the CRLO themselves. This intriguing obscurity notwithstanding, the CRLO's legal research perhaps established the legal and political foundations of the BSU's confirmatory *fatwā* on the American military deployment in Saudi Arabia.

Almost all the decisions taken by the BSU can be traced back to research prepared by the CRLO. Since being created in 1971, the CRLO has conducted extensive research that has fed into the BSU's discussions. This research frequently begins with a statement that explains the reason why the research has been prepared and then proceeds to set out its content. Then,

[199] Al-Shuway'ir, *Majmū' fatāwā*, 7:360.
[200] Basheer M. Nafi, "Fatwā and War: On the Allegiance of the American Muslim Soldiers in the Aftermath of September 11," *Islamic Law and Society* 11, no. 1 (2004), 115, accessed July 10,2016, http://www.jstor.org/stable/3399381.

the definition of specific words and terms associated with the research subjects is given generally from both lexical and legal points of view. For example, the research prepared for the BSU's discussion of banknotes begins with the lexical definition of banknotes, or money, and then proceeds to present Ibn Taymiyya's opinion that connects monetary unit and model with the customary practices of people and the public interest. Finally, the reader's attention is then drawn to a consideration of the origin and evaluation of the currency unit.[201]

Similarly, the research relating to issues of cornea transplantation, insurance, *khul'*, mortgage, *nushūz* and penal conditions of contracts begins with an introduction of both legal and literal definitions of relevant words and terms. After defining key terms and words, the prepared research proceeds to present relevant Qur'anic verses, *ḥadīths* and thoughts of earlier Muslim scholars from the four Sunni Islamic legal schools (*madhhabs*), with these contributions providing considerable insight into the subject of discussion. These research contributions differ widely in terms of their depth and length and vary in accordance with the complexity of the research subject. The frequent allusions to the opinions and views of the other schools can be interpreted as a confirmation of the fact that the religious scholars employ the practice of *tarjīḥ* (determining the preponderant opinion). To put it more concisely, the CRLO's research presents various and different opinions of other *madhhabs* to the BSU members before the preponderant opinion is then determined by the *ijtihādi* activities of the high-ranking official *'ulamā'*.

The practice of determining the preponderant opinion (*tarjīḥ*)[202] is not limited to a specific *madhhab*, as would be expected to be the Ḥanbalī *madhhab*. The material under the title "*Organizing Fatwas*" clearly establishes that the Dār al-Iftā' upholds inter-*madhhabs* interpretation and rejects the proposition of a commitment to a specific *madhhab* ("[t]he method of the Committee…is to choose the opinion which is supported by the proof without

[201] Hukm al-Awrāq al-Naqdiyya, 1: 51-54.
[202] *Tarjīḥ* is defined as "the determining and ascertaining of the most preponderant and valid opinion" from amongst the Sunni Islamic legal schools (*madhhabs*), that is, the identification of the most valid opinion by evaluating evidence (*dalīl*) by means of the Islamic legal principles and methodologies. Fatwā No. 4172, Fatwā No. 11296, Fatwā No. 2815, Fatwā No. 9783, Fatwā No. 2573, Fatwā No. 5166, Fatwā No.3323, Fatwā No. 2961, Fatwā No. 4522, Fatwā No. 2872, in *Fatwas of the Permanent Committee*, 5: 28-46, accessed November 27, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=1368&PageNo=1&BookID=7 and Fatwā No. 17625, , in *Fatwas of the Permanent Committee*, 4: 12-13, accessed November 27, 2017,http://www.alifta.net/Fatawa/FatawaSubjects.aspx?languagename=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4129&PageID=11427&SectionID=7&SubjectPageTitlesID=11888&MarkIndex=0&0#Howdowereconcileoragreeover.

being restricted to a specific Madhhab (School of Jurisprudence) or a certain scholar").[203] The CRLO therefore established that adherence to a single *madhhab*, which presupposed the disregarding of a correct, sound and valid opinion in another *madhhab*, was not an acceptable practice.[204] With regard to a particular legal issue, it is not appropriate to prefer an individual *madhhab* over another if the validity of opinion found in another *madhhab* is affirmed or discovered to be more just and accurate.[205] For example, during its biannual session of April 1976, the BSU authorized the CRLO to conduct a detailed and comprehensive research on the issue of the dissection (or autopsy, for medical and forensic purposes) of the dead body of a Muslim – this research would be undertaken with the intention of providing a basis for the Ninth Biannual Session that would be held in August 1976.[206] The research paper breaks down into four main parts: 1) the dignity (*ḥurma*) and inviolability (*'iṣma*) of the Muslim individual, whether alive or dead; 2) the different types of autopsy; 3) the legal views of earlier Muslim scholars in exceptional cases where an autopsy resulted in an organ being removed from a dead body; 4) the benefits of forensic autopsy for human beings in the modern world.[207] The inviolability of the Muslim body is underlined with reference to a number of Qur'anic verses, such as the Q. 4: 92 ("a believer should never kill a believer") and prophetic traditions that support the sanctity and inviolability of a human body ("[b]reaking the bone of a dead body is like breaking the bone of a live body").[208]

The CRLO clearly establishes that the mutilation and dissection of a body, whether a Muslim or a non-Muslim, is prohibited in Islamic law – the only exceptions are the three categories of punishments (*ḥudūd*, *qiṣāṣ* and *ta'zīr*) that are applied to adulterers, apostates, bandits, murderers, robbers and thieves.[209] The CRLO states that any failure to acknowledge the inviolability of the human body is, from the perspective of Islamic law, illicit. Despite

[203] Organizing Fatwas, in *Fatwas of the Permanent Committee*, 5: 1, accessed November 26, 2017, http://www.alifta.net/Fatawa/FatawaSubjects.aspx?languagename=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4106&PageID=1345&SectionID=7&SubjectPageTitlesID=1364&MarkIndex=0&0#OrganizingFatwas.
[204] Fatwā No. 4172 in *Fatwas of the Permanent Committee*, 5: 28-29, accessed November 27, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=1368&PageNo=1&BookID=7.
[205] Fatwā No. 3323 in *Fatwas of the Permanent Committee*, 5: 41-42, accessed November 27, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=1376&PageNo=1&BookID=7, Fatwā No. 2061 in *Fatwas of the Permanent Committee*, 5: 42-43, accessed November 27, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=1377&PageNo=1&BookID=7. See also Vogel, *Islamic Law and Legal System*, 78-79.
[206] Hukm al-Tashrīḥ Jathat al-Muslim, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 8-10.
[207] Ibid.
[208] Ibid, 2: 11-14.
[209] Ibid, 2: 8-10.

this, the research seeks to identify the circumstances in which the dissection of a dead body, or autopsy, may be permissible.

The CRLO distinguishes three kinds of autopsy: 1) forensic autopsy (*al-ṭib al-shar'ī*); 2) pathological autopsy (*al-tashrīḥ al-maraḍī*) that seeks to obtain medical knowledge about the cause of death, such as epidemic diseases; and 3)autopsies undertaken with the intention of obtaining medical and scientific knowledge (*al-baḥth al-'ilmī*).[210] After distinguishing these three separate examples, the CRLO attempts to identify which one is permissible by presenting five legal precedents that had been previously engaged by Muslim jurists and scholars from the four Sunni Islamic legal schools. The five legal precedents include: 1) burning or opening fire on enemies hidden amongst Muslim prisoners of war; 2) cutting the womb of a dead pregnant woman to save her baby; 3) eating the flesh of a dead human in instances of starvation; 4) throwing a passenger (chosen by drawing lots) into the sea in order to save a sinking ship; and 5) firing missiles into the enemies, even when women and children are among them.[211]

In referring to cutting the wombs of dead women in order to save the lives of their fetus, the CRLO evaluates the different approaches to this problem that have been taken by classical Muslim jurists and scholars, who include Ḥanafīs (such as Abū Ḥanīfa (d. 767)), Ḥanbalīs (such as Ibn Qudāma (d. 1283) and Ibn Ḥamdān (d. 1295)), Mālikīs (such as Mālik b. Anas (d. 795), Ibn al-Muwāq (d.1491), and al-Dardīr (d. 1768)) and Shāfi'īs (such as al-Māwardī (d. 1058), al-Nawawī (d. 1278), and al-Zarkashī (d. 1392)). These scholars adopted two different approaches.[212] The first, which was advocated by Ḥanafīs, Mālikīs, and the majority of Shāfi'īs, permits the womb of a dead woman to be cut in order to save the life of the baby – this is however dependent on the legal principles of necessity (*ḍarūra*) and public interest (*maṣlaḥa*). The second approach, which is instead advocated by the majority of Ḥanbalī (and some Shāfi'ī) scholars, emphasises the inviolability of the deceased and the uncertainty of the life of the fetus, whether alive or dead, and therefore prohibits the cutting of the womb in such instances.[213] It is noticeable that the CRLO appears to lean towards the first legal position by applying the legal maxims of "choosing the lesser of two evils" (*irtikāb adnā al-mafsadatayn*) and "necessities overrule prohibition" (*al-ḍarūrat tubīḥ maḥẓūrāt*). As a result, it permits the violation of the dignity of the human body under certain circumstances.

[210] Hukm al-Tashrīḥ Jathat al-Muslim, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 15-17.
[211] Ibid, 2: 18-59.
[212] Ibid, 2: 33-41.
[213] Ibid.

In addition to the opinions of classical Islamic jurists, a number of contemporary *fatwās* issued by modern Muslim scholars, such as Rashīd Riḍā (d. 1935) Yūsuf al-Dajawī (d. 1948), and Ḥasanayn Muḥammad Makhlūf (d. 1990), are introduced in order to provide a comprehensive overview of the issue. After first acknowledging the long-term implications of the research, the BSU permits the first two types of autopsy (forensic autopsy and pathological autopsy) and cites their beneficial impacts upon justice, preventive medicine, public health and security.[214] In instances where it is a matter of choosing between life and death, the BSU argues that the protection and rescue of a life must prevail over the dignity of the deceased (*ḥurmat al-mayyit*). In addressing itself to autopsies for scientific research, the BSU maintains a cautious stance by setting out a number of conditions. It accepts that it may be permissible to conduct autopsies on human bodies for medical reasons as this could conceivably contribute educational knowledge and therefore assist important scientific developments in the field of medical studies. This benefit notwithstanding, Islamic law is attentive to the dignity of human-beings, and this type of autopsy could conceivably interfere with this imperative. It is also important to recognise that the *ḥadīth* in which the Prophet suggests an equivalence between breaking the bones of a dead and living person suggests that the third type of autopsy may not be allowed, lest it interfere with the dignity of the human body. While it is acceptable to use the cadavers of those who relinquish their faith and become warriors against Islam (*ghayr ma'sūm*), it is not acceptable to use the cadavers of others (*ma'sūm*) in instances where there is no clear necessity.[215] In addressing itself to the dissecting of a dead Muslim's body, the BSU has leaned towards the Islamic legal position of the Ḥanafī, Mālikī, Shāfi'ī *madhhabs*, as opposed to the countervailing Islamic legal position of the Ḥanbalī *madhhab*.[216]

Even though the recognition of the other three Sunni schools of Islamic law (Ḥanafī, Mālikī and Shāfi'ī *madhhabs*) may appear to hint at the liberation of the Dār al-Iftā' from the shackles of the Ḥanbalī *madhhab*, it is important to acknowledge that there is a clear tendency towards the Ḥanbalī *madhhab*, which is attributable both to its methodology (the direct use of original sources, such as the Qur'an, the Sunna and the traditions agreed upon

[214] Hukm al-Tashrīḥ Jathat al-Muslim, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 59-65.
[215] Ibid, 2: 83-85.
[216] For a more detailed CRLO analysis of the dissection (or autopsy for medical purposes) of a Muslim's dead body, refer to Al-Atawneh, *Wahhābī Islam*, 137-143 and Muhammad al-Atawneh, "Wahhābī Legal Theory as Reflected in Modern Official Saudi *Fatwās*: *Ijtihād*. *Taqlid*, Sources, and Methodology," *Islamic Law and Society* 18, no. 3/4 (2011), 349-352.

by the Companions of the Prophet) and the fact that its sources are easily accessible.[217] This preference for the sources of the Ḥanbalī *madhhab* and its methodology are clearly indicated in the Dār al-Iftā's *fatwās*, as Al-Atawneh recognizes ("the Ḥanbalī *madhhab*, as interpreted by Ibn Taymiyya and his disciples, is still preferred by the Dār al-Iftā' when strong evidence is lacking elsewhere").[218] The Dār al-Iftā's members continue to be faithful to the Ḥanbalī *madhhab* and its associated legal methodologies and principles, and this is reflected in a continued adherence to the literal meaning of the sacred text (the Qur'an) and the transmitted tradition (*naql*), as opposed to the reason (*'aql*). The direct and frequent references to the Qur'an and Sunna in many *fatwās* on various subjects are indicative of placing the primary importance on the two main authoritative sources, before any other source. This continued commitment to the Ḥanbalī *madhhab* notwithstanding, it is possible to recognize a number of emerging tendencies in which the legal methodologies, principles and theories of the other three *madhhabs*, including *qiyās*, *maṣlaḥa* and *ḍarūra*, have been gradually drawn into mechanisms that the Dār al-Iftā' deploys when it issues a *fatwā*. The practice of *tarjīḥ* is particularly significant because it demonstrates that the Dār al-Iftā' does not limit itself to a certain *madhhab* (e.g. the Ḥanbalī school) and also illustrates that the institution addresses the challenges of modern life through a broad-ranging application of Islamic legal traditions.[219] The Dār al-Iftā's moderate approach towards other *madhhabs* and their methodologies can be easily observable when the BSU handles the controversial and intricate issues directed by the King or the Government agencies. However, the CRLO generally issues its *fatwās* by strictly following the Ḥanbalī school's legal theories and methodologies when the institution produces *fatwās* for simple questions directed by individual questioners. This tenuously bodes the Dār al-Iftā's reluctance in adopting an inter-*madhhab* trend in the process of *fatwā*-making. The decisions that the BSU makes on banking transactions, birth control, drug smuggling and trafficking and the limitation of dowries, each of which relates back to CRLO research, can also be said to attest to the working relationship (institutional coordination and working systems) that conjoin the BSU and the CRLO under the roof of the Dār al-Iftā'.

In addition to preparing research that establishes the basis for the BSU's discussions, the CRLO is also tasked with issuing *fatwās* (relating to faith (*'aqā'id*), ritual practices

[217] Al-Atawneh, *Wahhābī Islam*, 75-76.
[218] Ibid, 75.
[219] Ibid, 81.

(*'ibādāt*) and social transactions (*mu'āmalāt*)).[220] These questions are forwarded, whether through the internet, via post or through the telephone, by both members of the Saudi public and Muslims resident in other countries.[221] Specific questions tend to be answered on an individual basis, whereas those that occur with a greater frequency tend to be engaged during weekly sessions, which are generally held on Sundays and Tuesdays.[222] On other weekdays, at least two *'ulamā'* should be available to either answer phone calls or receive visitors.[223] Royal Decree A/137 establishes the presence of at least three CRLO members and the passage of a majority vote as preconditions for the issuance of *a fatwā*. It states:

> "Any *fatwā* must not be issued by the Permanent Committee unless the great majority of its members avow it. [In any event,] the number of *muftīs* must not be less than three. Under the condition of a tie on any issue discussed by *muftīs*, the vote of the chairman determines the outcome."[224]

The CRLO normally requires a single meeting in order to issue a *fatwā*; however, it is sometimes necessary to convene up to four further meetings if the key issue has not been resolved.[225] It is also possible to issue several *fatwās* during a single meeting.[226] Each *fatwā* has a serial number; however, the date of issuance and the name of the questioner are not generally included.

The four to seven members who work in the CRLO are selected from among the BSU's *'ulamā'*.[227] In addition to these prominent members, a number of research assistants are assigned to serve in the CRLO.[228] CRLO members meet twice a week. Recurrent *fatwās* are generated in a compendium before being published at the end of the year. At present, twenty volumes are dispersed Islamic websites.[229] CRLO *fatwās* have also been compiled into periodic editions (entitled "*Fatawā al-Lajna al-Dā'ima lil-Buḥuth al-'Ilmiyya wal-*

[220] Royal Decree A/137, August 29, 1971, 5 and Sherifa Zuhur, *Middle East in Focus: Saudi Arabia* (California: ABC-CLIO, 2011), 96.
[221] Al-Atawneh, *Wahhābī Islam*, 25.
[222] Mouline, *The Clerics of Islam*, 153.
[223] Mouline, "Enforcing and Reinforcing," 60 and Mouline, *The Clerics of Islam*, 153.
[224] Royal Decree A/137, August 29, 1971, 8.
[225] Al-Atawneh, *Wahhābī Islam*, 26.
[226] Ibid, 26.
[227] Mouline, "Enforcing and Reinforcing," 59.
[228] Al-Atawneh, *Wahhābī Islam*, 27.
[229] Mouline, "Enforcing and Reinforcing," 59 and al-Atawneh, *Wahhābī Islam*, 25. See http://www.alifta.net/default.aspx?languagename=ar and http://islamopediaonline.org/. See also private websites of prominent Wahhābī muftis: Shaykh Ibn Bāz, accessed June 19, 1016, http://www.binbaz.org.sa/; Shaykh Ibn 'Uthaymīn accessed June 19, 2016, http://binothaimeen.net/index.php and others.

Iftā',") and published.[230] Since the CRLO's establishment, the issuance of *fatwās* has emerged as its main function, although it has also undertaken numerous research projects.[231] While research project topics are generally determined by the BSU, CRLO and King, the King's priorities enjoy a clear pre-eminence.[232]

C) Grand Muftī Office

When Shaykh Muḥammad ibn Ibrāhīm, the Grand Muftī, died in 1969, his office was suspended for almost two decades (1969-1993).[233] During this period, a new Dār al-Iftā', which was largely composed of the BSU and the CRLO, was established and its structure was reordered in order to enable it to exert more complete control over the socio-religious domain. Mouline situates this reform within the wider context of institutionalization. He observes:

> "…[T]he Gulf war gave rise to an Islamist protest movement … that obliged the [official *'ulamā'*], with the support of political power, to reorganize its structure in order to achieve better control. Separating management of socioreligious bodies and activities (such as mosques, Qur'anic learning associations, the printing and translation of the Qur'an, and preaching), human resources (such as the mosque imams and muezzins, preachers, translators, and administrative staff), and properly ideological work doubtless allowed its positions to be strengthened and helped it to better defend its socio-religious privileges…"[234]

It is likely that the Saudi Regime did not wish to re-establish the Grand Muftī's office until the Dār al-Iftā' assumed its final form and attained public and religious recognition. Because Muḥammad ibn Ibrāhīm, the former Grand Muftī, held the juridical-religious offices and broad institutional powers, King Fayṣal's efforts to fragment and institutionalize the monopolistic religious establishment were complicated.[235] Muḥammad ibn Ibrāhīm's dissenting statements and legal explanations, which confronted with the positions of both the courts and chambers of commerce, both of whom were responsible for addressing issues in the areas of positive law[236] and finance,[237] clarified the ongoing tension with State policy. In his role as the Grand Muftī, Muḥammad Ibn Ibrāhīm presided over the *Dār al-Iftā' wal-Ishrāf 'alā al-Shu'ūn al-Dīniyya*,[238] a body with responsibility for issuing *fatwās* and managing religious affairs: he combined this role with various presidencies (of the al-Da'wa

[230] See online version, accessed June 19, 2016, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&MenuID=0&View=tree&NodeID=1&PageNo=1&BookID=3&Rokn=false.
[231] Al-Atawneh, *Wahhābī Islam*, 25.
[232] Royal Decree A/137, August 29, 1971, 7.
[233] Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 218-9.
[234] Mouline, *The Clerics of Islam*, 157.
[235] Vogel, *Islamic Law and Legal System*, 92.
[236] Mouline, *The Clerics of Islam*, 143.
[237] Ibid.
[238] Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 218-9.

Foundation, the High Institute of the Magistracy, the Islamic University of Medina and the Religious Studies and Arabic faculties).[239] These positions provided him with an opportunity to use state employment to dominate Saudi religious space. In addition to these religious positions, he was also responsible for the administration of girls' education and, as a Chief *Qāḍī*[240], the leadership of the judicial system.

In suspending the Grand Muftī position for slightly more than two decades, the State brought the State Grand Muftī's monopoly to an end and dissolved the vertical authority of this position, an action that was apparently undertaken in full awareness of the fact that any individual possessed of charisma and energy would have the ability to frustrate the reform and institutionalization of the Saudi state. Even though the BSU and CRLO (who were responsible for issuing *fatwās*), the newly created Ministry of Justice and the Supreme Judicial Council were essential components of the institutionalization process, the suspension of the State Grand Muftī's office probably sought to distribute the functions of the previous Dār al-Iftā' (which had operated under the leadership of Muḥammad ibn Ibrāhīm, the State Grand Muftī) to these newly-established (and state-dependent) agencies along with established ministries.

After limiting the office's authority and establishing a degree of collegiality within the religious establishments by fragmenting the juridical-religious structure, King Fahd issued a royal decree in July 1993 which declared the reestablishment of the Grand Muftī's office (*al-Muftī al-'Āmm*).[241] Shaykh 'Abd al-'Azīz ibn Bāz was then appointed to this position and also became the permanent chairman of both the BSU and CRLO.[242] In Saudi Arabia, Ibn Bāz was widely respected among both Wahhābī scholars and the general public. Al-Atawneh affirms:

> "Ibn Bāz's prodigious social activity and involvement caused him to be greatly esteemed in a wide range of Saudi circles, as can be clearly seen in the reactions following his death which proved a strong blow to Saudi society."[243]

In addition to his role as Grand Muftī, Ibn Bāz occupied a range of religious positions, at both the international and national levels. His religious career began when he worked as a *qādī* (judge) in the Al-Kharj area; he then became a lecturer in the College of Sharī'a (*Kulliyyat al-Sharī'a*) before becoming established as the president of the State Islamic University, the

[239] Mouline, *The Clerics of Islam*, 138.
[240] Mouline, *The Clerics of Islam*, 138 and Al-Yassini, *Religion and State*,113.
[241] Royal Decree, A/4, July 9, 1993.
[242] Al-Shalhūb, *Al-Niẓām al-Dustūrī*, 219.
[243] Al-Atawneh, *Wahhābī Islam*, 33.

chairman of the World Muslim League (*Rābiṭat al-ʻĀlam al-Islāmī*), and the Chairman of the Islamic Jurisprudence Assembly in Mecca (*al-Majmaʻ al-Fiqhī al-Islāmī fī Makka*).[244] These positions, in addition to his close relationship with the Āl-al-Shaykh family and the Saudi dynasty, enabled him to become an important religious and social figure within the country. His proximity to the Saudi throne also meant that he frequently acted as an intermediary between the Saudi Government and society.[245] Ibn Bāz retained the position of Grand Muftī until his death in 1999. Two days after his death, Shaykh ʻAbd al-ʻAzīz b. ʻAbd Allāh Āl al-Shaykh, the current Grand Muftī, was promoted to this position, along with the chairmanship of the BSU and the CRLO.

In contrast to his two predecessors, Shaykh ʻAbd Allāh Āl al-Shaykh is not socially active or influential. He was born in Riyadh in 1941 with weak eyesight before, 20 years later, completely losing his sight.[246] In 1954, he attended the Imām al-Daʻwa Institute, before graduating from the Faculty of Sharīʻa in 1962.[247] Subsequent to graduation, his vocational career in the area of religion began, and he worked as a teacher and lecturer at academic institutions in Riyadh, the Imām al-Da'wa Institute and the Faculty of Sharīʻa, between 1971-1991.[248] In 1986, he was appointed as a member of the Dār al-Iftā' and became Ibn Bāz's deputy in 1995. In comparison to the previous two Grand Muftīs, whose exercise of religious authority derived from a variety of religious positions, Shaykh ʻAbd Allāh Āl al-Shaykh held few religious positions – he is therefore less active and less authoritative than his predecessors in the role. His membership of the Āl al-Shaykh family could be interpreted as the return of the Āl al-Shaykh to its historical religious post (the practice of *iftā'*) after it had been held for a substantial amount of time by a religious figure who was not linked to the family. Since being appointed to the role, Shaykh ʻAbd Allāh Āl al-Shaykh has issued several controversial *fatwās* that have caused him to be labelled as conservative and xenophobic. (Brachman observes that Shaykh ʻAbd al-ʻAzīz b. ʻAbd Allāh Āl al-Shaykh "…is known for

[244] Member Scholars of the Permanent Committee for Ifta', Ibn Baz: Concise Biography, accessed November 11, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=3&searchScope=14&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=10509811003209809712 2#firstKeyWordFound.
[245] Al-Atawneh, *Wahhābī Islam*, 32-33.
[246] Member Scholars of the Permanent Committee for Ifta', His Eminence Shaykh 'Abdul-'Aziz ibn 'Abdullah ibn Muhammad Al Al-Shaykh, accessed November 11, 2017, http://www.alifta.com/Fatawa/MoftyDetails.aspx?languagename=en&Type=Mofty&section=tafseer&ID=8.
[247] Ibid.
[248] Ibid.

his conservative positions on Islamic issues)."[249] His 2007 announcement upon the Green Dome on the top of the tombs of the Prophet and the first two Caliphs (Abū Bakr and 'Umar b. al-Khaṭṭāb) along with his 2012 declaration on the destruction of churches within the Arabian Peninsula attracted negative comments from both the Muslim and Western world.[250]

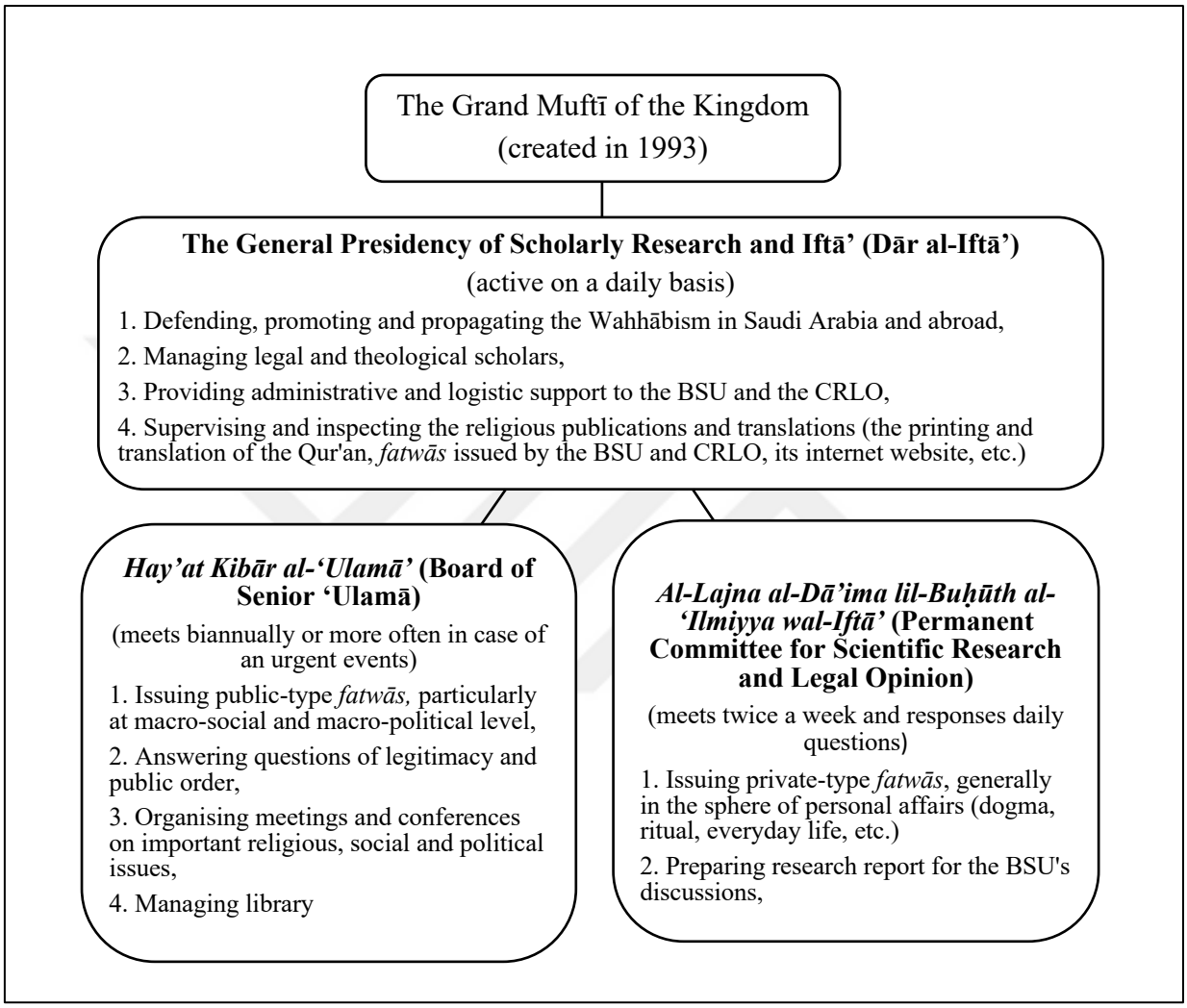

Table 1: The Dār al-Iftā's Organisational Structure and Functions

In conclusion, it will be noted that the reconstruction of the Grand Muftī's Office centralized the practice of *iftā'* after a substantial period of time by placing all *iftā'*

[249] Jarret M. Brachman, *Global Jihadism: Theory and Practice* (Oxon: Routledge, 2009), under the title "Establishment Salafists".
[250] Mark L. Samuel, *John's Assignment: A Satire on the Human Condition* (Bloomington: Author House, 2013), 63-64. For the *fatwā* concerning the destruction of churches in the Arabian Peninsula, see Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471, accessed November 12, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=10807&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=0671041171140991041011150321051100320651140970981050971100320801011101051101151171080 97#firstKeyWordFound.

institutions under its control and oversight.[251] As the permanent chairman of both the CRLO and the BSU, the Grand Muftī can open and manage sessions held within both institutions.[252] In addition, the Grand Muftī can also cast the decisive vote if the *'ulamā'* is unable to declare a clear majority when a *fatwā* is issued or legal advice is determined.[253] While the authority of the Office is mainly restricted to the practice of *iftā'*, it has operated as the highest *iftā'* authority in the State since its establishment.

D) The Issuance of *Fatwās*

In the contemporary period, the BSU and the CRLO, both of which operate under the leadership of the Grand Muftī, constitute the Dār al-Iftā', which is the highest official authority for Islamic legal interpretation and the issuance of *fatwās* in Saudi Arabia. Although possessed of distinct roles and duties, these three agencies evidence complementary functions when deciding upon a *fatwā*. The process through which a *fatwā* is issued corresponds to a hierarchical system that conjoins the three agencies. The CRLO addresses a number of questions which relate to all aspects of life, including*, inter alia,* economics, family planning, food, gender issues, marriage, medicine, Muslim minority groups, politics, technology and theology. Questions on these matters can be submitted by a legal person or a lay Muslim individual. When a question relates to the administrative spheres, controversial and contradictive religious issues, macro-social or political realms, the question, along with a religious report prepared by the CRLO, is immediately transferred to the BSU.[254] The CRLO therefore sets the research agenda by selecting topics that derive from questions it receives on a daily basis. The research agenda is then submitted to the Royal Cabinet and is subject to the King's approval or veto.[255] Once this official process is complete, the research agenda is certified by the Royal Cabinet and, subsequent to the King's approval, addressed to the BSU's members. The CRLO's functions can therefore be defined as the issuance of exhortations and legal rulings that are addressed to personal religious inquiries that arrive at the CRLO on a daily basis. Furthermore, it also establishes the BSU's research agenda by preparing religious reports on a wide range of subjects. The BSU functions as a final authority or guardian against non-sharī'a legislation. The Dār al-Iftā's hierarchical structure clearly establishes the BSU's status as the supreme religious *iftā'* authority in Saudi Arabia

[251] Al-Atawneh, *Wahhābī Islam*, 34.
[252] Royal Decree A/137, August 29, 1971, 2.
[253] Royal Decree A/137, August 29, 1971, 3.
[254] Mouline, *The Clerics of Islam*, 158.
[255] Ibid.

and also clarifies that the Dār al-Iftā' is subject to the authority of the political power when it comes to the determination of the research agenda that will be discussed by the BSU.

Correspondence and other communications between the BSU, the CRLO and the Royal Cabinet are the responsibility of the BSU's General Secretary, who is an official directly appointed by the Council of Ministers.[256] While the General Secretary is not a member of the BSU, he must have a diploma in religious studies. His function is to ensure that research reports, along with the CRLO's research agenda, are prepared and submitted to the BSU's members at least two weeks prior to the evaluative session.[257] He is responsible for ensuring the effective coordination of the three state agencies and for processing the BSU's decisions, exhortations, *fatwās* and statements, and, with the cooperation of the CRLO's directorate, overseeing their publication.

In exceptional cases, the Royal Cabinet is entitled to ask the BSU to assemble special meetings and directly establish the research agenda.[258] These meetings are addressed to the condemnation of a dangerous event, the discrediting of an enemy of the regime in the eyes of public opinion and/or the legitimization of a decision generally regarding political matters.[259] Relevant examples include the 1979 seizure of Mecca, the 1990 deployment of American troops in Saudi Arabia and disconcerting 'anti-government' tendencies.[260] The Government petitioned the BSU on each of these issues, with the intention of gaining support for its policies. However, because these *fatwās* possess a certain internal (legal and logical) coherence, it would be inaccurate to criticize them for merely providing political support to the Regime; furthermore, the accusation that the BSU performs an essentially political

[256] Royal Degree A/88, May 29, 2001, 4 and al-Atawneh, *Wahhābī Islam*, 17.
[257] Al-Atawneh, *Wahhābī Islam*, 21.
[258] Mouline, *The Clerics of Islam*, 158.
[259] Ibid.
[260] During the Ikhwān rebellion (1927-1930), the labor riots (1962 -1966), the seizure of Mecca's Grand Mosque (1979) and the Arab-Israeli Peace Process (1991-1996), the official *'ulamā'* supported the Saud Regime by approving its political policies. In response, the opposition, which included radical fundamentalist elements, sought to establish organizations, which included the Committee for the Defense of Legitimate Rights (CDLR, which was established in 1993), the Movement for Islamic Reform in Arabia (MIRA, established in 1996) and the Committee Against Corruption in Saudi Arabia (CASCAS, formed in 1996). These opposition groups offered strident critiques of the official *'ulamā'* and the Saudi Regime and openly challenged the alliance between the *'ulamā'* and *'umarā'*. The BSU issued a communique, *fatwā* and legal explanation which condemned these accusations as illegal. Gause III clarifies the BSU's position. He states: "In December 1991, [Ibn Bāz] publicly denounced the salafi activists and condemned their "conspiracies against Islam and Muslims" and "lies". The Council of Senior Ulama condemned an (opposition) advisory memorandum which was publicized in the international media, and accused the authors of "planting rancor" in Saudi society and judging it to be opposed to legitimate advance and justice. The *'ulamā'*s affirmation of the Regime's political legitimacy prevented the opposition from mobilizing support in Saudi society, and therefore reinforced the Wahhābī doctrine of *siyāsa shar'iyya*." See Teitelbaum, *Holier Than Thou*, 17-66, al-Atawneh, *Wahhābī Islam*, 45-54, Gause III, "Official Wahhabism," 135-144 and Al-Rasheed, *Contesting the Saudi State*, 80-133.

function would also fall short of the objective requirements of Islamic legal analysis. Because cooperation (*ta'āwun*) and obedience (*tā'a*) are foundations of the Wahhābī doctrine of *siyāsa shar'iyya*, which reinforces the broad authority of the Islamic leader, the Dār al-Iftā' presumably recognizes the King's authority to enforce the law.[261] In issuing a *fatwā* that relates to the political field, the Dār al-Iftā' acknowledges the existence of a separate field of authority and the need to offer allegiance (*bay'a*) to it. This politically autonomous field is however conceived in religious terms – this lends further strength to the proposition that the Wahhābī doctrine of *siyāsa shar'iyya* emerged through a traditional interpretation.

The coordinated effort of the Dār al-Iftā's three agencies produces *fatwās* that cover cultural, economic, legal, political, religious and social issues; however, they are only given legal effect by the King's endorsement. *Fatwās* lacking in legal effect touch upon subjects as diverse as celebrating the Prophet's Birthday (*al-Mawlid al-Nabawī*),[262] sex-change operations,[263] female leadership,[264] greeting Christians during their feast,[265] marriage to obtain citizenship,[266] listening to music,[267] mobile ringtones,[268] reading the Gospel and the

[261] Vogel, *Islamic Law and Legal System*, 169-170.
[262] The celebration of the Prophet's Birthday is referred to as a religious *bid'a* and thus declared as a prohibited act in the *fatwā*. See Fatwā No. 7136 in *Fatwas of the Permanent Committee*, 3: 5-6, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=754&PageNo=1&BookID=7.
[263] Fatwā No. 1542 in *Fatwas of the Permanent Committee*, 1: 64-65, accessed November 26, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=7&PageNo=1&BookID=7.
[264] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16, accessed August 25, 2015, http://www.alifta.net/Fatawa/fatawacoeval.aspx?languagename=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4660&PageID=6300&SectionID=7&SubjectPageTitlesID=6352&MarkIndex=19&0#Inwhichwomenareprohibitedto.
[265] The *fatwā* states greeting the Christians during their feast is not permissible, and it is a great sin. See Fatwā No. 11168 in *Fatwas of the Permanent Committee*, 1: 468-471, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=981&PageNo=1&BookID=7.
[266]In the *fatwā*, this type of marriage categorized as temporary marriage, and then it is stated that temporary marriage is invalid and that sexual intercourse under such kind of temporary marriage considered as unlawful sexual intercourse (*zinā*). See Fatwā No. 19504 in *Fatwas of the Permanent Committee*, 18: 447, accessed November 12, 2017,http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=7112&PageNo=1&BookID=7.
[267] In the *fatwā*, it is unequivocally stated that listening to music and playing musical instruments are *ḥarām* (unlawful). See Fatwā No. 20842 in *Fatwas of the Permanent Committee*, 26: 222, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=10274&PageNo=1&BookID=7.
[268] It is not acceptable to use musical tones on mobiles or other devices. Regular ringtones are however permitted. See Fatwā No. 16301 in *Fatwas of the Permanent Committee*, 26: 261, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=10313&PageNo=1&BookID=7.

Bible,[269] shaking hands with women,[270] treatment with blood[271] and working in banks.[272] Even though these *fatwās* are not legally binding, they make an important contribution to the country's religious and social life. It is normally the case that the BSU's decisions, *fatwās* and resolutions are approved by the King. However, this approval is not forthcoming when the proposed measure runs counter to public welfare and/or state interests. Under these circumstances, state interests, as defined by the King, may take precedence over the BSU's *fatwās* or Islamic legal rulings.[273]

The BSU's *fatwā* upon the expansion of the circumambulation area around Ka'ba (*taw'siat al-maṭāf*) clearly demonstrates that the King or the Government will disregard the BSU's decision if it is deemed to conflict with public welfare or the interests of the State.[274] In 2006, the King requested a *fatwā* from the BSU on the proposed enlargement of this area, with the intention of minimizing any potential difficulties. The BSU members did not align their verdict with the Saudi Government and therefore highlighted the points at which the proposed measure conflicted with the authoritative texts. Particular controversy arose in relation to the expansion of the *mas'ā*, the circumambulation passage between Ṣafā and Marwa. In setting the BSU's *fatwā* aside, the King decided to seek the opinions of other Muslim scholars in the Muslim world. It was no surprise when other scholars within the Muslim world endorsed the King's proposal to enlarge Ka'ba's circumambulation capacity

[269] Two CRLO *fatwās* establish that it is not permitted to read the two holy books of the People of the Book. See Fatwā No. 15662 in *Fatwas of the Permanent Committee*, 1: 436-437, accessed November 12, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=10775&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=098105098108101#firstKeyWordFound and Fatwā No. 8852 in *Fatwas of the Permanent Committee*, 3: 433-434, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=980&PageNo=1&BookID=7.

[270] It is *ḥarām* for a Muslim man to touch the body of a non-*maḥram* woman because this leads to the spread of corruption. See Fatwā No. 18999 in *Fatwas of the Permanent Committee*, 17: 27, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=6312&PageNo=1&BookID=7.

[271] Blood transfusion is permitted. See Fatwā No. 7136 in *Fatwas of the Permanent Committee*, 25: 67, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=9761&PageNo=1&BookID=7.

[272] The *fatwā* categorically stresses that working in a bank that deals with *ribā* (usury or interest) is not permissible. See Fatwā No. 608 in *Fatwas of the Permanent Committee*, 15: 41, accessed November 12, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=5475&PageNo=1&BookID=7.

[273] Vogel, *Islamic Law and Legal System*, 169-170.

[274] Aḥmad Selāmat al-Gharyānī, *Fatāwā al-'Ulamā' fī Ḥukm al-Tawsi'at al-Jadīda lil-Mas'ā wa 'Ademu Jawāzi al-Sa'ī fihā,* accessed August 05, 2016, http://www.ahlalhdeeth.com/vb/showthread.php?t=199230, Jones, "Religious Revivalism," 112-9 and Muṣṭafā Farḥāt, *Akbar Tawsi'at lil-Ḥaramayn Tuthīru bayna al-'Ulamā' fī al-Sa'ūdiyya*, accessed August 06, 2016, http://www.djazairess.com/echorouk/25380.

by appealing to the principle of *maṣlaḥa*.[275] Mouline suggests that the King's contra-decision was "an important economic and symbolic investment that would positively reflect on the kingdom and its rulers"[276] – however, this overlooks the fact that this cannot solely be considered from an economic perspective. By virtue of the fact that overcrowding and safety issues were also ongoing concerns for the Saudi state,[277] Mouline's assertion is quite narrow and restricted. The BSU's *fatwā* determines the areas which are encompassed by the *mas'ā* – these include books produced by scholars of the *ḥadīth*, history and Islamic jurisprudence.[278] The scholars maintained that the area of the *mas'ā* can be ascertained through the measuring unit of arm's length (*dhirā'*), whose width was clearly documented in the books produced by the aforementioned scholars. Here it is established that the length of the *mas'ā* closely corresponds to the Mounts of Ṣafā and Marwa, and that its width is determined through the historical development and expansion of continuous generations that have passed since the Prophet Muhammad's time. After discussing this matter and deliberating upon it, the majority of scholars reached the following conclusion:

> "Its current expansion exhausts in full the whole area of the *mas'ā*, and thus it is not permissible to extend its width any further. The problem can be solved by vertically adding building to over the *mas'ā* area under the condition of necessity (*ḍarūra*)."[279]

In reaching their legal conclusion, the BSU's scholars therefore only emphasized religious considerations and the technical part of the question; in addition, reference was only made to the possibility of vertically constructing a building over the circumambulation passage which conjoins Ṣafā and Marwa. Although the BSU are generally supportive of the Saudi polity and its policies, this *fatwā* may potentially provide considerable insight into tensions between the official religious establishment and the Saudi Government in contemporary Saudi Arabia.

In addition, the *fatwā* addressed to the destruction of churches in the Arabian Peninsula was issued by the CRLO in 2012, when it operated under the chairmanship of Grand Muftī, Shaykh 'Abd Allāh Āl al-Shaykh.[280] The question that is recorded asks whether it is acceptable for a company owner to establish a place of worship for his/her non-Muslim

[275] Farḥāt, *Akbar Tawsi'at lil-Ḥaramayn Tuthīru*.
[276] Mouline, *The Clerics of Islam*, 161.
[277] For other reasons of the expansion of circumambulation area around the Ka'ba, see Asghar Ali Imam Mahadi Salafi and Abul Hayat Ashraf, "Expansion of the Mataaf," "Aiming High" and "Welcome Change," *The Simple Truth* 5, no. 4 (2011), 13-26, accessed August 04, 2016, http://www.ahlehadees.org/phocadownloadpap/april-11.pdf.
[278] Farḥāt, *Akbar Tawsi'at lil-Ḥaramayn Tuthīru*.
[279] Al-Gharyānī, *Fatāwā al-'Ulamā' fī Ḥukm al-Tawsi'at al-Jadīda*.
[280] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.

employees. The *muftīs* adopted a particularly interesting approach when authoring this *fatwā*, which is based on three central arguments, each of which is supported by textual sources:

1. Building places of worship for non-Muslims in the Arabian Peninsula, such as Christian churches and Jewish synagogues, is held to be almost equivalent to deviation from the right path or apostasy. This position is supported by a long list of Quranic verses that clearly establish that Islam is the last religion and the Prophet Muhammad the last Prophet.[281] In referring to these verses, the *muftīs* establish their analogy (*qiyās*) by arguing that the acceptance of Christianity and Judaism as true religions will cause abjuration of one's own religion – this constitutes an effective cause (*'illa*). The *muftīs* therefore establish a clear analogy between the construction of houses of worship for non-Muslims and the endorsement of their faith. However, the *muftīs* signally fail to acknowledge that there is actually a significant difference between these two things (the endorsement of other religions as true and the construction of places of worship for non-Muslims). The profession of other religions as true is certainly related to *'aqīda* (faith or creed); however, the construction or maintenance of houses of worship belonging to non-Muslims is an issue that pertains to the Islamic legal rights of non-Muslims (*ḥuqūq ahl al-dhimma*).[282] Accordingly, from an Islamic legal perspective, the two cannot actually be held to be identical.
2. The sacrosanct position of the Arabian Peninsula is held to render the construction and maintenance of such temples as sinful. The *muftīs* attempt to support this position by citing a transmitted *ḥadīth*, in which the Prophet states that two religions should not co-exist in the Arabian Peninsula.[283] Although the *fatwā* cites this *ḥadīth* as a basis for refusing to allow non-Muslims to establish a foothold in the Arabian Peninsula, it overlooks the fact that it contradicts some Qur'anic verses,[284] which include the Q. 2:256 ("Let there be no force (or compulsion) in religion: Surely -Truth

[281] The cited verses are the Q. 34:28, the Q. 7:158, the Q. 3:19, the Q. 3:85, and the Q. 98:6, respectively.
[282] *Al-Ahl al-Dhimma* literally means "community of the covenant" – this is a term used to denote members of officially tolerated and protected religions under Muslim states in compliance with the agreements, covenants and contracts that are signed between Muslim states and non-Muslims.
[283] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.
[284] The Q. 10:99 reads: "If it had been your Lord's will all of them would have believed- All you are on earth! (But) will you then compel mankind, against their will, to believe?" According to this verse, mankind has been endowed with various faculties and capacities, and the limited free-will has been given to them, so they have the power and capacity to differentiate good from wrong. With this bestowed capacity, they can find the true faith that makes them close God. The attempt of forcing faith by imposing it on others through any form of compulsion contradicts with the teachings of Islam. In the same vein with this verse, the *Sūra al-Kāfirūn* (the Disbelievers) refers to the very existence of freedom of religion in Islam. Also refer to a separate explanation that relates to the relationship between Muslims and non-Muslims - see Said Hassan, "Law-Abiding Citizen: Recent Fatwas on Muslim Minorities' Loyalty to Western Nations," *The Muslim World*, 105, no. 4 (2015), 528-536, accessed November 18, 2017, http://onlinelibrary.wiley.com/doi/10.1111/muwo.12109/full.

stands out clear from error."). This verse quite clearly recognizes a right of freedom of religion, and it is therefore clear that not permitting the construction of places of worship can be said to represent a kind of compulsion. The contradiction between the textual sources can most likely be traced back to the fact that the *muftī*s adopt a literal interpretation. Rather than indicating the prohibition of the coexistence of one true (Islam) and one untrue religion, the *ḥadīth* clearly adopts an Islamic perspective to envisage the prospective impossibility of the simultaneous coexistence of two true religions in the Arabian Peninsula. Prior to the emergence of Islam, the Prophet Ibrāhīm and the Prophet Lūt coexisted in the Arabian Peninsula.[285] In addition, this literal interpretation of the *ḥadīth* runs counter to other *ḥadīths* that explain the interaction of the Prophet with the People of Book and the political and religious policies that he applied to them.[286] The extant presence of the Christian and Jewish populations and their temples in the region may also lend further support to the proposition that the literal interpretation of the *ḥadīth* is questionable when perceived through the lens of Islamic legal history. In indicating the existence of *ijmā'* among Muslim scholars upon the need to destroy temples belonging to other religions, the *fatwā* states: "[s]cholars unanimously agreed on the obligation of destroying churches and other places of worship if they were built recently in the Muslim lands."[287] However, the claim that there is *ijmā'* on the destruction of temples of other religions suggests that the *muftīs* are blind to historical realities. For instance, 'Umar b. al-Khaṭṭāb, the second Caliph, granted freedom of religion to the Christian and Jewish population of Palestine and Syria and did not damage their temples when he conquered this land.[288] Upon this basis alone, it can be asserted that the claim of *ijmā'* is defective.

[285] In the Qur'an, the *Sūra al-Dhāriyāt* (the Scattering Winds) mentions that the prophecy was simultaneously given to both the Prophet Ibrāhīm and the Prophet Lūt. See the Q. 51: 24-37.
[286] For the contradiction between the literal interpretation of the *ḥadīth* stated by the *muftīs* and other *ḥadīths* and the Covenants of the Prophet with the Christians of his time, see Abdur Rahman I. Doi, *Non-Muslims under Shari'ah (Islamic Law)* (Lahore: Kazi Publications, 1981), 62-84 and Craig Considine, "Religious Pluralism and Civic Rights in a "Muslim Nation": An Analysis of Prophet Muhammad's Covenants with Christians," *Religions* 7, no. 15 (2016), 6-13, accessed November 15, 2017, file:///C:/Users/emine%20enise%20yakar/Downloads/religions-07-00015.pdf.
[287] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.
[288] Al-Ṭabarī, "The Battle of al-Qādisiyyah and the Conquest of Syria and Palestine," vol. XII of *The History of al- Ṭabarī*, ed. Ehsan Yar-Shater, trans. Yohanan Friedmann (Albany: State University of New York Press, 1997), 191-193. In referring to the existence of freedom of religion in Islamic law, Doi states: "It is interesting to note that all the old and famous Churches of Cairo were, according to al-Maqrizi, built during the Islamic period. As for examples, the famous church 'Mar Marcus' in Alexandria was built between 39-56 A.H. Similarly, the first church in Fusta, old Cairo, was built between 48-69 A.H. The Muslim rulers did not stop

3. The last argument that the *muftīs* advanced is that allowing the construction of temples for other religions or allocating places for them in any Muslim country is tantamount to affirming disbelief, as these actions essentially confirm the truthfulness and authenticity of their religions.[289] The *muftīs* evaluated these claims under the concept of *al-walā' wal-barā'* (loyalty and disavowal).[290] In attempting to sustain their interpretations, they quote the Q. 5:2[291] out of context and with insufficient regard for its integrity. The cited part of the verse reads: "Help you one another in Al-Birr and At-Taqwâ (virtue, righteousness and piety); but do not help another in sin and transgression. And Fear Allâh. Verily, Allâh is Severe in punishment." However, the whole verse is concerned with the pilgrim (*ḥajj*) and the sacred symbols of God – the same Qur'anic verse also states: "And let not the hate of some people who earlier shut you out of the Sacred Mosque (in Makkah) lead you to overstepping your own limits (and bitterness on your part)." This is a clear warning that Muslims should bear in mind in their dealings with non-Muslims. Even if Muslims have previously encountered animosity and enmity in their relations with non-Muslims, they should endeavour to be fair, kind, modest and well-advised in their relations with their fellow non-Muslim citizens. It appears that the *muftīs* mainly rely on the specific Qur'anic verses and do not make reference to either their context or to other authoritative texts. The use of the stated part of the Qur'anic verse, which is clearly referenced out of context, may refer to the selectivity of the *muftīs* in adducing the textual legal evidence. Taking into account the selectivity and the rigid Wahhābī literal

non-Muslims building the places of worship of their respective religions. Muslim rulers even provided them with facilities in building and preserving churches and synagogues." See Doi, *Non-Muslims*, 80-81.

[289] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.

[290] Religious institutions have advanced different arguments and views on the concept of *al-walā' wal-barā'* (loyalty and disavowal). For example, the concept of *al-walā' wal-barā'* (loyalty and disavowal) is generally defined by the Saudi Arabia's Dār al-Iftā' in a way that suggests a Muslim should consider non-Muslims as enemies – accordingly, a Muslim should disassociate himself from them and their religions by submitting himself completely to God and being loyal only to Him. On the other hand, the Egypt's Dār al-Iftā' argues that there is no such doctrine, and the words "*walā'* and *barā'*" are simply used to describe one's relationship with God and people in the Qur'an and Sunna. Instead of accepting this as a legal doctrine, the Egyptian Dār al-Iftā', Hassan states, describes each word separately: *walā'* means adherence to Islam, maintenance of Muslim identity and coexistence with other people in a peaceful environment, while *barā'* is defined as the protection of Islamic faith against any distortion and misrepresentation. For a further explanation and different arguments relating to the concepts of *al-walā' wal-barā'*, see Hassan," Law-Abiding Citizen," 521-522, 527-528 and 533-536.

[291] The Q. 5:2 reads: "O you who believe! Do not change the holiness of the (sacred) Symbols of Allah, nor of the sacred Month of Ramadan, nor of the animals brought for sacrifice, the nor of the garlands (for such animals or of the people), nor of the people coming to the sacred House (in Makkah) seeking the bounty and the good pleasure of their Lord. But when you are away from the Sacred Grounds and (out) of the pilgrim clothes (i'hram), you may hunt: And let not the hate of some people who (earlier shut you out of the Sacred Mosque in (Makkah) lead you overstepping your (own) limits (and bitterness on your part). You help one another in righteousness and in good deeds, but do not help one another in sin and evil: Fear Allah: Because Allah is strict in punishment."

interpretation of the authoritative legal texts concerning the relationship between Muslims and non-Muslims, there are clear grounds for believing that the members of the Dār al-Iftā' or the official *'ulamā'* do not accept *ḥuqūq ahl al-dhimma* to be part of Islamic law. Although there are some defective points, the *fatwā* concludes with the statement that it is not permissible because the construction of temples for non-Muslims may result in accepting their faith, assisting their belief and strengthening their community.

The historical Wahhābī hostility towards other religious faiths therefore continues unabated, and this is clearly indicated in the fact that the official Wahhābī clerics calling for discrimination and pressure to be exerted upon non-Muslims and restrictions to be placed upon their rights of religious freedom.[292] It also appears that this *fatwā* contradicts the interfaith respect and dialogue that King 'Abd Allāh had sought to initiate. Since ascending to the Saudi throne in 2005, King 'Abd Allāh has prompted the modernization of Saudi Arabia and its state apparatus, and specifically a reform project focused mainly on freedom of expression, judicial fairness, religious tolerance and women's rights.[293] In the area of religious tolerance, the Saudi state has initiated a number of significant projects. For example, in 2008, the Muslim World League, with the active encouragement of the King, began an interfaith dialogue discussion in Mecca.[294] The 2011 inauguration of the King Abdullah Bin Abdulaziz International Center for Interreligious and Intercultural Dialogue most likely derives from another of King 'Abd Allāh's reform policies which sought to promote inter-religious dialogue at the international level.[295] These initiatives, which were launched by the Saudi state, sought to bring together representatives of world faiths in order

[292] It has already been noted that antagonism or xenophobia are defining features of the purist Wahhābīs. Wicktorowicz observes that, "[f]or the purists, Christians, Jews, the West more generally, are seen as essential enemies determined to destroy Islam by polluting it with their concepts and values." Wiktorowicz, "Anatomy of the Salafi Movement," 218.

[293] Christoph Wilcke, "Looser Rein, Uncertain Gain: A Human Rights Assessment of Five Years of King Abdullah's Reforms in Saudi Arabia," *Human Rights Watch,* September 27, 2010, accessed November 21, 2017, https://www.hrw.org/report/2010/09/27/looser-rein-uncertain-gain/human-rights-assessment-five-years-king-abdullahs.

[294] Wilcke, "Looser Rein, Uncertain Gain," and Yigal Carmon and Y. Admon, "Reforms in Saudi Arabia under King 'Abdallah," *The Middle East Research Institute* (MEMRI), June 4, 2009, accessed November 22, 2017, https://www.memri.org/reports/reforms-saudi-arabia-under-king-abdallah, Muslim World League Conferences and Organizations, *The International Islamic Conference on Dialogue (June 4-6, 2008)*, 9 and 17-19, accessed in November 22, 2017,http://themwl.org/downloads/International-Islamic-Conference-on-Dialogue-en.pdf, and United States Commission on International Religious Freedom (USCRIF), *United States Commission on International Religious Freedom: Annual Report 2010* (Washington: U. S. Commission on International Religious Freedom, 2010), 131.

[295] Abdullah al-Turki, "Interfaith Dialogue: From Makkah to New York," in *Interfaith Dialogue: Cross-Cultural Views*, (Riyadh: Ghainaa Publications, 2010), 16-17, (USCRIF), *United States Commission*, 131-133 and Wilcke, "Looser Rein, Uncertain Gain," and Carmon, "Reforms in Saudi Arabia."

to increase mutual tolerance and respect both within and outside Saudi Arabia.[296] It might therefore be argued that there is ostensible clash between the King's reform policy and the position adopted by the high-ranking official *'ulamā'* or religious establishment. Many scholars, in contending that the *fatwā* contradicts government policy, have criticized it on precisely these grounds – those aligned with the dialogist and moderate government policy of King 'Abd Allāh have been particularly prominent in advancing this argument. Al-Alawi observes:

> "The Saudi chief cleric then proceeded to conflict with repeated promises of the Saudi King, Abdullah, to foster interfaith respect and dialogue, by calling, in mid-March, for the destruction of all Christian churches in the Arabian Peninsula."[297]

Beside this, Esposito describes the *fatwā* as both a deviation from King 'Abd Allāh's reform policy and also a mirror that reflects the active and operative role of the religious establishment in contemporary Saudi Arabia.[298] However, it should be noted that there is a statement in the *fatwā* ("[i]t is not permissible to oppose the Muslim ruler in destroying them (referring churches), but you must obey him")[299] which clearly establishes its support for the policy pursued by King 'Abd Allāh's government policy and its unwillingness to become cast in an opposing role.[300] Although it has received little attention from scholars, this statement provides considerable insight into how the official *'ulamā'* functions within the borders of the Wahhābī doctrine of *siyāsa shar'iyya* – in acting thus, it helps to offset the threat of social unrest by preventing any clash between the Saudi Government, official religious establishment and wider society. This subtle undertone of support for the Saudi ruler notwithstanding, the *fatwā* clearly depicts the ongoing clash between the official *'ulamā's* religious ideology and Saudi Government policy. As Esposito emphasises, the fact that the Government has proven to be reluctant to adopt legal measures that will further entrench King 'Abd Allāh's reform policy can be interpreted as confirmation of the authority and power of the official *'ulamā'* along with the continued salience of their religious discourses on the rights of non-Muslims. The fact that the limited reforms have not translated into state

[296] Al-Turki, "Interfaith Dialogue," 15-18, Wilcke, "Looser Rein, Uncertain Gain," and Carmon "Reforms in Saudi Arabi."
[297] Irfan al-Alawi, "Top Saudi Cleric: Ban Christian Churches in Arabia: Let Girls Marry at 10," *Gatestone Institute International Policy Council*, May 23, 2012, accessed November 20, 2017, https://www.gatestoneinstitute.org/3073/saudi-fatwa-ban-christian-churches.
[298] John L. Esposito, "Exclusivist Muslims and the Threat to the Religious Reform," *Religion and Ethics*, May 15, 2012, accessed November 20, 2017, http://www.abc.net.au/religion/articles/2012/05/15/3503503.htm.
[299] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.
[300] Ibid.

law further reiterates and underlines the King's reluctance to confront Saudi Arabia's religious establishment.

In addition to creating tension between the Saudi Government and the religious establishment, the *fatwā* also resulted in harsh criticism being directed at the Saudi state by Muslim scholars, other Islamic religious institutions and practicing Muslims across the world. Al-Azhar University, Jamal al-Shahab (Kuwait's Minister of Religious Endowments), Mehmet Görmez (the head of Turkey's Presidency of Religious Affairs) all condemned the Saudi Grand Muftī and claimed that the *fatwā* clearly conflicted with Islam's peaceful teachings.[301] In undermining King 'Abd Allāh's commitment to promote inter-religious dialogue and to change international perceptions of Saudi Arabia, the *fatwā* resulted in sustained criticism being directed towards the Saudi *'ulamā'*. In confirming that religious freedom continued to be suppressed in Saudi Arabia, the *fatwā* negatively impacted the religious foreign policy and religious reform that King 'Abd Allāh had planned.

The relationship between the senior official *'ulamā'* (in particular the BSU members) and the Saudi Government is not completely coherent and harmonious. However, it is difficult, if not impossible, to ascertain the precise status of the relationship between the two authority-holders (*wulāt al-'amr*), as the official *'ulamā*' has made it clear that it prefers to voice its criticism of the ruler in private.[302] Al-Yassini links the denoted non-harmonic relationship (between the Dār al-Iftā' and Saudi Government) to the King's actions towards the incorporation of the *'ulamā'* (as the Dār al-Iftā') into the state administration. He states:

> "The extent of the ulama's participation in the newly founded structures was influenced by the needs and orientation of the political sphere – the ulama were given prominence when religious legitimation was needed, and they assumed a secondary position when their stance contradicted to that of the ruler or when other sources of legitimacy were invoked. As the process of territorial shaping neared completion, the ulama lost the whatever limited autonomy they had enjoyed…"[303]

Even though al-Yassini attributes these tensions and the Saudi Government's non-fulfilment of the Dār al-Iftā's decisions to the bureaucratization and institutionalization of the *'ulamā'*, it appears that this is not the case. The alleged argument that the institutionalization of the *'ulamā'*, which occurred subsequent to the discovery of petroleum resources, rendered them ineffective and inoperative in Saudi Arabia is questionable precisely because the covert tensions between the *'ulamā'* and *'umarā'* (in modern terms, the Dār al-Iftā' and the Saudi

[301] Samuel, *John's Assignment*, 64, al-Alawi, "Top Saudi Cleric," and Esposito, "Exclusivist Muslims."
[302] Al-Atawneh, *Wahhābī Islam*, 34 and Boucek, "Saudi Fatwa Restrictions."
[303] Al-Yassini, *Religion and State*, 67.

Government) have existed since the early period of the Saudi state. In 1927, for example, the Riyadh *'ulamā'* who were predominantly drawn from the Āl al-Shaykh family, issued a *fatwā* that related to Saudi Arabia's Shī'i community.[304] The *fatwā* called for the Shī'is of Hasa to be prevented from worshipping publicly and from invoking the saintly members of the House of the Prophet (*Ahl al-Bayt*). It also called for this group to be prevented from visiting Karbala and Najaf, for them to be compelled to perform the five daily prayers in mosques and for their regional places of worship to be destroyed.[305] In setting aside the strong cooperation between the Saudi dynasty and the Āl al-Shaykh *'ulamā'* during this period, Ibn Sa'ūd refused to obey and enforce this *fatwā*. Instead of enforcing this oppressive *fatwā*, he chose to tax the protection that he provided to the Shī'is in the region.[306]

In addition, Ibn Sa'ūd's education policies and reforms that sought to include foreign language, geography and painting classes in public school curriculums created further tensions between the *'ulamā'* and Ibn Sa'ūd in 1930.[307] The *'ulamā'* issued a *fatwā* that protested against Ibn Sa'ūd's education policies and in particular the inclusion of the aforementioned three subjects in the curriculum. The *fatwā*, which was probably grounded in the notion of *bid'a* (innovation) and the legal maxim of *sadd al-dharā'i'* (blocking means), objected to the study of foreign languages because it would enable Muslims to learn the religion of unbelievers; geography, meanwhile, aroused further objections because at that time, the *'ulamā'*s interpretation of one of the Qur'anic verses regarding the earth indicated that it is flat; in addition, the painting classes because drawing and painting would also reproduce one of God's creatures.[308] Ibn Sa'ūd rejected this *fatwā* and decided to include the three subjects in the curriculum – in doing so, he argued that the *fatwā* failed to recognise the principle of Islam which encourages believers to obtain knowledge.[309] These examples provide grounds for the argument that the relationship between the *'ulamā'* and *'umarā'* (or the Dār al-Iftā' and the Saudi government) has been demonstrating unbalanced fluctuations and abrupt tensions since the establishment of the Saudi state. This may be interpreted as

[304] Guido Steinberg, "The Wahhabiyya and Shi'ism, from 1744/45 to 2008," in *The Sunna and Shi'a in History: Division in the Muslim Middle East*, ed. Ofra Bengio and Meir Litvak (New York: Palgrave Macmillan, 2011), 172.
[305] Steinberg, "The Wahhabiyya and Shi'ism," 172-173 and Raihan Ismail, *Saudi Clerics and Shī'a Islam* (New York: Oxford University Press, 2016), 108-109.
[306] Steinberg, "The Wahhabiyya and Shi'ism," 170 and 173-174. Mehmet Ali Büyükkara, *İhvan'dan Cüheyman'a Suudi Arabistan ve Vehhabilik* (İstanbul: Rağbet Yayınlaı, 2016), 237-239.
[307] Mehmet Ali Büyükkara, *İhvan'dan Cüheyman'a Suudi Arabistan ve Vehhabilik* (İstanbul: Rağbet Yayınları, 2016), 154 and al-Yassini, *Religion and State*, 50.
[308] Büyükkara, *İhvan'dan Cüheyman'a Suudi Arabistan*, 154.
[309] Ibid.

imply that the role and activities of the *'ulamā'* in the present Saudi judicial system and society have not been substantially undermined by the incorporation of the *'ulamā'* into the state administration. The doctrine of *siyāsa shar'iyya* suggests that these official scholars, or *muftīs*, generally support the government policies and regulations – this is especially true in sensitive circumstances, when the authority of the King is broadly recognized.[310] In return, the King principally respects the high-ranking official religious scholars and their collective opinions and *fatwās* by commonly consulting them – his approval transforms their *fatwā*s' from non-binding to legally binding. Furthermore, it enforces them as functional, operative and imperative legal regulations in Saudi legal system and society.

In the absence of a constitutionally binding source of legislation, consensus is frequently achieved through the BSU, and the Government may consult the BSU to issue a *fatwā* with the intention of standardizing a legal ruling in the Saudi legal system. As Vogel notes, it appears that the BSU is one of the mechanisms of the Saudi legal system that provides uniformity and stability of rulings and judgments adjudicated by Saudi judges. [311] For instance, the Government requested a *fatwā* from the BSU that would ascertain delay penalties for construction contractors who fail to complete work on time when desiring *qāḍī*s to follow a single legal procedure on such matters.[312] Even though the ordinary *qāḍīs* are not officially liable for following the *fatwās* issued by the BSU, they are reluctant to diverge from the senior *'ulamā'* when deriving a legal rule from the authoritative sources through their *ijtihād* efforts.[313] It is therefore possible to state that the *fatwās*, in particular those issued by the BSU, have had an authoritative legal influence upon the *qāḍīs*' decisions. These types of *fatwās* are usually introduced and backed by the Government, generally after the *'ulamā'* have first been consulted; in turn, the *qāḍīs* have begun to regard them as a single legal procedure that can be applied to the issue at hand.[314] A further good example of these types of *fatwā*s is the BSU's *fatwā* that relates to two types of crimes (abduction and usurpation, and crimes relating to drug and alcohol) that was issued upon the request of King Khālid (d. 1982) in 1981.[315]

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[310] Al-Atawneh, *Wahhābī Islam*, 53.
[311] Vogel, *Islamic Law and Legal System*, 115-117.
[312] Ibid,124.
[313] Ibid.
[314] Ibid.
[315] The BSU decision No. 85 of September 10, 1981, accessed December 10, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=ar&lang=ar&view=result&fatwaNum=&FatwaNumID=&ID=1676&searchScope=2&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PageP

When the incidence of these types of crimes noticeably increased, the King consulted the Dār al-Iftā', with the intention of bringing a deterrent legal regulation into effect and

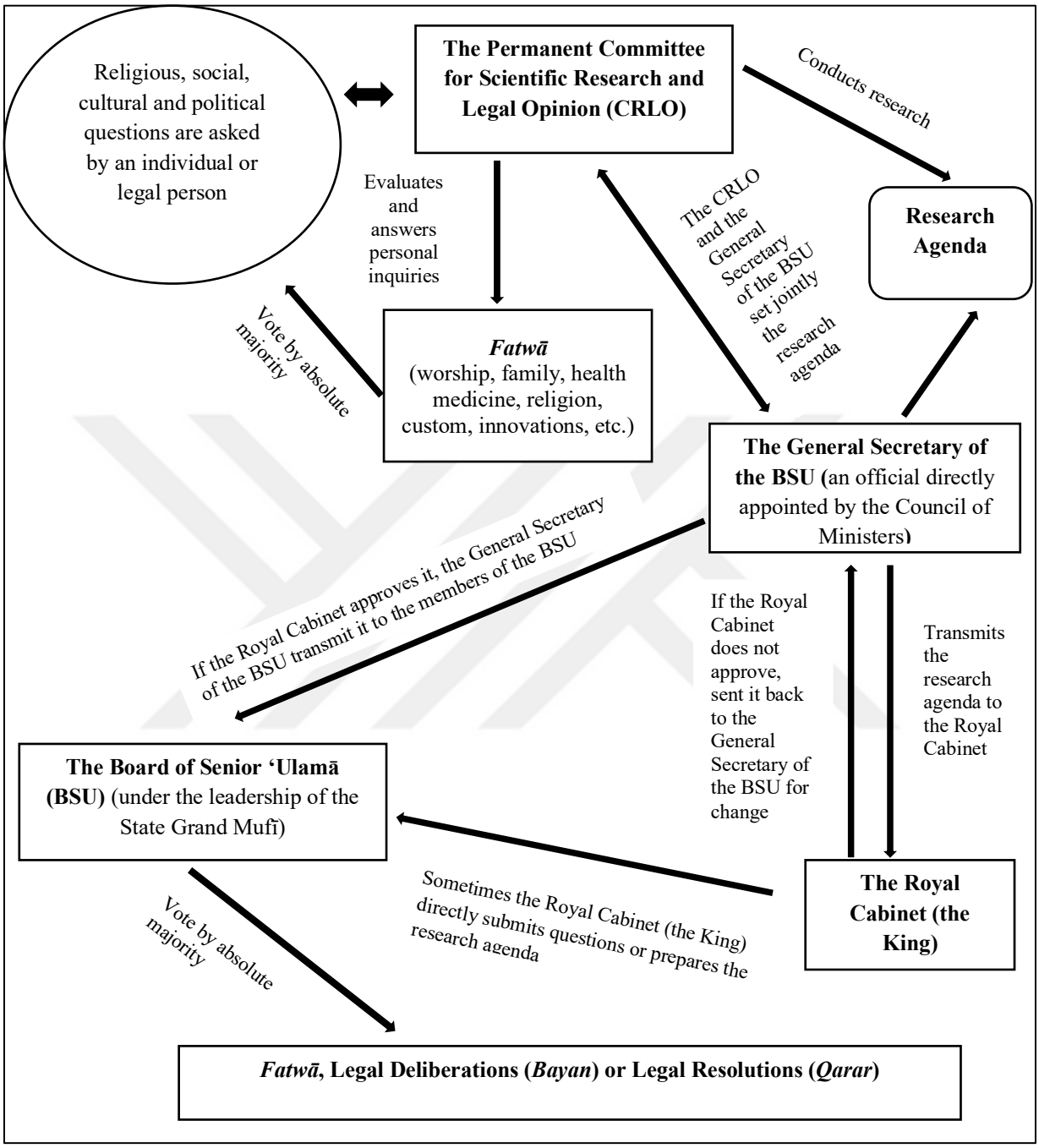

Table 2: The Process of *Fatwā*-Issuing by the Dār al-Iftā'

preventing penalizations of these crimes from being delayed.[316] The *fatwā* that derives from the CRLO's preparatory study evaluates these crimes in two different sections: the first section addresses the issue of abduction and usurpation, and the second discusses the *apropos* penalty for crimes relating to alcohol and drugs. In putting in place the penalties for these

ath=&siteSection=1&searchkeyword=217130216177216167216177032217135217138216166216169032217131216168216167216177032216167217132216185217132217133216167216161#firstKeyWordFound.

[316] The BSU decision No. 85 of September 10, 1981 and Vogel, *Islamic Law and Legal System*, 252-253.

crimes, the BSU's *fatwā* addresses itself to three points – firstly, the seriousness of the crimes; secondly, the social welfare; and finally, the need for deterrent penalties for the offence. In referring to the first section, the BSU bases its argument on the Q. 5: 33 which reads:

> "The punishment for those who wage a war against Allah and His messenger (Muhammad), and work hard with strength and taste for mischief through the land, is: Execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land. That is their disgrace in this word, and their punishment is heavy in the Hereafter."

This verse is the main authoritative text on which the *ḥadd* crimes and penalties of brigandage (*ḥirāba* or *muḥāraba*) are based. In the verse, the statement "work hard with strength and taste for mischief through the land" is interpreted in a way that permits the deputies of the ruler (judges) to extend the *ḥadd* penalties to people who cause harm to the Muslim community, create corruption on the earth and fight against Islam. After citing this verse, the BSU members further strengthen their argument by referring to the *ḥadīth* narrated by Anas and to the Mālikī Ibn 'Arabī's legal ruling (*ḥukm*) that concerns defamatory and humiliating offenses and abduction.[317] The *fatwā* then concludes the first section by accentuating three points. Firstly, it establishes that the person who commits an act of aggression, abduction and usurpation, whether in a city, desert, isolated place or village, should be convicted in accordance with the *ḥirāba* penalties. Second, the crimes committed against dignity have been understood to be equivalent to the offenses that encroach upon other's lives and properties, or more heinous crimes than them. Third, the judges have been

[317] The *ḥadīth* relates: "A group of people from 'Ukl (tribe) came to the Prophet and they were living with the people of *Aṣ-Ṣuffa*, but they became ill as the climate of Al-Madīna did not suit them, so they said, "O Allāh's Messenger! Provide us with milk." The Prophet said, "I see no other way for you than to use the camels of Allāh's Messenger." So they went and drank the milk and urine of the camels (as medicine), and became healthy and fat. Then they killed the shepherd and took the camels away. When a help-seeker came to Allah's Messenger, he sent some men in their pursuit, and they were captured and brought before mid-day. The Prophet ordered for some iron pieces to be made red hot, and their eyes were branded with them and their hands and feet cut off and were not cauterized. Then they were put at a place called Al-Ḥara, and when they asked for water to drink they were not given till they died. Abū Qilāba said, "Those people committed theft and murderer and fought against Allāh and His messenger." Abū 'Abdullāh Muḥammad ibn Ismā'īl al-Buhārī, *Ṣaḥīḥ al-Bukharī*, ḥadīth no. 6804, trans. Muhammad Muhsin Khan, vol. VIII (Riyadh: Darussalam, 1997), 416. Aforesaid Ibn 'Arabī' in the *fatwā* is Mālikī Ibn 'Arabī' (d.1148). By referring the legal judgment of Ibn 'Arabī', the BSU members conceivably intends to enrich their argument putting the abduction offenses under the category of *ḥirāba* crimes. The *fatwā* states: "Ibn 'Arabī' during his time of being a judge narrates one of his Islamic legal judgements as follows: "The case of a group of combatants were raised to me. One of the warriors forcefully abducted a woman regardless of her husband's attempts of rescuing her, along with some other people who were abducted as well. They brought the women with them and they were taken to the court and I asked how the *muftīs* resolved the issue. They said: "the *muftīs* stated that those warriors who took the women were not gangsters or brigands (*muḥārabūn*) because the *ḥirāba* crimes are concerned with looting properties, not transgressing against one's dignity. I replied in sadness, "we came from God and we only return to Him. Did not you know that violating one's dignity and honor is more horrendous than usurping one's money and that people are readier to let their money be looted and their properties be usurped rather than seeing their wives or daughters abducted and kidnapped? If there was any graver punishment prescribed by God, it would have been for those who transgress against dignity and honor." See the BSU decision No. 85 of September 10, 1981.

bestowed the right to choose among the prescribed *ḥirāba* punishments when penalizing the offenders of abduction and usurpation – however the judge overseeing such a case must demonstrate that the offender wages a war against God and His Messenger and causes corruption on Earth.[318]As the first and second points clarify, the BSU places the crimes of assaulting, kidnapping and sexual harassment under the category of *ḥirāba* – this in turn paves the way for loosening the strict Islamic legal rules and conditions that relate to the application of the prescribed four *ḥadd* penalties that are specifically applied to the *ḥirāba* crimes set out in the cited verse. In the *fatwā*, the ambiguous and uncertain character of these crimes, as Vogel states, is obviated by designating and fixing them as the *ḥirāba* crimes.[319] With regard to the third point, the drawbacks which may conceivably derive from the judges applying the *ḥirāba* penalties for such offenses are considerably mitigated by permitting and assigning them to sentence the offenders who commit the abhorrent and odious crimes. The *fatwā* provides judges with a considerable facilitation and liberty in applying the *ḥirāba* penalties because Saudi *qāḍīs*, before the issuance of this *fatwā*, did not ordinarily impose death as a *ta'zīr* penalty by considering it an extraordinary and extreme penalty to be wielded only by the ruler.[320]

The *fatwā* does not only entrust the judges with full authority and discretion to choose among the four penalties in considering the character of the offender, the circumstance of the crime and its negative impacts on society; it also, in accordance with the King's desires, increases the deterrent effect of the punishments and expedites the legal process. In accordance with a later request by the King, the first part of this *fatwā* (which relates to abduction and usurpation) was implemented in Saudi Arabia's courts.[321] The transformation of *fatwās* into legal regulations provides considerable insight into not only the latent potentiality of a religious edict issued by the Dār al-Iftā' to become a legally effective regulation; to an equivalent extent, it also touches upon the complementary and cooperative partnership between the religious establishment and the Saudi Government in the field of legislation and adjudication. Vogel refers to this relationship when he observes:

[318] The BSU decision No. 85 of September 10, 1981. Further analysis of the *fatwā* see Vogel, *Islamic Law and Legal System*, 254-276.
[319] Vogel, *Islamic Law and Legal System*, 255.
[320] Ibid, 254.
[321] Ibid, 258.

> "… the king and the 'ulamā' cooperate in an effort to solve a complex contemporary problem, the rise of certain grievous crimes for which the classical fiqh has no ready, specific response."[322]

This suggests that some legal regulations are the products of reciprocal cooperation, efforts and interaction between the religious establishment and the State's administrative organizations. The effects of the dynamic cooperation between the Dār al-Iftā' and the Government are also clearly evidenced in social norms and regulations that control, regulate and shape many aspects of daily life in Saudi Arabia.

Many royal decrees that relate to social regulations and norms originate within the Dār al-Iftā's *fatwā*s. This is particularly true of the regulations that govern the segregation of the sexes, a measure which has a direct daily impact upon the lives of Saudis. The religious establishment mainly draws upon the notions of *khalwa* (being alone in the company of an unrelated man) and *ikhtilāṭ* (intermingling of women with men) when evaluating issues that pertain to the education of women, the employment of women outside the home, interactions between men and women and the participation of women in social activities.[323] While the place of women is generally held to be the home, women are allowed to participate in social and working life, upon the condition that their occupations do not contradict the nature of woman; in addition, the permission of her husband should be obtained and she should refrain from intermixing with unrelated men (non-*maḥram*).[324] It is possible to argue that the Dār al-

[322]Vogel, *Islamic Law and Legal System*, 222.

[323] Danger of women joining men in their workplace, in *Fatwas of Ibn Baz*, 1:418-427, accessed November 29, 2017,http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=75&searchScope=14&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=1191111091011100391150321191111114107#firstKeyWordFound and Fatwā No. 7484 and Fatwā No. 2768, in *Fatwas of the Permanent Committee*, 17: 232-237, accessed November 29, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=6509&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=10511011610111410910511010310810511010303210910111003209711010003211911110910110#firstKeyWordFound.

[324] Fatwā No. 5082, in *Fatwas of the Permanent Committee*, 17: 81-85, accessed November 29, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=6368&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=10511011610111410910511010310810511010303210910111003209711010003211911110910110#firstKeyWordFound and Fatwā No. 4945, Fatwā No. 5512, and Fatwā No. 19359, in *Fatwas of the Permanent Committee*, 17: 54-55, accessed November 29, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=6509&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=1191111091011100391150321091051201051101030321191051161040321091011 10#firstKeyWordFound.

Iftā' relies primarily on the legal principle of the blocking of illegitimate means (*sadd al-dharā'i'*) – this argument can be sustained by referring to the assumption that the intermingling of men and women may result in seduction and temptation (*fitna*) in any society. In referring to this argument, the Grand Muftī Ibn Bāz clearly states:

> "It is better to block the means that lead to Fitnah than regretting it in the future … Free intermixing of men and women in the workplace plays a major role in the deterioration and corruption of nations." [325]

This is the reason why the intermingling of men and women is restricted in many places, including hospitals, public libraries, public transportation, restaurants, schools and universities.[326] The *fatwās* which restrict the mixing of men and women were transformed into a legal regulation by the Royal Decree 80/1631, which was issued in 1980.[327]

Similarly, the *fatwās* which refer to a women's dress code in the country were transformed into legal regulations by two Royal Decrees (4/30820 and 8/1858).[328] *Fatwās* issued by the Dār al-Iftā' clearly state that Muslim women must present themselves in appropriate garments when be in public and in the presence of non-*maḥram* men.[329] Women's attire is generally described in the following terms:

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[325] Danger of women joining men in their workplace, in *Fatwas of Ibn Baz*, 1:424.

[326] Fatwā No. 4671, in *Fatwas of the Permanent Committee*, 17: 17, accessed November 29, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=6301&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=10511011610111410910511010310810511010303210910111003209711010003211911110910110#firstKeyWordFound, Fatwā No. 20397, in *Fatwas of the Permanent Committee*, 24: 398-399, accessed November 29, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=9660&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=10511011610111410910511010310810511010303210910111003209711010003211911110910110#firstKeyWordFound,

[327] Al-Atawneh, *Wahhābī Islam*, 104.

[328] Ibid, 107.

[329] Fatwā No. 15885, in *Fatwas of the Permanent Committee*, 11: 317-319 , accessed December 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=14645&PageNo=1&BookID=7, Fatwā No. 19478, in *Fatwas of the Permanent Committee*, 17: 207-208, accessed December 02, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=6478&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=08711110910111003209911111810111410511010 3#firstKeyWordFound,
Fatwā No. 2847, in *Fatwas of the Permanent Committee*, 17: 281-284, accessed December 02, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=6540&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=08711110910111003210410510609709 8#firstKeyWordFound, and

> "The Islamic Hijab entails that a woman must cover all her body before a non-Mahram… She should cover her head, face, bosom, feet, and hand, as all her body considered as 'Awrah (parts of the body that must be covered in public, which Ajanib (men other than a husband or permanently unmarriageable male relatives) should not see."[330]

Generally speaking, the *fatwās* concerning the women dress code are fundamentally based on the three Qur'anic verses (the Q. 24:31, the Q. 33:53, and the Q. 33:59) and the Prophetic traditions. The instruction in the Q. 33: 59 ("[t]ell your wives and daughters and the women of the believers to draw their cloak (veils) all over bodies") is interpreted by the Saudi official *muftīs* in a way that women should screen themselves and should only leave exposed the eyes or one eye in order to see the way.[331] The public attire of Muslim women should cover the whole body and should not be too tight or transparent; furthermore, it should not be too attractive and should not resemble men's dress in any respect. However, the *fatwās* do not explicitly indicate that the colour of this attire should be black. In fact, this is categorically denied ("[i]t is not obligatory to dress in black; they can wear any other colour that is typical of women, provided that they do not attract attention or arouse Fitnah (temptation)").[332] Saudi women's common practice of wearing the black cloak (*'abāya*) therefore reflects personal preference rather than religious instructions or regulations issued by the Dār al-Iftā'. In complying with these decrees, even non-Muslim women who visit or reside in Saudi Arabia are required to present themselves in appropriate attire that will not conflict with Saudi custom and tradition and which will not violate Islamic legal rulings that pertain to the dress code of Muslim women.[333] The enactment of *fatwās* as legal regulations that relate to social issues (including appropriate attire for women outside the home, interaction between men and women and the right of women to work) may indicate that Saudi society's current legal and social structure may have been shaped by the Dār al-Iftā', as opposed to the State.

In addition, the Dār al-Iftā' sometimes introduces a bill to the Saudi government. For example, in 1980, the Saudi State issued a royal decree, based on a relevant *fatwā* presented

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Questions and Answers on 'Aqīdah, in *Fatwas of Ibn Baz*, 5: 298-299, accessed December 02, 2017, http://www.alifta.net/Fatawa/FatawaDetails.aspx?languagename=en&View=Page&PageID=531&PageNo=1&BookID=14#P298.

[330] Describing the proper Islamic Hijab, in *Fatwas of Ibn Baz*, 6: 19-20, accessed December 02, 2017, http://www.alifta.net/Fatawa/FatawaDetails.aspx?languagename=en&View=Page&PageID=624&PageNo=1&BookID=14.

[331] Questions and Answers on 'Aqidah, in *Fatwas of Ibn Baz*, 5: 298.

[332] Fatwā No. 5363, in *Fatwas of the Permanent Committee*, 17: 109, accessed December 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=6394&PageNo=1&BookID=7. See also Fatwā No. 5089 and Fatwā No. 7523 in *Fatwas of the Permanent Committee*, 17: 108 and 109-110, accessed December 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=6392&PageNo=1&BookID=7.

[333] Al-Atawneh, *Wahhābī Islam*, 107.

to the government as a legal recommendation, that would limit the number of students studying abroad.[334] The institution adopted a firm position upon a number of sensitive issues, and most notably, upon the imitation of the infidels. In order to prevent Saudi youth from being exposed to Western cultural and social norms, a *fatwā* was issued and submitted as a legal recommendation to the government.[335] This *fatwā* warned against travelling to infidel countries and opened the way for Royal Decree 19851, which limited foreign study to disciplines that could not be studied in Saudi Arabia. Several Qur'anic verses[336] were cited in order to lend further strength to the proposition that foreign study can result in the imitation of the infidels, with the consequence that the individual's Islamic ethics and creed was jeopardized.[337] The cited Qur'anic verses stress the excellence and perfection of Islam as a religion, while also alluding to the inappropriate attitudes, characters and conducts of infidels. The *fatwā* presents the prospect of imitation (cultural, religious or social) as the Dār al-Iftā's primary justification for limiting foreign study or travel.[338] Many *fatwās* that address similar issues explicitly clarify that Muslims ought to refrain from traveling to foreign countries in order to maintain their Islamic creeds and ethics.[339] In aligning itself with the Dār al-Iftā's religious recommendations, the Government's legal regulation can be viewed as a legal precaution that seeks to prevent impressionable young people from being exposed to foreign cultures or deviating from the straight path (Islam).[340]

The aforementioned examples demonstrate that the BSU mainly functions as a pacifying mechanism that helps to overcome political obstacles that are in need of religious

[334] Al-Atawneh, *Wahhābī Islam*, 95.
[335] Ibid.
[336] In the *fatwā*, the Q. 5:3, the Q. 3:118, the Q. 60:2, the Q. 2:217, and the Q. 2:120, respectively, are cited as the authoritative textual evidence.
[337] "Al-Taḥdhīru min al-Safar ilā Bilād al-Kafara wa Khaṭarahu 'alā al-'Aqīda wal-Akhlāq," in *Majallat al-Buḥūth al-Islāmiyya*, 16:7-10, accessed November 28, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=2283&PageNo=1&BookID=2.
[338] "Al-Taḥdhīru min al-Safar ilā Bilād al-Kafara," 16:7-10.
[339] For other *fatwās* on the issue of traveling to and studying in infidel countries, see Fatwā No. 20968 in *Fatwas of the Permanent Committee*, 26: 93-96, accessed November 29, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=10135&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=11511611710012110511010303209709811411109710 0#firstKeyWordFound and The interview of Okaz newspaper with His Eminence Shaykh 'Abdul- 'Aziz ibn Baz, in *Fatwas of Ibn Baz*, 5: 259-261, accessed November 29, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=513&searchScope=14&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=11511611710012110511010303209709811411109710 0#firstKeyWordFound.
[340] Al-Atawneh, *Wahhābī Islam*, 95.

explanation and legitimacy, in addition to functioning as a pre-legislative mechanism. These examples also indicate that the BSU's Islamic legal decisions, rulings and statements are legally effective and authoritative subsequent to the ratification of the King. The Dār al-Iftā' therefore simultaneously functions as a watchdog agency that supervises Islamic ethical dimensions of the state and society and as a pre-legislative mechanism in the Saudi legal system. The involvement of the *iftā'* institution in the legislative procedure can be theorized in two ways: either as providing a legal validity to an existing *fatwā* or issuing a new *fatwā* in the face of an unprecedented situation to fill a legal gap. For the most part, a royal decree functions as a mechanism that transforms a *fatwā* into a legally binding law. Official *fatwās*, in particular those issued by the BSU, have an important legal value in the judicial system because they essentially provide the legal foundation that underpins the legislative procedure in many cases.

Conclusion

In conclusion, alongside the growth of the petroleum industry and its wealth, the structure of the religious establishment transformed from an informal to a formal organization in order to meet the challenges of modernity and respond to the growing demands of Saudi society. In responding to modern exigencies, the *'ulamā'*, sometimes willingly and sometimes unwillingly, sought to accommodate this institutional and organizational development. This in turn enabled the institution to strengthen its authority and position in the socio-legal and socio-religious realms. In referring to this development, Commins observes:

> "Contrary to the expectation that incorporating Wahhabi ulama into a network of government institutions would diminish their influence, the ulama turned institutions into vehicles to entrench and even expand their sway. They retained authority over those areas of the law they deemed relevant and left it up to Al Saud to devise mechanism and rules for adjudicating areas the ulama chose not to touch. "[341]

The evolution of religious establishment from an ad hoc to a regular structure did affect the official *'ulamā'* by enabling their legal explanations to penetrate further into Saudi society. The Dār al-Iftā', as the official Wahhābī religious establishment, certainly did not recede as the tide of change advanced; on the contrary, it retained a strong and tenacious hold upon various dimensions of life (legal, normative and social) within the State. The socio-political context which has framed the developing relationship between religion and the State has been mainly defined in relation to the contemporary Wahhābī doctrine of *siyāsa shar'iyya*, which

[341] Commins, *The Wahhabi Mission*, 129.

institutes both the Dār al-Iftā' and the Saudi government as authority-holders in Saudi Arabia. The former interprets textually authoritative Islamic legal sources by using Islamic legal methodologies and the latter implements and enforces these interpretations as legal rulings.

The *'ulamā'*, or *muftīs*, recognize the broad authority of the King by applying the Wahhābī doctrine of *siyāsa shar'iyya*, which is derived from the classical Islamic model of the Caliphate in which the ruler represents the highest political and religious authority. In exercising the recognized power, the King governs the State in accordance with his own discretion while simultaneously resolving contradictions between governmental practices and Islamic legal principles by drawing upon the assistance of the Dār al-Iftā' and its *fatwās*.[342] This affirms that the Dār al-Iftā' functions as an intermediary between Islamic law and Saudi politics, performing a conciliatory role on issues relating to the Government and politics. Despite these benign interventions, the relationship between the Government and religious establishment has not been completely congruous and harmonious since the establishment of the Dār al-Iftā'. In their mutual interactions, there are veiled tensions which are not always straightforward to identify. These frictions between the Dār al-Iftā' (in particular BSU members) and Saudi State authorities notwithstanding, the former continues to legitimize the latter during times of both peace and crisis. This ongoing relationship further reiterates the indissoluble bonds which conjoin religious scholars and the Kingdom's rulers in the juridical, political, religious and social spheres.

In the contemporary period, the Dār al-Iftā' and its *fatwās* continue to perform a pivotal role in the formulation of cultural and social norms along with legal regulations – this is clearly reiterated by the fact that the Saudi constitutional and judicial systems continue to be anchored in Islamic law and Islamic legal methodologies. The Dār al-Iftā's *fatwās* serve three main functions within the state. Firstly, Islamic legal rulings and edicts, in particular those issued by the BSU, help to legitimate the Saudi government and provide political and social stability. In following on from the Wahhābī doctrine of *siyāsa shar'iyya*, the *fatwās* issued by the Dār al-Iftā' appear to support Government policies. This Wahhābī doctrine of politics and governance establishes a complex bilateral partnership between the Government and official religious scholars. In functioning within the wider context of this bilateral relation, the *fatwās* generally make a significant contribution by helping to support

[342] Vogel, *Islamic Law and Legal System*, 169.

Government policies, especially in areas of extreme sensitivity, such as matters pertaining to foreign relations and security (both external and internal). In addition, transfers of political power within the Saudi dynasty have been generally subject to the *'ulamā'*s anticipated consent; more recently, the *fatwā* has come to function as an official tool that indicates the *'ulamā'*s unanimous approval. When King Sa'ūd was deposed in favour of his brother Fayṣal in 1964, the *'ulamā'* issued a *fatwā* which confirmed this power transition. The Dār al-Iftā' also recognized Fayṣal as a Muslim religious and political leader (*imām*). Third, the Dār al-Iftā's *fatwās* perform a complementary role in the judicial system. Clashes between the religious legal norms and the reality of an evolving society have been softened by the interventions of the official religious institution, which has repeatedly evidenced its ability to operate as a mediatory mechanism that establishes a robust connection between the society, state and religion. It is therefore likely that the Dār al-Iftā' will continue to perform an important role in the social-legal realm by issuing *fatwās* that have the potential to, subsequent to the King's approval, become religiously binding legal regulations. Within Saudi Arabia's idiosyncratic Islamic legal system, the Dār al-Iftā's *fatwās* represent the initial stage of the law-making process. Once they are transformed into royal decrees, the Dār al-Iftā's decisions, *fatwās* and legal statements have a considerable impact upon the different layers of the state. While the Dār al-Iftā' strives to preserve the religious character of the legal system, society and state, its Islamic legal decisions are not always unquestioningly observed by the State. It is therefore possible to identify a number of contemporary cultural, legal and social practices within the country which incur the Dār al-Iftā's disapproval. The persistence of these practices could be interpreted as hinting at the institution's diminished significance, both within the Saudi legal system and in its relations with the Saudi Government.

With regard to Islamic legal methodology, the Dār al-Iftā' primarily follows in the footsteps of the jurists and scholars that belong to the Ḥanbalī *madhhab* – for this reason, it maintains a strict adherence to the two main authoritative textual sources (the Qur'an and Sunna), as opposed to other Islamic legal methodologies. In enacting the common methodological practice of the Ḥanbalī *madhhab*, the institution's members will first refer to these two authoritative sources on various matters before then referring to other sources and reviewing the legal views of other *madhhabs*'. Nonetheless, as al-Atawneh observes, there are some very limited changes in the institution's affiliation to the *madhhab*.[343] In some

[343] Al-Atawneh, *Wahhābī Islam*, 148.

fatwās, the use of legal principles and legal maxims (such as *ḍarūra*, *maṣlaḥa*, *qiyās* and *tarjīḥ*) which are frequently applied by the other three *madhhabs* may justify this slight alteration in the affiliation to a specific *maddhab*, legal methodologies and theories. However, this more lenient and moderate attitude is generally espoused in order to accommodate Islamic legal rules to the modern world, and it has proven to be of a particular utility when the institution encounters controversial or intricate problems that are generally directed by the King or the Saudi government.

CHAPTER 3

THE PRESIDENCY OF RELIGIOUS AFFAIRS (DIYANET) IN TURKEY

Introduction

The previous chapter defined the Dār al-Iftā', with specific reference to its historical development, functional role in Saudi Arabia and organisational structure, while mainly focusing upon the process through which the institution issued a *fatwā*. The functional role of *fatwās* in the state and society was also identified, with the intention of emphasising the substantially Islamic legal understanding adopted by the Dār al-Iftā'. In this chapter, the Presidency of Religious Affairs (Diyanet) in Turkey will be engaged and discussed from the same perspective. The Diyanet, which is a state-dependent institution, consists of three main branches: the headquarters in Ankara, provincial branches across the country, and overseas branches, which generally provide religious services for Turks resident abroad.

The structure of the headquarters in Ankara, which is the central body of the Diyanet, will be the primary focus of this chapter. A closer engagement will make it possible to elucidate the Islamic positioning and mindset of the Diyanet because the High Board of Religious Affairs in the headquarters in Ankara is the official religious think-tank of the Turkish state. The most important responsibility of the High Board of Religious Affairs, which is the highest decision-making and advisory body within the Diyanet's administrative and organisational structure, is to provide decisions on religious matters, to declare its opinion regarding religious issues, and to answer religious questions that pertain to the main sources of Islamic law by considering the current needs and circumstances of Muslims resident in Turkey. The chapter mainly examines Islamic legal rulings (*fatwās*), decisions, statements and explanations issued by the High Board of Religious Affairs with the intent of determining the Islamic legal methodology implemented by that body, along with the social context in which the *fatwās* were promulgated – this, it is anticipated, will help to identify the interaction between the Islamic legal methodologies and the social context in which the institution operates.

The institutional and intellectual history of Turkey's official legislative activities that have been directed to the Diyanet are explored with the intention of uncovering the institution's historical development. Although it developed within the specific context of Acts of the Parliament, by-laws, regulations and the boundaries of the Constitution, the Diyanet's particular Islamic legal mentality and methodology can only be fully comprehend

with reference to the official Islamic interpretations (*fatwās*), statements and rulings issued by its highest decision-making body. The institution will be engaged from four separate angles. Attention will initially focus upon key historical events in the development of the Diyanet, with particular emphasis upon its intricate constitutional regulations. In the second instance, attention will instead turn to its current organisational structure; this will be followed by a closer examination of the process through which a *fatwā* is issued – this contribution is of particular importance as it clarifies the institution's Islamic legal understanding. In the final analysis, the relationship between the Diyanet and religious groups is provided, after the Diyanet is directly compared to the Ottoman Empire's office of the *Shaykh al-Islām*.

A) The Historical Evolution of the Presidency of Religious Affairs (Diyanet) in Turkey

Modern Turkey was founded on the ruins of the Ottoman Empire, which had managed predominantly social structures which combined multiple cultures, languages and religions by deploying an assortment of agents and mechanisms.[1] In its aftermath, more than thirty states, which included the Republic of Turkey, were established in the Balkans, Middles East and North Africa.[2] These newly established nation-states, which gave birth to new political organisations and systems, sought to distance themselves from their immediate past by creating homogeneous political and social communities. Generally, these modern nation-states established upon the basis of secularism rather than religion, and the key objective was to institute a political settlement in which loyalty was owed to secular states rather than religious establishments.[3] Over time, the Turkish model of the state-religion system has gradually transformed. Islam, which was established as a state religion in the first Turkish Constitution, therefore gave way to a secular state. This transformation resulted in a new relationship between the state, secular law and religion, along with the emergence of novel ideological, legal and religious trajectories, each of which anticipated a fundamentally altered future for the Republic of Turkey's predominantly Muslim populations.

When a modern nation-state was established in Turkey, it was grounded within the radical secular ideology of the republican elite, along with the aspiration to reshape the State and its institutions and align them with Western modernism and secularism. This culminated in a range of radical secularisation reforms which were introduced during the first decade of

[1] Küçükcan, "Are Muslim Democrats," 274 and Gazi Erdem, "Religious Services in Turkey," 199-200.
[2] Küçükcan, "Are Muslim Democrats," 274.
[3] Ibid.

the new Republic and which sought to curtail the role of religion in every single aspect of Turkish society. Küçükcan argues:

> "Secularism was accepted as the state ideology above every other orientation at the expense of liberties as experienced especially during the single party rule in the country (referring to Turkey) until 1950."[4]

The social significance of religious influences, morals and values were diminished by removing cultural and political institutions that had been influenced by Islam from their official positions. The radical secularisation process sought to remove every symbol that had the Ottoman-Islamic connotations.[5] Religious shrines (*türbeler*) and dervish lodges (*tekkeler*) were closed in 1925, a constitutional article that proclaimed Islam as the state religion was removed in 1928, the alphabet was overhauled (from Arabic to Latin) in 1928, and the call to prayer (*adhān*) was "Turkified" in 1932. Each intervention further reiterated how, during the first decades of the Republic, Tukey's political elites sought to systematically minimise the role of religion and disconnect Turkey's tie with the Ottoman-Islamic cultural and literary heritage.

The separation of religion from the body of Turkish politics was the first step in the process of radical secularisation. The Sharī'a Courts were closed down, the Caliphate and the office of *Shaykh al-Islām* were abolished, and the Unity of Education Law (*Tevhid-i tedrisat kanunu*)[6] was enacted on March 3, 1924, on the same day that the Diyanet İşleri Başkanlığı (the Presidency of Religious Affairs) was established.[7] The management of religious affairs was placed under the control of a constitutional public body, as opposed to a ministry in the cabinet. The separation of religion from political authority was a core component of the project which sought to establish a secular state and transform Turkey into a modern society.

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[4] Küçükcan, "Are Muslim Democrats," 274.

[5] Thijl Sunier et al., *Diyanet: The Turkish Directorate for Religious Affairs in a Changing Enviroment*, (VU University of Amsterdam and Utrecht University, 2011), 10, accessed March 20, 2015, http://www.fsw.vu.nl/nl/Images/Final%20report%20Diyanet%20February%202011_tcm30-200229.pdf. and Küçükcan, "Are Muslim Democrats," 275.

[6] The Unity of Education Law (*Tevhid-i tedrisat kanunu*) was one of the main reforms of the Ataturk period which closed down all religious schools. This law, which sought to democratise and secularise the education system, established that all educational institutions, including medical and military schools, would henceforth be placed under the control of the Ministry of Education. See Ergun Özbudun, *The Constitutional System*, 27-28 and Andrew Davison, *Secularism and Revivalism*, 163-164, and Ali Bardakoğlu, *Religion and Society*, 111-112.

[7] Act no. 429 dated 03 March 1924. See Resmi Gazete (*Official Gazette*), 06. 03. 1924-63, accessed September 26, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/63.pdf&main=http://www.resmigazete.gov.tr/arsiv/63.pdf. Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, *Kuruluş ve Tarihi Gelişim*, accessed September 26, 2016, http://www.diyanet.gov.tr/tr/icerik/kurulus-ve-tarihce/8 and Turner and Arslan, "State and Turkish Secularism," 213. Ufuk Ulutas, "Religion and Secularism in Turkey: The Dilemma of the Directorate of Religious Affairs," *Middle Eastern Studies* 46, no. 3, (2010), 389- 392, accessed October 12, 2016, http://www.tandfonline.com/doi/pdf/10.1080/00263200902899812?needAccess=true.

However, this separation did not logically imply that religion would henceforth function as an autonomous sphere beyond the State's control. The Presidency of Religious Affairs (henceforth Diyanet) began to oversee religion in the name of the secular nation-state; over time, it became established as an effective institution that governed, promoted and managed religion in the state.

In subsequent years, constitutional laws and regulations have established the Diyanet as a constitutional public institution that receives its entire budget from the state and which employs approximately 110 000[8] people from across the country. The eighty-two years of the Diyanet's existence can be divided into four periods. The first period begins with the formation of the Diyanet and concludes in the mid-1940s. During these years, the influence and importance of the Diyanet gradually declined, in large part due to the radical secularisation reforms in many areas of public life. In 1924, the first article of Act 429 established the Diyanet but did not outlined its administrative and organisational structure.[9] It states:

> "In the Republic of Turkey, the Grand National Assembly and the Cabinet, which is formed by the Grand National Assembly of Turkey, are responsible for the legislation and execution of provisions concerning the affairs of people, and an office (Diyanet İşleri Reisliği) has been formed to implement all provisions regarding the ritual practices (*'ibādāt*) of and faith (*i'tiqād*) of the religion of Islam and to administer [Islamic] religious organisations."[10]

This regulation established that religious affairs pertaining to *i'tiqād* (faith) and *'ibādāt* (ritual practices), along with the administration of all religious sites would henceforth be placed under the control of the Diyanet. Meanwhile, all other areas relating to the State and people were placed under the legislative power of the Grand National Assembly of Turkey.[11] Act 429 established the Diyanet as a religious administrative body by separating the politics of the new regime from religion and by undermining the influence of Muslim scholars (*'ulamā'*) within the State administration. This enactment established that the head of the Diyanet would be, subsequent to a proposal by the Prime Minister, appointed by the President of the Republic of Turkey. The Diyanet, in operating as a constitutional body, was placed under the control of the Prime Minister's office. This legislation demonstrates how the State deliberately sought to limit religion and the official institution responsible for its

[8] İstatiksel Tablolar (31.12.2015 tarihi itibariyle): Personel in *İstatistikler*, accessed October 10, 2016, http://www.diyanet.gov.tr/tr/kategori/istatistikler/136.
[9] Act no. 429 dated 03 March 1924, *Resmi Gazete.*
[10] Ibid.
[11] Sönmez Kutlu, "Diyanet İşleri Başkanlığı ve İslamiçi Dini Gruplarla (Mezhep ve Tatikatlar) İlişkileri," *Dini Araştırmalar* 12, no. 33, 108.

management.[12] The 1927 Budget Act set out the administrative structure of the central and provincial branches of the Diyanet and declared its permanency for the first time.[13] However, the institution was not still an active or effective consideration in Turkey's public, religious or social life. Even during the period 1924-28, when the constitutional clause establishing Islam as the state religion remained in place, radical secularisation reforms continued apace. In 1928, this (which explicitly declared that "[t]he religion of the Turkish Republic is Islam"[14]) was removed from the Constitution. Nine year later, the principle of secularism was established as a foundational constitutional principle.[15] This measure curtained the authority and influence of the Diyanet to a great extent. In its aftermath, the Turkish state has been frequently characterised as "secular". At the same time, the Diyanet's incorporation as a state religious institution into the State's bureaucracy furthered precisely the opposite impression (namely that, Islam was the country's de facto religion). After removing the Constitution's recognition of Islam as the state religion, the Turkish State sought to establish a more complex relationship with it by maintaining the Diyanet as a religious institution that would henceforth be responsible for Islamic religious affairs.[16] Thus, the Diyanet has, since its establishment in 1924, become established as a constitutional public body that possesses the authority to administer religious affairs for Turkish Muslims. In the immediately aftermath of its establishment, the Diyanet implemented a range of important multi-year research projects that enjoyed the financial support of the government. These projects, which were implemented by the Diyanet, included a translation of Muhammad Elmalı Hamdi Yazır's *tafsīr* (interpretation) of the Qur'an,[17] *Sahih-i Buhari Muhtasarı Tecrid-i Ṣarīh* (a revered

[12] Act no. 429 dated 03 March, 1924, *Resmi Gazete.*
[13] Act no. 1452 dated 30 June, 1929. See *Resmi Gazete*, 30.06.1929-1229, accessed September 27, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/1229.pdf&main=http://www.resmigazete.gov.tr/arsiv/1229.pdf. Act no. 1452 elaborately set out the organisational structure of the Diyanet and details the official positions which fall under it. The Permanent Table attached to Act 1429 sets out officialdom degrees, positions, salaries and the number of Diyanet's personnel in considerable detail.
[14] The Constitution of Republic of Turkey, 1924, accessed September 25, 2016, http://www.anayasa.gen.tr/1924tek.htm. See Ahmet Hadi Adanalı, "The Presidency of Religious Affairs and the Principle of Secularism in Turkey," *The Muslim World* 98, no. 2-3 (2008), 228, accessed October 17, 2016, http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00221.x/full.
[15]Act no. 1222 dated 10 April 1928. See *Resmi Gazete*, 14.04.1928-863, accessed September 26, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/863.pdf&main=http://www.resmigazete.gov.tr/arsiv/863.pdf and act no. 3115 dated 05 February 1937. See *Resmi Gazete* (Official Gazette), 13. 02. 1937-3533, accessed September 26, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/3533.pdf&main=http://www.resmigazete.gov.tr/arsiv/3533.pdf.
[16] Ceren Kenar and Doğan Gürpınar, "Cold War in the Pulpit: The Presidency of Religious Affairs and Sermons during the Time of Anarchy and Communist Threat," in *Turkey in Cold War Ideology and Culture*, ed. Cangül Örnek and Çağdaş Üngör (London: Palgrave Macmillan, 2013), 26.
[17] This *tafsīr*, which is entitled '*Hak Dini Kur'an Dili*' and which was published in 1936, was one of the most valuable works of the Diyanet that relates to the Qur'an. It was written by Muhammad Elmalı Hamdi Yazır

collection of the Prophet Muhammad's *Sunna*)[18] and publication of a number of religious education schoolbooks. During this initial period, the most controversial Islamic legal explanation that was approved by Rıfat Börekçi (d. 1941), the Diyanet's first president, was a circular letter possessing the status of *fatwā* that explored the possibility of performing the call to prayer (*adhān*) in Turkish.[19] This circular letter, which was issued in 1932, states:

> "Some *muftīs* have hesitated on the issue of performing *adhān* and *qāmat* in Turkish on which there is no prohibition in terms of Islamic legal legitimacy (*şer'an*). Consequently, after the arrival of this circular to [the offices of *muftīs*], the general scientific officers (*umum ilmiyye memurları*) and *imāms* will be given a certain official notice [on that issue] and, thereon, ones who even slightly object to this [performing the *adhān* in Turkish] will expose to the certain and severe penalties declared in the way of circular …"[20]

It has already been noted that the historical connection between Turkey and Islam had proven to be a sensitive issue for the early republican elites who sought to create a homogeneous society that would only use Turkish as a common language. The desire to purify Turkish language from the 'taint of foreign languages (in particular Arabic and Persian)' culminated in some efforts to use Turkish language during religious services.[21] However, calls to 'Turkify' the call to prayer did not initially command the support of the Diyanet. In 1926, for instance, Cemaleddin Efendi, the *imām* of Göztepe Mosque, was reported to the Diyanet for reciting the *adhān* in Turkish language, with the consequence that he was temporarily suspended from his office.[22] During the 1930s, the pressure to use the Turkish language in religious services increased, largely as a result of direct pressure exerted by Mustafa Kemal Ataturk,[23] the founder of the Turkish Republic. In yielding to this pressure, the Diyanet ultimately provided a legal approval in the form of a circular letter (*tamim*) that conveyed its permission to perform *adhān* in Turkish. This letter led to raise contentious issues within

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(1878-1942). Yazır was a Turkish theologian and translator of the Qur'an, who was also, during the late Ottoman era and the early years of the Turkish Republic, renowned as one of the most prominent scholars on Qur'anic exegesis, Islamic jurisprudence and theology.

[18] *Sahīh-i Buhārī Muhtasarı Tecrīd-i Sarīh* by Zeynüddin Ahmed b. Ahmed Zebîdî (1488) was a twelve-volume *ḥadīth* work published by the Diyanet. Ahmed Naim (d. 1934) and Kâmil Miras (d. 1957) were commissioned to translate this work into Turkish by the Diyanet. This work presents *ḥadīths* with their commentary.

[19] Bayram Koca, "Diyanet İşleri Başkanlığı ve Aleviler Arasındaki Meseleye Liberal Bir Bakış," *Liberal Düşünce Yıl* 19, no. 73-74 (2014), 43, and İsmail Kara, "Din ile Devlet Arasına Sıkışmış Bir Kurum: Diyanet İşleri Başkanlığı," *Marmara Üniversitesi İlahiyat Fakültesi Dergisi* 18 (2000), 43-44.

[20] Cited from Koca, "Diyanet İşleri Başkanlığı," 43 and Kara, "Din ile Devlet," 43-44.

[21] Hidayet Aydar, "Türklerde Anadilde İbadet Meselesi -Cumhuriyet Dönemi-," *İstanbul Üniversitesi İlahiyat Fakültesi Dergisi* 15 (2007), 75.

[22] Ibid,78-79.

[23] Subsequent to the establishment of the Turkish Republic, efforts to "Turkify" *adhān* attained renewed impetus, in particular amongst early republican elites. Mustafa Kemal Atatürk enthusiastically supported this reformation project, and this was reflected in one of his decrees which established a commission that brought together reformist religious figures of the time. It was tasked with translating *adhān* into Turkish. Henceforth, the Qur'an and the call to prayer would be performed in Turkish. Prayers were also performed in Turkish for roughly the next twenty years. Aydar, "Türklerde Anadilde İbadet," 85-87.

Turkish society and its scholarly circles, such as the competence of Diyanet's scholars in comparison to Turkish Muslim scholars, the performing prayers in Turkish, the recitation of the Qur'an in Turkish and the reformation of Islamic practices (e.g. *adhān*). However, it was arguably the rigid legal punishments that applied to those who failed to perform *adhān* in Turkish and Muslims who opposed to the Turkification of *adhān* more generally that ultimately influenced the Diyanet's decision to allow *adhān* to be performed in Turkish.[24] A 1941 statement, which was added to Article 526 of the Turkish Criminal Code,[25] asserts that:

> "Whoever performs *adhān* and *qāmat* in Arabic shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may increase ten to two hundred Turkish currency."

In this regard, the legal restrictions encompassing the Diyanet and its personal may be accepted the key reason that impels the Diyanet to issue the circular letter decreeing to recite *adhān* in Turkish. Okumuş further reiterates the limited authority of the Diyanet during the early Republican era. He observes:

> "During the *single party period*, the state wanted to reform Turkey-religiosity in the mentality of reform in religion as it wished and policies were followed in this direction. It was in this period that *Adhan* and daily prayers had to be performed in the Turkish language. It was a period of official restrictions and things were difficult for the [Diyanet]."[26]

The constitutional provisions relating to the Turkification of *adhān* could be interpreted as establishing that the early Republican government did not act in accordance with the law when engaged in the issue of *'ibādāt*. This impression persists despite the fact that the first article of Act 429 clearly states:

> "An office (Diyanet İşleri Reisliği) has been formed to implement all provisions regarding the ritual practices (*'ibādāt*) of and faith (*i'tiqād*) of the religion of Islam and to administer [Islamic] religious organisations."[27]

On 8 June, 1931, another major change in the Diyanet's organisational structure was put into effect by the 1931 Fiscal Year Budget Law of the Directorate General of Foundations. This transferred the management of personnel and physical resources from the Diyanet to the Directorate General of Foundations,[28] with the consequence that the authority

[24] Aydar, "Türklerde Anadilde İbadet," 101-107.
[25] Koca, "Diyanet İşleri Başkanlığı," 43. See Hidayet Aydar, "The Issue of Chanting the *Adhan* in Languages Other than Arabic and related Social Reactions in Turkey," *İstanbul Üniversitesi İlahiyat Fakültesi Dergisi* 13, (2006), 60.
[26] Ejder Okumuş, "Turkey-Religiosity and the PRA," *The Muslim World* 98, no. 2-3 (2008), 354, accessed October 18, 2016, http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00232.x/full.
[27] Act no. 429 dated 03 March 1924.
[28] Act no. 1827 dated 8 June 1931. See *Resmi Gazete*, 13. 06. 1931-1821, accessed September 27, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/1821.pdf&main=http://www.resmigazete.gov.tr/arsiv/1821.pdf. See Tarhanlı, *Müslüman Toplum*, 70, Ulutas, "Religion and Secularism

and functionality were considerably reduced. Act 2800 then proceeded to specify the organisational duties and structure.[29] During this initial period, it would perhaps be inaccurate to describe the institution as being concerned with the religious affairs of Muslims; rather, it instead sought to inculcate the religious interpretations of the early Republican government within Turkish society; more episodically, the institution was required to, at the request of the State, intervene to interpret religion.[30]

The second period extends from the late 1940s to the late 70s, coincided both with political liberalism and Islam's growing presence within the political arena. During this period, the Diyanet was accepted as a necessary institutional mechanism which would help to maintain public stability in the area of religious affairs while helping to meet public demand for organised and satisfactory religious services. During the 1940s, the Republic of Turkey's multi-party period began when the National Development Party (*Milli Kalkınma Partisi*) and the Democrat Party (*Demokrat Parti*) were established (in 1945 and 1946, respectively). In 1950, the Republican People's Party (*Cumhuriyet Halk Partisi* or CHP), which had hitherto been the only governing party, lost the elections, and the Democrat Party assumed power.[31] Prime Minister Adnan Menderes relaxed the restrictions on Islam, with the consequence that the Diyanet's role and significance in Turkish state and society fundamentally altered. On 23 March, 1950, Act 5634, which reallocated the management of mosques and the conduct of *imāms* (prayer leaders) to the Diyanet, was passed.[32] This Act also changed the name of the Diyanet from Diyanet İşleri Reisliği to Diyanet İşleri Başkanlığı, and entrusted it with the organisation of a religious publication department that would examine, publish and translate religious articles, books, periodicals and sermons.[33]

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in Turkey," 393, Sunier et al., *Diyanet: The Turkish Directorate*, 12 and Mehmet Görmez, "The Status of the Presidency of Religious Affairs in Turkish Constitution and Its Execution," *The Muslim World* 98, no. 2-3 (2008), 246, accessed October 20, 2016 http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00222.x/full.

[29] Act no. 2800 dated 14 June 1935. See *Resmi Gazete*, 22. 06. 1935-3035, accessed September 27, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/3035.pdf&main=http://www.resmigazete.gov.tr/arsiv/3035.pdf.

[30] Kara, "Din ile Devlet," 43.

[31] Sunier et al., *Diyanet: The Turkish Directorate*, 13.

[32] Act no. 5634 dated 23 March 1950. See *Resmi Gazete*, 29. 03. 1950-7469, accessed September 27, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/7469.pdf&main=http://www.resmigazete.gov.tr/arsiv/7469.pdf.

[33] Act no. 5634 dated 23 March 1950 and Yüksel Salman, "Diyanet İşleri Başkanlığının Kuruluşunun 81. Yıl Dönümü Üzerine," *Diyanet Aylık Dergisi*, no. 171, (2005), 34, accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf.

Democrat Party policies facilitated the resurgence of Islam in political, public and social spheres, and this enabled the Diyanet to actively assist the promotion of Islam in Turkish public life. The removal of the legal penalty for *imāms* who perform *adhān* in Arabic,[34] the enforcement of compulsory religious education, the introduction of religious programs to state radio and the initiation of an extensive programme of mosque-building were all significant developments that simultaneously attested to the re-emergence of both the Diyanet and Islam.[35] When a military coup removed the Democrat Party from power in 1960, the new military regime acknowledged the continued importance of religion by supporting the Diyanet and its continued existence in Turkey. The constitutional regulation relating to the Diyanet's organisational and personnel structure, which had been given legal effect by Act 5634 in 1950, remained in force until 1965.

The adoption of the 1961 Constitution gave rise to prolonged debates about the existence of the Diyanet and the representation of other religious communities and sects. In 1963, legislation was proposed to change the Diyanet to the Presidency of Religious Sects. This, it was envisaged, would move it away from the Ḥanafī-Sunni Tradition and would establish it as an institution that would represent the other three Sunni schools, along with other religious denominations.[36] The proposal was rejected by the Constitutional Court on account of the fact that such a change could engender divisiveness, factionalism and discursion in the society.[37] As a consequence, this proposal did not impact on the Diyanet's regulations. In June 1965, a comprehensive law (Act No 633) relating to the Diyanet was enacted by the coalition government made up of the Republican People's Party and the Justice Party (*Adalet Partisi*) (which was one of the offshoots which emerged after the Democrat Party was forced to close). This particular regulation tasked the Diyanet with

[34] Act no. 5665 was passed as an act of law on 16 June 1950. It amends Article 526 of the Turkish Criminal Code and implies the abolition of the ban on the Arabic *adhān*. Prior to this amendment, the Act's legal penalty had applied to those who perform *adhān* in Arabic. See *Resmi Gazete* (Official Gazette), 17. 06. 1950-7535, accessed October 01, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/7535.pdf&main=http://www.resmigazete.gov.tr/arsiv/7535.pdf and Emre Ünlücayaklı, "The Official Discourse in Religion in post-1980 Turkey: The Official Boundaries of the Religious Field, National Belonging and Heritage" (PhD diss., McGill University, 2012), 49 and Ulutas, "Religion and Secularism in Turkey," 393.

[35] Necati Aksanyar, "Demokrat Partinin Din Politikalarının Türk Basınına Yansımaları (1950-1954)," *Akademik Bakış* 11, (2007), 12-15.

[36] İştar Gözaydın, *Religion, Politics and the Politics of Religion in Turkey* (Berlin: Friedrich-Naumann-Stiftung für die Freiheit, 2013), 21-22 and Kutlu, "Diyanet İşleri Başkanlığı," 110-111.

[37] Kara, "Din ile Devlet," 45 and Kutlu, "Diyanet İşleri Başkanlığı," 111.

"execut[ing] the works concerning the beliefs, worship, and ethical foundation of Islam, enlighten[ing] the public about religion and manag[ing] the places of worship."[38]

This established the management of ethical principles and the enlightenment of the public on religious matters as two of the Diyanet's additional key functions.[39] This gave rise to the strenuous objection that the execution of the moral principles of Islam was not compatible with principles of democracy and secularism; this in turn extended to a more general objection that a secular state should not be concerned with the people's religious morals.[40] Despite these objections, "to manage what is related to the principles of ethics of Islam" was added to the Diyanet's duties and responsibilities.[41] Act 633 admittedly tasked the Diyanet with enlightening society on the subject of religion. In the aftermath of 1965, it was possible to observe an increase in religious conferences, publications and seminars across Turkey. This Act, which provides a comprehensive account of the Diyanet's activities, objectives and responsibilities, provided a concrete account of the institution and clearly sketched its legal parameters while setting out its personnel. It specifically tasked the institution with informing Turkish society about religion and consolidating the unity of the nation on matters of faith and moral principles; in addition, it was also tasked with purifying Islam from bigotry and superstition, both of which had no basis within the faith.[42]

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[38] Act no. 633 dated 22 July 1965. See *Resmi Gazete*, 02. 07. 1965-12038, accessed September 28, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/12038.pdf&main=http://www.resmigazete.gov.tr/arsiv/12038.pdf.

[39] Act no. 633 dated 22 July 1965.

[40] Adanalı, "The Presidency of Religious Affairs," 232.

[41] The decision to include the management of the moral dimension of Islam as one of the duties and responsibilities of the Diyanet continues to arouse strong criticism from some scholars. Savcı, for instance, argues that this is a deviation from Atatürk's principles, and in particular from secularism. In his view, Atatürk had made it quite clear that religion should not be permitted to interfere in the domain of human relations. While Tarhanlı acknowledges that it is possible to – in both a legal and practical sense – incorporate organisational religious institution into a secular system, he maintains that the situation is different in the case of the Diyanet, as tasking this institution with the management of ethical principles of Islam indicates that the state has come to espouse a particular religious ideology. Similarly, Gözaydin argues: "[t]o create an administrative body that offers services to meet the general, daily needs of practicing Islam may be justifiable as 'public service' where a majority of the population belongs to Islam; however, to assign to this organisation a function such as 'conducting the affairs of belief, worship and enlightening society on religious matters and the moral aspects of the Islamic religion' whose content is legally ambiguous, indicates that the state preferred to use the organization as an ideological tool in manner different from the original intent of the founding elite. Such a wording in a law…is completely incompatible with the nation of secular state." In setting aside the ethical and moral values of religion, she argues that the Diyanet should have been solely tasked with enlightening society on matters pertaining to religion. However, this assertion overlooks the fact that the ethical and moral dimension is intrinsic to religion. When one of the main ethical principles, ("commanding good and forbidding evil") directly invokes Islam and Islamic law, it becomes clear that the task of separating ethics and religion may be impossible or irrelevant. İştar B. Tarhanlı, *Müslüman Toplum,* 71-150, Gözaydın, *Religion, Politics*, 14 and Adanalı, "The Presidency of Religious Affairs," 232-233.

[42] Act no. 633 dated 22 July 1965, *Resmi Gazete.*

In 1966, the constitutional basis of the Diyanet was interrogated by the Unity Party (*Birlik Partisi*), which was an Alevi-Turkish political party.[43] The Party filled a petition against the Diyanet in the Constitutional Court in which it argued that this form of religious institution was unconstitutional because Turkey is a secular state; upon this basis, it argued that the existence of such an institution simultaneously conflicted with the Constitution and the principle of secularism.[44] The Constitutional Court – which retained a strong commitment to secular principles – rejected the petition on the grounds that the institution was constitutionally necessary when the principle of secularism was understood with reference to the elevation of the Turkish nation and the accession of the status of modern civilisation, both of which were the overarching principles of the Turkish Republic.[45]

The majority of the judges recognised that the Diyanet was a constitutional body and that its personnel were not a religious clergy; on the contrary, they were instead recognised as civil servants who worked on behalf of the state.[46] In addition, presidential and prime ministerial visits over the course of the 1960s and 1970s further reiterated the growing prestige of the Diyanet. Cevdet Sunay (Turkey's fifth president) and Fahri Korutürk (Turkey's sixth president) respectively visited the Diyanet on 19 April, 1967 and 31 May, 1976.[47] Bülent Ecevit made the first prime ministerial visit to the institution on 01 April, 1978.[48]

This genuflection to religion can be interpreted as part of a strategy in which the state, while seeking to maintain a secular image, sought to reach an accommodation with social and religious actors. The Diyanet can therefore be interpreted as a networked space in which a rapprochement between religion, society and state, along with a type of secularism exclusive to Turkey, was envisaged and enacted. During the 1970s, when leftist-socialist activism was at its height, the sermons which Diyanet officials delivered in mosques across Turkey warned the Muslim community to refrain from catastrophic or hazardous movements that could divide the society.[49] During this difficult period, the Diyanet's sermons (*khuṭba*s), which were delivered in Friday prayers, called upon those in attendance to obey the State. Gürpınar

[43] Kaya, "Balancing Interlegality through Realist Altruism," 156-160 and Adanalı, "The Presidency of Religious Affairs," 234.
[44] Adanalı, "The Presidency of Religious Affairs," 234.
[45] Ibid.
[46] Ibid.
[47] Ruşen Çakır and İrfan Bozan, *Sivil Şeffaf ve Demokratik Bir Diyanet İşleri Başkanlığı Mümkün mü?* (İsatnbul: TESEV Yayinlari, 2005), 65, http://serdargunes.files.wordpress.com/2013/08/sivil-c59feffaf-ve-demokratik-diyanet-ic59fleri-bac59fkanlc4b1c49fc4b1-mc3bcmkc3bcn-mc3bc.pdf.
[48] Ibid.
[49] For more detailed and further analysis of the sermons issued by the Diyanet, see Gürpınar and Kenar, "The Nation and its Sermons," 70-74 and Ceren Kenar and Doğan Gürpınar, "Cold War in the Pulpit," 27-35.

and Kenar refer to the language and textual references which the Diyanet used to promote the obedience of the community. They observe:

> "Even here the selective…usage of hadith is noteworthy. For instance, the hadith 'whoever separates the size of palm from the sultan then his death would be of Jahiliyya' was frequently quoted in sermons on 'anarchy' to prove that obedience to state is an imperative in the Sunni tradition."[50]

During the Republican regime, the Diyanet skilfully adapted Islamic teachings which related to the basis of legitimate authority, in the manner of incorporating the Islamic legal doctrine on obedience to authority, into the fundamental religious and social values of the society. Gürpınar and Kenar observe that the framing of a conciliatory Islamic legal view implies, in practical terms, the combination of Islamic and secular political cultures, which might otherwise be presumed to be irreconcilable or opposed.[51]

It is therefore significant to note that later Islamic legal statements portray obedience as a moral religious responsibility that relates to the relationship between the individual and the community/society, as opposed to the political authority. A recently published book by the Diyanet, for example, presents the fulfilment of civic duties (e.g. paying taxes and performing mandatory military duty) within a democratic secular state as part of a rightful duty (*kul hakkı*) that is a moral and religious obligation for Muslim individuals.[52] Public peace, public order and social unity are the general foundations upon which the Diyanet constructs its Islamic legal perspective of obedience to the secular state/society.[53] At this point, it may be proposed that the Diyanet effectively assumes a placatory role, which becomes particularly pronounced during times of turbulence and crisis. This in turn motivates the community to demonstrate obedience and subservience to the state authority entrusted with the responsibility to govern society.

The third period of the Diyanet begins in the 1980s and concludes in the early-2000s. It can be argued that, during this period, the Diyanet helped to preserve state unity by promoting a variant of state nationalism that was heavily imbued with Islamic overtones. In the aftermath of the 1980 military coup, the Turkish elite increasingly gravitated towards an ideology known as Turkish-Islamic synthesis (*Türk-İslam sentezi*)[54], which sought to

[50] Gürpınar and Kenar, "The Nation and its Sermons," 70.
[51] Ibid, 72.
[52] M. Şevki Aydin et al., *Sorularla İslam* (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2015), 172-178.
[53] Ibid, 153-158 and 172-178.
[54] This is a theory or ideology that combines an Islamic element (with a 1000-year history), modernization and a Turkish element (with a 2500-year history). This ideology establishes secularism as an incubator and protector of a developed religious culture, freedom of conscience, religious belief and practice, and moral values. This ideology is predominantly concerned with the question of how Islam, modernity and Turkishness can be used to

combine Islam, modernism and Turkishness by bringing out the connection between Islam and Turkish state nationalism.[55] This ideology enabled national elites (who were mostly secular) to use Islam to challenge communism and Kurdish nationalism, both which jeopardised the Turkish state nationalism promoted by national and secular elites.[56] Islam was therefore drawn into the service of an ideology of Turkish state nationalism that sought to use it as a source of national solidarity and unity. The 1982 Constitution was the first instance in which this inclination towards the ideology of Turkish-Islamic synthesis became apparent.

Article 136 of the current constitution, which came into force in 1982 after the 1980 military coup, states:

> "The Presidency of Religious Affairs, which is within the general administration, shall exercise its duties that prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas, and aiming at national solidarity and integrity."[57]

This makes it clear that a theoretical wall of separation was implicitly established with a view of preventing religion from exerting influence upon the state. However, the converse does not apply – there is no restriction that limits State interference in religious matters. This law established that the State viewed the Diyanet as an apolitical religious institution. In the aftermath of the 1980 military coup, a law was passed that forbade the verbalisation of any demand for a change in the Diyanet's status.[58] Article 136 clearly established the Diyanet as an institutional mechanism of national integrity and solidarity. This became apparent when the escalation of the internal Kurdish 'problem' and the emergence of the Central Asian Turkic Republics during the 1990s resulted in the celebration of Nevruz being brought before the Diyanet. This was a particularly sensitive issue because the Nevruz was claimed as being of particular importance by both the Kurdish people of Turkey and the Turkish Republics

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gather Turkish residents under a single rubric. The transformation from a multi-religious and multi-ethnic empire into a Turkish nation-state was achieved through the combination of the ideology of Turkish-Islamic synthesis with Sunni Islam and Turkish nationalism. This application strengthened the formation of national identity and Turkey's territorial integrity. Ünlücayaklı, "The Official Discourse in Religion," 99- 108 and 110, Sunier et al., *Diyanet: The Turkish Directorate*, 100

[55] Ünlücayaklı, "The Official Discourse in Religion," 51 and Sunier et al., *Diyanet: The Turkish Directorate*, 100.

[56] Ibid, 49, 51.

[57] Türkiye Büyük Millet Meclisi, *Türkiye Cumhuriyeti Anayasası*, accessed September 16, 2016, https://www.tbmm.gov.tr/anayasa/anayasa82.htm and The Constitution of Republic of Turkey, 1982, Article 136, accessed September 16, 2016, https://global.tbmm.gov.tr/docs/constitution_en.pdf.

[58] Act no. 2820 dated 22 April 1983. See *Resmi Gazete*, 24. 04. 1983-18027, accessed October 26, 2016, http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2820.pdf. In this Act, the Article 89, which still is in use, aims to protect the legal status of the Diyanet and provides for the banning of political parties that call for the abolishment of the Diyanet. Gözaydın, *Religion, Politics*, 15, Ünlücayaklı, "The Official Discourse in Religion," 65 and Ulutas, "Religion and Secularism in Turkey," 394.

with which the country wished to establish special relations in the aftermath of the Soviet Union's collapse.

The Diyanet's official explanation claims that the Nevruz can be traced back to three separate epics (firstly, the Persian epic, which narrates the imaginary day on which the King of Küssi Empire entered into Babil; secondly, the Kurmanç and Zaza epic, which depicts the insurrection of a young blacksmith; and lastly the Ergenekon epic, which describes how Turks were released from the legendary Ergenekon valley where they had stuck, in the aftermath of a military defeat).[59] The Diyanet therefore established the Nevruz as an ancient Turkish and Kurdish festival which celebrated the seasonal change from Winter to Summer. The legal explanation also acknowledged the transformation of the Nevruz from the Zoroastrian religious festival, which the coming of Spring was celebrated and deceased ancestors were remembered. It lost its ties with Zoroastrianism when it became adopted as an Iranian national holiday and became imbued with Islamic motifs and themes.[60] Despite acknowledging the importance of Nevruz in instilling national unity and solidarity, the Diyanet simultaneously recognised that it is not an Islamic festival.[61] The legal explanation states:

> "In the time of the Ottoman, the Nevruz, the spring festival, was used as the beginning of the new year… it was also accepted as the official beginning of the financial year, and this has continued thusly until the 1980s.
> The custom of the Nevruz in Sunni communities has been seen as prevalently as in Shī'i, Alevi, and Baktashi communities. As a matter of fact, it was used to be celebrated by Sunnis in the Ottoman Empire."[62]

The Nevruz is a custom of both Kurdish and Turkish societies and also Shī'i and Sunni Muslims; as such, it may be a common customary element that reunites divided groups within Turkish society with each other. After recognising this unifying dimension, the Diyanet emphasised the centrality of intent (*niyyat*) in relation to an Islamic ruling on whether it was permissible to participate in this kind of customary and traditional practice. In addition, it also emphasised that the content, purpose and reason of the Nevruz festival[63] would have an important role to play in determining the legal ruling (*ḥukm*). In stressing the principle of inner responsibility for every action, the Diyanet makes it clear that the individual is ultimately responsible for establishing the permissibility of the celebration.

[59] Hayreddin Karaman, Ali Bardakoğlu and H. Yunus Apaydın, *İlmihal-II: İslam ve Toplum* (İstanbul: DİB, 1998), 489-490, accessed October 06, 2016, http://www.diyanet.gov.tr/dijitalyayin/ilmihal_cilt_2.pdf.
[60] Karaman et al., *İlmihal-II*, 490.
[61] Ibid, 489-491.
[62] Ibid, 491.
[63] Ibid.

Social harmony and unity emerge therefore as key priorities of the Diyanet when it engages with issues that include social sensitivities and divisive provocations.

During this period, the Diyanet also sought to satisfy the religious needs of emigrant Muslim Turks who had relocated to Europe, other Muslim countries and the Turkic Republics during the 1950's and 60s.[64] The temporary employment status of those Muslim Turks gradually transformed into permanent employment and permanent residence. The religious needs of those Muslim Turk emigrants encouraged the Diyanet to expand its role beyond Turkey. Fikret Karaman, one of the Diyanet's vice-presidents between 2003-2010, further reiterates the importance of this contribution:

> "… [the Diyanet] has increased its efforts to make religious services available to Turkish people living outside of the country. The Diyanet supports the integration of these people into societies in which they live, without losing their original identities, and religious and cultural values. The efforts of the Diyanet are especially important in introducing Turkish culture and Islam to new generations born abroad…
>
> Religious services are abroad also important in terms of world politics. Missionary activities are mostly located in regions where economic, social, health and education levels are low. The Diyanet maintains its services to protect and support the values of Islam both inside and outside the country."[65]

In order to further pursue these purposes, the General Directorate of Foreign Relations was established by a cabinet decree of May 25, 1971.[66] One key objective was to take necessary measures against destructive and divisive activities that targeted at Turkish citizens resident in foreign countries.[67] In further developing this dimension, the Diyanet opened the first consulate of religious affairs (which was also known as the Turkish-Islamic Union for Religious Affairs (*Diyanet İşleri Türk-İslam Birliği* or the DİTİB)) in Germany in 1984.[68] Just as in Turkey, the Diyanet sought to bring peace and tranquillity to the lives of Turkish citizens resident abroad. Subsequent to the collapse of the Soviet Union, the Diyanet also sought to fulfil the religious requirements of the six Turkic Republics which declared their

[64] In the late 1970s, the Diyanet began to extend its organisation and function abroad, most notably in Europe but also to other parts of the world. From the 1980s onwards, the Diyanet has sought to establish and develop connections with the Turkic Republics and Muslim countries. Since 1995, the Diyanet has been organising the Eurasia Islam Council, which brings "together heads of Islamic institutions of 38 countries and 12 autonomous republics in Russia and the Commonwealth of the Independent States, in the Caucasus and in the Balkans." These meetings engage country-specific religious educational projects, Islamic practice and the organisation of pilgrimage. See, Kerem Öktem, "Global Diyanet and Multiple Networks: Turkey's New Presence in the Balkans," *Journal of Muslims in Europe* 1 (2012), 42. See Ünlücayaklı, "The Official Discourse in Religion,"120 and Karaman, "The Status and Function of the PRA," 286-287.

[65] Karaman, "The Status and Function of the PRA," 286-287.

[66] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Tanıtım*, accessed March 08, 2017, http://www2.diyanet.gov.tr/DisIliskilerGenelMudurlugu/Sayfalar/Tanitim.aspx.

[67] Ibid.

[68] Türkisch Islamische Union de Anstalt für Religion e.V./ Diyanet İşleri Türk-İslam Birliği, in *Kuruluş ve Teşkilat Yapısı*, accessed March 08, 2017, http://www.ditib.de/default1.php?id=5&sid=8&lang=en.

independence.[69] By 2008, the Diyanet had expanded to thirty-four countries. The contemporary Diyanet has a separate Directorate-General which has five subordinate departments that conduct its affairs in the international arena. During this period, female preachers also began to be employed within the Diyanet.[70] This represented a clear break with the androcentric stance upon the position and status of Muslim women. In most instances, traditional Islamic religious circles do not allow women to become religious leaders or preachers. This is despite an established history of learned Muslim women instructing men, which began with the wives of the Prophet Muhammad. In assenting to the employment of women, the Diyanet re-established this tradition. The Diyanet's female employees were tasked with giving religious sermons to women, leading women's pilgrimages, monitoring local *imāms* and teaching in Qur'anic courses.[71]

The last period corresponds to the growing power of the Justice and Development Party (*Adalet ve Kalkınma Partisi* or AKP) and stretches from 2002 to the current day. During this period, the Diyanet's influence, at both the national and international level, expanded. Until 2010, there were no constitutional regulations that related to the institution. On 10 July, 2010, a new law (no 6002) produced changes in its structure and status.[72] The first change resulted in it being raised to the undersecretary level, with the consequence that its bureaucratic status was significantly enhanced.[73] Although there have been changes within the institution's structure since it was first established, this Act makes a significant contribution by putting in place fourteen main departments. The second change expanded the institution's service area outside mosques and the Qur'anic courses – as a result it began to provide religious services to other state institutions, including hospitals, prisons, retirement homes and women's shelters.[74] In establishing the Bureau of Religious Guidance for Families (*Aile ve İrşat Rehberlik Bürosu*) in the *muftīs*' office in some cities and towns and the

[69] Salman, "Diyanet İşleri Başkanlığının Kuruluşunun," 35-36 and Ünlücayaklı, "The Official Discourse in Religion,"120.
[70] Seda Dural, "The Violence against Woman Policy of the AKP Government and the Diyanet" (Master diss., Middle Eastern Studies, Leiden University, 2016), 33-34.
[71] Okumuş, "Turkey-Religiosity," 357.
[72] Act no. 6002 dated 01 July 2010. See *Resmi Gazete* (Official Gazette), 13. 07. 2010-27640, accessed October 10, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http%3A%2F%2Fwww.resmigazete.gov.tr%2Feskiler%2F2010%2F07%2F20100713.htm&main=http%3A%2F%2Fwww.resmigazete.gov.tr%2Feskiler%2F2010%2F07%2F20100713.htm.
[73] Act no. 6002 dated 01 July 2010. Act 6002 clearly states that the existence of an intermediary state ministry is optional – this can be interpreted as establishing that the status of the Diyanet's President is comparable to that possessed by an undersecretary. See Kaya, "Balancing Interlegality," 123.
[74] Act no. 6002 dated 01 July 2010.

Religious Services Development Project (*Din Hizmetleri Gelişim Projesi*),[75] the institution actively sought to engage with the community "to provide guidance under the light of the Qur'an and Sunna, based on morality-centred knowledge."[76] These activities sought to integrate people from every section of society into the religious services. In addition, this Act

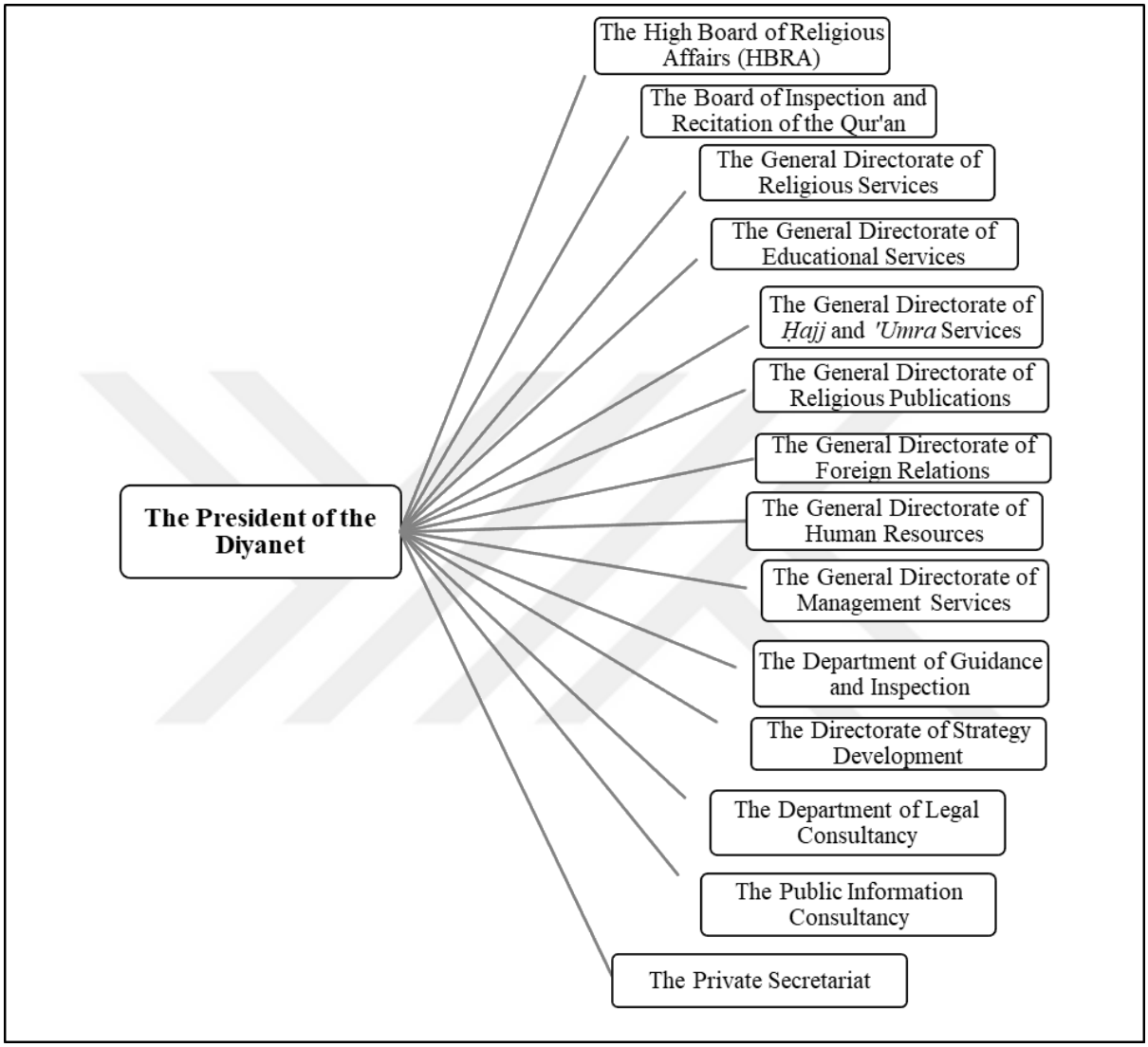

Table 1: The Diyanet's Organisational Structure

brings forth regulations that relate to the President of the Diyanet's appointment process (the same official can only be nominated twice) and term of office (five years).[77] The Religious Supreme Council (*Din Üst Kururlu*), which consists of 120 individuals (including members of the High Board of Religious Affairs, regional *muftīs* and theologians) identifies 3

[75] This is a project that sought to expand the area of religious services beyond the mosques by providing the people with necessary religious knowledge on various subjects, including the ecological environment, education and health. This project sought to counteract bad habits such as the consumption of alcohol, drug abuse, gambling and smoking and also possibly sought to spread a socio-religious morality that would be conducive to effective and efficient religious services. See Turner and Arslan, "State and Turkish Secularism," 220.
[76] Turner and Arslan, "State and Turkish Secularism," 209.
[77] Act no. 6002 dated 01 July 2010.

candidates for the Presidency before the Council of Ministers chooses one of the candidates and proposes his appointment to the President of the Republic of Turkey.[78] It is possible to argue that this new procedure represented an attempt to enhance the Diyanet's administrative autonomy.[79]

During the 7th June 2015 elections, the existence, function and status of the Diyanet became a hugely controversial political topic, and each of the three main political parties adopted a different stance towards the institution. The Republican People's Party (*Cumhuriyet Halk Partisi* or CHP) promised to transform it into a religious institution that would be available to all religions and religious sects; meanwhile, the Peoples' Democratic Party (*Halkların Demokratik Partisi* or HDP) proposed its abolition.[80] In setting itself apart from both of its rivals, the AKP presented religion as an indispensable social quality and secularism as a key principle of the State.[81] President Recep Tayyib Erdoğan reiterates the former:

> "They are now targeting the Diyanet. The main opposition party [CHP] has written in their political election platform. 'The Diyanet will be at equal distance to all faiths.' The religion of this country is clear. And the members of other religious communities have their own institutions, and those are clear. So why are they bringing the controversy to the doors of the Diyanet? And those who promise to abolish the Diyanet [HDP], it is clear what kind of a lesson our nation will teach them."[82]

The opposition parties would, in criticising the Diyanet, quite clearly create a divide between themselves and the Muslim voters who form the majority in Turkey, which quite clearly raises the question of why they pursued this course of action. Opposition parties accused the AKP of using the Diyanet to further its political interest, and cited the institution's disproportionate expansion (budgets, mosques and personnel all expanded) after the political party attained power in 2002. Turner and Arslan maintain that during the period 2002-2010, the institution's budget increased fivefold, and its personnel almost doubled (from 74,000 to 117,000).[83] However, statistical data analysis makes it difficult to substantiate this assertion

[78] Dural, "The Violence against Woman Policy," 18.
[79] Sunier et al., *Diyanet: The Turkish Directorate*, 48.
[80] Pinar Tremblay, "Is Erdogan Signalling End of Secularism in Turkey?" in *Al-Monitor*, April 29, 2015, accessed February 04, 2017, http://www.al-monitor.com/pulse/tr/originals/2015/04/turkey-is-erdogan-signaling-end-of-secularism.amp.html.
[81] Emine Enise Yakar and Sumeyra Yakar, "The Transformational Process of the Presidency of Religious Affairs in Turkey," *Dirasat*, no. 24, (2017), 24-25, accessed January 13, 2018, https://kfcris.com/pdf/2cd1eca0b34279e8904cff6c48e8f35f59782edf6fdb9.pdf.
[82] "Diyanet İşleri Neden Her İnanca Eşit Mesafede Olacakmış? Bu Milletin İnancı Belli," in *Cumhuriyet*, April 25, 2015, accessed February 04, 2017, http://www.cumhuriyet.com.tr/haber/turkiye/262365/_Diyanet_isleri_neden_her_inanca_esit_mesafede_olacakmis__Bu_milletin_inanci_belli_.html and Tremblay, "Is Erdogan Signalling End of Secularism."
[83] Turner and Arslan, "State and Turkish Secularism," 209.

as the increase in Diyanet personnel and the overall number of mosques evidenced annual fluctuations, even during the years of AKP government. To take one example, during the period 1998-2004, the number of personnel rapidly declined, while the number of mosques steadily increased.[84] It is overtly stated that "the normal trend in the number of personnel does not match the increase in the number of mosques."[85] It is also important to note that in Turkey, mosques are generally built, funded and maintained by the Muslim people while the administration of mosques and appointment of *imāms* are respectively the responsibility of the Diyanet and the State.[86] The AKP's long-term plan for the Diyanet envisaged that it would be transformed into an autonomous religious organisation that could produce and present religious information in isolation from government influence. Sunier et al. observe:

> "Until recently, the Friday sermon (*hutbe*) was issued by the central Diyanet authorities on a weekly basis. This was one of the measures in which successive secularist governments tried to control local imams and religious practices. Decentralising the Friday sermons could thus also be interpreted as a move by the AKP to promote religious freedom: one of the political priorities of the AKP."[87]

Under the AKP government, the Diyanet began to become more autonomous and the institution's president and scholars came to realise that they could declare opinions upon the truth of Islam without the threat of dismissal.[88] In 2002, the Turkification of *adhān* was revaluated during the Diyanet's "Consultation Meeting of Contemporary Religious Issues", in which a substantial number of Muslim scholars participated. The explanation relating to the Turkification of *adhān* focused upon the symbolic value and unifying influence of Arabic *adhān* for all Muslims around the world. It stated that the *adhān* was an unchangeable symbol of Islam that refers to Muslim existence and identity, irrespective of where the individual is located in the world.[89] Both *sunna al-taqrīr* (a tradition of what the Prophet allowed to be said or done)[90] and consensus (*ijmā'*) related the performance of the *adhān* in

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[84] For further statistical data analysis related to the amount of personnel and budget of the Diyanet and the number of mosques administered by the Diyanet, see Sunier et al., *Diyanet: The Turkish Directorate*, 42-45.
[85] Sunier et al., *Diyanet: The Turkish Directorate*, 44.
[86] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Sayın Oral Çalışların Radikal Gazetesinde Hazırlamış Olduğu "Aleviler" Yazı Dizisi Nedeniyle Başkanlığımızın da Görüşlerine Başvurmak Düşüncesiyle Yönelttikleri Sorulara Başkan YardımcısıProf. Dr. İzzet ErTarafından Verilen Cevaplar*, accessed February 17, 2017, http://www.diyanet.gov.tr/tr/icerik/sayin-oral-calislarin-radikal-gazetesinde-hazirlamis-oldugu-aleviler-yazi-dizisi-nedeniyle-baskanligimizin-da-goruslerine-basvurmak-dusuncesiyle-yonelttikleri-s/5864.
[87] Sunier et al., *Diyanet: The Turkish Directorate*, 138.
[88] Ünlücayaklı, "The Official Discourse in Religion, 70-71.
[89] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, *Güncel Dini Meseleler Istişare Toplantısı-I* (İstanbul: Diyanet İşleri Başkanlığı Yayınları, 2004), 578-590, accessed October 31, 2016, http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Documents/Guncel%20Dini%20Meseleler%20%C4%B0stisare%20Toplant%C4%B1s%C4%B1-I%20.pdf.
[90] Sunna simply means all the traditions of the Prophet Muhammad. It can be categorized into three parts: 1) all his deeds or what he did (*sunna al-fi'il*); 2) all his words or what he said/commanded (*sunna al-qawl*); and 3)

its original language, and therefore reiterated Arabic language as an essential component of the *adhān*. During this consultation meeting, many Muslim scholars expressed the view that the legitimacy of the *adhān* is established by three of the main sources of Islamic law, specifically, the sunna, the consensus (*ijmā'*), and the Q. 5: 58 (which reads: "And when you recite your call to prayer they take it as a joke without (any) seriousness that is because they are a people without understanding"). After reference was made to these three sources, it was clearly and unequivocally stated that chanting the *adhān* in languages other than Arabic is a negative innovation (*bid'a*) in religion or a deviation from the tradition of the Prophet (Sunna) – for this reason, it should not be performed by Muslims or permitted by Muslim scholars. In subsequent years, the same question arose in relation to the Kurdification of *adhān*. In a 2011 press release, Mehmet Görmez, the President of the Diyanet, states:

> "The *adhān* is the mutual symbol and emblem of all Muslims. Every single word and sentence in the *adhān* is "*shi'ar al-Islamiyya*". *Shi'ar* means a symbol that keeps alive our conscious of being and staying Muslim. Accordingly, translating the *adhān* and performing it in any other language is not possible to amount to the *adhān*, including the mutual belief and conscious of Muslims."[91]

Görmez's contribution clearly establishes that it is not permissible to recite the *adhān* in a language other than Arabic because this will strip it of one of its distinguishing features that unifies and integrates Muslims.

In the years between 2000 and 2015, the Diyanet sought to engage different sections of society and enhance the efficiency of its domestic and international engagements. These innovations have included the establishment of a Diyanet TV channel that engages with a broad range of 'consumer' groups including children, women and the elderly.[92] In addition to this, an internet website was organized to issue religious publications, to receive questions, and to answer these questions, and a free call center was also launched to facilitate the practice of *iftā'* and the mission of providing religious knowledge. Among some projects that extend the Diyanet's influence to everyday lives of the citizens are the organization of religious seminars and programs for women and the direct encouragement of *imāms* (prayer leaders) to actively engage with their local congregation. The fourth period is therefore synonymous with the transformation of the Diyanet from a state-controlled institution to a

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everything that the Prophet allowed to be done in his presence - this is called *sunna al-taqrīr* or the confirmation (*takrīr*) or silence (*sukūt*) of the Prophet.

[91] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Başkan Görmez Kürtçe Ezan Konusunda TRT'ye Konuştu: "Ezanın Herhangi Bir Dile ve Lehçeye Çevcilmesinin Ezan Kabul Edilmesi Asla Mümkün Degildir."* accessed October 10, 2016, http://www.diyanet.gov.tr/tr/icerik/baskan-gormez-kurtce-ezan-konusunda-trt%E2%80%99ye-konustu-%E2%80%9Cezanin-herhangi-bir-dile-ve-lehceye-cevrilmesinin-ezan-olarak-kabul-edilmesi-asla-mumkun-degildir/6836.

[92] Turner and Arslan, "State and Turkish Secularism," 209.

more autonomous and active counterpart that possessed the ability to engage large and diverse audiences. In the case of State and constitutional acts, amendments and provisions, it has already been noted that the Diyanet should be engaged and considered as the foremost religious authority. Constitutional regulations and laws have entrusted the institution with administering all mosques, answering religious questions, organising educational religious facilities for youth and adults and training *vā'izs* (preachers) and *imāms* (prayer leaders).

It is particularly instructive to reflect upon the ruling parties' policies towards the Diyanet have evidenced considerable variation over time, extending from strictly restrictive and nationalistic to somewhat autonomous. It is similarly possible to identify an equally wide of variation in the constitutional regulations that pertain to the institution. Setting aside the different policies adopted by various administrations, the Diyanet, in complying with laws, regulations, and standards, has strongly influenced the official discourse on the role of religion in public life, particularly in the period after the 1960s. The Diyanet's connections with the state confer considerable power and legitimacy upon the institution. Ünlücayaklı explicitly recognises this importance when he observes that the institution is, in Turkey, "by far the most dominant agent in the bureaucratic-religious field and one of the most dominant ones in the vaster religious field."[93]

Amongst ordinary people of a religious persuasion, the Diyanet commands considerable stature and importance. Many Muslims refer to the Diyanet when performing their prayers (time of prayer), attending religious festivals (*'Īd al-Fitr* and *'Īd al-Aḍḥā*) or paying *zakāt* (religiously prescribed obligatory alms) and *fitr* (special form of Islamic alms-charity).[94] The institution also enjoys considerable renown in the production of Islamic explanations and juristic opinions. Taş, in highlighting his research group's recognition of the institution's production of juristic opinions (*fatwās*),[95] observes that 76 percent of participants follow the Diyanet's Islamic legal statements (*fatwās*).[96] However, while the institution is a recognised authority within the field of religious scholarship, this status does not extend to the Turkish legal system. The Diyanet's *fatwās* are therefore advisory, case-specific and optional.

The existence of the Diyanet with its religious extensions and services in the Turkish secular state system raises questions about the precise relationship between the State and the Diyanet. There principally exist two arguments on that specific issue. The first contends that

[93] Ünlücayaklı, "The Official Discourse in Religion, 275.
[94] Okumuş, "Turkey-Religiosity," 354.
[95] Kemaleddin Taş, *Türk Halkının Gözüyle Diyanet* (İstanbul: İz Yayıncılık, 2002), 161-162.
[96] Ibid, 163.

the State established the institution with the intention of promulgating its official religious ideology, a position which implies that the Diyanet cannot claim any religious authority to represent Islam. From this perspective, the Diyanet appears either as an administrative tool that is applied in order to inculcate the religious understanding of the State within Turkish society or as an organisational mechanism that assists in the arrangement of religious services. Ismail Kara and İştar Gözaydın advance precisely this line of argument: the former contends that the Diyanet resembles other institutions of the Turkish state tasked with executing government policies. The institution lost its religious, sacred and prestigious status when the president of the Diyanet began to be appointed by the President of the secular Turkish Republic.[97] Gözaydın concurs:

> "The state makes use of the Diyanet as an administrative tool to indoctrinate and propagate official ideology regarding Islam while fulfilling duties like "enlightening society about religion" and "religious education"."[98]

Hence, in the view of Gözaydın, the Turkish State has had an unrestricted authority over religious discourse and imposed the State's form of Islam by deploying the Diyanet as a religiously political apparatus. Turner and Zengin Arslan provide further clarification:

> "To put it differently, we suggest the Turkish state's engagement with the field of religion has not been a case of flawed secularism, but on the contrary an example that fulfilled the basic practice of the secular nation-state – that is, to manage or govern religion in the name of national security and social unity. In this sense, the Diyanet is far from being an exception; it is an effective institution of the secular state."[99]

This reiterates that the Diyanet can be described as an ostensible representative of Islam and Muslims which is deeply bound up with the political authority. By logical extrapolation, the Diyanet enables the State to control the content of Friday sermons (*khuṭbas*), the curriculum of all the Diyanet's Qur'anic courses and the institution's religious explanations and interpretations (*fatwās*).

The second perspective maintains that the institution enables religion to emancipate itself from the State control by promoting religious unity and solidarity amongst Turkey's Muslims. In the absence of a central and authoritative institution such as the Diyanet, there would be innumerable religious controversies and discordances. The existence of a widely respected official religious authority would help to offset the danger that aims to fragment Muslims into assorted groups and sects. Ali Bardakoğlu (who was previously a Diyanet

[97] Kara, "Din ile Devlet," 32, 38-39, 43, 45-50 and 51-52.
[98] İştar Gözaydın, "Management of Religion in Turkey: The *Diyanet* and Beyond," in *Freedom of Religion and Belief in Turkey*, ed. Özgür Heval Çınar and Mine Yıldırım (Newcastle: Cambridge Scholars Publishing, 2014), 17.
[99] Turner and Arslan, "State and Turkish Secularism," 208.

president), İrfan Bozan, Mehmet Ali Büyükkara, Ruşen Çakır and İzzet Er (a Diyanet vice-president between 2003-2010) directly challenge those who depict the Diyanet as a puppet of the secular regime. These scholars observe that no politicians have the right to impose a certain legal interpretation (*fatwā*) or demand religious explanations aligned with the political authority's demands. Er further reiterates:

> "[The Government] cannot tell Diyanet to give a certain fatwa. Even if they did, the Higher Council of Religious Affairs (the organ of Diyanet taking Decisions on Religious issues) would never accept it. They take their decisions according to the sources of Islam."[100]

Bardakoğlu instead maintains that the institution evidences competence and a liberal predisposition in producing and transforming religious knowledge. He observes:

> "The second aspect of the Presidency of Religious Affairs is that it is free to choose scholarly and religious discourse it will use. Indeed, no matter how different things may appear, … the Presidency of Religious Affairs has acted totally on its own initiative, its own scholarly competence and accumulation of knowledge and with Turkey's scholarly capacity while providing religious services, responding to religious questions that come from citizens or informing people of religious issues."[101]

In the same vein, Çakır and Bozan agree that the Diyanet has a relative autonomy in the issuance of Islamic legal interpretations (*fatwā*) and public statements on religious matters. However, they contend that this 'bounded' or relative autonomy should be transformed into a 'full' autonomy that is free from political influence and/or State interference.[102] Büyükkara, in the course of an interview that engages the interrelation of religion and the State, also highlights the importance of the Diyanet's unifying role when he demonstrates how it intercedes between the State and religious sects.[103] The relative autonomy of the Diyanet in formulating and issuing its own decisions, explanation and statements on religious and religiously ethical issues engenders conflicts between the Diyanet and the government from time to time. It is quite clear that not all of the Diyanet's statement are in harmony with the State's secular regulations. Büyükkara observes:

> "Each government desires to set its own seal on the Diyanet. We see these risks, but, in my view, the Diyanet makes the best of what it would do…for instance, even in the period in which there was rigid attacks [and a general ban on wearing headscarf in public places] with the influence of the 28th February, the Diyanet did not give any *fatwā* that would be used against wearing headscarf."[104]

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[100] Sunier et al., *Diyanet: The Turkish Directorate*, 38.
[101] Bardakoğlu, *Religion and Society New Perspectives*, 14.
[102] Çakır and Bozan, *Sivil Şeffaf ve Demokratik Bir Diyanet*, 336-337.
[103] Turgay Bakırtaş, "Din ve Devlet Birlikteliği Bu Ülkenin Kaderidir," in *Gerçek Hayat*, February 25, 2016, accessed December 05, 2016, http://www.gercekhayat.com.tr/gundem/1050/.
[104] Bakırtaş, "Din ve Devlet Birlikteliği."

While the Diyanet was often presented as the supreme religious authority, its Islamic legal statements and opinions on the headscarf were not acknowledged or engaged during this period. The official Islamic legal statement of the Diyanet on the headscarf[105] would explicitly bring to light the contradictive relationship between the secular legal system and the Diyanet's legal rulings in the Turkish Republic.[106] Here it should be acknowledged that the political authority is not in a position to formulate religious opinions as the only way in which the Government intervenes in the Diyanet's affairs is by appointing the president of the Diyanet and the members of the High Board of Religious Affairs.

The Diyanet's expressed views on a wide range of subjects demonstrate its clear grasp of Islam, Islamic law and the relation of both to Turkish society. These contributions clearly demonstrate the institution's ability to surmount the limitations imposed by official ideology and the purposeful interventions of the State. Kutlu observes:

> "[The Diyanet's aim] is to teach religious truth to the public, protect secularism, keep religion outside from the realm of politics, control religious duties without giving monopoly to any religious groups, strengthen the nation state and protect religion from being exploited."[107]

Since the Diyanet was established, its biographical books of the Prophet (*sīra*), calendar writings, Friday sermons (*khuṭbas*), *ḥadīth* books and Islamic legal decisions/interpretations have both informed and unified Turkish society. In working with the Turkey Diyanet

[105] By the time that the Turkish Constitutional Court upheld the headscarf ban, it had already been in force for some time, although this did not significantly dampen or diminish Islamist opposition. The Diyanet acknowledged that the wearing of the headscarf is an Islamic legal ruling that is prescribed by the Qur'an and Sunna; this was however supplemented by the observation that there is no particular *naṣṣ* or *ḥadīth* that relates to the form of covering [*tesettür*]. The Diyanet's catechism establishes that each nation has its own particular characteristics, customs and traditions, each of which can be manifested in the wearing style of Muslims. However, the main norm to be taken into consideration by Muslim men and women is that covering or veiling oneself is a religious order and there is *ijmā*' (consensus) among Muslims on the issue. See Karaman et al., *İlmihal-II*, 70-73, Hamdi Mert, "Gündem: Alevilik ve Başörtüsü," *Diyanet Aylık Dergisi*, no. 12, (1992), 6-30, accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/1992/ocak_1992.pdf. Çakır and Bozan *Sivil Şeffaf ve Demokratik*, 331 and Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı in *Basın Açıklaması*, accessed December 05, 2016, http://www.diyanet.gov.tr/tr/icerik/basin-aciklamasi/6123.

[106] In the period following 28 February 1997, the Diyanet clearly established that 'wearing headscarf is an order of Allah'. During this time, when the headscarf was very much perceived as a political symbol, this Diyanet's statement clashed with the interests of the central administration, which viewed the headscarf as the most serious threat to Turkey's secular structure. Çakır and Bozan, *Sivil Şeffaf ve Demokratik*, 36 and Sunier et al., *Diyanet: The Turkish Directorate*, 100. In addressing the issue of the headscarf, Bardakoğlu observes: "Muslims has seen 'to be worn the headscarf by adult women as a religious necessity.' As the State's religious representative, the Diyanet is tasked with informing people on the issue, with reference to authentic, established and genuine religious sources. Fourteen centuries of historical and religious experience were the underlying foundation that sustained the Diyanet's stance on the headscarf issue." See, Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı in *Basın Açıklaması*, accessed December 11, 2016, http://www.diyanet.gov.tr/tr/icerik/basin-aciklamasi/6121?getEnglish.

[107] Sönmez Kutlu, "The Presidency of Religious Affairs' Relationship with Religious Groups (Sects/Sufi Orders) in Turkey," *The Muslim World* 98, no. 2-3 (2008), 249, accessed October 23, 2016, http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00223.x/full.

Foundation (*Türkiye Diyanet Vakfı*), the Diyanet published *Türkiye Diyanet Vakfı İslam Ansiklopedisi* (encyclopaedia), which extends across 44 volumes to engage with Islamic culture, civilisation and sciences.[108] *Hadislerle İslam* (the *Ḥadīth* project), which was the combined effort of 85 scholars, was also completed and published (as a seven-volume edition) in 2013[109].

In the contemporary period, the Diyanet is still the main institution that is responsible for informing internal and external communities about Islam and Islamic legal issues, issuing Islamic legal decisions, judgements and views, managing mosques and reviewing religious services, including the appointment of local religious representatives (*imāms* and *muftīs*).[110] Since being established, the Diyanet has issued thousands of Islamic decisions, interpretations (*fatwās*), recommendations and statements, thus ensuring that the people of Turkey remain informed on Islam and issues pertaining to Islamic law. These contributions encompass a wide range of subjects, as diverse as economy, sciences and social life. The Diyanet's official website features answers to individual religious questions, decisions of the Consultative Religious Council, online publications and reports on religious issues. Within the Diyanet, the High Board of Religious Affairs (*Din İşleri Yüksek Kurulu*) is the Presidency's most pre-eminent consultative and decision-making service which is tasked with conducting scholarship activities (answering religious questions, examining publications and undertaking research) and developing Presidency policies.[111]

1. The High Board of Religious Affairs

Since being established, the Diyanet has progressed and developed by enlarging and reorganising its institutional structure and religious services. Within the Diyanet, the High Broad of Religious Affairs (*Din İşleri Yüksek Kurulu*) was, in 1965, instituted as the pre-eminent decision-making body whose scope extended to Islamic legal and social issues.[112] While it functions within the limits of official secularism, this Board promulgates the Diyanet's official opinions on religious issues. While performing its duties, the High Board of Religious Affairs (henceforth: HBRA) has undergone a name change. When the Diyanet was first established, it was known as the Board of Consultation (*Hey'et Müşavere*). It was

[108] Türkiye Diyanet Vakfı İslam Araştırma Merkezi in *İslam Ansiklopedisi*, December 08, 2016, http://www.islamansiklopedisi.info/hakkinda.php.
[109] Mehmet Emin Özafşar et al., *Hadislerle İslam* (Ankara: Türkiye Diyanet Vakfı, 2013), 41-47, accessed December 08, 2016, http://hadislerleislam.diyanet.gov.tr/.
[110] Sunier et al., *Diyanet: The Turkish Directorate*, 108.
[111] Yaşar Yiğit, İbrahim Ural and Mehmet Bulut, *Diyanet İşleri Başkanlığı: Din İşleri Yüksek Kurulu* (Ankara: Türkiye Diyanet Vakfı Yayın Matbaacılık ve Ticaret İşletmesi, 2009), 8.
[112] Sunier et al., *Diyanet: The Turkish Directorate*, 40-41 and 88- 94, Yiğit et al., *Diyanet İşleri Başkanlığı*, 6-9 and Adanalı, "The Presidency of Religious Affairs," 230.

responsible for answering religious questions, issuing Islamic legal explanations and manging personnel (including disciplinary duties).[113] The Board of Consultation was actively involved in all parts of the Diyanet's services until Act 633, which related to the institution's administrative and organisational structure, was accepted in 1965.[114] Even though the organisational structure of the HBRA was established in 1965, it was not fully active until the 1980s.[115] When the HBRA was established, the Diyanet assumed a clearer institutional role focused upon the production and transformation of religious knowledge. Act 633 was significant in this regard as it established the HBRA as the pre-eminent consultative and decision-making body tasked with producing Islamic knowledge that was directly addressed to the challenges that confronted Muslims within and outside Turkey. [116]

The constitutional by-laws, constitutional laws and regulations establish the basis for the formation of the HBRA, the election and appointment of its members, the method through which the president of the HBRA and its members were elected, the duties and responsibilities of the HBRA, and the functions and tasks of the commissions that operated under the HBRA are also set out in by-laws, constitutional laws and regulations. The Board consists of a president and fifteen members, four of whom are selected from a pool of university professors specialised in Islamic studies and whose Islamic works are widely recognised.[117] Twelve members of the HBRA are elected over the course of the election and appointment phases. The Candidate Designation Board, which was formed pursuant to the relevant regulation, selects twenty-four candidates through voting, a figure which is twice the actual number of HBRA members.[118] The President of the Diyanet submits twelve members from among these candidate members, along with four members who had to be elected amongst lecturers at faculties of theology, to the Council of Ministers because the appointment of all members ultimately contingent upon the approval of the Council of Ministers.[119] It is normally the case that HBRA members would be well-educated scholars in Islamic sciences and Islamic law. Mehmet Görmez, who has been President of the Diyanet since 2010, observes:

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[113] Dadaş, "Kuruluşundan Günümüze Din İşleri," 41.
[114] Yiğit et al., *Diyanet İşleri Başkanlığı*, 8.
[115] Kutlu, "The Presidency of Religious Affairs' Relationship," 252 and Yiğit et al., *Diyanet İşleri Başkanlığı*, 13.
[116] Yiğit et al., *Religious Affairs Presidency*, 6.
[117] Ibid, 4-7.
[118] Act no. 633 dated 22 July 1965, *Resmi Gazete.*
[119] Act no. 633 dated 22 July 1965, *Resmi Gazete* and Republic of Turkey's Presidency of Religious Affairs, in *High Board of Religious Affairs*, accessed November 05, 2016, http://diyanet.gov.tr/en/icerik/high-board-of-religious-affairs/12598.lmaz.

> "The Religious Affairs High Council was responsible for defining, regulating, and improving religious affairs in Turkish society. Members of this council were to be elected from among people who had mastered both "*Akaid-i Islamiyye and Ulumu Şer'iyye*" (Islamic sciences and jurisprudence)."[120]

This decision-making body was defined by the presence of competent individuals who possessed the ability to provide religious knowledge and services. Act 633 restricted the number of HBRA members to sixteen (including the chairman) and limited their term to a five-year duration.[121] Members could only be appointed twice for any position, although they were required to maintain office until a new member was assigned.[122] HBRA members selected one president and one deputy chairman through a majority vote that was cast on a secret ballot.[123] If membership was terminated for whatever reason, a new member would need to be selected among either the candidate members who were identified by the Candidate Designation Board or lecturers at faculties of theology within thirty days.[124] The current HBRA committee took office with sixteen members on 28 August, 2015, and Dr. Raşit Küçük, the vice-president of the President of the Diyanet, was elected as the chairman of the HBRA on 05 September, 2015.[125] The other members of the HBRA are:

1. Zeki Sayar (the deputy chairman of the HBRA)
2. Mehmet Kapukaya (a HBRA expert)
3. Rifat Oral (a lecturer at the Directorate of Selçuk High Specialization Center)
4. Dr. Muhlis Akar (a HBRA expert)
5. Dr. Mehmet Canbulat (a HBRA expert)
6. Prof. Dr. Ahmet Yaman (a lecturer at the Faculty of Theology in Necmettin Erbakan University)
7. Doç. Dr. Cenksu Üçer (a lecturer at the Faculty of Islamic Sciences in Yıldırım Beyazıt University)
8. Prof. Dr. Zekeriya Güler (a lecturer at the Faculty of Theology in İstanbul University)
9. Prof. Dr. Ibrahim Hilmi Karslı (a lecturer at the Faculty of Theology in Recep Tayyip Erdoğan University)
10. Prof. Dr. Hüseyin Yılmaz (a lecturer at the Faculty of Theology in Yüzüncü Yıl University)

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[120] Görmez, "The Status of the Presidency," 244.
[121] Act no. 633 dated 22 July 1965, *Resmi Gazete.*
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] Act no. 8044 dated 19 August 2015. See *Resmi Gazete*, 28. 08. 2015-29459, accessed November 07, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http%3A%2F%2Fwww.resmigazete.gov.tr%2Feskiler%2F2015%2F08%2F20150828.htm&main=http%3A%2F%2Fwww.resmigazete.gov.tr%2Feskiler%2F2015%2F08%2F20150828.htm.

11. Prof. Dr. Mehmet Ünal (the dean of the Faculty of Islamic Sciences in Yıldırım Beyazıt University)
12. Prof. Dr. Mürteza Bedir (the dean of the Faculty of Theology in İstanbul University)
13. Prof. Dr. Kaşif Hamdi Okur (a lecturer at the Faculty of Theology in Hitit University)
14. Prof. Dr. Bünyamin Erul (a lecturer at the Faculty of Theology in Ankara University)
15. Prof. Dr. Cağfer Karadaş (a lecturer at the Faculty of Theology in Uludağ University).[126]

All of these scholars completed their studies at Faculties of Theology in Turkish universities, but some of them are combined their formal modern education with the traditional education (*medrese usulu egitim*). In 1992, Zeki Sayar attended the eight-term specialisation course at Haseki Education Centre, which primarily provides traditional education to the Diyanet's personnel.[127] Subsequent to completing his education in Selçuk University's Faculty of Theology, Rifat Oral also received instruction from well-known Turkish scholars were considered to be an authority (*marji'*) in Islamic studies. He took *ijāzat* (teaching permission) from them[128] and also participated in an informal network of scholarly lecturers (*ḥalaqāt*) who included Fadl Abbas, Şuaybü'l Arnavud, Abdülaziz ad-Duri, Fethi Duveyni and Salah al-Halidi.[129] In common with Sayar, Muhlis Akar attended the sixth term specialisation course at Haseki Education Centre after earning his M.A. at the Faculty of Theology in

[126] Act no. 8044 dated 19 August 2015, *Resmi Gazete.*
[127] In 1976, Haseki Education Centre was established by the Diyanet to educate the Diyanet's personnel, with particular emphasis upon *muftīs* (specialists in Islamic law who issue *fatwās*) and *vā'izs* (preachers). This centre makes an important contribution by offering the scientific substructure to *muftīs* and *vā'izs*, who both function as representatives of Islamic knowledge in Turkey. This substructure is probably programmed to provide traditional education (*medrese usulu egitim*), with particular emphasis upon Arabic langue, Islamic jurisprudence, the Qur'anic commentaries (*tafsīr*) and *ḥadīth* traditions. Once the Centre was staffed with an academic cadre, its curriculum was simply programmed, with this feature extending from its establishment to the 1999s. In general terms, the curriculum consisted of Arabic language and literature classes (*sarf*, *nahw*, *balāghat*), a *fiqh* (*Hidāya*) class, a *ḥadīth* tradition class (Abū Dawūd's Sunan), a *tafsīr* class (Nasafī and Ibn Kathīr) and a Turk-Islam Culture and Civilisation History class, up until 1999, there was also a conversation/speech class. Subsequent to a meeting, the Centre's curriculum was changed, and a preparatory class was added to the curriculum. Some classical Islamic books, such as al-Alūsī, *al-Vaciz* by Abdulkerim Zeydan, *Qadaya Fiqhiyye* by Ramadan al-Būtī, *tafsīrs* by Baydawī and Qurtibī, and *Uṣūl al-Fiqh* by Ḥallaf were added to the curriculum. In 2007, a more advanced curriculum was designed and implemented for Haseki Education Centre participants. This new curriculum also incorporated aspects of traditional education and included *fiqh*, *ḥadīth* tradition, Islamic Thought and Religion and Qur'an classes. See "Haseki Dini Yüksek İhtisas Merkeziniin Tarihçesi," in *Merkezimiz*, accessed November 09, 2016, http://www.hasekidiyanet.gov.tr/?pnum=122&pt=M%C3%BCd%C3%BCr%C3%BCm%C3%BCz%C3%BCn%20Kaleminden%20Merkezimizin%20Tarih%C3%A7esi. Din İşleri Yüksek Kurulu Başkanlığı in *Kurul Üyeleri: Zeki Sayar*, accessed November 14, 2016, http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Sayfalar/uyeler/ZekiSayar.aspx.
[128] Din İşleri Yüksek Kurulu Başkanlığı in *Kurul Üyeleri: Rifat Oral*, accessed November 14, 2016, http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Sayfalar/uyeler/RifatOral.aspx.
[129] Ibid.

Selçuk University in 1986; he later received his PhD degree from the Faculty of Economics in 2000.[130] During his early life, Zekeriya Güler received the classical traditional Islamic education (*klasik medrese egitimi*) and memorised the Qur'an by heart. He graduated from the Faculty of Theology in Selçuk University in Konya in 1986 and later received his PhD degree from the Faculty of Theology in İstanbul University before working as a lecturer at the department of Ḥadīth in the same university.[131] The assignment of predominantly academic experts has produced objective and reliable knowledge and has also increased global awareness of the Diyanet.

By virtue of the fact that the Diyanet is an administrative state institution, both its and the HBRA's organisational structure were regulated by by-laws, constitutional laws and regulations. Act 633 depicts the duties of the HBRA in the following terms:

a) To make decisions on religious matters, express views concerning religious affairs, and answer questions relating to religion by taking into account current demand and requirements, historical experiences and the fundamental information sources and methodology of Islam.
b) To conduct, examine or translate research on religious matters. Benefit from competent people in the country, form research groups and purchase services when required and submit the results to the Directorate,
c) To examine and evaluate religious groups connected to Islam that produce different interpretations, religio-social associations, and traditional religio-cultural formations inside and outside the country; also organize scientific and consultative meetings and conferences on these matters,
d) To follow developments associated with Islam (religious publications, religious and scientific activities and propaganda in the country), evaluate them and submit assessments to the Directorate,
e) To examine audio, printed and visual works sent by the Directorate and to decide, in the course of undertaking an analysis grounded within a religious perspective, whether or not they will be published.
f) To, subsequent to the payment of a fee, examine religious publications that individuals and particular institutions request to be examined for a fee.
g) To carry out works that relate to the Consultative Religious Councils.

[130] Din İşleri Yüksek Kurulu Başkanlığı in *Kurul Üyeleri: Muhlis Akar*, accessed November 14, 2016, http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Sayfalar/uyeler/MuhlisAkar.aspx.
[131] Din İşleri Yüksek Kurulu Başkanlığı in *Kurul Üyeleri: Zekeriya Güler*, accessed November 14, 2016, http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Sayfalar/uyeler/ZekeriyaGuler.aspx.

h) To implement tasks and works assigned by the president of the Diyanet, and to express their views on these issues.[132]

At the level of both theory and practice, the HBRA functions as the highest religious authority whose decisions have a crucial implication for public affairs that require religious explanation. In many cases, the Muslim society espouses and values Islamic legal explanations issued by the HBRA – these extend to court divorce, inheritance, religious marriage (*nikāḥ*), ritual practices (*'ibādāt*) and superstitions. HBRA members meet at least once a week to discuss and evaluate subjects on the agenda, and it is established that an absolute majority of the HBRA's members should attend these meetings. The president of the HBRA usually chairs meetings, but the president of the Diyanet presides when attending HBRA meetings. When the HBRA president is absent, the deputy chairman of the Board operates as the meeting chairman. The HBRA consists of five sub-commissions – these are set out below.[133] The subjects included in the meeting agenda are closely examined by the

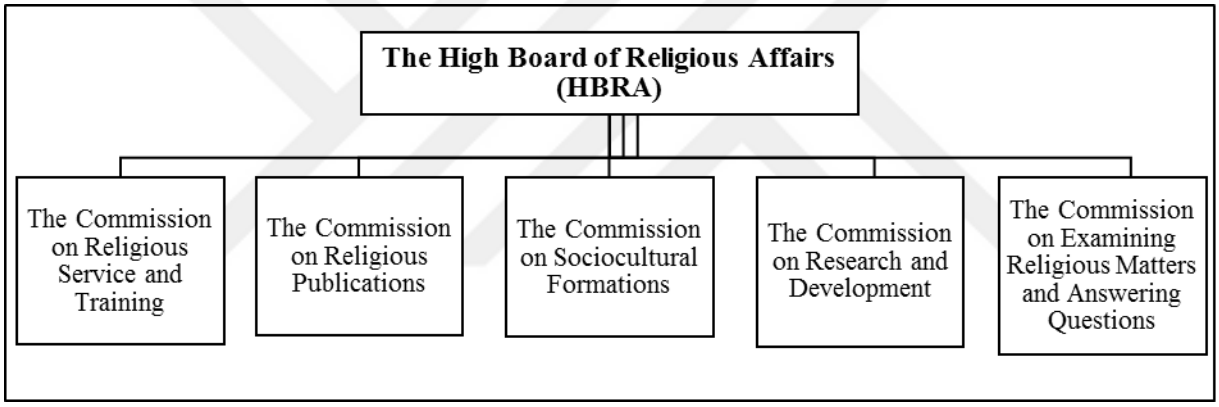

Table 2: The Organisational Structure of the HBRA

relevant commission/s before being brought before the HBRA. Discussions are usually based on the research and examination conducted by the commissions, which contain at least three members. Every commission selects a president, and HBRA members have the right to participate in more than one commission. During HBRA meetings, necessary decisions, Islamic legal explanations and recommendations are advanced by an absolute majority of members. The regulation establishes that HBRA members must sign the agreed decision subsequent to collective discussion and voting. At the beginning of the next HBRA meeting, a summary official report relating to the previous meeting's decision is read out. HBRA decisions can therefore be interpreted as a collective *iftā* practice addressed to contemporary

[132] Act no. 633 dated 22 July 1965.
[133] Republic of Turkey Presidency of Religious Affairs, in *High Board of Religious Affairs*, accessed November 05, 2016, http://diyanet.gov.tr/en/icerik/high-board-of-religious-affairs/12598.

social, cultural, economic and social problems in need of more sustained scholarly engagement.

Every five years, the HBRA organises a Consultative Religious Council with the intention of improving the Diyanet's services.[134] Up to the contemporary period, the HBRA has organised five Consultative Religious Councils that address a wide range of subjects. Councils last normally for at least three days, although they can last sometimes for twice as long. They include the Diyanet president along with current and former members of the HBRA. The attendees include a maximum of twenty religious and scientific scholars invited by the Diyanet, ten *muftīs* and five *vā'izs* selected by the HBRA. They extend to a member of each faculty of theology, a member of the Ministry of Education's Education and Training Board (*Milli Eğitim Bakanlığı Talim ve Terbiye Kurulu*), the director of the Religious Education General Directorate (*Din Öğretimi Genel Müdürü*) and one member of the Board of Trustees of Turkey's Diyanet Foundation (*Türkiye Diyanet Vakfı Mütevelli Heyeti*) were required to attend as members of the HBRA's Consultative Religious Council.[135] In addition, one representative from the Directorate-General of Foundations, the General Secretariat of the National Security Council, the General Staff, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Tourism, the Radio and Television High Council, the State Planning Organisation, along with official guests invited by the president of the Diyanet were allowed to participate and present a notification to the Consultative Religious Council. However, they were not entitled to vote.[136] The Council's agenda and the view of the Diyanet that would be presented in the Consultative Religious Council were prepared by the HBRA.[137] In every Consultative Religious Council, resolutions were, as determined by Act 93/4257, supported by the majority of members who attended the Consultative Religious Council ("[i]n the Consultative Religious Council, decisions are taken by the great majority of joined members. Should the votes be tied, the President of the Diyanet determines the outcome)."[138] In 1993, the Council was, for the first time, organised under the name of "the First Consultative Religious Council" and tasked with attending to 'religious publications'. In

[134] Act no. 93/4257 dated 19 February, 1993. See *Resmi Gazete*, 30. 04. 1993-21567, accessed November 18, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/21567.pdf&main=http://www.resmigazete.gov.tr/arsiv/21567.pdf.
[135] Act no. 98/11479 dated 24 July, 1998.See *Resmi Gazete*, 12. 08. 1998-23436, accessed November 19, 2016, http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/23436.pdf&main=http://www.resmigazete.gov.tr/arsiv/23436.pdf.
[136] Ibid.
[137] Act no. 93/4257 dated 19 February, 1993, *Resmi Gazete.*
[138] Ibid.

1998, "the Second Consultative Religious Council" was convened and its attention was directed towards the issue of 'interreligious dialogue'. In 2003, "the Third Consultative Religious Council" was established and asked to evaluate 'the role of religion in Turkey's accession process to the EU'. The HBRA also organised the fourth (addressed to 'religion and society') and fifth (addressed to 'contemporary religious education, knowledge, services and understanding') Consultative Religious Councils, which were respectively held in 2009 and 2014.[139] In addition to establishing ordinary Consultative Religious Councils, the HBRA is also entitled to, in urgent situations, call extraordinary meetings – these, however, require the coordinated effort of Board members, Diyanet personnel, the relevant Ministries and representatives drawn from various institutions.[140] Up until the current date, the HBRA has held a single extraordinary Consultative Religious Council meeting, which was held on 04 August, 2016 in response to the bloody coup attempt of the preceding month. The decisions of each Consultative Religious Council are recorded by the Secretary-General (*Genel Sekreter*). Subsequent to the approval of the Diyanet's President, they are then published.[141] In addition, the Secretary-General is also responsible for submitting the Council's agenda, date and place to the members of the Consultative Religious Council and to concerned institutions at least three months before any meeting.[142] In contrast to constitutional laws, judicial decisions and regulations, which are binding on all who are resident in Turkey, these Council resolutions, as Act 93/4257 establishes, instead possess an advisory, consultative and informative character ("[t]he resolutions of the Consultative Religious Council have consultative nature.").[143] It is therefore important to note that the resolutions are not binding on members of the public, but are instead advisory and informative, with particular application to the ethical, religious and social realms.

The HBRA also organises Consultation Meetings of Contemporary Religious Issues which engage with contemporary Islamic law and related problems that currently confront Muslims at both the internal (within Turkey) and external levels. A list of subjects discussed and recorded in these consultation meetings follows:

- Correctly understand and interpret religious texts, women's problems, prayers and discussions on the *ḥajj* (pilgrimage)
- Medical developments, religious problems and social life originating within trade

[139] Din İşleri Yüksek Kurulu Başkanlığı, in *Din Şuraları*, accessed November 20, 2016, http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Sayfalar/DinSuralarison.aspx.
[140] Act no. 93/4257 dated 19 February, 1993, *Resmi Gazete.*
[141] Ibid.
[142] Ibid.
[143] Ibid.

- Business life
- Contemporary issues relating to *ḥalāl* food
- Issues relating to family and prayers
- Methods to understand and interpret the Qur'an and *ḥadīths*,
- Religious advisory services and the *fatwā* concept.[144]

In addition to these consultation meetings, the HBRA has organised various workshops that have engaged with astronomical observations, contemporary problems of belief, data bank projects, embryo research, esoteric comments in religion, *fatwā* projects, Islamic ethics, Islam and violence, the *Mahdī* (guided one) and Islam's outlook on different beliefs and races.[145] However, the examination of religious works remains the HBRA's core activity. Books and other written works that relate to religion are normally sent to the Commission on Religious Publications, which falls within the HBRA's structure. Commission experts are then responsible for examining the work and preparing a related report.[146] The Commission experts then reconvene and re-engage the work, with a view to preparing a new report that will be presented to the HBRA.[147] After discussing the Commission report and analysing it from a religious perspective, the HBRA then makes a final decision on whether it will be published.[148] The works are therefore only published subsequent to an examination of whether they are consistent with an authentic and correct interpretation of Islam. In this manner, the HBRA operates as a board which is responsible for supervising religious publications within the Diyanet structure.

External experts have participated in certain HBRA meetings, projects and workshops, which have focused strongly upon contemporary problems and topics.[149] These experts have made an important contribution in areas where the scholars lack required knowledge, such as economics, medicine, technology and science. Between 20-30 May 2016, the Diyanet, working in cooperation with the Islamic Crescent Observation Project (ICOP), organised the International Lunar Calendar Unity Congress.[150] During the Congress,

[144] Republic of Turkey Presidency of Religious Affairs, in *High Board of Religious Affairs*, accessed November 05, 2016, http://diyanet.gov.tr/en/icerik/high-board-of-religious-affairs/12598.
[145] Ibid.
[146] Yiğit et al., *Diyanet İşleri Başkanlığı*, 19.
[147] Ibid.
[148] Ibid.
[149] Act no. 633 dated 22 July 1965, Act no. 93/4257 dated 19 February, 1993 and Act no. 98/11479 dated 24 July, 1998 and Dadaş, "Kuruluşundan Günümüze," 59.
[150] The Congress, which was hosted by the Diyanet, was held in İstanbul between 28-30 May, 2016. Scientific and religious scholars from roughly fifty countries, which included Egypt, Jordan, Malaysia, Saudi Arabia, Turkey, the United Arab Emirates (UAE) and the United States, participated in the Congress. The preparation of the Congress began three years in advance when a commission of scientists and scholars specialised in astronomy and Islamic jurisprudence (*fiqh*) began to explore views within the Muslim world at the international

astronomical experts made an important contribution by providing required knowledge to the participating scholars. The Congress decision derived from a Science Board that included scholars and scientists drawn from various countries.[151] In acknowledging that the issue of moonsighting has divided the Muslim community (*umma*), the Congress sought to develop a unified lunar calendar. It states:

> "[I]t has been a real challenge for Muslims, particularly for the Muslim minority groups…because, in one country, this results sometimes in celebrating the religious festivals (*'Īd al-Fitr* and *'Īd al-Adḥā*) in three different days among Muslims living in non-Muslim countries as well as Muslim countries … This religion is the religion of oneness (*tawḥīd*), and has regarded unity and integrity as a legal obligation (*şer'i bir farz*) and a factual necessity."[152]

The Congress was justified by the fact that the celebration of religious festivals (*'Īd al-Fitr* and *'Īd al-Adḥā*) begins at different times in separate countries and sometimes even in the same cities. For this reason, it was imperative to work towards unifying the lunar Islamic calendar (*at-taqwīm al-hijrī*). The Congress noted that divisions among the Muslim community on the subject of local moonsighting (*ikhtilāf al-maṭāli'*) was contrary to the *tawḥīd* spirit of Islam; the need to achieve and uphold unity within the Muslim community came to provide the basis for the acceptance of a single lunar calendar system.[153] In the Congress Resolution, the obligation regarding the viewing the new moon (*hilāl*) was determined an obligatory and functional requirement for the verification of the birth of the new moon, so the witnessing of the crescent (*hilāl*) was established a necessary precondition for the confirmation of the birth of the new moon.[154] If the crescent is viewed at any point of the world, whether through human sight or the use of modern astronomical instruments, it is conceivably sufficient for the discharge of religious obligations that the sighting of the crescent is considered the operative cause (*'illa*). Being grounded within the universal validity of sight (*ittihād al-maṭāli'*), the Resolution does not appear to contradict the classical

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level. The Congress concluded with two main proposals: firstly, a dual calendar system that would entail a separate calendar for the Western Hemisphere, which would be of particular benefit to Muslims resident in North and South America; secondly, a single calendar system that Muslims in every part of the world would refer to when celebrating religious festivals (*'Īd al-Fitr and 'Īd al-Adḥā*). These two proposals were put to the vote, and a clear majority of participants agreed to adopt a single Islamic lunar calendar system. See Din İşleri Yüksek Kurulu Başkanlığı, in *Uluslararası Hicri Takvim Birliği Kongresi Sonuç Bildirgesi*, accessed November 20, 2016,http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Sayfalar/HaberDetay.aspx?rid=64&lst=HaberlerListesi&csn=/dinisleriyuksekkurulu and Mehmet Çelik, "Islamic Scholars Agree on a Shared Lunar Calendar for Muslim World," in *Daily Sabah Turkey*, May 31, 2016, accessed November 20, 2016, http://www.dailysabah.com/nation/2016/05/31/islamic-scholars-agree-on-a-shared-lunar-calendar-for-muslim-world.

[151] Din İşleri Yüksek Kurulu Başkanlığı, in *Uluslararası Hicri Takvim Birliği*.

[152] Ibid.

[153] Ibid.

[154] Ibid.

Islamic regulation which holds that the witnessing of the crescent moon is a form of worship and a prerequisite for devotional practices – this is the case because the visibility condition of the crescent is the Resolution's main priority. The issue was resolved through an alignment with scientific opinion (astronomy) and Islamic jurisprudence (*fiqh)*. On medical questions, including the use of alcohol in medication, in vitro fertilization, organ transplantation, plastic surgery and sterilisation, teams of doctors were, in advance of any Islamic legal explanation, asked to provide their specialised knowledge. On economic issues, including banking, commerce, interest/usury (*ribā*), life insurance and mortgages, economic experts could conceivably provide guidance to the HBRA.

In the modern context, it can be asserted that economic, medical, sociological and technological sources grounded within empirical and scientific evidence emerge naturally and provide an essential data-base for the practice of *iftā'*. In common with other religious scholars, the HBRA members cannot claim to possess a comprehensive knowledge of economic, medical, scientific or technological matters. The HBRA is, for this reason, frequently reliant upon external expertise. In addressing itself to the question of whether anesthesia breaks the fast (*ṣawm*), the organisation refers to established medical and scientific truths.[155] After describing three types of anesthesia (general, local and regional), the HBRA states:

> "Anesthesia is used to stop patients from feeling pain or other sensations during medical operations… Anesthesia is given as gas to breath in or injections into the human body. The anesthesia through gas and injection does not carry a meaning of eating and drinking as it does not go down the stomach. However, regional and general anesthesia sometimes necessitates to drip-feed the anesthetized person in order to establish vascular access in the case of emergency. Consequently, the fast breaks in the types of regional and general anesthesia when the anesthetized patient drip-feeds, but the local anesthesia does not lead to breaking of the fast of the patient due to the fact that there is no mention of drip-feeding."[156]

Instead of referring to any textual evidence, the HBRA members, in trying to identify which types of anesthesia break an individual's fast, refer to medical knowledge on the subject. It can, upon this basis, be argued that medical knowledge is the foundation of the *fatwā*. However, the knowledge of the external experts is generally cited and used as circumstantial and corroborative evidence in conjunction with the authoritative Islamic legal sources in

[155] Din İşleri Yüksek Kurulu, *Fetvalar* (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2015), 286-287.
[156] The *fatwā* sets out three types of anesthesia. In the first instance, general anesthesia is used for major operations, and an anesthetized (and entirely unconscious) patient does not feel pain and other signals passing along nerves to the brain. Local anesthesia is the second type of anesthesia which is used for the minor medical procedure. While the person remains conscious (awake), he/she should not feel pain in the area being anesthetized. The third type (regional anesthesia) is similar to local anesthesia – however it anesthetizes more broadly and in greater depth by injecting drugs into the specific nerves that are connected to the targeted part of the body. See Din İşleri Yüksek Kurulu, *Fetvalar*, 286-287.

many *fatwās* pertaining to issues as diverse as abortion, birth control, euthanasia and organ donation.[157]

Closer engagement suggests that the issuance of *fatwās* and Islamic religious rulings are among the HBRA's most important duties. It should be noted that these *fatwās* and Islamic legal statements clearly address themselves to the task of constructing the religious consciousness and morality of the Muslim segment of the society. The following section will set out the HBRA's process of *iftā'* in greater detail.

2. The Process of Answering Religious Questions

The HBRA is the main component of the Diyanet, which functions as its executive agent on all matters pertaining to religious research and explanation, and Islamic legal interpretation (*fatwā*). Because Act 633 tasks the Diyanet with informing the society about religion, the issuance of *fatwās* and the provision of Islamic legal explanations can be said to be the HBRA's primary duty (Yiğit observes, "[a]fter inuring the Act 633 in 1965, the function of answering religious questions which were asked by the citizens gained density among functions of the board").[158] Thousands of *fatwā*, Islamic legal decisions, recommendations and statements have been issued on various subjects which include culture, economics, food, gender issues, interfaith dialogue, marriage, medicine, Muslim minority sects, rituals, theology, the rights of non-Muslims, sophisticated technology and vitro fertilisation.

It is generally the case that the questions of individuals and private/public organisations can be submitted by e-mail, fax, mail or telephone. However, some individuals do occasionally visit the Board to present their questions in person.[159] Answers to the questions asked by fax or mail are posted with a signed official letter by the HBRA's president or its deputy chairman. In the process of the practice of *iftā'*, questions are forwarded to the Commission on Examining Religious Matters and Answering Questions at the outset. The Commission then has the option of pursuing one of three courses of action. If the question is straightforward, it will receive a direct answer. If it is complicated, it will be sent to the commission's experts. While researchers may initially conduct research independently, their final response to the question is issued on a collective basis. The prepared answer will then be submitted to the HBRA president who, in acting on behalf of the president of the Diyanet, will then sign the document, which will later be forwarded to the

[157] Din İşleri Yüksek Kurulu, *Fetvalar*, 535 and 538-540,
[158] Yiğit et al., *Religious Affairs Presidency*, 6.
[159] Dadaş, "Kuruluşundan Günümüze," 42- 44.

initial applicant via fax or mail. The final course of action arises pertains to instances in which extra effort is required to deduce an Islamic legal ruling or the issue has not arisen before. Here the Commission prepares research related to the question before this research is then placed on the HBRA agenda, in the expectation that it will issue a *fatwā* or produce an Islamic legal explanation.[160] After engaging with the issue on the basis of research prepared by the Commission, HBRA members then make a final decision, which is indicated by an absolute majority vote. HBRA members are therefore responsible for producing Islamic knowledge and answers to religious questions in instances where the experts of the Commission on Examining Religious Matters and Answering Questions were unable to respond.

In order to further engage (answer, publish and receive) questions and practice *iftā'*, the Diyanet also established a free call centre and launched an official website. In order to answer religious questions by phone, a private room (known as "the Room of Answering Religious Questions") was established within the HBRA.[161] It is estimated that the room answers a total number of between 200-250 questions per day.[162] During weekdays (from 09:00 a.m. to 17:00 p.m, with the exception of Ramadan, when it stays open until the later hours), two experts are deployed within the room.[163] Sometimes, if they require a clearer grasp of content or context, the experts will ask for questions to be put in writing.

E-mail enquiries submitted through the Diyanet's official website have recently increased in number.[164] The Commission on Research and Development (ARGED) is responsible for replying to these questions in addition to undertaking media outreach through consultative resolutions, journals, recommendations, reports and documentations of *fatwās*, television broadcasts and the Divanet's official website. The ARGED transfers the questions to the relevant experts in the HBRA, before any answer are emailed to the petitioners.[165] After obtaining the experts' explanation and interpretation (*fatwā*) to the question, the ARGED emails the *fatwā* to the questioner. Frequently, those *fatwās* that have general contents and that are considered to be of importance not only to the individual questioner but also to the Muslim resident in Turkey are featured on the website.

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[160] Dadaş, "Kuruluşundan Günümüze," 42- 44 and Yiğit et al., *Diyanet İşleri Başkanlığı*, 18.
[161] Yiğit et al., *Diyanet İşleri Başkanlığı*, 18.
[162] Republic of Turkey Presidency of Religious Affairs, in *High Board of Religious Affairs*, accessed November 05, 2016, http://diyanet.gov.tr/en/icerinek/high-board-of-religious-affairs/12598.
[163] Yiğit et al., *Diyanet İşleri Başkanlığı*, 18-19.
[164] Ibid, 18.
[165] Yiğit et al., *Diyanet İşleri Başkanlığı*, 18 and Dadaş, "Kuruluşundan Günümüze," 43-44.

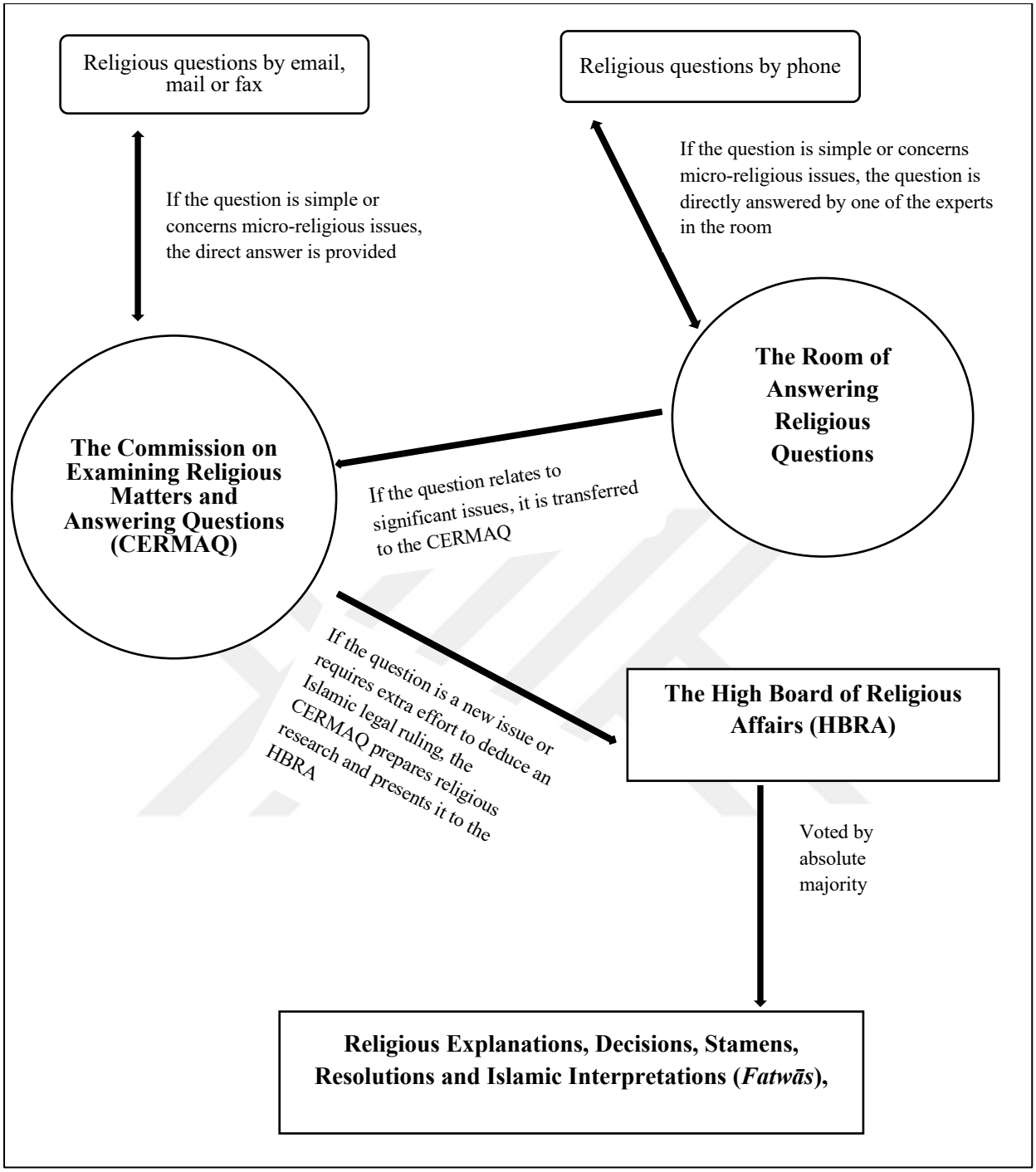

Table 3: The Process of *Fatwā*-Issuing by the HBRA

There are also questions that require a stronger grasp of the petitioners' situation or local cultural practices. In these instances, experts can adopt two approaches, which vary in accordance with the specific circumstance.[166] In the first instance, petitioners can sometimes be asked to present their question in person, a course of actions which could, under certain circumstances, help experts to provide a more authentic, reliable or specific religious

[166] Yiğit et al., *Diyanet İşleri Başkanlığı*, 18-19.

answer.[167] In the second instance, the questions which include local or cultural correlations can be directed to the Office of Muftī in the petitioner's city.[168] In the process of answering a religious question, therefore, the investigation of the petitioners' conditions and of the local and cultural context emerges as a noteworthy criterion in order to ensure the religious answer's suitability to that specific case.

Finally, it is important to recognise that the Commission (on Examining Religious Matters and Answering Questions) and the Room (of Answering Religious Questions) both seek to answer uncomplicated questions pertaining to Islamic legal and religious issues (e.g. ritual practices and their legal rulings). In contrast, HBRA members are primarily preoccupied with novel issues that have not been encountered before or complicated cases that require an intensification of existing scholarly efforts or a heightened level of collaboration in the practice of *iftā'*.[169] This clearly brings out the existence of a hierarchical administrative system within the structure of the HBRA. In this system, the primary responsibility of the board is to answer questions in a manner that closely corresponds to the essence of Islam and Islamic law.

In answering questions that have been presented to it, the HBRA has adopted two main strategies, which vary in accordance with question content. Firstly, if the content of the question is associated with ritual practices (*'ibādāt*) or classical Islamic legal issues discussed by earlier Muslim scholars, the HBRA normally refers to the Ḥanafī school's views and methodologies – this entails a closer engagement with *fatwās* associated with *'ibādāt* and issues adjudicated by the earlier Muslim scholars.[170] It is occasionally the case that a *fatwā* will, subsequent to introducing the Ḥanafī school's view, outline the position of the three other Sunni schools (with particular emphasis on the Shāfi'ī legal school) without apportioning a clear preference.[171] This is especially true when: 1) The petitioner specifically requests the views of other Sunni schools; 2) When the opinions of other Sunni schools appear to be better suited to the immediate legal problem; 3) When the view of the Ḥanafī school is not compatible with new circumstances; or 4) When a defect can be identified in the evidence (*dalīl*) of the Ḥanafī legal rule.

It is generally the case that the HBRA will introduce the views of other legal schools after mentioning the stance of the Ḥanafī school, thus leaving the right of selectivity (*tarjīḥ*)

[167] Yiğit et al., *Diyanet İşleri Başkanlığı*, 18.
[168] Ibid.
[169] Dadaş, "Kuruluşundan Günümüze," 43-44.
[170] Din İşleri Yüksek Kurulu, *Fetvalar*, 46 and Dadaş, "Kuruluşundan Günümüze," 50.
[171] Din İşleri Yüksek Kurulu, *Fetvalar*, 46.

to the discretion of the individual questioner.[172] The *fatwā* relating to the number of suckling that prohibits the marriage with milk siblings is one example of *fatwās* that encompasses the views of other Sunni schools.[173] As is usually the case, the *fatwā* presented the Ḥanafī school's legal ruling which holds that sucking is sufficient to establish milk kinship until the age of two. The school maintains that the condition which institutes milk kinship is that the milk reaches the stomach of the baby – this is the key consideration, as opposed to the consumed amount or the number of occasions on which the baby is breastfed by his/her milk mother.[174]

After presenting the opinion of the Ḥanafī school, the *fatwā* refers to the legal opinion of the Shāfi'ī and the Ḥanbalī schools on the various conditions that establish milk kinship.[175] The two schools agree that sucking less than five times does not institute milk kinship; suckling that takes place after two years of age does not result in marriage being forbidden.[176] To put it differently, the *fatwā* states that five times square breastfeeding before the age of two by the same wet nurse is certainly conditioned by the Shāfi'ī and the Ḥanbalī schools to institute milk kinship that prohibits marriages among the milk siblings.[177] Another *fatwā* relating to the legal ruling on the consumption of seafood, such as mussel, crab and lobster, also sets out a similar structure in which the legal views of the Ḥanafī and Shāfi'ī schools are respectively presented.[178] These two *fatwās* and many others establish that the selection and implementation of the legal rulings, opinions and views of the four Sunni schools are generally contingent upon the discretion of the individual who asks the question. Mustafa Bülent Dadaş, one of the experts in the HBRA, explains why the institution offers different opinions of the four Sunni schools. He states:

> "The board conceivably aims to provide easiness and facility to the questioner (*mustaftī*) by mentioning the different views in a *fatwā*. Yet more, other schools' legal views, along with the four Sunni law schools, are introduced to the individual as practicable, valid and applicable Islamic legal options."[179]

However, several *fatwās* issued by the HBRA also make it clear that, after the relevant views of the Islamic law schools are conveyed, the board assumes responsibility for determining the preponderant opinion. For example, the HBRA issued a *fatwā* relating to the issue of triple

[172] Dadaş, "Kuruluşundan Günümüze," 50.
[173] Din İşleri Yüksek Kurulu, *Fetvalar*, 467.
[174] Ibid.
[175] Ibid.
[176] Ibid.
[177] Ibid.
[178] Ibid, 531.
[179] Dadaş, "Kuruluşundan Günümüze," 53-54.

divorce (*ṭalāq*) by a single utterance.[180] The *fatwā* briefly set out the legal view of the Ḥanafī and Shāfi'ī schools at the beginning, before then engaging with two *ḥadīths* narrated by 'Abd Allāh b. 'Abbās, one of the Companions of the Prophet. These were referred to as the second Islamic legal opinion concerning triple divorce by a single utterance, a view which was, it should be noted, very much peculiar to the minority's stance within the Ḥanbalī school.[181] The *fatwā* observes that the majority of scholars, including most Ḥanafīs and Shāfi'īs, maintain that this form of divorce has the same full effect as a triple divorce (the greater irrevocable divorce) – it does not matter whether the words of *ṭalāq* are pronounced three times or expounded in a single sitting or during the *'idda* period (the wife's waiting period after divorce).[182]

The two *ḥadīths* narrated by 'Abd Allāh b. 'Abbās clearly state that the triple divorce previously only counted as a single divorce (revocable *ṭalāq*) during the time of the Prophet and Abū Bakr, the first Caliph. This was also true during the first two years of 'Umar b. al-Khaṭṭāb, the second Caliph.[183] In engaging with this issue, the HBRA evidenced a clear preference for the second view, namely that the multiple pronunciation of the divorce (*ṭalāq*) formula in one sitting is considered to be the usage of only one divorce right, as opposed to the greater irrevocable divorce.[184] Even though this view is a minority view among Ḥanbalī scholars (although it is worth noting that it was held by Ibn Taymiyya), the HBRA cited the two *ḥadīths* as the second Islamic legal view on triple divorce by a single utterance. It can therefore be argued that the HBRA uses *tarjīḥ* (the practice of determining preponderant opinion) as an Islamic legal methodology, with the intention of broadening its spectrum. This establishes that the practice of *tarjīḥ* is not narrowly limited to the four Sunni law schools, but also extends to the Companion's opinions, followers (*tābi'īn*) and even followers of followers (*tābi'ī al-tābi'īn*), along with other Muslim scholars who are generally very interested in the area of Islamic law.[185] By virtue of the fact that the HBRA expresses a clear

[180] Generally speaking, there are two types of divorce (*ṭalāq*): revocable and irrevocable. In revocable divorce, the marriage does not terminate, and during the waiting period of the wife, the husband and the wife can reunite, without implementing a new marriage contract. Irrevocable divorce is classified as two types according to their degrees: the lesser, which permits the parties to remarry, and the greater, which prohibits remarriage of the parties until after the wife has married another man and that marriage is consummated and terminated.
[181] Din İşleri Yüksek Kurulu, *Fetvalar*, 444 and Frank Vogel, "The Complementarity of Iftā' and Qaḍā'," 265.
[182] Din İşleri Yüksek Kurulu, *Fetvalar*, 444.
[183] Ibid.
[184] Ibid.
[185] Dadaş, "Kuruluşundan Günümüze," 48 and 54. The *fatwā* relating to the legal ruling on inheritance between Muslims and non-Muslims can also be interpreted as an explicit confirmation that the decision was made with reference to the views of some of the Prophet's Companions (including Mu'āwiya b. Abī Sufyān and Mu'adh b. Jabal), as opposed to the general position of the four Sunni schools. In referring to the opinion of the two Companions, the HBRA assents to Muslims inheriting from their non-Muslim parents. In engaging with this

preference for one of the legal opinions, the individual petitioner and other audiences are probably guided by the institution towards the second view, as opposed to its preceding (Islamic) counterpart. In this respect, the Diyanet can be interpreted as a religious institution that moderately follows a traditional Sunni interpretation of Islam.[186] Sunier et al. state:

> "The picture that emerge[s] from our analysis of the religious information and guidance of Diyanet is one of an institution extensively engaged in the vocabulary, classical sources and methodologies available to Sunni religious authorities all over the world. Fatwas issued by Diyanet gain their legitimacy in the same way as other fatwa institutions, by interpreting the Quran, quoting authentic prophetic traditions and using analogous reasoning to address new moral questions. In this sense, Diyanet works like an institution for Sunni orthodoxy."[187]

Even though the Diyanet's decisions, interpretations and legal explanations are indebted to the Sunni tradition to a certain extent, it is important to recognise that the institution presents its role as being to:

> "[M]ake decisions on religious matters, express views and answer questions concerning religion by taking into consideration fundamental information sources and methodology of Islam, historical experiences, current demand and requirements [of the society]."[188]

However, the classical Ḥanafī and Shāfi'ī *fiqh* traditions provide an important basis for the legitimacy of the institution's official discourse and Islamic legal interpretation, in particular Islamic legal rulings and explanations relating to *'ibādāt* and classical Islamic legal issues.

The second strategy adopted by the HBRA relates to novel and contemporary religious matters, along with issues pertaining to social transactions (*mu'āmalāt*). It is therefore conceivable that a question addressed to the institution may involve an issue that has not been extensively discussed by Muslim scholars, or a subject that demands a review of an existing Islamic legal ruling.[189] Upon engaging with these two categories, the HBRA deploys two methods.

In the first instance, it seeks to revise the issue by considering its extension and potential positive and negative effects. This is achieved by taking new circumstances into account, with a view to reformulating existing rulings. In the second instance, it formulates new rules that relate to unprecedented cases, such as those that are frequently encountered in

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specific issue, the majority of Muslim scholars from the four Sunni schools maintain that it is not permissible for a Muslim to inherit from a non-Muslim and vice-versa. Their argument is generally based on the two *ḥadīths* of the Prophet: 1) "A Muslim does not inherit from an unbeliever and an unbeliever does not inherit from a Muslim" [narrated by Muḥammad b. Ismā'īl al-Buhārī]; 2) "People of different religions do not inherit from each other." [narrated by Ibn 'Īsā al-Tirmidhī and Aḥmad Ibn Ḥambal]. See Din İşleri Yüksek Kurulu, *Fetvalar*, 487-488.

[186] Turner and Arslan, "State and Turkish Secularism," 216.

[187] Sunier et al., *Diyanet: The Turkish Directorate*, 140-141.

[188] Act no. 633 dated 22 July 1965 and Din İşleri Yüksek Kurulu Başkanlığı, in *İlkeler ve Hedefler*, accessed December 12, 2016, http://www2.diyanet.gov.tr/dinisleriyuksekkurulu/Sayfalar/IlkelerVeHedefler.aspx.

[189] Din İşleri Yüksek Kurulu, *Fetvalar*, 46.

the economic, medical and technological spheres. To a substantial extent, the Diyanet therefore deploys modern methods in order to adapt Islamic legal tradition to contemporary circumstances, an outcome which is predominantly achieved by prioritising the Islamic legal principle of *maṣlaḥa* (public interest), the highest objectives of Islamic law (*maqāṣid al-sharī'a*) and the two main Islamic legal maxims (of necessity (*ḍarūra*) and customary practices (*'urf*)) over the specifics.[190] In describing the Diyanet's epistemological predisposition towards Islamic law, Kaya states:

> "The Diyanet's Islamic legal approach is successful in reaching beyond formalistic tendencies and for seeking to materialise the spirit of religion rather than drawing judgements out of Muslim black boxes."[191]

Powel also accentuates the modern approach of the Diyanet, which places a particular emphasis upon the Ḥanafī jurisprudence, when he states:

> "On many issues, [the Diyanet] relies on traditional *fiqh* rules; and it tends to refer to the *Hanafi* school for legitimacy. Even so, it is also modern in its attempts to harmonise the tradition with Turkish republicanism and secularism and to provide religious council to Turkish citizens."[192]

The Diyanet's orientation towards Ḥanafī jurisprudence, which is clearly indicated in a number of its juristic publications and statements, is conceivably justified by the fact that many Muslim Turks follow the Ḥanafī school.[193] While there is no official method or regulation attributed to sharī'a, the Diyanet's position does imply a particular approach to Islam and Islamic law which could be considered an alternative understanding of *fiqh* that combines elements of the classical Islamic *fiqh* tradition (mainly Ḥanafī school) with modernism.[194]

With regard to marriage, for instance, the transplantation of the Swiss Civil Code of 1926 made it a criminal offence to marry in a religious ceremony without executing civil marriage (Article 230/5 and Article 230/6) or to initiate multiple marriages (Article 230/12).[195] A civil marriage must first be confirmed by authorized marriage officers before a

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[190] Din İşleri Yüksek Kurulu, *Fetvalar*, 46.
[191] Kaya, "Balancing Interlegality," 69.
[192] Powell, "Evolving Views of Islamic Law," 479.
[193] It is important to note that a large majority of the Turkish population observes the Sunni tradition. A 2014 Diyanet survey found that almost 78 percent of Turkish citizens follow the Ḥanafī scholar, while approximately 11 percent of the Muslim population adhere to the Shāfi'ī school. Din İşleri Yüksek Kurulu, Türkiye'de Dini Hayat Araştırması (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2014), 8.
[194] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Din, Yenileşme ve Modern Hayat*, accessed February 25, 2017, http://www3.diyanet.gov.tr/tr/icerik/din-yenilesme-ve-modern-hayat-prof-dr-ali-bardakoglu-diyanet-isleri-baskani-istanbul/6217.
[195] Act no. 5237 dated 26 September 2004. See *Resmi Gazete* (Official Gazette), 12. 10. 2004-25611, accessed November 03, 2016 http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237-20150327.pdf.

religious marriage (*nikāḥ*) is permitted. If this does not occur, the respective parties can be punished under Act no 5237.[196] This is why a religious marriage without official registration was made optional and frequently operated in the absence of sanctioning power, generally in the Eastern part of Turkey. After the enactment of Act no 5237, a religious marriage has not registered by any authorised marriage officers as an official marriage. Despite the fact this legal regulation renders a religious ceremony into officially ineffective within the scope of state law, the ceremonial Islamic religious marriage (*nikāḥ*) still remains a preferred form of marriage among many people, in both rural and urban areas. A State Institute of Statistics publication observes:

> "In 2011, the ratio of couple who employed both civil and religious marriage ceremonies is 93.7%, the figure for only civil marriages is 3.3%, and the ratio of only religious marriages is 3% in their first marriage …"[197]

The data makes it clear that, for Turkish Muslims, the legitimacy of wedlock rests upon religious marriage (*nikāḥ*). Yılmaz observes:

> "[M]any Turkish citizens still prefer the informal or consensual marriage, or *nikah*." Sometimes they marry with *nikah* only without registration, which is not recognised under the Civil Code. There are still some marriages performed by *imams* without the prior official celebration. In rural society, the religious ceremony is still regarded as valid in itself, and a civil marriage alone is not regarded as valid by the Muslim community."[198]

However, religious marriages that are performed without prior official registration can conceivably give rise to familial, legal and societal complications: the custody and inheritance of children born into this marriage, the legitimacy of the marriage before the law, lineage, the maintenance of women in cases of divorce, official registration and the victimisation of women.[199] In addressing itself to these social problems, the Diyanet has provided an Islamic legal explanation (on the performance of marriage) which combines the requirements of Islamic and Turkish law. The Diyanet's Consultation Meeting addressed to familial problems states:

> "On account of the [civil marriage] arrangements in our Civil Code, it can be easier to persuade our people for the necessity of the official marriage in today's Turkey than the past. Yet, it is possible to find negative examples that, in our society, have been faced by the families living only with the religious marriage. On this subject, it is primarily – in accordance with the principles adopted in Islamic legal methodology – necessary to generate the unity of

[196] Act no. 5237 dated 26 September 2004. See *Resmi Gazete* (Official Gazette), 12. 10. 2004-25611, accessed November 03, 2016 http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237-20150327.pdf.
[197] İstatistiklerle Aile, 2012, in *Türkiye İstatistik Kurumu*, accessed November 03, 2016, http://www.tuik.gov.tr/PreHaberBultenleri.do?id=13662.
[198] Ihsan Yılmaz, "Secular Law and the Emergence of Unofficial Turkish Islamic Law," *Middle East Journal* 56, no. 1 (2002), 122.
[199] İlker Çalışkan, Hasan Mollaoğllu, Muhammed Acar, *Aileye İlişkin Sorunlar: İstişare Toplantısı* (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2009), 46 and Sunier et al., *Diyanet: The Turkish Directorate*, 94.

> the sensibility and understanding that all marriages must be officially registered in compliance with the principle of *maṣlaḥa mursala* (unrestricted public interest), and thence, no matter who implements such a regulation, it is necessary for the people to obey this … The official marriage in the Civil Code is the marriage of those who have no barriers to marriage; it means that the marriage is declared and freed from secrecy. This is in conformity with the Prophet's recommendation that the marriage be public and be [publicly] announced."[200] [201]

This statement apparently refers to social problems that have the potential to manifest in instances in which religious marriage is performed without its civil accompaniment. In acknowledging associated familial, legal and social difficulties, the HBRA issued a *fatwā* that was addressed to the question of whether the person who performed the official marriage should commit the religious marriage (the *fatwā* states: "[t]he civil marriage performed by fulfilling all the necessary conditions and requirements of *nikāḥ* (religious solemnisation) is a religiously valid marriage").[202] The *fatwā* strongly insists that the marriage should be publicly announced and officially registered, and should be undertaken with the full knowledge of parents and other relatives.[203] It is also implicitly asserted that a religious marriage ceremony should be conducted in the aftermath of its civil counterpart.[204] This suggests that the *fatwā* does not only address the religious needs of Muslims, but also offers a hybrid formulation that amalgamates unofficial Islamic law with the law of the secular state.[205]

The Diyanet's catechism observes that religious solemnisation (*nikāḥ*) is an individual responsibility that is enacted before God. However, it is occasionally misused by malevolent people, resulting in familial problems, religious exploitations and social disorders.[206] The civil marriage offsets the danger that these problems and misuses will arise by providing a legal solution in which the rights of spouses are acknowledged by the official state legal system.[207] The Diyanet's legal explanations and rulings are instructive because they remind the reader of the limitations and possibilities of attempting to align Islamic legal rulings with

[200] Çalışkan et al., *Aileye İlişkin Sorunlar*, 49.
[201] Author's translation.
[202] In the *fatwā*, religious marriage and its some conditions described as follows: "[a]ccording to Islam, the religious solemnisation (*nikāḥ*) is a marriage of one woman and one man before witnesses. In addition to this, both parties must have the capacity of marriage, must be free from any obstacles that might prevent the marriage from being valid, and must give their mutual consent in the form of a proposal (*ījāb*) and of an expression of acceptance (*qabūl*)." See Din İşleri Yüksek Kurulu, *Fetvalar*, 439.
[203] Din İşleri Yüksek Kurulu, *Fetvalar*, 439.
[204] Ibid.
[205] The similar approach is also adopted by the HBRA when answering a religious question concerning the court divorce. The question is of whether couples who are divorced by the court is religiously divorced or not. The *fatwā* concerning this question is explicitly states that the court divorce is equivalent to the lesser irrevocable divorce in terms of Islamic law. From the *fatwā*, it is possible to make an inference that a couple divorced three times by the court must follow the procedure of the greater irrevocable divorce according to Islamic law. That is to say, the couple must not remarry until after the wife has married another man and that marriage is consummated and terminated. See Din İşleri Yüksek Kurulu, *Fetvalar*, 446.
[206] Hayreddin Karaman, Ali Bardakoğlu and H. Yunus Apaydın, *İlmihal-I İman ve İbadetler* (İstanbul: DİB, 1998), 220-223, accessed October 06, 2016, http://www.diyanet.gov.tr/dijitalyayin/ilmihal_cilt_1.pdf.
[207] Karaman et al., *İlmihal-I*, 222-223.

contemporary trends and modern values. By developing a new technic which brings the secular Turkish legal system together with the unofficial Islamic ruling, the Diyanet attempts to meet the demands of Muslims in a way that offsets the threat of legal and social conflict in Turkey. This reconciliatory approach is evidenced in the numerous legal answers that the organisation provides in response to Muslims' problems. The Diyanet therefore seeks to overcome a range of contentious issues by amalgamating secular and Islamic law and arranging them around the principle of *maṣlaḥa*.

On rare occasions, the opinions of Ḥanafī, Ḥanbalī, Mālikī and Shāfi'ī jurists may be appealed in a discretionary manner. A decision or explanation that had been previously acknowledged by a Muslim jurist, irrespective of their affiliation to a particular school of Islamic law, can therefore provide an initial point of engagement for the assessment and discussion of issues that have been addressed to the Diyanet. This may be interpreted as an indication that the Diyanet are following in the footsteps of the Ottoman Muslim scholars, their predecessors, in addressing themselves to the questions. In discussing the traditional positions of Ottoman scholars on the legal maxims of 'eclecticism' (*takhayyur*) and 'combination of opinions' (*talfīq*), Ibrahim remarks:

> "…Ottoman jurists from the provinces pushed these limits on the pragmatic selection of juristic views by expanding the permissibility of *tatabbu' al-rukhaṣ* and challenging the consensus over the prohibition of *talfīq*. This theoretical evolution also corresponded to the utilization of both legal techniques (referring *talfīq* and *takhayyur*), whereby legal subjects appealing to the courts were directed to the school that was more suitable for their legal transactions."[208]

This can be taken as confirmation of the Diyanet's aim to apply legal maxims of 'eclecticism' (*takhayyur*) and 'combination of opinions' (*talfīq*) in some cases. The presence of the ruler or his deputy is, to take one example, one of the necessary prerequisites for the establishment of the Friday prayer in the Ḥanafī tradition.[209] The Diyanet's catechism made it clear that most of the earlier Ḥanafī scholars during the time of 'Abbasid made the permission and presence of the ruler a necessary condition for the performance of the Friday prayer. This established a link between the Friday prayer and the political authority, with the consequence that the Friday prayer, over time, came to attain a political meaning.[210] Earlier Ḥanafī scholars who

[208] Ahmed Fekry Ibrahim, "Talfīq/Takhayyur," in The Oxford Encyclopaedia of Islam and Law, Oxford Islamic Studies Online, accessed June 11, 2017, http://www.oxfordislamicstudies.com/article/opr/t349/e0082.
[209] Karaman et al., *İlmihal-I*, 289. Shams al-Dīn Sarakhsī (d. 1089), one of the most prominent Ḥanafī scholars, wrote *Kitāb al-Mabsūṭ*, in which he claimed that the presence of the *sulṭān* (the ruler of country) was one of the *wujūb* (conditions necessary for the establishment of the Friday prayer). See Norman Calder, "Friday Prayer and the Juristic Theory of Government: Sarakhsī, Shīraāzī, Māwardī," *Bulletin of the School of Oriental and African Studies* 49, no. 1, (1986), 35-36 and 37, accessed March 27, 2017, http://www.jstor.org/stable/617667.
[210] Karaman et al., *İlmihal-I*, 298.

were clearly influenced by this proposition later added a number of other conditions, which had no prior existence, as the necessary precursors to a valid Friday Prayer.[211] The presence of the head of state or his deputy was therefore one among a number of *post facto* conditions. The Ḥanafī tradition maintains that if none of these conditions are present, the Friday prayer is not obligatory (*wājib/farḍ*) for its adherents.[212] However, this prerequisite was softened by allusions to other schools of Islamic law and later Hanafi scholars who did not impose the presence of the head of state or the permission of the government as preconditions for a valid Friday prayer. This suggests that the implicit permission is sufficient for the validity and establishment of the Friday prayer, as the catechism states:

> "… due to the fact that the prerequisite of the permission from the ruler for performing the Friday Prayer lost its political connotations, there is no need to implement this condition in our day. On the other side, if this prerequisite is still considered as a necessary condition for the establishment of the Friday prayer at the present time, the permission of building mosques, the salary payment to *imāms* by the state, and the existence of the public institutions implementing such duties may be counted as a governmental permission, and hence it is possible to conjecture that the necessary condition has already fulfilled for the establishment of the Friday prayer."[213]

The first part of this statement can certainly be interpreted as delinking Friday prayers from the government. This could conceivably be interpreted as a reflection of the Shāfi'ī tradition's condition for the establishment of Friday prayers. Calder makes this clear in his evaluation of Abū Isḥāq al-Shīrāzī (d. 1073), one of the pre-eminent Shāfi'ī scholars, when he addresses himself to conditions pertaining to the establishment of the Friday prayer ("[t]he Shāfi'ī tradition looked much more to a sense of communal unity…").[214] For this tradition, it is therefore the existence of a settled community of Muslims, as opposed to a functioning authority or the permission of the government that was stipulated by the Ḥanafī tradition for the establishment of the valid Friday. Alternatively, it can be argued that the precondition of the present ruler adjusted according to prevailing conditions within contemporary Turkey when the Diyanet gravitated towards espousing the position of the Shāfi'ī tradition.

Additionally, the traditional Ḥanafī juristic position, which maintains that the Friday prayer can be held in more than one mosque in a city, is presumably upheld in recognition of its alignment with contemporary environmental, modern and social circumstances.[215] In this particular instance, the Diyanet combined Ḥanafī and Shāfi'ī juristic views to argue that the Friday prayer can, particularly in megacities, be performed in more than one central mosque.

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[211] Karaman et al., *İlmihal-I*, 298.
[212] Karaman et al., *İlmihal-I*, 298 and Calder, "Friday Prayer," 35-36 and 37.
[213] Karaman et al., *İlmihal-I*, 298.
[214] Calder, "Friday Prayer," 41.
[215] Karaman et al., *İlmihal-I*, 298.

Furthermore, the specific permission of the government is not a necessary condition because the existence of mosques, religious public institutions and state *imāms* can justifiably be regarded as the permission of the head of state or government.[216] At the level of Islamic legal doctrine, these two legal maxims conceivably enable legal pragmatism up to a point; however, this feature becomes blurred when the Diyanet does not develop a set of specific criteria that are addressed to the application of these two legal maxims (*takhayyur* and *talfīq*).

The aforementioned cases presumably exemplify the approach that Diyanet officials adopt when providing religious counsel to Turkish citizens. A substantial number of questions presented to the HBRA involve issues previously addressed by earlier Muslim scholars. When issuing *fatwās* on these issues, the Board usually presents Islamic legal rulings that have been adjudicated and decided by earlier scholars (in response to individual questions), instead of outlining a new legal ruling. The *fatwās* mostly convey Ḥanafī juristic views, which draw upon Ḥanafī scholars' *ijtihād* – this, however, is only the case when the views of the school are applicable to contemporary circumstances, conditions and realities.[217] Dadaş observes that there are several reasons why the Ḥanafī school is privileged within the HBRA's Islamic legal methodology.[218] Firstly, a majority of Muslims resident in Turkey adhere to the Ḥanafī school. Secondly, it was the official school of the Ottoman Empire, and courts of the time ruled in accordance with its *fatwās*, so the fact that the customs and traditions of those resident in the territory who identified with the school are shaped in line with this school is one among a number of reasons which explain why the HBRA's *fatwās* are aligned with the Ḥanafī school. Thirdly, the scholars who work in the HBRA mostly trained in the Ḥanafī school.[219] Finally, the HBRA presumably wishes to produce coherent and consistent Islamic legal knowledge and rulings, and the Ḥanafī school recommends itself on this basis.[220] In some cases, the institution provides a religious consultation service in which it selects an alternative classical rule from among the four Sunni schools of Islamic jurisprudence. In other instances, it presents legal rulings based on new interpretations of authoritative texts.

Dadaş states that the HBRA in particular follows two types of *ijtihād* on contemporary religious issues that were not addressed by earlier Muslim scholars.[221] In the

[216] Karaman et al., *İlmihal-I*, 298.
[217] Dadaş, "Kuruluşundan Günümüze," 51.
[218] Ibid, 50-51.
[219] Ibid, 51.
[220] Ibid.
[221] Ibid, 59-60.

first instance, the HBRA adopts *ijtihād* through the *takhrīj* (extraction) method,[222] which is applied when evaluating contemporary religious issues that closely resemble the subjects that were previously adjudicated upon by Muslim scholars.[223] To take one example, the issue of organ donation was resolved by applying *takhrīj* in order to achieve *ijtihād*.[224] The HBRA's *fatwā* refers to a number of established legal rulings, which include the permission of earlier Muslim scholars for the wombs of dead women to be cut in order to save the lives of their foetuses; for pathological autopsies to be performed in order to provide medical treatment for unknown diseases (on condition that permission was first forthcoming from the deceased's heirs); and for prohibited substances to be used for medication (upon the condition that no alternative medicines were available).[225] The HBRA adopts *qiyās* (legal analogy) as a legal methodology and this enables it to ascertain the similar effective causes between the cited cases and the organ donation. The *fatwā* states that it is permissible to make organ donation, if certain Islamic legal conditions and criteria established in advance are met.[226]

Secondly, the HBRA also uses creative *ijtihād* (*ijtihād inshā'ī*) to apply certain Islamic legal principles and maxims which include the blocking of illegitimate means (*sadd al-dharā'i'*), necessity (*ḍarūra*) and the public interest (*maṣlaḥa*), and this enables to resolve unprecedented and contemporary religious issues.[227] This type of *ijtihād* requires unprecedented rules in response to new contemporary questions – it is not therefore sufficient to refer to the existing opinions of Muslim scholars, with a view to establishing an analogy between these earlier opinions and unprecedented cases (as was the case with the aforementioned issue of anaesthesia and the HBRA's decision on insurance, which was

[222] Particular methods and technics are used to determine the effective cause (*'illa*). These methods are particularly important in the determination of *'illa* because the application of *qiyās* (legal analogy) requires the identification of the attributes of *'illa* and the ascertainment of the relationship which conjoins the original and new case (*aṣl*). *Takhrīj*, which is generally known as *takhrīj al-manāt,* is one method that makes it possible to ascertain *'illa* through the identification of proper attributes and similarities. Dogan defines it in the following terms: "*Takhrīj al-manāt* is defined in *Uṣūl al-Fiqh* as identifying the proper attribute of the underlying cause for the ruling which is the mentioned in the text of the Qur'an, Sunna, and in *ijma*. In other words, *mujtahids* work to discover the *'illah* through examining the attributes of the ruling and find one of them to be a real reason for it." See Recep Doğan, *Usūl al-Fiqh: Methodology of Islamic Jurisprudence* (Clifton: Tughra Books, 2013), under the title "*Takhrīj al-Manāt*".
[223] Dadaş, "Kuruluşundan Günümüze," 59.
[224] Din İşleri Yüksek Kurulu, *Fetvalar*, 535-536.
[225] Ibid.
[226] The HBRA observes that organ donation is permissible under certain conditions. Firstly, it must be a matter of necessity (e.g. there must be no other treatment option available). Secondly, either the donor or his/her family must have consented to the removal and transfer of organs. Thirdly, organs cannot, under circumstances, be exchanged for a financial reward. For further insight into additional conditions, refer to Din İşleri Yüksek Kurulu, *Fetvalar*, 536.
[227] Dadaş, "Kuruluşundan Günümüze," 60.

issued in 2005).[228] Dadaş, in engaging at a methodological level, observes that these are collective rather than individual *ijtihād*.[229] It is therefore possible to observe that the two types of *ijtihād* (*ijtihād* by means of *takhrīj* and *ijtihād inshā'ī*) are the main legal methods that the HBRA uses when engaging with novel or complicated issues within the scope of collective *ijtihād*.

In Turkey, the Diyanet is presumably acknowledged as a moral, legal and religious authority that educates, enlightens and informs people about Islam and Islamic law. However, it should be recognised that the religious interpretations, resolutions and statements provided by the institution are not imposed upon those who live under the state legal system. The level of popular acceptance of the institution will probably determine its position and ability to engage with wider constituencies.[230] The legal function, status, structure and even name of the institution are grounded within by-laws, constitutional regulations and laws. At the administrative level, it is a state agency that does not exert any authority within the Turkish legal system. Its decisions and explanations do not possess binding authority and can therefore be categorised as advisory in character. Nonetheless, it could perhaps be argued that the institution has, through its involvement in the religious affairs of Muslims in Turkey, established a form of social legitimacy. [231] It is therefore instructive to note that the institution's detachment from state politics and its transformation into a more autonomous and competent religious institution has helped to sustain this legitimacy.[232] In remaining loyal to the scholarly heritage of Islamic law, it has also cautiously and gently advanced an Islamic legal reasoning that is simultaneously grounded within modern, religious and secular reference points. The Diyanet, as the main contributor to Islamic law and jurisprudence, can be said to represent a modern scholarly tradition that possesses three main trivets (Islamic legal tradition, modernism and secularism), each of which are exclusive to Turkey.

B) The Relationship of the Diyanet with Religious Groups

In contemporary Turkey, it is possible to identify an overlap and intersection of disparate religious and social identities.[233] This complexity resonates within the religious interpretations of separate social groups, creating a clear and ongoing challenge for the

[228] For a more detailed analysis of the Islamic legal decision on the insurance question, refer to Dadaş, "Kuruluşundan Günümüze," 62-63.
[229] Dadaş, "Kuruluşundan Günümüze," 59.
[230] Din İşleri Yüksek Kurulu, *Fetvalar*, 535-536.
[231] Dadaş, "Kuruluşundan Günümüze," 64-65.
[232] Ibid.
[233] Kaya, "Balancing Interlegality,"110 and Bardakoğlu, *Religion and Society New Perspectives*, 31-32.

Diyanet. The institution's encounter with this diversity will now be extensively discussed, with specific reference to themes of modernism, secularism and traditionalism.

Turkish society is dominated by Muslims whose actions, culture and thoughts derive from a foundation of Islamic ethics and values. Despite far-reaching changes, which can be traced back to Secularisation and Westernisation, Islamic morals, qualifications and values still remain an active consideration within Turkish society (Lewis therefore observes that "the deepest Islamic roots of Turkish life and culture are still alive, and the ultimate identity of Turk and Muslim in Turkey is still unchallenged").[234] Because the majority of Turks are adherents of Islam, the Republic of Turkey is frequently identified as "Islamic". This is problematic precisely because it is standard practice to use this term in relation to state whose constitution establishes Islam as the official state religion or permits elements of Islamic law to percolate within the state legal system, neither of which are observable in contemporary Turkey. It would therefore be more accurate to describe Turkey as a democratic, secular state with a Muslim majority population. The majority population is characterised by considerable heterogeneity, and a diverse range of cultural and regional groups implement a wide number of different religious interpretations and practices.[235] The Diyanet's relationship with these dispersed religious communities and denominations is controversial precisely because, while the Diyanet is the highest official religious institution that teaches religious truth to the Turkish Muslim society, it also provides religious services without discrimination, protects Islam from exploitation and strengthens the unity of the Turkish nation- state.

Since its establishment, the Diyanet has performed two key duties. The first is the oversight of the religious affairs of Muslims with regard to *'ibādāt* and *i'tiqād*, and the second is the management of places of worship. In 1961, the institution was tasked with informing wider society about religion and managing Islam's ethnical principles. Up until the 1960s, the Diyanet's stance towards Islamic legal schools (*madhhabs*) and different religious denominations remained relatively uncontroversial. It was clearly indicated that the view of *Ahl al-Sunna wal-Jamā'a* (the Sunni tradition) would be adopted in *i'tiqādi* subjects. It was also established that the Ḥanafī school would provide guidance upon *'amalī* issues during the translation of *Hak Dini Kur'an Dili*[236] and *Sahih-i Buhari Muhtasarı Tecrid-i Ṣarīh,* with this

[234] Bernard Lewis, *The Emergence of Modern Turkey* (Oxford: Oxford University Press, 2002), 424.
[235] Bardakoğlu, *Religion and Society New Perspectives*, 31-32 and 90.
[236] The *tafsīr* (interpretation) of the Qur'an was written by Muhammad Elmalı Hamdi Yazır. In setting out his method in the Introduction of the book, Yazır indicates that his interpretation regarding to the issues of the creed and practices depends on the understanding of the Ḥanafī school of Sunni Tradition. Elmalılı Hamdi Yazır, *Hak Dini Kur'an Dili*, vol.1 (İstanbul: Eser Kitabevi, 1971), 19.

work being undertaken by the Diyanet.[237] Both contributions have been acknowledged as important works in their own right, and are not therefore perceived as being biased towards other Sunni perspectives.[238]

Subsequent to the 1960 military coup, the Diyanet's attitude towards Islamic schools and sects began to be discussed within the Constitutional Court and the institution itself.[239] It has already been noted that the establishment of a Directorate of Religious Sects in place of the Diyanet had already been proposed in legislation to the Constitutional Court. However, this proposal produced little more than an acrimonious debate, which was only resolved when the 1982 Constitution established that the Diyanet would continue to promote national solidarity and unity.[240] During the 1980s, however, the polemical and abrasive debates with regard to the objectivity and neutrality of the Diyanet towards Sunni schools, religious groups and Sufi orders started to be extensively aggravated. Kutlu points out the increasing debates related to the relationship between the Diyanet and religious groups when he writes: "With the influence of liberalism at the end of the 1980s, demands on the state in general and [the Diyanet] in particular increased and discussion of the problem of representation intensified."[241]

The Diyanet's general and specific (e.g. Diyanet-Alevis relations and Diyanet-Ja'faris relations) interactions with religious groups have proven to be among the most challenging issues that the institution has recently addressed. In its public and religious services, the Diyanet adheres to principle of remaining above all Islamic legal schools (*madhhabs*) and religious sects. In recent years, the institution has sought to produce authentic religious knowledge without evidencing too clear dependence upon any specific religious group or sect.[242] In reflecting upon the institution's adherence to this 'scientific' approach, Er observes:

> "Without ignoring the modern life and the common accumulation of humanity, [the Diyanet], presenting religious knowledge to the society on the basis of citizenship, informs the society about religion by depending on the main sources of religion, scientific criteria and methodology. The knowledge concerning Islamic belief, worship and moral principles, presented by [the Diyanet], is based on the two fundamental sources of Islam [the Qur'an and

[237] Gözaydın, *Religion, Politics*, 17 and Kutlu, "Diyanet İşleri Başkanlığı," 109-110.
[238] Kutlu, "The Presidency of Religious Affairs' Relationship," 249.
[239] Kutlu, "Diyanet İşleri Başkanlığı," 110.
[240] Ibid, 112.
[241] Kutlu, "The Presidency of Religious Affairs' Relationship," 250-251.
[242] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı in *Basın Açıklaması*, accessed December 05, 2016, http://www.diyanet.gov.tr/tr/icerik/basin-aciklamasi-aciklama/6155.

> the Sunna of the Prophet], accepted by all Muslims, rather than the information and preferences of a sect or a group."[243]

The Diyanet must rely on the general principles of Islam, as opposed to the experiences of particular religious groups, religious clergy or Sufi orders when producing authentic religious knowledge. Görmez further reiterates the importance of the Diyanet's impartiality in the production of religious knowledge when he states:

> "In its attempts to educate Turkish society on religious matters, the [Diyanet] produces the needed religious knowledge through scientific and scholarly avenues and keeps its independence because of the principle of secularism."[244]

If the production and transmission of authentic and sound knowledge is held to be an important task of this institution, it can be argued that it is not sustainable to maintain that the Diyanet should take the heterogenic religious structure of Muslims in Turkey into account when undertaking this task.

The Alevi revival of the 1980s resulted in the heightened public visibility of the Alevis and trenchant criticism being directed towards the Diyanet and its role within the secular Turkish state.[245] This heightened visibility no doubt attracted the attention of the Diyanet and led it to issue an explanatory statement relating to Alevism. Er (a Diyanet vice-president between 2003-2010) defines the Diyanet's approach to Alevism, saying:

> "In the light of scientific studies based on historical experience and clear knowledge of the main sources of religion, Alevism that accepts Islam as religion, the Prophet Muhammad as the last prophet and the Qur'an as the holy book cannot be regarded as a separate religion."[246]

This statement clearly demonstrates that Alevism is regarded as a historically Islamic formation. The consideration of its ties with Islam can be interpreted as a form of recognition, and this impression is further reinforced by the use of inclusive language. Kutlu observes that the report prepared by the High Board of Religious Affairs refers to the needs of the Turkish-Shī'i religious community as part of religious public services.[247] While this clearly suggests that the Diyanet was willing to engage with the demands of non-Sunni groups, it does not sufficiently clarify if this recognition extends to the Alevis, or if their demands fall within the scope of religious public services. Presumably, it is not possible to attribute this lack of clarity to only the Diyanet's nebulous and obscure approaches towards the issue of Alevism. Rather, it can instead be traced back to the term in which Alevism is defined. In Turkey,

[243] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Sayın Oral Çalışların Radikal Gazetesinde.*
[244] Görmez, "The Status of the Presidency," 248.
[245] Mert, "Gündem: Alevilik ve Başörtüsü," 6-10.
[246] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Sayın Oral Çalışların Radikal Gazetesinde.*
[247] Kutlu, "The Presidency of Religious Affairs' Relationship," 250.

Alevi identity, ideology and religious predispositions demonstrate some vast discrepancies from one local region to other, so they are so widely dispersed. The definition of Alevism displays noticeable differences among different Alevi groups; these differences have also reverberated in the divergent understandings of Alevi theology that exhibits salient differences one Alevi group to other. Alevi theology therefore sometimes applies deistic, gnostic, monotheistic and pantheistic idioms to historically Muslim personalities or sometimes takes agnostic or atheistic routes altogether.[248] Accordingly, Alevism may turn into an ethno-cultural hub that operates independently of faith. Turner and Arslan describe how Alevis define themselves in the following terms:

> "The Alevis are a distinctive tradition, believing that there is a sacred hierarchy of authority, and their mystical and esoteric beliefs are unlike modernised Sunni Islam. The core of their ritual tradition is known as *cem*, and this tradition is guarded and organised by religious leaders called *dede*. The Alevis are associated with Shi'ism because they believe in the twelve imams of Shi'ism and recall the martyrdom of Hasan and Huseyin. As a result, the Sunni majority often believe the Alevis are Shi'ite Iranians, but the Alevis reject this accusation. They also believe in the equality of men and women, whereas Sunni Islam keeps men and women apart in the mosques and assumes that women are separate from men and require protection. In their prayers and ritual life, they favour the Turkish language over Arabic."[249]

Seemingly, this definition does not sufficiently clarify where Alevis seek to situate themselves within Islam, or even if they seek to situate themselves in this manner in the first instance. However, the Diyanet and Suleyman Er (a *dede* or Alevi religious functionary) provide an important clarification when they observe that Alevis are not subject to discrimination because there are no basic religious differences between Alevism and the Sunni branch of Islam.[250] In their view, any divergence can be traced back to cultural practices and local customs. Er observes that the Diyanet maintains that Alevism is a Sufistic religious entity that falls within the scope of Islam.[251] This approach of the Diyanet conceivably indicates that the institution is aware of Alevi identity and Alevi culture, but the recognition and promulgation of Alevi understanding of Islam by the Diyanet will probably deteriorate the institution's position in producing and transferring authentic Islamic knowledge.

Although the Diyanet is ostensibly an equal distance from all Islamic legal schools (*madhhabs*) and sects, the Alevis (who view themselves as being a Muslim community that

[248] Kaya, "Balancing Interlegality," 230-231.
[249] Turner and Arslan, "State and Turkish Secularism," 217-218.
[250] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Sayın Oral Çalışların Radikal Gazetesinde,* and Mert, "Gündem: Alevilik ve Başörtüsü," 6-30.
[251] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Sayın Oral Çalışların Radikal Gazetesinde*.

operates outside of the Sunni and Shi'a traditions[252]) have accused it of only adopting the Ḥanafī school. For this reason, Alevis have asked the Diyanet to recognise different interpretations of Islam, and to recognise them as a religious group that can be clearly distinguished from Sunni Islam. This aspiration is however complicated by the fact that the definition of Alevism lacks clarity and does not encompass all Alevis. Karaman observes:

> "Sometimes those from Alevi communities complain about the lack of services they receive from the Diyanet, but there are contradictions in such claims. Some voice these in the context of human rights, others in the context of freedom of religion and conscience. Others consider the Alevi citizens as belonging to a completely different religion; some consider them atheist or part of an ideological moment that opposes religion. However, there is no historical or scientific evidence to support these claims and extremism. In fact, throughout Turkish history, Alevi citizens have accepted Islamic beliefs and morals, loved Ehli-Beyt (the descendants of the Prophet) and shown faithfulness to the pillars of religion, prayer and moral principles."[253]

The main problem relating to the definition of Alevism arises in the question of how Alevi foundations and associations define themselves along with 'Alevism'. Some organisations describe Alevism as a non-Islamic religion while others incorporate Marxism to instead depict it as a kind of Kurdish religion.[254] Other groups also seek to establish a link between Alevism and Shī'ism by arguing that "the real Alevism is the Alevism of Ahl al-Bayt (the House of the Prophet), namely Shī'ism."[255] Some researchers assert that Alevism is a democratic, national and secular belief system, while others claim that it is only the Turkish interpretation of Islam.[256] A further layer of complexity is added by sociological research, which suggests that "those who define themselves as Alevi have difficulty [in] defining what Alevism is."[257]

Taking into account the fact that the definition of Alevism invokes various ambiguities and even conflicting interpretations, it is conceivable that the representation of

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[252] Kutlu, "Diyanet İşleri Başkanlığı," 112.
[253] Fikret Karaman, "The Status and Function of the PRA in the Turkish Republic," *The Muslim World* 98, no. 2-3 (2008), 288, accessed October 13, 2016, http://onlinelibrary.wiley.com/doi/10.1111/j.1478-1913.2008.00226.x/full.
[254] For different definitions of Alevism, see Hamdi Mert, "Gündem: Alevilik ve Başörtüsü," 14-18. Turner and Arslan, "State and Turkish Secularism," 216 and Sunier et al., *Diyanet: The Turkish Directorate*, 116-117.
[255] Kutlu, "The Presidency of Religious Affairs' Relationship," 256. See also Sunier et al., *Diyanet: The Turkish Directorate*, 116.
[256] Kutlu, "The Presidency of Religious Affairs' Relationship," 256. The definition of Alevism varies. However, a research report on the Diyanet describes it as a mythical tradition that does accept the authority of the Qur'an and *ḥadīths* or the practice of the five pillars of Islam. However, Sunier et al. observe "[c]ontemporary Alevism is very critical about religious orthodoxy and usually defines itself by distancing itself from Sunni Islam …. [Alevis] feel attracted to mystical traditions in Islam that look for God in [the] human heart." Sunier et al., *Diyanet: The Turkish Directorate*, 116. See different definitions of Alevism also Çakır Ceyyhan Suvari and Elif Karaca, "The Alevi Discourse in Turkey" in *Studies on Iran and The Caucasus*, Brill Online Books and Journal (June 2015), 511-519, accessed April 06, 2017, http://booksandjournals.brillonline.com/content/books/b9789004302068s034.
[257] Kutlu, "The Presidency of Religious Affairs' Relationship," 256.

Alevis within the Diyanet may in turn engender various controversies and intricacies. If it is accepted that Alevism is a religion that falls beyond the scope of Islam, it would be perverse to suggest that the group should be represented within an institution that is concerned with the administration of Muslim religious affairs in Turkey. For this reason, it is clearly incumbent upon Alevis to first clarify the precise meaning of 'Alevism' before advancing a claim to be represented within the Diyanet. Furthermore, the unawareness of a clear knowledge of the Diyanet's constitutional framework will almost certainly invalidate claims of partiality towards faith communities, religious sects and Sufi orders. Accusations will invariably fail to engage with the legal provisions and structures of the institution, with the consequence that they will appear superficial in both tone and content.

While some Alevis accuse the Diyanet of being biased against religious groups that diverge from Ḥanafī-Sunni Muslims, Alevism is accepted by the Diyanet as a group that falls within the parameters (belief, history and religious orientation) of Islam. The *fatwā* that assents to marriage between an Alevi man and a Sunni woman clearly demonstrates the attitude of the Diyanet towards Alevism, at least within the sphere of Islamic law. The *fatwā* states:

> "According to Islamic rulings, the fact that Muslim women marry non-Muslim men is not a licit act. One who accepts the religious rulings that the Prophet Muhammad notified, conveyed, and carried out during his life time as authentic and true, and who proclaims that I am a Muslim is a Muslim no matter he/she is called Sunni or Alevi. Accordingly, regardless of the person's Alevi or Sunni identity, one who is inside the borders of Islam can marry with a Muslim woman because there is no religious obstacle for him to do so."[258]

This Islamic legal statement brings out both the Diyanet's democratic legalist perspective and also its unifying disposition. The *fatwā* makes it straightforward to infer that the Diyanet adopts a deeper internalisation of established Islamic teachings. Instead of focusing upon the cultural, ideological and social differences between Alevis and Sunnis, it adopts a more inclusive and positive language that is grounded within the unity of faith. It exemplifies the Diyanet's inclusivist and integrationist approach and alignment with the Alevis.

The Diyanet has also undertaken a number of initiatives that derived from the requests of Alevi citizens. To take one example, the Diyanet has taken the needs of Alevi-Bakthasi citizens into account when appointing personnel to Alevi settlements and villages.[259] These Diyanet officials are trained and informed about Alevi culture before they begin to provide religious services.[260] The Diyanet's printing and publishing of Alevism's basic sources can

[258] Mert, "Gündem: Alevilik ve Başörtüsü," 13.
[259] Karaman, "The Status and Function of the PRA," 288. See Kutlu, "Diyanet İşleri Başkanlığı," 123.
[260] Ibid.

also be considered to be part of these initiatives. During Memhmet Sait Yazıcıoğlu's presidency (1987-1992), the first serious dialogue between the Alevis and the Diyanet began when a substantial part of the Diyanet's official periodical (*Diyanet Aylık Dergisi*, XIII, January 1992) was reserved to the subject of Alevism.[261] In this official periodical, Alevi Dedes (Alevi religious functionaries) and Alevi and non-Alevi academics discoursed extensively upon the subject of Alevism. More recently, the Ashura (the tenth day of Islamic month of Muharram),[262] Muharram fasting, the martyrdom of Husain in Karbala, *Ahl al-Bayt* (the House of the Prophet) and the life of 'Alī b. Abī Ṭālib, the fourth Caliph (along with his services to Islam) have become subjects of the Friday sermons and the Diyanet's official periodicals.[263] For instance, the love of the House of the Prophet has previously been the main subject of the Diyanet's official periodical (*Diyanet Aylık Dergisi*, CLXXI, March 2005).[264] More recently, this topic has featured alongside the life of the Prophet Muhammad in the ceremonies of the Week of the Blessed Birth (an annual celebration week focused upon the Prophet's birth) which were organised by the Diyanet.[265] During the week of the Blessed Birth and the Muharram Celebration, the Diyanet organised a number of activities that were implemented in cooperation with Alevis.[266] These recent initiatives (coordination with Alevi

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[261] Mert, "Gündem: Alevilik ve Başörtüsü," 6-30.
[262] The tenth of Muharram is a sacred day for Alevis and Shī'i Muslims. On this day, both Alevis and Shī'is commemorate and mourn the tragic dead of Ḥusayn, the grandson of the Prophet Muhammad. At Karbala, which is nearby, Ḥusayn was, along with his family members, tortured and murdered by the army of Caliph Yazid.
[263] Kutlu, "Diyanet İşleri Başkanlığı," 122-123.
[264] The issue 171 of *Diyanet Ayık Dergisi* is mainly committed to the subject of the *Ahl al-Bayt*. Osman Eğri, "Kültürümüzde Ehl-I Beyt Sevgisi," *Diyanet Aylık Dergisi*, no. 171, (2005), 5-10, accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf, Ahmet Yaman, "Ehl-i Beyt Hukuku," *Diyanet Aylık Dergisi*, no. 171, (2005), 10-15, accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf, Ekrem Keleş, "Ali gibi Bir Genç," *Diyanet Aylık Dergisi*, no. 171, (2005), 15-18, accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf, Seyid Ali Topal, "Hz. Ali'de Yönetim Anlayışı," *Diyanet Aylık Dergisi*, no. 171, (2005), 18-23, accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf, Abdurrahman Akbaş, "Hz. Ali ve Fatıma'nın Evliliği (Mutlu Yuva Mutlu Beraberlik)," *Diyanet Aylık Dergisi*, no.171, (2005), 23-27 accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf, Ömer Menekşe, "Hz. Hüseyin'in Şehadeti," *Diyanet Aylık Dergisi*, no. 171, (2005), 27-30, accessed February 19, 2017,http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf, and S. Emin Arvas, "Omanlı'da Ehl-I Beyt Sevgisi," *Diyanet Aylık Dergisi*, no. 171, (2005), 30-34, accessed February 19, 2017, http://www2.diyanet.gov.tr/DiniYay%C4%B1nlarGenelMudurlugu/DergiDokumanlar/Aylik/2005/mart_2005.pdf.
[265] Kutlu, "The Presidency of Religious Affairs' Relationship," 259.
[266] Ibid.

leaders, training of staff on Alevism and the publication of Alevi-Bektashi classics) have been regarded with suspicion and even presented as a covert mechanism through which the Sunni version of Islam can be infiltrated into the Alevi cult. However, these Diyanet initiatives, which are part of a more general search for an authentic Alevism, attest to the fact that, since the 1980s, the institution has evidenced a somewhat more constructive posture towards the Alevi community, with the consequence that its members have been regarded through a social rather than a religious lens.

With regard to the relationship between the Diyanet and religious groups, the Ja'faris and the Shafī'is are other prominent religious groups that ought to be subject to extensive evaluation by the Diyanet. In contrast to the Alevis, the Ja'faris do not aspire to be represented within the Diyanet.[267] The Diyanet's definition of 'Ja'faris' has probably proven to be the largest challenge in relations between the two actors, although this was probably addressed when the Diyanet published the Ja'fari catechism in 2012. Prior to publication, the Diyanet described the Ja'faris as a political non-Sunni sect that adopts Shī'i jurisprudence in Islamic law.[268] Ja'faris, for their part, previously frequently espoused the view that the Diyanet was an institution that sought to advance a "Sunnisation project" focused upon Muslims resident in Turkey. In an interview with *Caferi Yol* (Ja'fari Way), Bardakoğlu (the Diyanet president) encapsulated his institution's attitude towards the Ja'faris in the following terms:

> "Ja'farism is an Islamic jurisprudence based on the ideas of the disciples of great scholar, Imam Jafar al-Sadık, and his disciples' opinions. The duty of the Diyanet is to provide religious services to people and to satisfy their religious needs without discriminating in favour of a specific religious group, sect, and Sufi order, because our presidency is a neutral institution [in implementing those duties and responsibilities given by constitutional regulations, laws and bylaws]."[269]

While the Diyanet's religious explanations and services operate from within a particular Sunni perspective, the contemporary Diyanet makes a clear concession to the Ja'faris when it acknowledges the group as one of the valid legal schools in Islam that attest to the considerable religious diversity in Turkey. The fact that the Diyanet implements a specific programme that seeks to train *imāms* about the creed, ritual practices and Islamic legal norms of Ja'faris who live and work in the eastern parts of Turkey and some districts of İstanbul clearly attests to a noticeable shift within the institution's attitude towards this group.[270] To

[267] Kutlu, "The Presidency of Religious Affairs' Relationship," 259.
[268] Ibid, 259-260.
[269] Ali Bardakoğlu, "Caferileri Kazanmalıyız," *Caferiyol*, no. 1, (2006), 5.
[270] Sunier et al., *Diyanet: The Turkish Directorate*, 115.

the same extent, the Diyanet's approach to the Shafī'is (who are mainly dispersed within the Kurdish population) can only be sufficiently engaged within the wider context of the Diyanet's relationship with Islamic diversity in Turkey. This issue evidences a clear paradox that operates along two points: (1) the Kurdish ideological spectrum or state nationalism; and (2) jurisprudential divergence in the Sunni community.

When it is evaluated within the context of a larger Kurdish national ideology, the issue conceivably creates a complex enigma for the Diyanet. To a substantial extent, the Diyanet pursues the state's project of national unification, and therefore seeks to reduce communal demands within the state (this is embodied in Kaya's observation that "[t]he hypersensitivity of the subject and the state's nationalistic conservatism has been determining the Diyanet's Kurdish policy to a large extent").[271] On the contrary, when the issue is engaged as a matter of Islamic jurisprudential divergence which is set between the Diyanet's implicit domination of Ḥanafīsm and the Kurds' doctrinal adherence to the Shafī'i school, the problem presents itself as a trivial concern that needs to be developed into an all-encompassing institutional philosophy by the Diyanet. Since 1960, the Diyanet has employed Kurdish/Shafī'i *imāms*, who have received religious education through *medreses* (unofficial schools that provide traditional instruction in Islamic sciences).[272] This was named the 'Mele Project' of the Diyanet and it relates to the employment of Kurdish/Shafī'i *imāms* in the Diyanet mosques and offices in spite of the fact that they received *medrese*-education rather than official education in the public schools (for *imāms* and preachers).[273] Mehmet Görmez suggests that the underlying reason of the project is to benefit from well-versed *imāms* in Islamic sciences and to establish communication with the Shafī'is, who have clearly developed means through which dissociate themselves from the Diyanet, particularly in rural and less mixed areas, and to render religious services for Kurdish/Shafī'i citizens within Turkey's boundaries.[274] Although Cinmen criticises the 'Mele Project' upon the grounds that it is part of the state's assimilation policy directed towards its Kurdish population,[275] closer inspection suggests that it is simply concerned with the provision of socio-religious services

[271] Kaya, "Balancing Interlegality," 234.
[272] "Diyanetten 'Mele'Alımı İddialarına Yanıt!" in *Haber Türk*, December 12, 2011, accessed February 25, 2017, http://www.haberturk.com/gundem/haber/696476-diyanetten-mele-alimi-iddialarina-yanit.
[273] "Diyanet Bakanlığından Mele Eleştirilerine Tepki!" in *T24 Bağımız İnternet Gazetesi*, December 18, 2011, accessed February 25, 2017, http://t24.com.tr/haber/diyanet-bakanligindan-mele-eles tirilerine-tepki,187392 and "Diyanet'in Mele İstihdamı Toplumsal Barışa Katkıdır," in *Güneydoğu Güncel, December* 19, 2011, accessed February 25, 2017, http://www.guneydoguguncel.com/diyanetin-mele-istihdami-toplumsal-barisa-katkidir-1479h.htm.
[274] "Diyanet Bakanlığından Mele Eleştirilerine Tepki!"
[275] Işıl Cinmen, "Mele Projesi, TRT Şeş'e Benziyor," in *Kurdî Bianet*, January 14, 2011, accessed February 25, 2016, http://bianet.org/kurdi/din/134755-mele-projesi-trt-ses-e-benziyor.

that cater to the religious expectations and needs of Shafī'i Kurds. Kaya refers to the shortage of religious personnel in Eastern Turkey (where the Shafī'i Kurds are predominantly based) when he observes that "the Shafī'i Kurds lack truly representative of religious personnel who would communicate with them through their lore and customs".[276] From this perspective, the Diyanet's praxis appears as a more apposite representation of Islam for the Turkish milieu and the Shafī'i Kurds. Accordingly, it can be inferred that the dialogue between the Diyanet and the Shafī'is has primarily been articulated in the vernacular religion rather than ethno-nationalism. The institution's leniency towards Ja'faris and Shafī'is that seek to maintain their interpretation of Islamic legal rulings (this is particularly apparent within the area of ritual practices or *'ibādāt*) suggests that a productive dialogue has been initiated between the Diyanet, Ja'faris, and the Shafī'is that can be favourably contrasted to that undertaken with the Alevis. Upon these grounds, it is reasonable to conclude that the Diyanet has, in comparison to the Alevis, found it easier to accommodate the Ja'faris and the Shafī'is.

In Turkey, a number of civil Muslim organisations formed around charismatic religious leaderships (*cemaats*) and religious movements have come to operate within a zone that falls beyond the Diyanet and the law. The Diyanet generally perceives these civil Muslim organisations (*cemaats*) and religious movements, which include the Nakşbendi Sufi order, the National Outlook (Milli Görüş), the Nurcu movement and the Süleymancı movement, to be beyond its direct control and therefore a threat to Turkey's national and religious unity.[277] In an effort to retain its influence over society, the Diyanet has published Islamic explanations and informative studies that highlight the percolation of superstitious practices and unauthentic Islamic knowledge within those religious movements.[278] During the 1970s, for instance, there were critical conflicts between the Diyanet and the Süleymancı movements, and the Diyanet's uncomplimentary appraisals of the later led some members of the Süleymancı movement to refuse to pray behind the Diyanet's *imāms*.[279] Here it should be noted that these conflicts were not entirely religious in character and could therefore be traced back to political and social sources.[280] In addition, religious activities that fall beyond the supervision of the Diyanet could still be perceived as an internal threat that potentially undermined the integrity and sovereignty of the Turkish state. The military coup attempt of 2016 can be asserted as clear evidence of this perceived threat of 'reactionary *cemaats*'. The

[276] Kaya, "Balancing Interlegality," 237.
[277] Kara, "Din ile Devlet," 52-53 and Sunier et al., *Diyanet: The Turkish Directorate*, 113.
[278] Sunier et al., *Diyanet: The Turkish Directorate*, 113.
[279] Ibid, 113-114.
[280] For an account of religious movements and their national, political, revolutionary and social extensions and influences, refer to Kaya, "Balancing Interlegality," 238-242.

proposition that religion, if left unchecked, could easily be used as a brainwashing instrument by malevolent people is also reiterated by the Fetullah Gulen movement, which is one branch of the Nurcu movement. The Diyanet, along with all other state institutions, interpreted its mission to be the fight against religious threats of this kind. The Diyanet's withdrawal from the area of religious affairs and the absence of some organisational control mechanism that would exert control over religious movements could potentially create a political cataclysm and empower those who would seek to advance their evil intentions under the cover of Islam. In this instance and the coup attempt of 2016, such official religious institutions would have an essential role to play by promoting religious and social unity.

When it was first established, the Diyanet's initial aim was conceivably to promote a single version of Islam. However, over time this initial aspiration has been exposed to the divergent policies of different political administrations and the enactment of various constitutional regulations.[281] As Gözaydın recognises, the original Diyanet was established in order to inculcate the state's form of Islam during Turkey's early republican period.[282] However, the current Diyanet has succeeded in acquiring a somewhat autonomous official position, in which it assumes responsibility for the maintenance of Islam as a spiritual source for society, the prevention of religious bigotry, the supervision of religion, the training of individuals tasked with providing religious services to society and the unification of Turkish society around the foundation of religion. Turner and Arslan remark, in common with a number of other observations, that the Diyanet has come to function as an essential instrument through which a nationalised Islam is produced and represented.[283] Ali Bardakoğlu, the Diyanet's former President (2003-2010) evidences an awareness of a number of the criticisms that have been advanced on this subject, and he therefore emphasises the contribution of the Diyanet in assisting in the production of accurate and authentic Islamic knowledge. In his view, the institution has also evidenced impartiality in its engagement with different Islamic groups, while clearly demonstrating a continued commitment to educate citizens about Islam and provide religious services that promote social unity and solidarity.[284] In addition, he also affirms the institution's commitment to remain above Islamic legal

[281] Yakar and Yakar, "The Transformational Process of the Presidency of Religious Affairs," 8.
[282] Gözaydın, "Management of Religion in Turkey," 17.
[283] Turner and Arslan, "State and Turkish Secularism," 211.
[284] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı, in *Türkiye'de Din -Devlet-Toplum İlişkileri ve Diyanet İşleri Başkanlığı, (TESEV) Açılış Konuşması*, accessed February 25, 2017, http://www3.diyanet.gov.tr/tr/icerik/turkiyede-din-devlet-toplum-iliskileri-ve-diyanet-isleri-baskanligi-tesev-acilis-konusmasi-prof-dr-ali-bardakoglu-diyanet-isleri-baskani-istanbul/6221.
[284] Kutlu, "The Presidency of Religious Affairs' Relationship," 250-251.

schools (*madhabs*) and religious sects.[285] From this perspective, the Diyanet is interpreted as evidencing a moderate predisposition towards religious groups that accepts the heterogeneity of Turkey's Muslim population and commitment to transfer authentic, sound and true religious knowledge.[286] In adopting moderation and rationality as its core principle, the Diyanet has come to function as an important public institution with a central role in the definition of the parameters of acceptable religious practice.

Consequently, the Diyanet has recently adopted a role that facilitates social relations, interactions and dialogs by standing close to the grassroots of Muslim diversity in Turkey – the Kurdish/Shafi'i, Ja'fari and Alevi populations, and *cemaats*. In the progress of time, the Diyanet as a religious institution has produced its own dynamics and approach to Islam and Islamic legal issues in spite of the varying policies of different political administrations towards that institution. Even though the Diyanet is seen as too Sunni for Alevis and Ja'faris, too liberal for Sufi orders and religious *cemaats*, and too Muslim for non-Muslim minorities, it is possible to observe that the Diyanet adopts and develops a neutral and impartial approach towards religious groups and sects to produce authentic, realistic and credible religious knowledge.

C) The Diyanet in comparation to the Office of *Shaykh al-Islām*

The Diyanet is now established as a comprehensive authority that is focused upon the administration of religious affairs pertaining to Islam. It is not a new invention in the history of Turkish political and religious culture and can in many respects be said to be a superficial or illusionary image of the *Shaykh al-Islām* (the head of religious affairs in the Ottoman Empire),[287] as opposed to a successor to the Ottoman religious institution.[288] Despite this, a number of scholars have sought to draw a direct comparison between the Diyanet and the office of the *Shaykh al-Islām*. In particular, they advance the claim that under the AKP (Justice and Development Party) rule, the Diyanet has begun to transform into the office of the *Shaykh al-Islām*. Eytan Yanarocak argues:

> "[The] Diyanet has emerged as an indispensable instrument of Erdoğan political agenda at home and abroad…Beyond Turkey's borders, [the] Diyanet is attempting to unite the Muslim world under the political and theological leadership of Turkey. In short, it is becoming more

[285] Türkiye Cumhuriyeti Başkanlık Diyanet İşleri Başkanlığı in *Basın Açıklaması*, accessed December 05, 2016, http://www.diyanet.gov.tr/tr/icerik/basin-aciklamasi-aciklama/6155,
and Sunier et al., *Diyanet: The Turkish Directorate*, 120-121.
[286] Bardakoğlu, *Religion and Society New Perspectives*, 16-17.
[287] *Shaykh al-Islām* literally means 'the guardian of Islam'. The term was mainly used to refer to the head of religious affairs in the Ottoman Empire.
[288] Bardakoğlu, *Religion and Society New Perspectives*, 9 and 55.

> evident each day that, under Erdoğan, [the] Diyanet increasingly resembles the Ottoman office of Sheikh al-Islam."[289]

The office of the *Shaykh al-Islām* should be more closely engaged in order to ascertain the extent to which the Diyanet closely resembles it along with the question of how the transition from the Ottoman Empire to the Republic of Turkey impacted the State's perception of religion and the Diyanet's role as a governmental agency in society. The question of whether the Diyanet is a continuation of the office of the *Shaykh al-Islām* can be engaged with from two points of angles; firstly, the scope of their authority and secondly the functions and sanctioning power of their *fatwās* or Islamic legal statements.

Within Ottoman society, religious affairs were regulated by the office of *Shaykh al-Islām* (also known as *Mesihat*),[290] which was created in 1424. During its inception stages, this office lacked executive authority and even a seat in the Imperial Council (*Divan-ı Hümayum*) with the consequence that it acted as a jurisconsult during this period. With reference to the role of that office in classical period of the Ottoman Empire (1299-1451), Erdem observes:

> "Another important duty of the *Şeyhülislām* in the Ottoman Empire was that they were the sultans' counsellors. Before making important decisions, the sultan would summon the grand vizier or the *Şeyhülislām* to the palace for advice. According to the Ottoman rule of imperial council (*Divan-ı Hümayum*), the *Şeyhülislām* was not one of the original members of this council, though he took part in extraordinary meetings."[291]

Because the office of *Shaykh al-Islām* was not part of the Sultan's *Divan*, it can be hypothesised that it lacked political power. It appears that the office was consciously designed as an autonomous legislative supervisor that did not possess any political authority within the Empire. While the *Shaykh al-Islām* was described as a counsellor, who would help the Sultan legitimate the State's policy with reference to Islamic law, his office instead presented itself as a form of legal authority that was exerted over political power. With regard to classical period of the Ottoman Empire, it may be suggested that the main duties of the office were focused upon the issuance of *fatwās* (in response to questions from the Sultan and his governors, judges and ministers, along with members of the public seeking out-of-court determination). The chief and main duties of the office were focused upon religious matters and it was tasked with functioning as an Islamic legal mentor for the sultans when the State's administrative, legal, and religious policies were subject to legislative debate.

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[289] Hay Eytan Cohen Yanarocak, "Turkey's Diyanet: The Revival of Sheikh al-Islam," *Telaviv Notes* 9, no. 3 (2015), 5, accessed April 10, 2017, http://dayan.org/content/tel-aviv-notes-turkeys-diyanet-revival-sheikh-al-islam.
[290] Talip Ayar, *Osmanlı Devletinde Fetvâ*, 14-15 and Karaman, "The Status and Function of the PRA," 283.
[291] Erdem, "Religious Services in Turkey," 204.

After receiving the title of *Shaykh al-Islām*, the office received its highest level of acclaim and reputation as a religious and scientific post during the time of Kanuni Süleyman (known as the Magnificent Süleyman) (d. 1566) and recognised as the Muftī of İstanbul, which was the head of learned corporation in its time.[292] In the period between the 16th century and the early 19th century, the office of *Shaykh al-Islām* occupied a pre-eminent position in the State's governmental and political affairs.[293] Erdem further reiterates this point when he observes:

> "From the time of Suleyman onward, the *Şeyhülislām* was ranked virtually equal with the grand vizier [and] the *Sadrazam*. Both were the only officials to receive their investiture at the sultan's own hand… The grand vizier was bound to keep in constant touch with the *Şeyhülislām* on state affairs."[294]

While the appointment, deposal and promotion of *medrese* staffs was the concern of the grand viziers until the last decades of the 16th century, the *Shaykh al-Islām*, in acting within important regions, assumed responsibility for nominating members of the *'ilmiyye* organisation (the scholarly organisation) and judges (*qāḍīs*) towards the end of the 16th century.[295] This feature may be interpreted as indicating that the office of the *Shaykh al-Islām* was superior to the grand viziers. Even though the *Shaykh al-Islām*, the head of *'ulamā'* or the highest scholarly authority, was not – at the level of theory – recognised as a member of the government council, he began to exert a substantial practical influence upon the State's affairs. From the 18th century onward, the consultation of the *Shaykh al-Islām* became an established tradition, and it unofficially participated in the Imperial Council.[296] As its power and prestige incrementally consolidated, it began to exert a stronger influence over government affairs and state protocol. During the Sultan's enthronement, the *Shaykh al-Islām* handed the sword to him; meanwhile, during official ceremonies, the *Shaykh al-Islām* traditionally participated alongside the Sultan and other official members.[297] These traditions perhaps attest to the growing power of the office in state protocol. The office began to administer religious affairs in Ottoman society on behalf of the Sultan, to conduct religious education (one of its main activity areas) and to implement judicial and municipal services between the 16th century and the early 19th century.[298]

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[292] Ayar, *Osmanlı Devletinde Fetvâ*, 15 and Gazi Erdem, "Religious Services in Turkey," 202.
[293] Vogel, *Islamic Law and Legal System*, 206-207.
[294] Erdem, "Religious Services in Turkey," 202.
[295] Ayar, *Osmanlı Devletinde Fetvâ*, 16.
[296] Erdem, "Religious Services in Turkey," 204.
[297] Ayar, *Osmanlı Devletinde Fetvâ*, 16.
[298] Erdem, "Religious Services in Turkey," 203-204 and Kutlu, "Diyanet İşleri Başkanlığı," 107.

The authority and role of the office of *Shaykh al-Islām* was acknowledged in the executive, judicial and legislative realms. Erdem describes the jurisdiction of the office of *Shaykh al-Islām* in the following terms: "At the beginning of 19th century the office of *Şeyhülislām* combined the administration of justice, religious counselling and educational services under its jurisdiction. All the *kadis*, *muftis* and *muderrises* of *madrasahs* were under the authority of the *Şeyhülislām*."[299] The office of *Shaykh al-Islām* oversaw the various functions and duties that would later be assumed by the Ministries of Education and Justice, the General Directorate of Foundations and the Diyanet. In contrast, the Diyanet's role was restricted to religious affairs pertaining to *'ibādāt*, *i'tiqād* and the moral dimensions of Islam. In contemporary Turkey, it is focused only upon religious services. These observations suffice to demonstrate that there is not a clear continuity between the *Shaykh al-Islām* and the Diyanet.

In the late 19th century, the Ottoman society underwent various reforms and transformations that sought to preserve it against challenges that emanated from various nationalist movements. During this final period of the Ottoman Empire, the functions and role of religion, and, by logical extension the office of *Shaykh al-Islām*, began to deteriorate and a clear weakening was evidenced in the administrative, political and social spheres.[300] The establishment of new assemblies, ministries, *Nizamiye* courts (the first secular court system, which functioned alongside the Sharī'a courts) and the importation of secular laws from the West were part of the State's response to the divisive and corrosive nationalist movements. The office of *Shaykh al-Islām* was further weakened by the establishment of new and modern schools (which operated independently of *medreses* and educated civil and military bureaucrats) and the establishment of a Ministry of Foundations. Each of these measures weakened it in the administrative, educational, legal, political and religious spheres because a number of its duties were officially designated to newly established institutions and ministries. Erdem portrays this period, which became known as the office's 'time of decadence', in the following terms:

> "By transferring some duties of the *Şeyhülislām* to some newly established councils after "the Noble Edict of Rose Garden (*Gülhane Hatt-ı Hümayum – Tanzimat Fermanı*)" such as "the Supreme Council for Judicial Regulations (*Meclis-i Vala-i Ahkam-ı Adliye*)," and after "the Reform Edict of 1856 (*Islahat Fermanı*)," "the Supreme Council of the Reforms (*Meclis-i Ali-i Tanzimat*)," and "the Supreme Council for Judicial Regulations," the effect of the *Şeyhülislām* on state affairs was gradually lessened. The new government of the Ottoman

[299] Erdem, "Religious Services in Turkey," 202.
[300] Ibid, 205.

> Empire in 1916 made the Ministry of Justice responsible for all of the *madrasahs*, schools and other educational institutions."[301]

The time period in which these changes were put into effect can be presumed to imply that the secularization process was initiated by Ottoman reformists (who benefitted from the support of civilian and military bureaucrats) who assumed control of the administrative bodies during this period. In the aftermath of these changes, the office only remained responsible for the management of religious affairs and the Sharī'a courts. The office during this final period of the Ottoman Empire closely resembles the contemporary Diyanet, and clear parallels can be drawn between their respective transformation processes and limitations placed upon their authority.

In order to clarify the relationship between Muslims and non-Muslims during the modernization period, which coincided with the concluding decades of the Ottoman Empire, legislation was issued on March 12, 1917 which separated legal and religious jurisprudence. During 1920, the *Şer'iye ve Evkaf Vekâleti* (the Ministry of Religious Affairs and Foundations), which followed on from the office of *Shaykh al-Islām*, was established in order to regulate the religious affairs of Muslims and pious foundations within the State.[302] This period can be pre-emptively labelled as "a preparatory stage of the modern Republic of Turkey".[303] The *Şer'iye ve Evkaf Vekâleti* was established as a ministry in the administrative hierarchy, and it was permitted to directly intervene in political debates of its time.[304] The order of protocol placed its responsible minister immediately after the prime minister within the members of the cabinet.[305] The Diyanet, meanwhile, was established as an apolitical administrative unit that was placed under the direct control of the Prime Minister's Office. The transformation from the office of *Shaykh al-Islām* to the Diyanet can be said to represent the replacement of traditionally functioning structures with a newly modernized apolitical institution of religion. During the history of the Ottoman Empire and the Turkish Republic, the office of *Shaykh al-Islām* experienced various institutional turbulences in the process of changing from the office of *Shaykh al-Islām* to the *Şer'iye ve Evkaf Vekâleti* (Ministry of Religious Affairs and Pious Foundations) and finally to the *Diyanet İşleri Başkanlığı* (the Presidency of Religious Affairs).

To fully comprehend the functional gap between the office of *Shaykh al-Islām* and the Diyanet, it is necessary to more closely engage with the functions and sanctioning power of

[301] Erdem, "Religious Services in Turkey," 205.
[302] Gözaydın, "Management of Religion in Turkey," 12 and Erdem, "Religious Services in Turkey," 206.
[303] Görmez, "The Status of the Presidency," 243.
[304] Ibid.
[305] Erdem, "Religious Services in Turkey," 206.

their *fatwās*. Within the Ottoman legal system, the office of *Shaykh al-Islām* was envisaged as a state-dependent body which implemented religious affairs on the Sultan's behalf and which provided the religious legitimacy of the political authority, which it ascertained by making reference to Islamic legal appropriateness.[306] However, this does not mean that the *Shaykh al-Islām*, as opposed to the Sultan, was the head of religious administration. Erdem discusses how religion and State authority were merged within the Ottoman Empire:

> "[T]he Ottoman state was a form of Islamic theocracy and did not admit any distinction between religion and politics…. Thus the sultan was the leader of the country both in the sphere of religion and government. The *Şeyhülislām* could be described as the person who helped both the sultan and the vizier control the state, the law and the operations of administration from the scope of religion and or in accordance with religion."[307]

This suggests that the Sultan was simultaneously the political and religious leader of the Ottoman Empire and also affirms the unity of religion and politics, as opposed to Vikor's argument that suggests the existence of the separation between them or a kind of duality in legal norms, in the Ottoman Empire.[308] Vikor identifies two separate sources of legitimacy: the first derives from Islamic law (*ḥukm shar'ī*) and the second from the Sultan's acts or orders (*qānūn*, in Turkish *kanun*).[309] Here it should be recognized that the two legal systems, which were partially based on Islamic law and the *qānūns*, were unified into a single authority by the Sultan and his Caliphate position.[310] This appears to correspond to a legal model in which Islamic law underpins state power and the *qānūns*, with the two legal systems merging into each other and presenting themselves in the Caliphate's image. Islamic law evidently operated as the legal foundation of the state's legal system, while the *qānūns* or the state power put in place the framework that would enable the law to be applied.[311] The title of 'Caliphate' given to the Sultan therefore completely embodies the combination of political and religious identities. The practice of *iftā'* which was carried out by the office of *Shaykh al-Islām* also put in place a control mechanism role that would examine the compatibility of *qānūns* with Islamic law. Vogel observes:

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[306] Görmez, "The Status of the Presidency,"242 and Bardakoğlu, *Religion and Society New Perspectives*, 9-10.
[307] Erdem, "Religious Services in Turkey," 203.
[308] S. Knut Vikor, *Between God and the Sultan: A History of Islamic Law* (London: Hurst, 2005), 206-209.
[309] Vikor, *Between God and the Sultan*, 207-208.
[310] Gözaydın, "Management of Religion in Turkey," 11 and Ahmet Erdi Öztürk, "Turkey's Diyanet under AKP Rule: From Protector to Imposer of State Ideology?" *Southeast European and Black Sea Studies* 16, no.4, 623, accessed April 04, 2017, http://dx.doi.org/10.1080/14683857.2016.1233663.
[311] Vikor, *Between God and the Sultan*, 211.

> "The Shaykhs al-islām of the 10th/16th century worked "to make most of the [qānūns] correspond with the noble sharī'a." In part they did this by fatwās declaring that various qānūn rules either conformed or conflicted with the sharī'a."[312]

The Ottoman Empire's *fatwās* established the provisions of *qānūns* illegal if they diverged from the sharī'a to an unacceptable extent or openly conflicted with it. It was normally the case that the Sultan's decrees were reviewed by the *Shaykh al-Islām* to ensure that any *qānūns* incompatible with the sharī'a would not be issued or legalized. Accordingly, the *fatwās* issued by the office of *Shaykh al-Islām* were authoritative, despite the fact that they were theoretically non-binding.[313]

Even though the coexistence of secular laws (*qānūn*) (albeit those that could be reconciled with the sharī'a) and religious laws (*sharī'a*) was clearly observable within the Ottoman Empire, the relationship between politics, religion, society and state was very different from their counterparts within the Turkish state. In the case of the Ottoman Empire, it was possible to identify an Islamic legal system grounded within a reciprocal relationship between the legal and political authority. While the office of *Shaykh al-Islām*, as a state-dependent structure, was responsible to the political authority, it retained the power to use Islamic law to control the sultanate's legitimacy.[314] In this legal system, the *fatwās* issued by the office of *Shaykh al-Islām* basically have three functions that do not directly map onto the Diyanet's decisions, *fatwās* and Islamic explanations. Firstly, the office of *Shaykh al-Islām* enabled the Sultan's *qānūns* to attain legitimacy within the Sharī'a courts and integrate them into the sharī'a-based *fatwā* format – for this reason, it issued *fatwās* which established a foundation for the implementation of the law.[315] This put in place an arrangement in which religious (*sharī'a*) and secular (*qānūn*) laws were adapted to each other. This had the consequence that the *fatwās* issued by the office of *Shaykh al-Islām* emerged as a preliminary phase of the law-making process and presented themselves as a mechanism that would enable a review of whether *qānūns* are compatible with the sharī'a. Secondly, the office of *Shaykh al-Islām* occasionally functioned as an out-of-court mechanism that enabled both defendant and plaintiff to present their problems to the *muftīs* in the office, and the respective parties consented to subsequently obey the *fatwā* issued by him.[316] This enabled the parties to resolve their problems without going to the Sharī'a courts – in this respect, the *muftīs* in the

[312] Vogel, *Islamic Law and Legal System*,319-320.
[313] Ibid, 324.
[314] Vogel, *Islamic Law and Legal System*, 206.
[315] Vikor, *Between God and the Sultan*, 213-214.
[316] Ibid, 215.

office of *Shaykh al-Islām* could, to a certain extent, be likened to the *qāḍīs*, who sat as judges in the Ottoman Empire's Sharī'a courts. In this respect, the *fatwā* could be interpreted as an "out-of-court settlement". Finally, the *fatwās* issued by the office of *Shaykh al-Islām* functioned as an evidentiary basis for the *qāḍī*'s verdict, and could be applied in the absence of honest, righteous or virtuous witnesses. Vikor invokes the evidential value of the *fatwās* when he observes:

> "The *fatwā* has in those cases changed its function. It is no longer a clarification of an unresolved matter of law or authoritative establishment of the relevant legal rule. Instead, it has become a sort of auxiliary evidence and a crutch that the *qāḍī* could use if he had no other acceptable proof such as witnesses and confession."[317]

In these instances, *fatwās* functioned as an acceptable proof that anchored the judiciary's verdict to an authoritative reference-point. In addition, the *fatwā* issued by the office of *Shaykh al-Islām* had the potential to depose the sultans during the times of economic, financial and political disturbance. A number of uprisings anchored in a *fatwā* issued by the office of *Shaykh al-Islām* resulted in sultans being deposed; to this extent, the office of *Shaykh al-Islām*'s *fatwā* put in place the legal foundations of these depositions. Relevant examples include the depositions of Sultan İbrahim (1648), Mehmet IV (1687), Mustafa II (1703), Ahmed III (1730), Selim III (1807), Abdülaziz (1876), Murad V (1904) and Abdülhamid II (1918).[318] It is possible to advance the proposition that the office of *Shaykh al-Islām* was, to a certain extent, superior to that of the Sultan himself – it was certainly clear that the *Shaykh al-Islām* had a scholarly efficiency and retained the competence to issue a *fatwā* calling for a sultan's deposition on the basis of Islamic law. In the absence of the *Shaykh al-Islām*'s official sanction, for example, it was not possible for a war to be declared or for the slaughter of the Sultan's male relatives to be enacted.[319] In contrast to the Diyanet's legal explanations or statements, these facts and incidents clearly reiterate the acute sanctioning power of *fatwās* issued by the office of *Shaykh al-Islām* in the Ottoman legal system.

Erdem has suggested that the Diyanet is "not exactly a continuation of the Ottoman office of the *Şeyhülislām* in terms of all of its functions and duties but is a continuation in the point of religious service and a continuation in the post-*Tanzimat* shape and functions."[320] This view can be upheld to a certain extent when the Diyanet and the *Shaykh al-Islām* are merely discussed with reference to their area of jurisdiction. However, this line of argument

[317] Vikor, *Between God and the Sultan*, 216.
[318] Erdem, "Religious Services in Turkey," 204 and Ayar, *Osmanlı Devletinde Fetvâ*, 18.
[319] Erdem, "Religious Services in Turkey," 204.
[320] Ibid, 212.

takes on a more contradictory appearance when the legal functionality of *fatwās* issued by the office of *Shaykh al-Islām* is taken into consideration. Because Islamic law was recognised as the foundation of the Empire's legal system and the fundamentals of Islamic law were protected and implemented up until the end of the Empire, the legal functionality and sanctioning power of *fatwās* issued by the office of *Shaykh al-Islām* potentially remained intact and maintained their functions within in that legal system. This suggests that a discontinuance and functionality lacunae is evidenced in the gap which separates the Diyanet's legal explanations and the *fatwās* which emanate from the office of *Shaykh al-Islām*.

The office of *Shaykh al-Islām* was therefore tasked with overseeing administrative, educational, judicial and religious affairs during the period which extended from the 16th century to the early 19th century.[321] Nearly half of the office's functions were allocated to newly established institutions and ministries. It only retained authority within areas relating to religious affairs (faith, morality and worship), with its transformation into the Diyanet. Turner and Arslan observe that "in this institutional reform process for modernisation and secularisation, the Office of the Şeyhülislam lost all its functions apart from those relating to religion".[322] The Diyanet was only tasked with administering places of worship and informing society about religion, so it has a lower level of responsibility than the office of *Shaykh al-Islām* maintained, even during the final years of the Ottoman Empire. However, the Diyanet, as a state-funded institution, continues to engage with wide-ranging duties, which include assisting in religious services, employing *imāms* (in addition to preachers and *muftīs*), funding mosques, and promulgating Islamic legal statements (*fatwās*). A comparison of the Diyanet's authority and the office of *Shaykh al-Islām* (in particular between the 16th century and the early 19th century) clearly establishes the extent to which the Diyanet was confined to merely religious affairs. The administration of state and popular affairs was placed under the control of the legislative power of the Grand National Assembly of Turkey and the Constitutional Courts, educational services were assigned to the Ministry of Education and the management of charitable foundations was transferred to the Directorate General of Foundations.

It is also important to note that in other respects, the explanations and Islamic legal statements of the Diyanet are solely informative and advisory, and do not, within the secular legal system, possess any legal function or sanction. To put it differently, the Diyanet's

[321] Turner and Arslan, "State and Turkish Secularism," 213.
[322] Ibid, 214.

explanations and legal statements are not binding, and the institution only imparts religious knowledge to those who seek it. When the Diyanet and *Shaykh al-Islām* are compared with reference to the functions and sanctioning power of their *fatwās*, a clear discrepancy can be observed. The efforts of some commentators to portray the Diyanet as a continuation of the office of *Shaykh al-Islām* is ultimately unconvincing. The function of the two institutions was quite different, and any attempt to establish a continuity rests upon insecure ground. The presence of the Diyanet within the Turkish state does not entail a religious or secular system; rather, the Turkish arrangements should instead be interpreted as a form of "hybrid" secularism.

Conclusion

Turkey's top-down modernisation and secularisation clearly required an infrastructure, which would have been developed and employed by the ruling elite to further perpetuate its own secular ideological perspective while reducing religious chaos, conflict and disorder within the Turkish Republic. With the intention of establishing a modernised and secular state, the early Republican government initiated reform projects, a number of which were explicitly modelled on Western counterparts. These included the abolition of the Caliphate, the abolition of sharī'a courts, the extension of strict state controls in the educational field, the nationalisation of the endowments (*awqāf*) that supported Muslim scholars (*'ulamā'*) and the replacement of the Islamic legal system.[323] The office of *Shaykh al-Islām* was not however abolished but was instead transformed into the Diyanet in 1924. In retaining the Ottoman Empire's religious establishment, the Republican elite subtly sought to appease the religious concerns and anxieties of its subjects.

It has already been noted that the early Republican People's Party sought, in the first instance, to apply restrictive policies to religion and religious structures. With its internal religious rivals silenced, the Party clearly required a justification for its consolidation and maintenance. Nationalism asserted itself at this point as a means through which ideological and political stability could be achieved within the newly established Republic. During the initial phases of the state-building process, the Diyanet was tasked with solidifying the state ideology and with standardising religious consciousness and aligning it with the secular narratives of the ruling elite and the state policy of nationalised Islam.[324] Although the Diyanet initially followed the request of the state by issuing and promulgating religious

[323] Bardakoğlu, *Religion and Society New Perspectives*, 110-111.
[324] Kenar and Gürpınar, "Cold War in the Pulpit," 26.

explanations and statements, it appears that, as time progressed, it became increasingly reluctant to pursue this course of action.[325]

Over a roughly 30-year period (1950s-1980s), the Diyanet began to be recognised as an institution of considerable significance by Turkish Muslims. It played an important role in producing religious knowledge and educating the public about Islam and Islamic legal rulings, at a time when state policy on religion was continually adjusting. However, in recent years, the Diyanet has taken on the appearance of a more autonomous religious body that is primarily concerned with conveying religious knowledge and fulfilling popular religious needs, in comparison with its previous years. The transition away from a state-controlled institution founded by the Republican elite has therefore been perhaps the most significant trend that has occurred during this period. This transformation can be traced back to political policies focused upon religion which have, both directly and indirectly, impacted the institution. Despite the ebbs and flows of changing political administrations, the Diyanet is now established as the only official institution that controls, manages, and supervises religious affairs in Turkey. The socio-political and socio-religious environment in which the Diyanet has functioned since its establishment is considerably more complex than the situation which prevails in counterpart Muslim states. The Diyanet, and more specifically its *fatwās* and official legal statements, have made a vital contribution to the ethical, social and religious reformulation of the Muslim component of Turkish society.

The Diyanet's *fatwās* are characterised by two main methodological approaches which the institution presumably adopts in accordance with the issue that is immediately in front of it. If the issue relates to classical Islamic legal rulings and ritual practices (*'ibādāt*) established by classical normative Muslim scholarship, it will be engaged through the answering of questions. In the area of *'ibādāt*, the answers to these questions are generally framed against the backdrop of the Ḥanafi and Shāfi'ī schools. A *fatwā* initially provides the Ḥanafi classical position and, presuming there is an observable difference between the two legal schools, the divergent view of the Shāfi'ī school is then presented to the questioner. Occasionally, the legal maxims of 'eclecticism' (*takhayyur*) and 'combination of opinions' (*talfīq*) are applied by the institution to solve intricate issues and benefit the society (for instance, when the conditions that establish a valid Friday prayer are clearly re-determined within the context of contemporary Turkey). These two legal maxims are however usually articulated against the backdrop of the Islamic legal principle of public interest (*maṣlaḥa*).

[325] Gürpınar and Kenar, "The Nation and its Sermons," 63.

If the issue that is presented to the institution concerns contemporary religious issues and social transactions (*mu'āmalāt*), the institution normally pursues a more moderate approach that combines democratic reference points, Islamic legal values and secularism. It may be presumed that the Diyanet has an important contribution to make to the balancing of these values and their adoption by the public. The institution also started to develop its own ideological, legal and theological approach to Islamic legal issues associated with social transactions. The Ḥanafī school, by virtue of the fact that it commands the loyalty of a majority of Turkish Muslims, would be presumed to be the key reference point, with this school providing the relevant legal methodology and jurisprudence. In addition to this Ḥanafī orientation, it should be recognised that the institution also seeks to develop a modern, overarching and progressive interpretative approach which takes into account Turkey's heterogenic and dispersed socio-religious structure. In this regard, it is important to note that the institution has, particularly when engaging with cultural and social themes, attempted to adopt a more conciliatory and moderate approach that is grounded within divergent cultural foundations, expectations, sensitivities and traditions.[326] In articulating itself within a constructive and integrative language and applying a similar method, the Diyanet invites Muslims to unite under the roof of Islam. In doing so, the institution extensively applies two main Islamic legal tools or methodologies: firstly, the Islamic legal principle of public interest (*maṣlaḥa*) and secondly the objectives of Islamic law (*maqāṣid al-sharī'a*). One of the key concerns of the institution is therefore to promote and preserve social unity. At times when different religious groups and divergent interpretations of Islam threaten national unity or when political and social conflicts threaten solidarity and unity, the Diyanet brings the integrative, peaceful and unifying dimension of Islam to the forefront, and cools the chaotic social mood through the direct application to the Islamic legal principles of *maṣlaḥa* and *maqāṣid al-sharī'a*.

The method of appointment of its highest administrators (including its president) and the constitutional regulations that relate to the institution's organisational structure may be understood to denote both its dependence upon the state and, by implication, the centrality of political influence. Notwithstanding all these ties, the institution has succeeded in gaining a high level of scholarly credibility and in acquiring freedom of speech; in addition, it has also attained a high level of public acceptance, particularly amongst the Muslim segment of society. In the aftermath of the 1970s, the Diyanet achieved considerable credibility by

[326] Din İşleri Yüksek Kurulu, *Fetvalar*, 46 and Bardakoğlu, *Religion and Society New Perspectives*, 31-32.

producing authentic, reliable and sound knowledge that related to Islam and Islamic legal issues. In normal circumstances, it acted, and still acts, as an independent public institution concerned with the production of religious knowledge and its dissemination to the society; clearly, any individual or state organisation is not able to compel this institution to issue a particular *fatwā*.[327] Upon this basis, it is possible to conclude that the Diyanet enjoys, to a substantial extent, freedom in its scholarly and intellectual activities that pertain to Islam and Islamic legal and ethical issues.

[327] Bardakoğlu, *Religion and Society New Perspectives*, 27-28.

CAHPTER 4

A GENERAL COMPARISON BETWEEN THE DĀR AL-IFTĀ' AND THE DIYANET

Introduction

Saudi Arabia's Dār al-Iftā' and Turkey's Diyanet have been selected as case studies with the intention of bringing out interactions between Islamic legal theory and the divergent cultural, economic, environmental, political and social contexts. As the second and third chapters have demonstrated in more detail, they provide very different styles of producing Islamic legal explanations, interpretations and rulings (*fatwās*) in the twenty-first century. There is a dynamic, fluid and organic connection between these institutions and the contexts in which they function – this highlights the importance of distinguishing one's *fatwā* from the context in which they operate and the responsibilities they entail – this will in turn provide important insight into the interaction between Islamic legal methodologies and environmental contexts.

The two institutions hold different Islamic legal positions on issues which include celebrating the Prophet's birthday and other religiously important days, divorce, engaging with non-Muslims, listening to music, playing chess, the performance of plastic surgery and the sighting of the crescent, which marks the beginning and end of religious feasts. In responding to these and other questions, the institutions formulate different and even diametrically opposed legal answers (*fatwās*), rulings and views, raising the question of whether they can even be considered to be part of the same religious tradition. Although the two institutions both refer to the Qur'an and Sunna, which put in place Islamic juristic and legal principles that enable the resolution of problems confronting Muslims and the production of Islamic legal solutions tailored to the specific audience, they diverge in their analysis of how these foundational texts should be applied and their assessment of contemporary Islamic legal issues. Differences of opinion (*ikhtilāf*) between the two institutions essentially correlate with the four main thematic factors set out in the introduction of the study. This chapter will compare the two institutions by referencing the four thematic perspectives, thus bringing out the interaction between Islamic legal theory and social context in clearer perspective. These four thematic factors are:

1. The interaction between the mainstream *madhhab* affiliation of society in Saudi Arabia and Turkey and the Islamic legal methodologies, theories and principles that adopted by the Dār al-Iftā' and the Diyanet,

2. The impact of the legal systems within both countries upon the functioning of the *fatwā* in both Saudi and Turkish societies,

3. The interaction between the political systems of the two countries and the issued *fatwās*,

4. The influence of cultural practices (or customary aspects) within both societies upon the issued *fatwās*,

Through a more sustained engagement with these thematic elements, the interaction between the Islamic legal methodology espoused by the two institutions and their antipodal social contexts will be analysed, with specific emphasis upon the question of how the two institutions read, interpret and apply the fundamental Islamic sources in their respective environments when issuing *fatwās*.

Scholars working in these institutions should seek to apply the immutable and fundamental principles of the authoritative sources to their respective environments – this requires a deep knowledge of Islamic law and also an understanding of a particular issue or problem in its specific context. When scholars evaluate context-specific problems in order to provide related Islamic legal rulings (*fatwās*), their juristic legal thinking and outlook are influenced – whether directly or indirectly – by the cultural, legal and political context of the institutions in which they operate. To take one example, both the Dār al-Iftā' and the Diyanet adopt the jurisprudential view that Muslims should be fair, kind and righteous in their dealings with non-Muslims.[1] However, in applying this principle in Saudi Arabia and Turkey,

[1] In engaging with relations with non-Muslims, the Dār al-Iftā' places a particularly strong emphasis upon just and fair dealings with non-Muslims. See Muslims Dealing with Non-Muslims, in *Fatwas of Ibn Baz*, 6: 283-285, accessed April 3, 2018, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=735&searchScope=14&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=11610410103211210111111210810103211110203211610410103209811111111107#firstKeyWordFound. The Diyanet's position on this issue was partially revealed when the issue of "the Religious and Legal Position of Houses of Worship pertaining to Non-Muslims in Islamic Tradition" was published in 2012. Here the Diyanet commits to protect the rights of non-Muslims resident in a Muslim country and counsels Muslims to demonstrate justice, morality and righteousness in their relationships with non-Muslims. See "İslam Geleneğinde Gayr-ı Müslim Mabetlerin Dini ve Hukuki Durumu," in *Din İşleri Yüsek Kurulu Kararları*, accessed April 3, 2018, https://kurul.diyanet.gov.tr/Karar-Mutalaa-Cevap/4373/islam-geleneginde-gayr-i-muslim-mabetlerinin-dini-ve-hukuki-durumu.

they are most likely influenced by their respective environments, which function to both customarily and socially delineate the scope of possible relations with non-Muslims. More specifically, the question of protecting non-Muslim sanctuaries, such as churches and synagogues, and of allocating places of worship to non-Muslim citizens was evaluated by both institutions, but they formulated antipodal juristic views on this specific issue. The *fatwā* issued by the Dār al-Iftā' on this specific issue clearly states that it is forbidden to build houses of worship for religions other than Islam – this applies because such initiatives may be taken to indicate an acceptance of their faith, along with an associated commitment to strengthen their community.[2] The Diyanet's Islamic legal decision (on "the Religious and Legal Position of Houses of Worship pertaining to non-Muslims in Islamic Tradition") can be directly contrasted with the Dār al-Iftā's *fatwā*. Here the Diyanet implicitly argues that it is obligatory for a Muslim state to protect sanctuaries belonging to non-Muslims and to allocate places of worship to non-Muslims resident in the state.[3] Even though the institutions both referred to the same Islamic legal proofs (the Qur'an and Sunna) and concurred upon the basis which Muslims should engage justly, kindly and righteously with non-Muslims, they ultimately issued fundamentally opposed *fatwās*. Here it seems permissible to suggest that this divergence can be attributed to the interaction between Islamic legal methodologies and different cultural, legal, political and social contexts.

The divergence of *fatwās* pertaining to almost similar and identical questions was particularly pronounced in relation to social transactions (*mu'āmalāt*). This can be understood as a further demonstration of how context impacted upon Islamic legal rulings and statements issued by the two institutions. It seems plausible that the sources of divergence within Islamic legal opinions do not originate within fundamental Islamic principles and sources but can instead be traced back to interpretative technics and Islamic legal methodologies employed by the institutions which derive from wider contextual influences. While it is instructive to evaluate the Dār al-Iftā' and the Diyanet in relation to each other with reference to the four thematic factors stated above, the official Islamic legal

[2] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471, accessed November 12, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=10807&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=06710411711409910410111503210511003206511409709810509711003208010111010511011511710809 7#firstKeyWordFound. The *fatwā* discussed in chapter two when explaining the clashes between the Saudi government's policies and the the Dār al-Iftā's Islamic legal stances. More detailed analysis of this *fatwā*, see chapter two.

[3] "İslam Geleneğinde Gayr-ı Müslim Mabetlerin Dini ve Hukuki Durumu," in *Din İşleri Yüsek Kurulu Kararları.*

decisions, rulings (*fatwās*) and statements issued by the institutions will be used to provide additional insight into each thematic comparative point. In engaging with these points, the chapter will seek to identify differences within the *fatwās* issued by the Dār al-Iftā' and the Diyanet and will attempt to ascertain the extent to which these differences can be attributed to the contextual environments of the two institutions.

1) The Influence of the Mainstream *Madhhab* Affiliation of the Societies over the Dār al-Iftā' and the Diyanet

With regard to the Islamic legal methodologies that are espoused and followed by the two institutions, it is possible to identify a number of differences which have been partially influenced by the *madhhabic* affiliation of the majority of the population in which the two religious institutions operate. The Ḥanbalī *madhhab* is the legal school which is predominant within Saudi society.[4] In addition, Saudi Arabia's cultural, political and social environment has been influenced by the Wahhābī movement, a religious movement which emerged from central Arabia in the mid-eighteenth century.[5] The Ḥanbalī *madhhab* and the Wahhābī religious movement have markedly shaped both the Dār al-Iftā's religious understanding and the interpretation technic of the authoritative texts within Saudi Arabia. The Dār al-Iftā' has tended to emphasise the legal methodologies of the Ḥanbalī *madhhab*, in addition to creating an opening for three Sunni *madhhabs*' opinions and methodologies on controversial issues. This has been done under the practice of determining the preponderant opinion (*tarjīḥ*) if the strongest proof (*dalīl*) is identified in another school's legal ruling or opinion.[6]

Conversely, Turkey's Diyanet chooses to silently pursue the legal methodologies and views of the Ḥanafī *madhhab* – the institution maintains that this is particularly necessary because the majority of the Turkish Muslim population adheres to the Ḥanafī *madhhab*, which has historically exerted a strong influence over mainstream custom, social practices and tradition.[7] Despite the fact that the Ḥanafī *madhhab*'s legal methodologies and opinions have been predominant within the practice of *iftā'*, the needs of followers of other schools, other religious groups and sects are taken into account to as great an extent as possible. When the opinions and views of other Sunni *madhhabs* appear better suited to the immediate issue at hand, most notably in ritual practices (*'ibādāt*) or classical Islamic legal issues discussed by the earlier Muslim scholars, the Diyanet generally maintains the views of these schools

[4] Akgunduz, *Islamic Law*, 285 and Vogel, *Islamic Law and Legal System*, XV.
[5] Vogel, *Islamic Law and Legal System*, XVI and 44.
[6] Al-Atawneh, *Wahhābī Islam*, 77-81.
[7] Dadaş, "Kuruluşundan Günümüze," 50-51.

along with the position of the Ḥanafī *madhhab* by leaving the final decision to the individual.[8] When contemporary religious issues are instead the main preoccupation, the Diyanet mainly practices two variations of *ijtihād* – (*ijtihād* through the *takhrīj* method and *ijtihād inshā'ī*) upon a collective basis. While the influence and weight of the Islamic legal tradition press themselves with various degrees of intensity upon Islamic legal decisions, interpretations (*fatwās*) and statements, the approaches adopted by the Dār al-Iftā' and the Diyanet in response to contemporary Islamic legal issues demonstrate a clear awareness that Islamic law should adjust to changing circumstances.

The influence of the predominant *madhhab* affiliation of both societies can be clearly identified within the *fatwās* issued by the Dār al-Iftā' and the Diyanet. It is possible to identify a number of references, both direct and indirect, to the Islamic legal views of the renowned Muslim jurists and scholars that respectively belong to the Ḥanbalī and Ḥanafī *madhhabs*. The Dār al-Iftā', for example, referred to Ibn Taymiyya's view that sanctioned the execution of a person who refused to give up drinking alcohol when issuing a *fatwā* upon the application of the death penalty to drug smugglers. In the *fatwā*, the Dār al-Iftā's main concern, in referencing Ibn Taymiyya's view, was whether execution is a penalty suited to the penal category of *ta'zīr* (punishments left to the discretion of the ruler or judge). Ibn Taymiyya permitted the ruler a wider scope in exercising his discretionary power to punish miscreants who disrupted law and order, with this even applying in instances where they had not committed murder. While jurists of Ibn Taymiyya's time had allowed the death sentence to be applied in instances of spreading anarchy, chaos and sedition (*sā'un fī'l-arḍ fasād*) only if murder had been committed, Ibn Taymiyya allowed the ruler to prescribe death sentence to conspirators (*su'at*), supporters (*a'wina*) and transgressors (*ẓalama*) upon the basis that they were attempting to spread anarchy and terrorise society.[9] Ibn Taymiyya maintains that the ruler has the right to sentence an offender to prison and award corporal punishment up until the point his penalty has been paid.[10] With regard to offences where punishment was not fixed, Ibn Taymiyya maintained that the ruler was permitted to punish a culprit through *ta'zīr*, including execution.[11]

In drawing upon Ibn Taymiyya's view, the institution placed execution within the scope of *ta'zīr* punishments and established that relevant judicial agencies, such as the courts,

[8] Dadaş, "Kuruluşundan Günümüze,", 53-54.
[9] Muhammad Khalid Masud, "The Doctrine of *Siyāsa* in Islamic Law," *Recht van de Islam* 18 (2001), 10-11, accessed May 14, 2018, http://www.verenigingrimo.nl/wp/wp-content/uploads/recht18_masud.pdf.
[10] Ibid, 11.
[11] Ibid, 12.

jurisdictional bodies and the Supreme Judicial Council must, once proof of criminal offenses had been demonstrated, possess the right to sentence drug smugglers and traffickers to the death penalty.[12] To the same extent, the *fatwā* calling for the demolition of all churches in the Arabian Peninsula was consolidated by Ibn Taymiyya's legal opinion. Ibn Taymiyya issued a number of rulings which extended to those who believe that churches are Allāh's houses and serve as places for His worship, or those who believe that the worship of the Christians and Jews are true and can be said to constitute obedience to His prophets, or those who actively enable to open places of worship for them to perform their religion, or those who think this [their religious practice] to be proximity and obedience to [Allāh] is a disbeliever.[13] Ibn Taymiyya's legal opinion was used as a supplementary argument in the *fatwā* that further consolidated the legal ruling calling for the removal of churches in the Arabian Peninsula. It has been demonstrated that the Islamic legal views of Muslim scholars that belong to the Ḥanbalī *madhhab* occupy a privileged place in modern-day official *fatwās* issued by the Dār al-Iftā'.

It is also highly likely that the influences and reflections of the Ḥanafī *madhhab*, which are adhered to by a large majority of the Turkish population, will be discernible in the *fatwās* officially issued by the Diyanet. In both theory and practice, the Diyanet (modern neo-Ḥanafī scholars) remains faithful to the doctrines and tenets of Ḥanafīsm by primarily privileging this *madhhab*'s legal opinions or views – this, however, depends upon the prior condition that these classical views are applicable to contemporary problems confronting Turkish Muslims. By way of illustration, the Diyanet grounds its *fatwā* within the Ḥanafī legal opinion when addressing the question of how religious marriage (*nikāḥ*) between a Muslim and a non-Muslim woman from the People of the Book should be performed, along with the question of whether non-Muslims from the People of the Book can witness this marriage ceremony. The *fatwā* states:

> "A religious marriage with a non-Muslim woman from the People of the Book is in almost all respects identical to the religious marriage contracted with a Muslim woman – this applies to its form, ruling and implementation. In direct opposition to a marriage in which both parties are Muslims, the Ḥanafī *madhhab* establishes that the witnesses in the marriage of a Muslim man and a non-Muslim woman can be from the People of the Book. Except this, there is no

[12] The BSU decision No. 138 of February 02, 1987, accessed June 30, 2016, http://www.alifta.net/Search/ResultDetails.aspx?languagename=ar&lang=ar&view=result&fatwaNum=&FatwaNumID=&ID=3101&searchScope=2&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=217130216177216167216177032217135217138216166216169032217131216168216167216177032216167217132216185217132217133216167216161#firstKeyWordFound.

[13] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.

> difference in terms of Islamic legal rulings and conditions of marriage while the religious marriage is conducted between the two parties [a Muslim man and a non-Muslim woman]."[14]

Taking this *fatwā* into account, it may be observed that the Diyanet primarily refers to the position of the Ḥanafī *madhhab* rather than other Islamic legal schools' when answering questions directed to it. This feature apparently attests to the influence of mainstream *madhhabic* tendency of Turkish society (which is specifically indicated in the institution's adherence to the Ḥanafī *madhhab* along with the jurisprudential methodology that it employs when creating *fatwā*s). In a number of officially issued *fatwās*, the Diyanet's approach to the Ḥanafī *madhhab* is generally presented as an act of "imitation (*taqlīd*)" rather than a method of argument (*ṭarīqat istidlāl*) that is applied with the intention of investigating the authoritative texts.[15] A question pertaining to the neutering of animals were answered by the institution with direct reference to the traditional Ḥanafī legal opinion. In addressing this issue, it primarily focused upon extracting the general principle of Islamic law related to animal rights. The fact that all animals, like humans, have reproductive rights is identified to be the main general legal principle associated with the issue at hand. After determining this general legal principle, the Diyanet categorically condemned the neutering of animals without any valid reason and asserted that such actions were legally prohibited by Islamic law ("[i]f there is no a valid and legitimate reason, it is illicit to neuter or sterilise animals").[16] However, while the neutering of animals is not encouraged in Islam, it is not completely forbidden. In referring to *al-Fatawā al-Hindiyya*,[17] the Diyanet clarifies that it is acceptable for pets to use contraceptives to prevent their pregnancy, and stray animals (abandoned and homeless animals) such as cats and dogs can be sterilised in order to control their reproduction upon the condition that this does not damage the ecological balance. The legal views of both Marghīnānī (d. 1197) and Ibn Māza (d. 1141) clearly establish that it is permissible for animals such as calves and goats to be neutered if some benefit will be produced, such as improvement in the animal's health or the production of meat.[18] In referring directly to widely acknowledged *fiqh* works of the Ḥanafī *madhhab*, which include

[14] Din İşleri Yüksek Kurulu, *Fetvalar*, 443.
[15] Kaya, "Balancing Interlegality, 204-205.
[16] Din İşleri Yüksek Kurulu, *Fetvalar*, 556.
[17] *Al-Fatāwā al-Hindiyya*, which is also known as *al-Fatāwā al-'Ālamgiri*, is a collection of Islamic legal rulings that have been issued and compiled by many scholars, principally from Ḥanafī scholars in India. It was created at the request of the Mughal Emperor Aurangzeb (who was also known as Alamgiri) in the late 17th century.
[18] Din İşleri Yüksek Kurulu, *Fetvalar*, 556.

al-Fatāwā al-Hindiyya, Marghīnānī's *al-Hidāya*[19] and Ibn Māza's *al-Muḥīt*,[20] the Diyanet grounded its *fatwā* within the traditional Islamic legal view of the Ḥanafī *madhhab*, which was constructed upon the Islamic legal principle of need (*ḥāja*), necessity (*ḍarūra*) and public interest (*maṣlaḥa*).

The same question was presented to the Dār al-Iftā'[21] and the institution provided a clear answer. It stated:

> "[The castration of animals] is permissible if there is public benefit, based upon the evidence reported by Imām Aḥmad and al-Ḥākim on the authority of Abū Rāfi'…who said {The Prophet … sacrificed two white, castrated rams with big horns.} He said (in *Majma' al-Zawāid*) the *isnād* (chain of narrators) of this *ḥadīth* is *ḥasan* (good)"."[22]

Although the two *fatwās* issued by the Dār al-Iftā' and the Diyanet appear very simple and straightforward, they perfectly exemplify the differences between the legal methodologies applied by the two institutions and the influence of the *madhhab*, which is predominant within both societies upon the Dār al-Iftā' and the Diyanet. It can be observed that the Dār al-Iftā' methodologically follows the doctrines of the Ḥanbalī school by prioritising the text and elevating tradition (*naql*) over reason (*'aql*). As the *fatwā* clearly reiterates, the Dār al-Iftā' bases its legal ruling on the *ḥasan ḥadīth*, instead of aligning itself with the Islamic legal view of the Ḥanbalī school that it is permissible to castrate animals, such as sheep and rams upon the basis that this will improve the quality of the meat; this course of action is however held to be reprehensible (*makrūh*) when applied to horses and other animals.[23] This

[19] *Al-Hidāya fī Sharḥ Bidāyat al-Mubtadī'* is commonly referred to as *al-Hidāya*. It is a 12th century legal manual by Burhān al-Dīn Abu'l-Ḥasan 'Ali bin Abī Bakr bin 'Abd al-Jalīl al Farghānī al-Marghīnānī, and it is considered to be one of the most influential compendia of Ḥanafī jurisprudence.

[20] *Al-Muḥīḍ al-Burhānī fī Fiqh al-Nu'mānī* was authored by Ibn Māza al-Bukhārī (d.1141), one of the prominent scholars of the Ḥanafī school. Ibn Māza is more frequently referred to as "al-Ṣadr al-Shahīd."

[21] The question is: What is the Islamic legal ruling on the castration of animals? See Fatwā No. 6341 in *Fatwas of the Permanent Committee*, 26: 162-163, accessed April 8, 2018, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageNo=1&FromMoeasrID=26068&PageID=10212&BookID=7.

[22] Fatwā No. 6341 in *Fatwas of the Permanent Committee*, 26: 162-163.

[23] 'Abd al-Rahmān ibn 'Abd Allāh al-Ba'lī al-Ḥanbalī, *Kashf al-Mukhaddarāt wal-Riyāḍ al-Muzhirāt lil-Sharḥ Skhṣar al-Mukhtasarāt* vol. 2 (Beirut: Dār al-Bashaer al-Islāmiyya, 2001), 695. Generally speaking, all schools of Islamic law allow the neutering of animals; however, they differ with regard to the species of animals which are permitted for it to be implemented. The Ḥanafī school adopts the view that it is appropriate to neuter animals on the basis of necessity (*ḍarūra*), need (*ḥāja*) and public interest (*maṣlaḥa*). The Mālikī school takes the view that it is only appropriate to permit castration for animals that are intended to be consumed by Muslims – this applies because it produces clear benefits for both the animal and humans. With regard to this specific issue, the Islamic legal view of the Shāfi'ī school is more detailed and complex but is more restrictive than the other three schools. The Shāfi'ī scholars clearly distinguish between animals whose meat is edible and those that are not eaten. They maintain that it is acceptable to neuter animals whose meat is capable of being consumed when they are small, but this is forbidden in other cases. They also clearly establish that neutering should not result in the death of the animals. The Ḥanbalī school establishes that it is acceptable to castrate animals such as sheep and rams upon the grounds that this improves the quality of the meat – this act is however reprehensible (*makrūh*) when it performed upon other animals, such as horses. For further insight into this issue, also refer to Abū

methodological approach of the Dār al-Iftā' most likely derives from the fact that Wahhābī-Ḥanbalī scholars (the majority of the scholars in the Dār al-Iftā') distinguish between "following (*ittibā'*)" and "imitation (*taqlīd*)" upon the deeply embedded predisposition within the Ḥanbalī *madhhab* that rejects blind *taqlīd*.[24] The Dār al-Iftā' draws certain lines between the two (*taqlīd* and *ittibā'*) upon the basis that a *muqallīd* (imitator) adheres strictly to an *imām* or a *madhhab*; in contrast, a *muttabi'* (follower) closely aligns him/herself with the Prophet, including his behaviours, moral advice, norms and statements. The *fatwā* that indirectly relates to *taqlīd* states:

> "[A] person has not to imitate any scholar. Rather, opinions of scholars have only to be followed when there is evidence for them. All Muslims must follow the Messenger (peace be upon him) for he is the model to be emulated by all believers…"[25]

A separate *fatwā* that directly addresses the issue of *taqlīd* divides it into four categories. The first category is the independent *taqlīd* of an individual qualified to employ his own *ijtihād* after deriving his own rules from the sacred textual sources.[26] If a person is sure of the truth and evidence that derives from his own *ijtihād*, it is not appropriate for this person to follow an opinion that conflicts with his own ruling. This type of *taqlīd* is unequivocally forbidden because it contradicts the juristic consensus of scholars upheld by the Dār al-Iftā'.[27] The second category is the *taqlīd* of those who are capable of *ijtihād* but who imitate other mujtahids without exercising their own *ijtihād* in order to derive a legal ruling from the legal sources. Shāfi'ī (d. 820) and Ibn Ḥanbal (d. 855) both maintain that this type of *taqlīd* is

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Zakriyyā Yaḥyā ibn Sharaf al-Nawawī, *Al-Majmū' Sharḥ al-Madhhab (Irshād),* vol. 6 (Jeddah: Maktabat al-Irshād, 2008), 154-155, 'Abd al-Raḥmān ibn Muḥammad ibn Sulaymān al-Mad'ū Bashī Zāda, *Majmū' al-Anhir fī Sharḥ Multaqā al-Abḥar* vol. 4 (Beirut: Dār al-Kutub al-'Ilmiyya, 1997), 224 and Abū al-Walīd Muḥammad Ibn Aḥmad Ibn Rushd, *al-Bayān wa al-Taḥṣīl wa al-Sharḥ wa al-Tawjīh al-Ta'līl fī Masāil al-Mustakhraj* vol. 18 (Beirut: Dār al-Gharb al-Islāmī, 1988), 436 and Wazāra al-Awqāf wa al-Shu'ūn al-Islāmiyya-Kuwait, *al-Mawsū'a al-Fiqhiyya* vol. 19 (Kuwait: Wazāra al-Awqāf wa al-Shuūn al-Islāmiyya, 1983), 125-126.

[24] Al-Atawneh, *Wahhābī Islam*, 71-74. Although al-Atawneh recognizes the practice of distinguishing *taqlīd* from *ittibā* as one of the defining attributes of Wahhābī scholars, this is also the position of Ibn Taymiyya, the Ḥanbalī scholar. Vogel observes: "Ibn Taymiyya sometimes used the term *ittibā'*, meaning "following," to convey the peculiar mix of taqlīd and ijtihād resulting from adoption of proof-evaluation theory. For example, Ibn Taymiyya writes: "One who follows (*ittibā'*) the imām and then differs with him [to follow another imām] on certain matters because of the strength of the proof (*dalīl*) or because one of [two imāms] is more knowing and pious, has done well…"." It is can therefore be argued that, in this respect, modern Wahhābī scholars, including the members of the Dār al-Iftā', draw from the thought of Ibn Taymiyya. See Vogel, *Islamic Law and Legal System*, 69.

[25] Fatwā No. 17831 in *Fatwas of the Permanent Committee*, 2: 168-172, accessed April 20, 2018, http://www.alifta.net/Fatawa/FatawaSubjects.aspx?languagename=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4100&PageID=10898&SectionID=7&SubjectPageTitlesID=11293&MarkIndex=8&0#ImitatingtheFourMadh-habs(Hanafi.

[26] Fatwā No. 11296 in *Fatwas of the Permanent Committee*, 5: 29-31, accessed April 20, 2018, http://www.alifta.net/Fatawa/FatawaSubjects.aspx?languagename=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4098&PageID=1369&SectionID=7&SubjectPageTitlesID=1388&MarkIndex=0&0#Whatisthemeaningandformsof.

[27] Ibid.

prohibited.[28] In addition, the Dār al-Iftā' argues that it is incumbent upon those skilled in *ijtihād* to derive Islamic legal rulings from the authoritative texts. The third category is *taqlīd* practiced by a lay Muslim who is not qualified to derive rules through his own efforts, as he/she lacks the ability to examine legal evidence and then deduce rules. The Dār al-Iftā' only permits a type of *taqlīd* in which a lay person who does not know how to deduce rules is allowed to follow a skilled *mujtahīd*. The final category is the *taqlīd* of those who ignorantly follow their predecessors and leaders in matters which violate the sharī'a – a consensus among Muslim scholars establishes that this type of *taqlīd* is unlawful.[29] While the Dār al-Iftā' does not forbid the practice of *taqlīd* in its entirety, it nonetheless restricts its application by only permitting the third. Depending on the approach that the Dār al-Iftā' adopts to *ittibā'* and *taqlīd*, it may be observed that the institution attempts to retain the Islamic legal methodology of the Ḥanbalī *madhhab* to as great an extent as possible.

The methodological influence of the Ḥanbalī *madhhab* most likely impelled the Dār al-Iftā' to adopt a text-centric approach when issuing *fatwā*s. That approach can be identified in many *fatwās* that have been officially issued by the institution. Rather than referring to the opinion of the Ḥanbalī *madhhab*, the Dār al-Iftā', while offering legal rulings which align with the mainstream view of the Ḥanbalī *madhhab* on the relevant issue, provides direct references to the Qur'an and the *ḥadīth* literature – the neutering of animals was an instructive example in this regard. The Dār al-Iftā' does not therefore present its *fatwās* as an Islamic legal ruling that derives from *taqlīd* but instead renders it as a search for textual evidence that is achieved through *ijtihād*. Taking into account the Dār al-Iftā's attempts to separate *ittibā'* and *taqlīd*, it is possible to observe that the Diyanet adopts *taqlīd* as a methodology when addressing itself to questions that concern ritual practices (*'ibādāt*) along with classical Islamic legal issues evaluated by the earlier Muslim scholars.[30] This feature of the Diyanet's approach is evidenced in many of its *fatwās*. In these instances, the Diyanet presents its legal ruling by directly referring to the commonly accepted Islamic legal opinion that is embodied within the Ḥanafī *madhhab*, and, to a lesser extent, the Shāfi'ī *madhhab*.[31] However, rather than extracting direct evidence from the Qur'an and the *ḥadīth* corpus in the same manner as the Dār al-Iftā' did, the Diyanet generally grounds its Islamic legal ruling within a *fatwā* provided by a prominent and recognised Muslim scholar in the Ḥanafī

[28] Fatwā No. 11296 in *Fatwas of the Permanent Committee*, 5: 29-31.
[29] Ibid.
[30] For the Diyanet, the term "*taqlīd*" means presumably following or embarking on the best suited legal opinion among the views of within the Ḥanafī school or among the Sunni schools.
[31] Kaya, "Balancing Interlegality," 156-160 and Adanalı, "The Presidency of Religious Affairs," 124.

madhhab – this applied to the two examined *fatwās* relating to the acceptance of non-Muslims' testimony in the marriage ceremony between a Muslim man and a non-Muslim woman and the neutering of animals. When finding an applicable classical Islamic legal opinion or ruling (*fatwā*) to contemporary issues, the Diyanet does not refer to the authoritative texts (the Qur'an and Sunna) in an effort to rederive an Islamic legal ruling from the foundational sources. It is conceivable that the existence of applicable Islamic legal views and rulings removes the necessity for deduction (*ijtihād*) – this applies because the legal ruling regarding the issue that has been directed to the institution had already been decided by earlier Muslim scholars.

In this regard, it may be argued that the dominant *madhhab* affiliation of societies in which the Dār al-Iftā' and the Diyanet operate have served, to a greater or lesser extent, to shape their Islamic legal methodologies. Abdul Rahman et al. explicitly point to the possible effect of the dominant *madhhab* affiliation in a society on the practice of *iftā'*, arguing:

> "If the dominant legal mindset in a society is tied to the doctrine of a certain *mazhab*, then it will absorb into any activities related to law because fatwa is a reflection of the doctrine of the prevailing legal practice."[32]

In this respect, it is instructive to note that the predominant *madhhab* commitment of the Muslim majority population of Saudi Arabia and Turkey has contextually composed the Islamic legal methodologies that the two religious institutions, when regulating the day-to-day running of religious affairs in their respective environments, espoused.

A further notable difference between the Islamic legal views of the two institutions perhaps arises out of the hermeneutical approaches that they adopt to the primary sources of Islamic law. This can be linked to the influence of the predominant *madhhab* adherence in the two societies upon the Dār al-Iftā' and the Diyanet, respectively, which are active considerations, because their respective hermeneutical approaches have been substantially shaped by the two *madhhabs* (Ḥanbalīsm and Ḥanafīsm). While the Dār al-Iftā' interprets authoritative sources literally, the Diyanet generally focuses upon the intent and purpose of these sources rather than their literal meaning. This is one possible reason why such a clear divergence can be observed between the two institutions' Islamic legal rulings and interpretations (*fatwās*). Due to the fact that the Ḥanbalī *madhhab* and the Wahhābī religious movement have markedly impinged upon the Dār al-Iftā', the wording of the Qur'an and the

[32] Noor Naemah Abdul Rahman, Asmak Ab Rahman and Abdul Karim Ali, "A Study on Students' Research related to Fatwa Summited at Malaysian Public Universities," *International Journal of Humanities and Social Science* 2, no.18 (2012), 129, accessed March 02, 2018, http://www.ijhssnet.com/journals/Vol_2_No_18_October_2012/15.pdf.

ḥadīths presents, without necessary resort to exegetic interference or rational interpretation, the absolute basis upon which the institution conducts the practice of *iftā'*. Wiktorowicz reflects upon the strong Wahhābī tendency towards literal interpretation of the authoritative texts. He observes:

> "[Wahhābī] publications eschew human systems of argumentations, preferring instead to make a point and follow it with series of direct quotes from the Qur'an and sound hadith collections…But it reflects the [Wahhābīs'] rejection of human logic and their objective of undermining the rationalists."[33]

This feature is exhibited in a considerable number of *fatwās*, and it can be said to be a defining feature of Wahhābīsm. The Dār al-Iftā's rulings in many *fatwās* are stated in one or two sentences and are supported by a number of direct quotations from the *ḥadīth* and the Qur'an. This can be attributed to the impact of the Ḥanbalī legal doctrine on the Wahhābī juristic and legal views. Al-Atawneh reflects upon this link between Ḥanbalīsm and Wahhābīsm when he writes:

> "A quick glimpse at classical Wahhābī methodology and fatwā sources indicates that they follow Ḥanbalī legal doctrine, as elaborated by Ibn Ḥanbal's disciples, especially Ibn Taymiyya (d. 1328) and Ibn Qayyim al-Jawziyya (d.1350)."[34]

Taking into account the earlier Wahhābī affiliation to the Ḥanbalī *madhhab*, it can be observed that the influence of the Ḥanbalī *madhhab* still continues to be exerted over the contemporary Saudi-Wahhābī *muftīs* that operate within the Dār al-Iftā'.[35] Ibn Qayyim al-Jawziyya lists Ibn Ḥanbal's legal sources (*uṣūl*) in the following: 1) the texts of the Qur'an and the Sunna; 2) the legal opinions of the Companions (*fatāwā al-ṣaḥāba*); 3) in instances where there is disagreement between the Companions, the legal view that most closely resembles the Qur'an and the Sunna; 4) certain weak (*ḍa'īf*) or weakly attested *ḥadīths* (*mursal aḥādīth*); and 5) sound analogy (*qiyās ṣaḥīḥ*) when no other solution exists.[36] Taking Ibn Qayyim's account as a point of reference, it can be identified that the first four of Ibn Ḥanbal's *uṣūl* only rely on texts, whether these are provided by the Qur'an, the *ḥadīth* reports from the Prophet or the Islamic legal explanation (*fatwās*) from his Companions. This list of Ibn Ḥanbal's *uṣūl* engenders a text-centric legal methodology that ascribes a broad authority to *naql* (transmitted tradition) when deriving Islamic legal rulings (*fatwās*). Vogel observes

[33] Wiktorowicz, "Anatomy of the Salafi Movement," 212.
[34] Al-Atawneh, *Wahhābī Islam*, 14.
[35] For the historical interaction and interconnection between Ḥanbalīsm and Wahhābīsm, see Vogel, *Islamic Law and Legal System*, 3-165.
[36] Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, vol. 1 (Beirut: Dār al-Jīl, 1973), 29-33, Abdul Hakim I. Al-Matroudi, *The Ḥanbalī School of Law and Ibn Taymiyya* (London: Routledge, 2006), 34-35, Muhammad Abu Zahra, *The Four Imams: The Lives and Teachings of Their Founders*, trans. Aisha Bewley (London: Dar Al Taqwa, 2001), 473-474, and Vogel, *Islamic Law and Legal System*, 73.

that the text-centric *uṣūl al-fiqh* approach of the Ḥanbalī *madhhab* is actually still practiced by the Wahhābīs and, by extension, the Dār al-Iftā's official Saudi *'ulamā'* – in both instances, the authoritative legal texts precede other authorities and sources.[37] Accordingly, the Dār al-Iftā' outlined the methodological rules and procedures in the practice of *fatwā* by generally acting in accordance with the Ḥanbalī *madhhab*. When discussing any question directed to the institution, the *'ulamā'*, in the form of the Dār al-Iftā', generally adduced proofs directly from the Qur'an and Sunna, which functioned as the foundational sources of Islamic law. If the first two sources do not provide legal evidence, the legal opinions reached by the consensus of the Prophet's Companions are applied upon the basis that they are the legally authoritative sources of Islamic law.

In common with many Ḥanbalī scholars, the *'ulamā'* that function in the Dār al-Iftā' generally insist upon the literal application of the injunctions of the Qur'an and the *ḥadīths* – for this reason, any interpretative mechanism is held to be superfluous. In addition, whenever an issue is not addressed in the Qur'an and the authentic *ḥadīth* literature, they bring *āḥād ḥadīths* (solitary reports) as the legal evidence, with this being preferred over analogical legal reasoning and methodologies.[38] However, the text-centric approach adopted by the Dār al-Iftā' has gradually transformed into a Sunna-centric approach that privileges the *ḥadīth* over the Qur'an. To take one example, the Dār al-Iftā' based its legal ruling referring to the construction of non-Muslim houses of worship in Muslim countries (particularly those part of the Arabian Peninsula) on the *ḥadīth* which establishes that two religions cannot co-exist in the Arabian Peninsula.[39] The *ḥadīth* is understood in its literal meaning which establishes that only Islam can be practiced in the region, without being subject to a further assessment of its authenticity or further interpretation. The issue of female leadership is evaluated on a similar basis with reference to the *ḥadīth* narrated by Abū Bakra ("[n]ever will succeed such a people who place a woman to be in charge of their affairs").[40] In taking this *āḥād ḥadīth* as its point of reference, the Dār al-Iftā' clearly and unequivocally states that it not acceptable for women to assume a leadership role within their own communities.[41] The two *fatwās* clearly establish

[37] Vogel, *Islamic Law and Legal System*, 73.
[38] For further insight into the role of a *āḥād ḥadīth* in the Ḥanbalī *madhhab*, refer to Abu Zahra, *The Four Imams*, 479-490.
[39] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.
[40] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16, accessed August 25, 2015, http://www.alifta.net/Fatawa/fatawacoeval.aspx?languagename=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4660&PageID=6300&SectionID=7&SubjectPageTitlesID=6352&MarkIndex=19&0#Inwhichwomenareprohibitedto. This *fatwā* will be discussed in more detail in Chapter Five, as part of an analysis between the Dār al-Iftā' and the Diyanet.
[41] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16

that the official *'ulamā'*, when assessing the intention of the Qur'anic principles or identifying the objectives of Islamic law, refer to the *ḥadīth* literature before setting out the Qur'anic principles and the objectives of Islamic law. It may therefore be conjectured that the *ḥadīth* literature, when engaged in its literal meaning, assumes a critical role in helping to identify an Islamic legal ruling that relates to contemporary questions directed to the Dār al-Iftā'.

In contrast to the text-centric approach of the Dār al-Iftā', the Diyanet, when issuing a *fatwā*, normally attempts to identify the guiding principles and overarching legal objectives of the authoritative texts. If the Diyanet is regarded, to a certain extent, as maintaining the Ḥanafī *madhhab*, this provides reason (*'aql*) with an important role in helping to determine and understand the main aims and fundamentals of the authoritative texts; upon this basis, it may be asserted that the Diyanet, in common with its predecessors, aspires to the active participation of reason in the process of producing religious ruling (*fatwās*) that relate to social transactions (*mu'āmalāt*). In principle, the modern neo-Ḥanafī scholars in the Diyanet remain faithful to the tenets of Ḥanafīsm and the classical Ḥanafī legal epistemology – this is evidenced in the cautious and vigilant application of a singular *ḥadīth* (*khabar al-wāḥid*) and a prioritisation of the use of legal reasoning in the process of making *fatwās*, in particular those that relate to contemporary issues.

The Ḥanafī *madhhab*, which is adhered to by a large majority of the Turkish population, is one of the four major schools of Sunni Islamic legal thought. It was constructed upon the teachings of Abū Ḥanīfa (d. 767), affiliated to the group of scholars who were "less receptive to solitary *ḥadīths* and relied much more on the use of legal reasoning and sound judgement."[42] This group of scholars are commonly known as the People of Opinion (*ahl al-ra'y*). Vogel defines the People of Opinion and their legal approach in the process of law-making when he says:

> "[The People of Opinion] understood the Islamic law as an all-embracing corpus unfolding first from the example of the Prophet and his Companions and then from the experience and wisdom of the pious lawyers of succeeding generations. They exhibited lawyerly concerns for stability, continuity, logical coherence, and practicability of their laws and for accommodating secular sources of law, such as custom, local consensus, and administration."[43]

As a member of 'the People of Opinion', Abū Ḥanīfa gave a secondary importance to reason (*'aql*) and contrasted in this respect with his counterparts in the process of law-making. Vogel

[42] Vogel, *Islamic Law and Legal System*, 40. See also, Taha Jabir al-Alwani, *Source Methodology in Islamic Jurisprudence: Usul al-Fiqh al-Islami* (London: The International Institute of Islamic Thought, 2003), 62.
[43] Vogel, *Islamic Law and Legal System*, 40.

suggests that the Ḥanafī *madhhab* mostly reflects the characteristic aspects of 'the People of Opinion', and can be clearly contrasted in this respect with the three other Sunni schools (Ḥanbalīsm, Mālikīsm and Shāfi'īsm).[44] Within the Ḥanafī *madhhab*, Qur'an, Sunna, *ijmā'* (consensus) and *qiyās* (legal reasoning) are listed as the four fundamental sources of law, with two main secondary sources (*istiḥsān* (juristic preference) and *'urf* (custom)) being added to the Ḥanafī legal sources with the intention of supplementing those primary four sources. Abu Zahra's *The Four Imams: The Lives and Teaching of Their Founders* refers to seven fundamental principles of jurisprudence used by Abū Ḥanīfa. These are: 1) the Book, 2) the Sunna, 3) *Fatwās* of the Companions, 4) *ijmā'* (consensus), 5) *qiyās* (analogy), 6) *istiḥsān* (juristic preference) and 7) *'urf* (custom).[45] The ordering of these Ḥanafī sources of law clearly demonstrate that while the scriptural sources remained essential for the Ḥanafī *madhhab*, the context and the use of legal reasoning also had an important influence upon the formulation of law. It is nonetheless the case that the most distinctive character of the Ḥanafī *madhhab*'s legal methodology is its approach to a singular *ḥadīth* (*khabar al-wāḥid*).[46] Within the Sunni legal schools, there had been a long and contentious debate upon the probative value of *khabar al-wāḥid*.[47] While the Ḥanbalī *madhhab*, which was associated with 'the People of *Ḥadīth*' (*ahl al-ḥadīth*), considered these reports to provide more reliable guidance than human reasoning, the Ḥanafī *madhhab*, which was connected to 'the People of Opinion', did not accept *khabar al-wāḥid* as a sound basis for extracting legal rules – for this reason, they set out a number of conditions which applied to its application.[48] Within *'Uṣūl al-Shāshī* (one of the well-known Ḥanafī uṣūl works attiributed to Nidhām al-Dīn al-Shāshī (d. 955)) it was stipulated three conditions that preceded the acceptance of the *khabar al-wāḥid* as a legal source within the Ḥanafī legal tradition:

1) It does not contradict the Book of Allah.
2) It does not conflict with a *mashhūr ḥadīth*.
3) It does not conflict with the *dhāhir* (the known norms in society).[49]

Taking these three conditions into account, it may be asserted that the Ḥanafī *madhhab*, in applying rational criteria, ranks the probative value of *khabar al-wāḥids* below the verdicts of systematic legal reasoning. This should be considered alongside a relevant assertion ("[w]hen

[44] Vogel, *Islamic Law and Legal System*, 43.
[45] Abu Zahra, *The Four Imams*, 244-245.
[46] A *ḥadīth* only has a single transmitter in a particular generation.
[47] Vogel, *Islamic Law and Legal System*, 44.
[48] Abu Zahra, *The Four Imams*, 244-245.
[49] Nidhām al-Dīn al-Shāshī, *Introduction to Usul Ul-Fiqh: According to the Hanafi School*, trans. Abdul Aleem (London: Cordoba Academy, 2015), 123.

a *khabar wāḥid* goes against the status quo of a *dhāhir*, one cannot act upon it").[50] With regard to matters of public importance, a *khabar al-wāḥid* that contradicts a well-known practice in society cannot be accepted as a legally valid source. This applies in these circumstances because a *ḥadīth*, if valid, would have been widely circulated and acted upon.

In aligning itself with many Ḥanafī scholars, the Diyanet took the view that applying *āḥād ḥadīths* to contemporary issues requires a critical examination that is, by necessity, preceded by an examination of the legal validity or applicability of the *ḥadīth*.[51] This critical examination process requires both knowledge of the *ḥadīth* and also an interpretation of the context in which the Prophet uttered the *ḥadīth* and the contemporary context to which the *ḥadīth* will be applied. In addition, the Diyanet evaluates *āḥād ḥadīths* by directly comparing them to the authoritative texts (the Qur'an and Sunna) and the life of the Prophet and his Companions with the intention of ensuring that they do not conflict with any authoritative text and the objectives of Islamic law.

To take one example, the Islamic legal decision that relates to the issue of "the religious and legal position of houses of worship belonging to non-Muslims" can provide further insight into the hermeneutical and methodical approach towards the *ḥadīth* literature adopted by the Diyanet. In evaluating the *ḥadīth* that the Dār al-Iftā' used to establish its *fatwā* forbidding the construction of non-Muslim houses of worship in Muslim countries, the Diyanet subjects the *ḥadīth* to a critical examination that is consistent with the fundamental Qur'anic principles and the life of the Prophet.[52] After referring to a long list of Qur'anic verses that recognise the right to freedom of conscience, religion and thought, the Diyanet draws upon proofs from the life of the Prophet and his Companions to demonstrate that the Prophet desired a pluralistic society in which citizenship and equal rights were guaranteed to all people irrespective of religious beliefs and practices.[53] The *ḥadīth* which establishes that no religion apart from Islam may reside in the Arabian Peninsula is also categorised as a *gharīb ḥadīth* (a strange or rare *ḥadīth*) with regard to its location within the chain of transmitters (*isnād*).[54] In taking these reasons into account, the Diyanet unequivocally states that the *ḥadīth* cannot be appropriately used as legal evidence when it is compared against the

[50] Al-Shāshī, *Introduction to Usul Ul-Fiqh*, 124.
[51] More detailed explanation of the position of the Ḥanafī *madhhab* regarding a singular *ḥadīth* (*khabar al-wāḥid*), see Abu Zahra, *The Four Imams*, 251.
[52] "İslam Geleneğinde Gayr-ı Müslim Mabetlerin Dini ve Hukuki Durumu," in *Din İşleri Yüsek Kurulu Kararları.*
[53] Ibid.
[54] Ibid.

general Qur'anic principles that relate to the given issue. To the same extent, when discussing the issue of female leadership, the Diyanet, in the same manner as the Dār al-Iftā', refers to the *ḥadīth* narrated by Abū Bakra (however it restricts the application of the *ḥadīth* to the time of the Prophet). The *fatwā* clearly states that the Prophet remarked upon the apparently imminent collapse of the neighbouring Sassanid Empire, whose ruler was a woman.[55] In contrast to the Dār al-Iftā', which accepted the *āḥād ḥadīth* concerning the female leadership in its literal meaning as legal evidence, the Diyanet examined the same *āḥād ḥadīth* in the context of statement and restricted it to the time in which the Prophet was speaking and the event occurred in the time of the Prophet. The *fatwā* clearly states that within Islam, the fundamental rights and liberties that are provided to men are understood to extend to women – by implication, it is not appropriate to restrict judicial capacity and *jus capiendi* upon the basis that the object of reference is a woman. Accordingly, no objection can legitimately be made to efficient women who possess the required qualifications to undertake all kinds of administration and assume the role of head of state.[56] After many *āḥād ḥadīths* that related to relevant issues were considered with reference to Qur'anic principles and analogy, they were either accepted or rejected by the Diyanet as a legally valid source during the issuance of *fatwā*s.

Taking into account the interpretative approach adopted by the two institutions towards the authoritative texts, it may be inferred that the Diyanet explicitly approves reason as one of the main instruments that can be used to produce Islamic legal knowledge and rulings (*fatwās*) – this clearly contrasts with the preference of the Dār al-Iftā' to implicitly push it into the background. The Diyanet issues its *fatwās* upon the basis of the fundamental principles reached by examining the circumstances in which the Qur'an was revealed and the *ḥadīths* were uttered by the Prophet. On the contrary, the Dār al-Iftā' answers the religious questions presented to it by relying largely on the literal meaning of the authoritative texts.

Even though it is apparent that the dominant *madhhab* in the two societies has substantially influenced the methodological procedure applied to the practice of *iftā'* by the Dār al-Iftā' and the Diyanet, there are certain indications that the two institutions extracted considerable advantage not only from the predominant *madhhab* affiliation in their respective societies but also from other sources and methodologies that were endorsed and recognised

[55] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*, accessed August 27, 2015, https://fetva.diyanet.gov.tr/Karar-Mutalaa-Cevap/2913/kadinlarin-is-hayatinda-ve-yonetimde-yer-almalari.
[56] Ibid.

by other Islamic legal schools and prominent Muslim scholars. The tolerance that the two institutions exhibited towards the other Sunni *madhhabs* can be observed in the frequent references that they make to the other *madhhabs* in their *fatwās*, Islamic legal explanations and publications. For example, the Islamic legal decision that the Dār al-Iftā' issued on autopsies derived, to a substantial extent, from the legal opinions accepted by predominantly Ḥanafī, Shāfi'ī and Mālikī *madhhabs*.[57] With regard to Islamic legal methodology, the Dār al-Iftā' mainly resorted to *qiyās*, *maṣlaḥa* and *tarjīh*. Subsequent to finding the legal views of earlier Muslim scholars on five legal cases that had similar effective causes (*'illa*) to the issue at hand, the scholars within the Dār al-Iftā' revived these views with the aim of determining the preponderant opinion amongst them. The Dār al-Iftā' then constructed its Islamic legal decision upon the mainstream view of the given three *madhhabs*, and this enabled it to allow for violating the inviolability of a deceased Muslim body in order to uphold the public interest and remove necessity. Upon the grounds of public interest and necessity, the institution permitted forensic and pathological autopsies, while autopsy for the purpose of research was allowed only if the cadaver was a non-Muslim.[58] Similarly, the Dār al-Iftā' approved the use of the Internet and cited the public interest (*maṣlaḥa*) while arguing that it can serve as an effective tool that helps to disseminate beneficial information for religious, social and educational purposes.[59] While warning against its immoral contents (including pornography) and negative influences, it encouraged Muslims to use it for the benefit of Islam and Muslims.

In a similar manner, the Diyanet also draws upon other three Sunni schools, the Islamic legal views of the Companions and other independent scholars, and applies the legal theories and principles that have been approved by other three Sunni schools out of the Ḥanafī school. For example, the Diyanet answered the question of whether it is necessary to perform a funeral prayer for a deceased individual when part of their body has been found by drawing upon the Shāfi'ī *madhhab*. This establishes that it is necessary to provide a funeral prayer when even a small part of the body of the deceased has been found. This contrasts with the view of the Ḥanafī school which establishes that when the head of the dead body is found, half of the dead body must be found to perform the funeral prayer for the deceased; however, if the head of the dead body is absent, then more than half of the body has to be present in order for a funeral prayer to be offered. Subsequent to presenting the Ḥanafī

[57] Hukm al-Tashrīḥ Jathat al-Muslim, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 83-85.
[58] Ibid.
[59] Al-Atawneh, *Wahhābī Islam*, 118-120.

school's position, the Diyanet suggests that it is preferable to adopt the legal position of the Shāfi'ī school when taking into account the psychological well-being of the deceased's relatives.[60] Turkish Muslims were apparently directed to adopt the position of the Shāfi'ī *madhhab* on this specific issue. The issue of organ donation was also evaluated by the Diyanet. In drawing upon the Islamic legal principles of necessity (*ḍarūra*) and public interest (*maṣlaḥa*), which were identified in accordance with one of the five objectives of Islamic law (saving the lives of living people), the Diyanet endorsed organ donation.[61] To take another example, the Ḥanafī *madhhab* takes the view that a triple divorce uttered at once is binding – this, however, contradicts with a practice reported by 'Abd Allāh ibn 'Abbās. The Diyanet cites this report in justifying its position that a triple divorce should be accepted as a single divorce.[62] Even though all four Sunni schools embrace 'Umar's ruling, in which the triple divorce on one occasion is accepted as a binding irrevocable divorce, the Diyanet grounded its legal ruling within the legal opinion of the Prophet's Companion ('Abd Allāh ibn 'Abbās).[63] In also referring to Muslims inheriting from non-Muslims, the Diyanet states that it is possible to inherit from non-Muslims by drawing upon the legal opinions of the Companions (Mu'adh ibn Jabal, Abū Sufyan and Mu'awiya).[64] The *fatwā* states that the majority of Muslim scholars maintain that it is not appropriate for a Muslim to inherit from a non-Muslim and vice-versa, a position which is grounded within two *ḥadīths* reported from the Prophet. The first states "[a] Muslim does not inherent from an unbeliever, and an unbeliever does not inherent from a Muslim,"[65] while the second states "[p]eople of two different religions do not inherent from each other".[66] While many Muslim scholars cite these two *ḥadīths* in attempting to uphold the impermissibility of inheritance under this circumstance, the Diyanet advances an opposed line of argument by contending that there are a number of instances which demonstrate that it is acceptable for a Muslim to inherit from a non-Muslim (but not vice-versa). Rather than adopting the mainstream views of the four Sunni schools, the Diyanet grounds its *fatwā* within the views transmitted by Shāfi'ī ibn Ḥajar al-'Asqalānī (d.1449), Shāfi'ī Muḥammad ibn Muḥammad al-Mardīnī (d. ?) and Shams al-Ḥaq al-Azīmābādī (d.1857).[67] It shoould be noted that there is a jurisprudential debate

[60] Din İşleri Yüksek Kurulu, *Fetvalar*, 549.
[61] Ibid, 535-36.
[62] Ibid, 444.
[63] Ibid.
[64] Ibid, 487-488.
[65] Ibid, 487.
[66] Ibid.
[67] Ibid, 487-488.

upon the issue that implicitly indicates the absence of consensus (*ijmā'*). The Diyanet presented the opinion of those who allowed a Muslim to inherit from his/her non-Muslim relatives, while applying the legal principle of *istiḥsān* (juristic preference) in justification. These cases attest to the expedient use of Islamic legal legacy through eclecticism (*takhayyur*) or the legal maxim of 'combination of opinions' (*talfīq*) and its subsequent application to the legal views of the Companions; in proceeding thus, the legal views of the four Sunni *madhhabs* and other prominent Muslim scholars potentially assist the Diyanet in developing a pragmatic legal method in the process of issuing *fatwās* in response to modern problems that confront Turkish Muslims.

The practice of choosing among Islamic legal views of Muslim scholars in accordance with the strength of their proofs is often referred to as *tarjīḥ*; this is a kind of legal methodology that enables Muslim scholars to review the Islamic legal views expounded by earlier Muslim scholars at the end of their own *ijtihād*, while also declaring the most preponderant among them to correspond to the evaluated evidence (*dalīl*). In the contemporary period, the two institutions appear to be pursuing a form of eclectic *ijtihād* when utilising *tarjīḥ*, which is one of the essential tools of *ijtihād*. It can be assumed that both institutions do not restrict themselves to any particular *madhhab*; rather, they instead decide with reference to any of the four Sunni *madhhabs* and the question of which one is better suited to any one of the respective environments. In engaging at both points, the Diyanet demonstrates a greater degree of flexibility than the Dār al-Iftā'.

It can also be observed that the two institutions, to a substantial extent, seek to revive the existing Islamic legal principles, such as the public interest (*maṣlaḥa*), the presumption of continuity (*istiṣḥāb*), the blocking of illegitimate means (*sadd al-dharā'i'*) and the customary practices (*'urf*) – in doing so, they seek to add new interpretations that help to achieve a synthesis between the basic religious values of Islam and changes within place and time. However, the two institutions demonstrate quite different approaches within their specific environments. The crucial point is therefore the extent to which these Islamic legal maxims and principles are appealed by the two institutions and prevail in their Islamic legal explanations, *fatwās*, resolutions and statements; in addition to this, it is also crucial to ascertain the legal reasoning that their *fatwās* are grounded within when a specific legal maxim or principle is employed. For example, both institutions, when discussing the permissibility of using contraceptives, resort to the legal maxim of blocking of illegitimate means (*sadd al-dharā'i'*). However, different legal rationales asserted by the two institutions

result in two fundamentally opposed *fatwās* being issued. The Dār al-Iftā' employs the legal reasoning that the use of contraceptives may inflict harm upon the cultural, ethical, familial and social spheres by promoting adultery and the spread of sexually transmitted diseases in society. This destroys the supreme value of the family unit, which is an integral underpinning of the Islamic social structure.[68] It is necessary to restraint whatever may culminate in this prohibited action, as adultery (*zinā*) is forbidden in Islam. In citing this legal rationale along with a range of others, the Dār al-Iftā' asserts that all birth control and contraception methods are totally forbidden and will only be permitted in exceptional cases. It appears that the opinion of the Dār al-Iftā' that relates to the impermissibility of birth control and contraception derives from a prior assumption that the use of contraceptives results in increased fornication within society.[69]

A similar issue was also evaluated by the Diyanet, which concluded that it is acceptable to use contraceptives, such as *coitus interruptus* (*al-'azl*), copper-T (contra-implantation) and condoms, that prevent pregnancy upon a temporary but not permanent basis. The legal rationale that the Diyanet used to construct its *fatwā* derived from a prior belief that the prohibition of using contraceptives may contribute to an increased rate of abortion, which is prohibited by Islamic law in the society.[70] In accordance with the specific legal rationale that is applied, the Diyanet conceivably confirms the use of temporal contraception methods in order to prevent the occurrence of unlawful things, such as the killing of unwanted babies or embryos.[71] In common with the Dār al-Iftā', the Diyanet also applies the Islamic legal maxim of the blocking of illegitimate means (*sadd al-dharā'i'*) – however, here it is essential to note that the main concern of the Diyanet differs from the Dār al-Iftā'. While the Dār al-Iftā' seeks to prevent the spread of fornication in society by employing the legal maxim of *sadd al-dharā'i'*, the prevention of killing innocent babies

[68] Taḥdīd al-Nasl, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 525-527, accessed November 02, 2017, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=ar&View=Page&PageID=207&PageNo=1&BookID=1.

[69] The *fatwā* states that contraception methods are only permissible when there is potential for harm to be inflicted upon the woman as a result of pregnancy. If the life of the mother is endangered because of the continuation of pregnancy or another pregnancy, the woman can use abortion or a permanent method of contraception in order to save her life. In the case of necessity, the woman's well-being is prioritized by the institution. See Taḥdīd al-Nasl, in *Majallat al-Buḥūth al-Islāmiyya*, 2: 529-531. More detailed analysis of this *fatwā*, see Al-Atawneh, *Wahhābī Islam*, 134-137.

[70] Din İşleri Yüksek Kurulu, *Fetvalar*, 540. In a separate *fatwā*, the Diyanet states that permanent methods of birth control, such as tubectomy and vasectomy, are completely prohibited if there are no health grounds for their application. It can be deduced that in cases of absolute necessity, permanent methods of contraception can be practiced by Muslims. See Din İşleri Yüksek Kurulu, *Fetvalar*, 539.

[71] Din İşleri Yüksek Kurulu, *Fetvalar*, 540.

through abortion presents itself as the Diyanet's main preoccupation when it resorts to the same legal principle.

In both Saudi Arabia and Turkey, the challenges of the modern period probably motivate the two institutions to develop an inter-*madhhabī* approach when developing appropriate solutions to the problems of their respective societies. Both the Dār al-Iftā' and the Diyanet display some tolerance towards the four Sunni *madhhabs*, and this is privileged at the expense of doctrinal fanaticism (*ta'aṣṣub madhhabī*). In all likelihood, the moderate proclivity adopted by the two institutions is triggered by pragmatic considerations, which encompass a range of cultural, economic, political and social concerns. Despite this moderate tolerance towards the four Sunni *madhhabs*, the predominant *madhhab* which is predominant within both societies – Ḥanbalīsm in Saudi Arabia and Ḥanafīsm in Turkey – have, to a substantial extent, shaped Islamic legal guidelines, methodologies, principles and views espoused by the two institutions within both contexts.

2) The Effect of the Legal Systems of the Countries in Which the Two Institutions Function

Socio-legal dynamics that adhere within the wider contexts of the two institutions incrementally influence the issuance of a *fatwā* in the respective environments. It is clear that the function, influence and role of the *fatwās* issued by the two institutions are determined by the legal systems of Saudi Arabia and Turkey in which the Dār al-Iftā' and the Diyanet respectively operate.

It is generally clear that obedience to an Islamic legal interpretation or ruling (*fatwā*) that derives from the intellectual exertion of Muslim scholars (*ijtihād*) can be said to be morally binding or proper in the most general sense. If an individual questioner (*mustaftī*) is free to follow or obey *fatwās* issued by the two institutions, then it follows that the two legal systems (Saudi Arabia's Islamic system and Turkey's secular system) do not exert binding force upon individual questioners. However, it is possible to detect slight differences with regard to the sanctioning power of *fatwās* which can be traced back to the legal systems in which the two institutions function. Firstly, it should be noted that the official *fatwās* issued by the Dār al-Iftā' are more legally authoritative and influential and command a considerably greater level of respect than those issued by the Diyanet – this is further underlined by the fact that they sometimes even, subject to the approval of the Saudi Arabian king, obtain legally binding status.

Subsequent to acquiring the approval of the King, the Dār al-Iftā's *fatwās* obtain a regulatory and statutory power within Saudi Arabia's Islamic legal system. Islamic decisions issued by the BSU, which is the highest religious authority within the Dār al-Iftā's structure and the country more generally, have the potential to become, subject to the King's approval, state laws. To take one example, the Islamic legal decision prescribed the death penalty for drug smugglers and traffickers; in addition, the Islamic legal decision regarding the issue of *khul'*, many *fatwās* which obliged women to appear in appropriate attire and the recommendation presented to the government to limit the number of students permitted to study abroad – were transformed into state regulations through royal decrees.[72] Al-Atawneh observes that the Dār al-Iftā' does not only function as an advisory or consultative body but also takes on the form of a pre-legislative mechanism within the Saudi legal system.[73] In an innovation which can be clearly distinguished from an individual's inner decision to credit a *fatwā*, the King or the Saudi Government formally transforms the non-binding character of a *fatwā* into a binding regulation by exerting discretionary (*ta'zīr*) or legislative power.

Conversely, the Diyanet's issued *fatwās* do not have any statutory power under the Turkish secular legal system to any extent at all; the obedience to an Islamic legal explanation and statements (*fatwās*) is ultimately subject to the inner decision of individuals who ask questions in order to overcome inner conflicts of lapses of understanding on matters of Islamic belief and obligation. In addition, it may be observed that the official *fatwās* issued by the Diyanet can generate a normative or social value. Because they operate within a Muslim-majority country, the *fatwās* may conceivably obtain a power of social sanction – this would apply despite the fact that they lacked a legal or statutory function within the Turkish secular legal system. Given the fact that there is no other entity in Turkey whose religious erudition and services have been institutionalised and systematised to the same extent as the Diyanet, it may be asserted that some religious, social and moral values in Turkish society have been markedly shaped and preserved through the hand of that institution. To take one example, the *fatwās* that concern marriage with milk siblings are obeyed by both religious and secular sections of society despite the fact that there is no law, regulation or statute within Turkey's secular legal system that prohibits marriage between milk siblings.[74] In the *fatwā* that relates to marriage with milk siblings, the Diyanet states that

[72] Al-Atawneh, *Wahhābī Islam*, 21, 95 and 107 and Vogel, *Islamic Law and Legal System*, 266.
[73] Al-Atawneh, *Wahhābī Islam*, 21.
[74] Kaya, "Balancing Interlegality," 219.

this kind of marriage is prohibited by Islamic law.[75] This and similar *fatwās* that are associated with marriage with milk siblings do not only uphold the Islamic legal prohibition but also gives rise to a sanctioning power that operates socially. However, in many cases, this power of *fatwās* only operates within Muslim sections of society, and therefore generally extends to other matters such as abortion, the consumption of alcohol and the use of interest (*ribā*) in purchase and sale transactions.

The sanctioning power of *fatwās* that have been issued by the religious institutions can be linked to the legal system that prevails within both countries. If the legal system of the country is (as in the case of Saudi Arabia) Islamic, then the *fatwās* issued by the official religious establishment have the potential to become binding legal regulations. However, if the legal system of the country is not Islamic, then *fatwās* can still acquire the power of social sanction, although this is dependent upon the proportion of the Muslim population in a country. The official *fatwās* may sometimes create and formulate a social norm or a moral value acceptable by a large segment of society if the society has Muslim majority populace – this is the case within Turkey. What situates the official *fatwās* at the centre of Muslims' practices as the only useful mechanism to deal with Islamic normativity in Turkey is conceivably the disconnection of Islam from the state's legal system. However, the issued *fatwās* do not have any power to legally sanction because they only possess the status of Islamic legal opinions and their implementation depends on the acceptance of the individual who asked the question.

In Saudi Arabia, there is also an enforcement mechanism (this is known as the Committee for Encouraging Virtue and Preventing Vice – this is the religious police, more generally known as *Muṭawwi'a*). This mechanism enables the legal rulings of *fatwās* to be implemented in the society and ensures popular obedience to *fatwās* issued by the Dār al-Iftā'.[76] Shahi has depicted its forceful and repressive character in Saudi Arabia. He states:

> "The *Mutawwi'in* are a powerful socio-political force that acts as the vanguards of the Wahhabi state. Its members are portrayed as the 'guardians of morality', monitoring public as well as private spheres to standardise collective behaviour in accordance with Wahabi ideology."[77]

[75] Din İşleri Yüksek Kurulu, *Fetvalar*, 467.
[76] Al-Atawneh, *Wahhābī Islam,* 112.
[77] Shahi, *The Politics of Truth Management*, 77 and Al-Yassini, *Religion and State*, 143.

The *Muṭawwi'a* has been present since the establishment of the Saudi state.[78] It usually acts in accordance with the *fatwās* issued by the Dār al-Iftā' to ensure that Saudi society obeys and implements Islamic law – the official *fatwās* are not only optional Islamic legal interpretations and rulings but are also compulsory and obligatory norms that exert a considerable influence over Saudi ethical and social values. It is clear that the *Muṭawwi'a* is the main enforcement mechanism that is used to create an ideal Islamic state in which the Wahhābī values and practices, which were initially produced by the Saudi-Wahhābī *'ulamā'* and later ideologically maintained by the Dār al-Iftā', are observed. This enforcement mechanism circulated the Wahhābī ideology throughout the newly-constructed Saudi Kingdom to the point where it became established as the Saudi national culture and the essential underpinning of core social values.[79]

Turkish citizens are not required to obey *fatwās* that were issued in response to questions asked to the Diyanet. There are also no institutionalised mechanisms that enforce declared Islamic legal rulings in the form of *fatwās*. It is entirely permissible for an individual to seek another *fatwā* from different religious institutions or other Muslim scholars within or outside the country. Both lay people and state officials are entitled to seek the Diyanet's view and also benefit from its Islamic legal explanations on religiously sensitive issues. However, the Diyanet can also provide consultation during the course of legal processes. During the 1980s, in the aftermath of the military coup, the military government asked the Diyanet for its opinions upon state policies, which included banking interest (*ribā*), headscarf and organ transplantation.[80] In engaging with these issues, the Diyanet's Islamic legal explanations and statements have always evidenced consistency and have never created the impression that they were issued with the intention of placating the state authorities.

In addressing the issue of banking interest, the Diyanet provided some circumstantial solutions and encouraged the general public and state authorities to conduct themselves with due caution and vigilance.[81] However, the Diyanet's view on this issue was not effective and was not taken into account by the legislative body during the legislative process relating to banking.[82] As to the headscarf issue, the Diyanet maintained that Muslim women are obliged to cover their heads; however, the Constitutional Court disregarded the Diyanet's explanation and ruled against veiling within public buildings, a category which encompassed hospitals,

[78] Shahi, *The Politics of Truth Management*, 157-158.
[79] Ibid, 157-1 61.
[80] Kaya, "Balancing Interlegality, 220.
[81] Ibid.
[82] Ibid.

ministries, public schools, the Turkish Parliament building and universities. Although the Diyanet was often presented as the supreme religious authority, its Islamic legal opinions and explanations were not engaged sufficiently during this period by the state legislative body. The headscarf issue brings out the conflict between the Islamic legal rulings issued by the Diyanet and the secular legal regulations within the Turkish Republic, but many Muslim women tended to follow the Diyanet's explanation, as opposed to state regulations, upon this issue. This created an internal conflict between state departments and also social conflict between Muslim sections of the society. The Diyanet's position on organ transplantation[83] has become a major component of the state's public engagement on this issue and it has become a key component of related state policies.[84] It has become increasingly clear that even official state bodies, in particular the legislative organs, are free to espouse the Diyanet's Islamic legal opinions in the legal processes. With regard to this, Kaya argues:

> "The Diyanet's view may be sought not only by the public but also by state officials. Its scholarly credibility and freedom of speech are acknowledged by the state. It can contradict the state policies despite working under the government, but its judgement cannot constitute any justification for legislation. This is a feature of Turkish laicism by which the religion's academics and the state's executive liberties are guaranteed against each other. Its reflection on the public is such that the people are presented both religious and secular options, and in case of their conflict are expected to make their own choices."[85]

The Diyanet is an institution whose services and undertakings are not compulsory and binding in any respect – it does not therefore exert coercive authority over the public or society.[86] It should nonetheless be observed that the production of juristic legal edicts is a valuable component of the institution's work which has earned it considerable credit and respect.[87] From this perspective, the Diyanet appears as an erudite authority which exerts considerable influence over the public. While the Diyanet may appear at times to embody the state's control over religion, this institution puts in place an authentic and peaceful approach to both religion and secularism. Within the state, the Diyanet presents itself as the main agent of Islamic law and jurisprudence which represents a scholarly tradition that surpasses the legal field and encompasses the entirety of Islam.[88]

The intricate interaction between Islamic legal theories and contextual environments that arises from the legal systems of the two countries can also be traced through a closer

[83] Din İşleri Yüksek Kurulu, *Fetvalar*, 535-536.
[84] Kaya, "Balancing Interlegality, 220.
[85] Ibid, 221.
[86] Yavuz, "Tukey: Islam without Shari'a," 164.
[87] Kaya, "Balancing Interlegality," 141.
[88] Ibid, 117.

engagement with their laws, statutes and regulations. The legal system of Saudi Arabia was structured in accordance with traditional Islamic legal sources – that is, the traditional corpus of Islamic jurisprudence and law has largely contributed to the construction of its legal system. Vogel notes that this grounding within sharī'a clearly distinguishes the Saudi legal system from its counterparts ("unlike virtually every other country, it has not replaced its legal system with a Western-model constitutional and legal order").[89] The prevailing law was formulated in accordance with the Ḥanbalī school and has continually been complemented by royal decrees issued by the King and supplemented by influential developments within the Saudi legal system. Despite this, as Vogel observes, Islamic legal concepts and practices, which can be traced back to the inception of the Saudi state, can still be identified. Within this sharī'a-based legal system, *fatwās* assume a complementary role and function as a secondary source for the Saudi judiciary.

To provide an example, three *fatwā*s on the issue of *ṭalāq* (divorce through the repudiation of the husband) that were provided by the Dār al-Iftā' during the presidency of Ibn Bāz were recognised by the Saudi courts as being legally authoritative sources within the wider context of the legal procedure.[90] The first *fatwā* relates to the issue of divorce by oath, which entails the utterance of words of conditional divorce to fortify vows (for instance, "my wife is divorced if I do this again"). The early *fiqh* authorities established that this type of divorce is valid and operative upon the fulfilment of the condition made through the oath – this classical view was normally applied and upheld within the Saudi courts. The BSU studied this issue, while drawing upon the extensive research that was probably prepared by the CRLO. At the culmination of this process, two *fatwās* were issued: the first *fatwā* upheld the traditional ruling approved by the majority of the BSU members, while the other *fatwā* was an opposing opinion that was adopted by a minority of the BSU, including Ibn Bāz. The *fatwā* adopted by the minority group clearly establishes that the utterance of words of divorce to fortify vows does not bring about a divorce of spouses; rather, the individual who vowed must be obliged to perform the atonement (*kaffarā*) when the condition is fulfilled.[91] The second *fatwā* is associated with the validity of divorces that are uttered in a state of extreme anger.[92] The Ḥanbalī school which is applied within the Saudi courts tends to be too strict on this point. It is generally the case that when the husband utters divorce in a state of anger the

[89] Vogel, "The Complementarity of Ifta' and Qada'," 262.
[89] Vogel, *Islamic Law and Legal System*, 83 and Al-Atawneh, *Wahhābī Islam*, 23.
[90] Vogel, "The Complementarity of Ifta' and Qada'," 262.
[91] Ibid, 262-263.
[92] Ibid, 264.

divorce becomes automatically operative.[93] In a manner that closely resembles the first *fatwā*'s divorce by oath, a minority of the BSU, including Ibn Bāz, decided against accepting the *ṭalāq* uttered in a state of extreme anger.[94] The last *fatwā* relates to the issuing of three divorce at once. A historical perspective makes it clear that all four of the Sunni schools almost unanimously converged upon the view that a triple divorce of this kind has a triple effect. This is the legal regulation which judges apply in the courts. In most likely drawing upon Ibn Taymiyya's view that the triple divorce should be counted as a single divorce, a minority of the BSU, including Ibn Bāz, placed themselves in opposition to the majority view by endorsing three divorces at once as a single divorce.[95] With their authority having been endorsed and reinforced by the presidency of the Dār al-Iftā', Ibn Bāz's *fatwās* (which evidence a clear leniency towards husbands that seek to offset the consequences of their acts of *ṭalāq*) are taken into consideration by judges before they provide a verdict in the Saudi courts. Even in some cases, the parties were advised to benefit from these *fatwās*. As Vogel verifies in his article, the courts provide clear proof that *fatwās* may function as a legal source that the judge may draw upon when issuing their own verdict at the end of the legal process.[96] In Saudi Arabia, a number of judicial arrangements were formulated in accordance with *fatwās*; accordingly, the *fatwā* mechanism can perform a complementary and mediatory role by providing an enhanced level of flexibility to the existing standard of law within the Saudi legal system.

However, the legal system of the country not only influences the function, role and sanctioning power of *fatwās* but also occasionally impacts the content and legal ruling of *fatwās* in Turkey. A number of *fatwās* issued by the Diyanet are formulated within the context of the state regulations. The early Republican government, which advanced a radical secular agenda, sought to remove the influence of Islamic law upon society and replace it with European codes. In the aftermath of the collapse of the Ottoman Empire, the Turkish Republic experienced a process of democratisation, extensive modernisation and secularisation – this radical agenda drew strongly upon the German and Italian Commercial Codes and the Swiss Civil Code in the legal area. These revolutions sought to distance Turkey from the presumed backwardness of the Muslim world and also create a modern

[93] Vogel, "The Complementarity of Ifta' and Qada',".
[94] According to the Ḥanbalī school, this kind of divorce is valid and this position of the Ḥanbalī school is strictly applied by the courts. See Vogel, "The Complementarity of Ifta' and Qada'," 264.
[95] Vogel, "The Complementarity of Ifta' and Qada',"265-266.
[96] Ibid, 267-269.

society that was more civilised, rational and scientific than its Muslim counterparts.[97] At the conclusion of this process, it was anticipated that "[n]o rules of Sharī'a were to continue to exist, including such of its features as polygamy and the religious ceremony surrounding marriage."[98] Religion was confined to the private sphere to as great an extent as possible. Despite the State's ongoing attempts to secularise society, Islamic practices and values remained pervasive within Turkish society, with the influence of Islam being evidenced within various spheres of legal and social relations. Hallaq observes:

> "The case of Turkey represents a unique example of a society that has clung to Islamic values despite the structural, even radical, dismantling of the Sharī'a legal system over nearly a century."[99]

The Diyanet and its *fatwās* have presumably made an essential contribution in supporting this social commitment to Islamic legal values. This assumed role of the Diyanet may be understood better in being referred to the *fatwā* that counterpoises official and religious marriage. As has already been noted, civil, familial and marital issues within Turkey are legally governed by the Turkish Civil Code, which was imported from the Swiss Civil Code. Act no 5237 establishes that the ceremonial Islamic *nikāḥ* (religious marriage) does not have any official status or legal validity within Turkey's legal system.[100] The couple who performs a religious marriage in the absence of official marriage are held not to be married; therefore, they, as the civil state law establishes, do not have resultant liabilities, responsibilities and rights that derive from the officially implemented marriage. Amongst many Turks, religious marriage is still a preferred form of marriage that, in contrast to official marriage, makes a marriage legitimate and valid.[101] Hallaq further reiterates this point ("[i]n popular perception, legitimacy of marriage rested solely in the *shar'ī nikāḥ*, and children born within civil marriages were normatively regarded as "bastards").[102] In addition, women who perform religious marriage without official marriage do not claim any right before the state's courts subsequent to the nullification of their marriage; meanwhile, children born within religious marriages cannot be registered in the name of their fathers and cannot, by extension, claim any rights from their father's inheritance. In attempting to minimise and resolve potential problems and social disorders that arose from performing only religious marriage, the Diyanet issued several *fatwās* that combined official and religious law. In drawing upon the

[97] Hallaq, *Sharī'a*, 498.
[98] Ibid.
[99] Ibid, 497.
[100] Yılmaz, "Secular Law and the Emergence," 121-122.
[101] Hallaq, *Sharī'a*, 498.
[102] Ibid.

legal principle of *maṣlaḥa*, the Diyanet guided individuals to fulfil initially official marriage in accordance with the Turkish Civil Code and latter to perform the ceremonial Islamic *nikāḥ*.[103] However, when the couple performs the official marriage, they must simultaneously fulfil the imperative, necessary and obligatory conditions and requirements of religious marriage, which include *mahr* (dower).[104] The *fatwās* that relate to civil-religious marriages clearly demonstrate how state laws occasionally infiltrate into Islamic legal statements issued by the Diyanet. It will be noted that the institution seeks to offer Islamic legal guidance and solutions with an attempt to resolve the sense of confusion which results when Muslims live under a secular legal system – this is achieved by bridging the gap between Islamic and official law.

The Islamic character of the Saudi legal system provides a crucial position to the official *fatwās* issued by the Dār al-Iftā' within the Saudi judicial system. They may have the potentiality to become the state regulations with the approval of the King; in addition, they obtain a recognised place as a legal source that Saudi judges draw upon when issuing a legal verdict. Conversely, *fatwās* issued by the Diyanet can possess the status of ethical norms and moral values within society while being exerted as a form of social sanctioning power. However, they cannot be said to possess an authoritative function and position within the Turkish judicial system. In functioning within a secular legal system, the Diyanet is occasionally forced to take the state law into account so as not to create social disorder and turmoil. A number of *fatwās* issued by the Diyanet evidence a hybrid character which amalgamates religious and state law with the intention of establishing social harmony, tranquillity and welfare in the country.

3) Influence of the Political Systems of the Countries Upon the Institutions and Their *Fatwās*

The political systems of the two countries have demonstrated their influence over the two religious institutions, and it is therefore necessary to understand the political systems and the relationship between state and religion within the two countries. The authority, power and role of official religious scholars within the Dār al-Iftā' and the Diyanet vary in accordance with the political processes and structures that are operative within both contexts. In addition, *fatwās* which relate to political forms, religious legitimacy and obedience to political

[103] Din İşleri Yüksek Kurulu, *Fetvalar*, 429- 432 and 439-440.
[104] Ibid, 431-432.

authorities are generally formulated by the two institutions in accordance with the political systems that are specific to Saudi Arabia and Turkey.

Since being established, Saudi Arabia has operated as an absolute monarchy, whose governance has been underpinned by Islamic law. Because there is no separation of religion and state, Islam has been a pervasive political influence in Saudi Arabia. Taking into account the fact that the close association between the *'ulamā'* and the Saud dynasty (*'umarā'*) in the eighteenth century has continued with minor adjustments in contemporary Saudi Arabia, the political role of the official *'ulamā'* has been as important and influential as the ruling dynasty within the state. As al-Atawneh claims, the '*ulamā'* and *'umarā'* are mutually dependent upon each other.[105] This interdependence has also been fortified by the doctrine of Wahhābī *siyāsa shar'iyya* which amalgamates politics and religion within doctrinal thought. As Chapter Two has already demonstrated, a number of *fatwās* issued by the Dār al-Iftā' conceive of a complementary relationship between '*ulamā'* and *'umarā'* which is grounded within the doctrine of Wahhābī *siyāsa shar'iyya*, in which both are introduced as authority-holders (*wulāt al-'amr*).

During the twentieth century, Saudi Arabia experienced a modernization and institutionalization process which extended to the religious establishment and the practice of *iftā'* regulated by the *'ulamā'*. Although the steep increase in oil revenues during the 1950s produced a series of administrative and institutional reforms, the *'ulamā'*, as the guardians of the religious character, were never marginalised as it happened in Turkey after the dissolution of the Ottoman Empire. Up until the contemporary period, the proposition that the Saudi state is fundamentally Islamic remains central to the efforts of the *'ulamā'* to legitimate the Islamic state's political power. It is perhaps unsurprising that in contemporary Saudi Arabia, the Dār al-Iftā' functions as a closet agency which produces a set of legal and political perspectives that help to sustain and legitimize the political authority of the Saudi dynasty as the *'ulamā'* coming only from the family of Āl al-Shaykh implemented from the mid-eighteenth century to the early 1950s. During times of crisis, the Saudi government resisted and repulsed a considerable number of social and political uprisings and other escalations by strengthening its ties with the religious establishment. During Iraq's 1990 invasion of Kuwait, for example, the Dār al-Iftā' issued a *fatwā* which allowed the US army to be deployed in Saudi Arabia in order to support the policy of the Saudi government that sought to align itself with the United

[105] Al-Atawneh, *Wahhābī Islam,* 35.

States.[106] This example clearly demonstrates how the Saudi government sought to harness the religious authority (the Dār al-Iftā') in order to obtain a religious edict that legitimated and supported its political strategy. The official *fatwās* that relate to political issues have been generally used to legitimise the Saudi government's political policies and curtail the activities of radical movements which seek to challenge the Saudi ruler. When political issues are contested, the Dār al-Iftā' generally creates the impression that it is only acting as an agent or office which seeks to legitimate the Saudi government's political policies. Despite the fact that the Saudi political power compels the official *'ulamā'* to issue *fatwās* that legitimise its policies within the area of politics, their official *fatwās* are effective both within the Saudi political system and Saudi society – this applies irrespective of whether political pressure or repression is an active consideration.

The Dār al-Iftā' and the Saudi government have an ongoing mutual partnership which institutes an arrangement in which the official members of the religious establishment usually support the government policy, in particular when addressing themselves to politically sensitive issues. The Saudi Government enforces their *fatwās* in return for their sustained support. A kind of genuine elective affinity can be observed within the interaction between the political power and the religious authority. Mouline observes:

> "…the ulama (referring to the Ḥanbalī -Wahhābī *'ulamā'*) mobilized all available symbolic and ideological resources on behalf of the political authorities. The authorities, for their part, offered the ulama the resources necessary to promote and export Hanbali-Wahhabism. In short, the legitimacy of the political power is mainly based on this tradition while the authority and prestige of the ulama almost entirely depend on Saud support."[107]

It is noticeable that there is a strong incessant interdependence between the Saudi rulers and the *'ulamā'* in the legal and political system within the country. This creates a complementary cooperation which divided authority between the official *'ulamā'* and the *'umarā'*, which were both defined as possessing authority within the Saudi state.[108] This mutual cooperation has occasionally resulted in harsh and severe criticism being directed towards the Dār al-Iftā' and its official members from different segments of the society.[109] These criticisms intermittently undermine the authority and credibility of the institution and compel the official *'ulamā'* to defend themselves to Muslims. In Turkey, however, the

[106] "Ulema Council Supports Actions of King Fahd," 26. accessed August 14, 2016, and Gause III, "Official Wahhabism and the Sanctioning," 140.
[107] Nabil Mouline, *The Clerics of Islam,* 11.
[108] Obeying rulers and scholars in Ma'ruf to set things right, in *Fatwas of Ibn Baz*, 7:115-119.
[109] Gwenn Okruhlik, "State Power, Religious Privilege, and Myths about Political Reform," in *Religion and Politics in Saudi Arabia: Wahhabism and Saudi Arabia*, ed. Mohammed Ayoop and Hasan Kosabalan (London: Lynne Rienner, 2009), 92-93.

Diyanet has generally chosen to remain silent upon controversial topics, and in particular on issues that are politically sensitive. This has resulted in Turkish Muslims voicing negative views upon the institution on various occasions. In contrast to the Dār al-Iftā', which actively endorses government policy, the Diyanet more frequently demonstrates its reluctance or opposing stance against particular aspects of government policy by maintaining its silence.

In operating within Turkey's democratic secular state structure, the Diyanet seeks to balance religion, society and state by actively demonstrating, for the benefit of other Muslim countries, how democracy and Islam can co-exist. In the contemporary period, the Diyanet presents itself as a religious institution that promulgates an inclusive, moderate, tolerant and unifying Islam and denounces its exclusivist, fundamentalist and radical counterparts. Turkey's democratic character should be taken into account as one of the key influences that motivates the Diyanet to espouse a more aggregative, comprehensive and tolerant Islamic understanding. The heterogenous character of the Turkey's population is another factor that should also be factored into account. In this respect, it is important to note that the interpretation and understanding of Islam evidences considerable variation in the transition from one Muslim group or sect to another. This establishes that the Diyanet explicitly intends to unify this diverse Muslim population under the heading of Islam by adopting a constructive and integrative language.

Most of the Diyanet's Islamic legal explanations and statements that relate to the state's secular democratic system reiterate that a democratic political structure does not contradict Islam,[110] but minutely bypasses or avoids answering the questions whose content is associated with secularism. In operating within Turkey's idiosyncratic secular structure, the Diyanet can be interpreted as being considerably more free and liberal than the Dār al-Iftā', most notably in the production of religious knowledge relating to political issues. If both institutions are assessed with reference to theoretical perspectives that relate to wider political systems, it becomes clear that the secular structure of Turkey conceivably prevents the state from inferring in religious affairs, most noticeably in the production of Islamic knowledge that is subject to the control of the Diyanet. Bardakoğlu states:

> "Secularism in Turkey does not mean the exclusion of religion from our lives. It means the separation of the affairs of religion and state. This does not mean the intervention of the state

[110] Aydin et al., *Sorularla İslam*, 153-158.

> in the interpretation of religion because such an intervention would contradict the very essence of secularism."[111]

However, the divergent policies that different administrative governments have adopted towards religion have partially affected, in botha positive and negative sense, the administrative, functional and jurisdictional role and position of the Diyanet.[112] With the exception of the Diyanet's first period (between 1924 and the late-1940s), it is rare to observe the state's intervention in the area of producing Islamic knowledge and of conveying it to the society that is so seriously and meticulously undertaken by the Diyanet. As Bardakoğlu observes, this freedom and liberality in the production of Islamic knowledge, which extends to Islamic legal statements and rulings (*fatwās*), can conceivably be attributed to the secular structure of the Turkish Republic.

In addition, the two institutions have developed and formulated Islamic legal ideas and arguments that function to legitimate the political structures of their countries or render obedience to the states and their prescribed laws obligatory, irrespective of whether they are Islamic or secular. In Saudi Arabia, the Dār al-Iftā' strongly rejects oppositional or rebellious tendencies upon the grounds that they lead to chaos, division and sedition (*fitna*) in society. They are generally defined as religious innovations (*bid'a*) without precedent in the prophetic model and the practice of the Companions. To take one example, the Saudi government requested a *fatwā* upon the legitimacy of public demonstrations from the Dār al-Iftā during the 2011 'Arab Spring' uprisings. When the repercussions of the uprisings began to ripple across the country, the Dār al-Iftā' issued a *fatwā* that strictly warned those who organise and participate in such kinds of demonstrations and uprisings against the Saudi government whose rulers implicitly portrayed as Muslim by virtue of their recognition the Qur'an and sunna as the constitution of the country.[113] It is stated in the *fatwā*:

> "Since the Kingdom of Saudi Arabia is based on the Qur'an, sunna, and the oath of allegiance (*bay'a*) along with sticking to the unification of the society and obedience, the reform and advice do not actualize with the [illegitimate] demonstrations, methods, and styles which trigger sedition in and divide the society (*jamā'a*). This is the reason why the earlier and

[111] Bardakoğlu, *Religion and Society New Perspectives*, 114.
[112] Dural, "The Violence against Woman Policy," 21.
[113] The BSU decision No. 93 of March 6, 2011, accessed June 20, 2017, http://www.alifta.net/Search/ResultDetails.aspx?languagename=ar&lang=ar&view=result&fatwaNum=&FatwaNumID=&ID=13350&searchScope=2&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=216167217132217133216184216167217135216177216167216170032217129217138032216167217132216168217132216167216175032217136216170216173216176216177032217133217134032216167217132216167216177216170216168216167216183216167216170032216167217132217129217131216177217138216169032217136216167217132216173216178216168217138216169032216167217132217133217134216173216177217129216169#firstKeyWordFound.

> present *'ulamā'* of this country have decided to prohibit these kinds of demonstrations and to warn against them." [114]

Within the *fatwā*, the Saudi Kingdom is depicted as an 'Islamic' state which requires unconditional or obligatory obedience. It can also be argued that the Companions of the Prophet never launched demonstrations, revolutions or sit-ins to oppose the rulers. The Prophet instead recommended that Muslims should provide advice to the rulers in private. The contentious propaganda, mass protests and public demonstrations against government leaders were presented as foreign threats that sought to divide Saudi Arabia's unity. The Dār al-Iftā (the BSU) states:

> "The Kingdom has maintained its Islamic identity as the Kingdom although adopting the means for progress and development by using the legally permissible worldly reasons. It is not and will not permit—by God's will and omnipotence – ideas from the West and the East to detract this identity and to disintegrate this society (*jamā'a*)."[115]

To a certain degree, the Saudi ruling family derives its authority from religion and, by extension, the Dār al-Iftā', and this is reflected within the Islamic character of the state. The monarchy, in being aware of the extent to which religion is an essential accompaniment of its political power and stability, has generally sought to cultivate a harmonious relationship with the religious establishment.

In operating within the Islamic political structure of Saudi Arabia, the Dār al-Iftā' adopted the doctrine of classical Wahhābī *siyāsa shar'iyya* with the intention of ensuring the state's political and social stability. This Wahhābī doctrine, which was put in place by the earlier Wahhābī scholars, is built upon the premise that, within Islam, the purpose of the state is to preserve Islamic law and implement its dictates and requirements.[116] This doctrine establishes that it is not simply the case that a temporal ruler is required to uphold and enforce Islamic law – rather it is instead the case that obedience to him is regarded as an obligatory religious duty. A number of *fatwās* and official statements make it possible to identify clear expressions and indications that demonstrate that the Dār al-Iftā' continues to uphold the views of its predecessors when addressing obligatory obedience to leaders. An example can be found in the following *fatwā*, which was issued by the institution:

> Question: Your Eminence Shaykh, there are people who think that, because some of the rulers commit major sins, we are obliged to rebel against them and attempt to change the status quo, even if this results in harm to the Muslims in that country and despite the many problems that the Muslim world is facing. What is your opinion?

[114] The BSU decision No. 93 of March 6, 2011.
[115] Ibid.
[116] Al-Atawneh, *Wahhābī Islam,* 38.

> Response: …Allah…says: {O you who believe! Obey Allah and obey the Messenger and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger, if you believe in Allah and in the Last Day. That is better and more suitable for final determination.} [the Q. 4: 59] This Ayah (Qur'anic verse) is a Nas (Islamic text from the Qur'an and Sunnah) on the obligation of obedience to the leaders; the rulers and scholars. The authentic Sunna of the Messenger of Allah explains that this obedience is obligatory, and enjoined duty regarding everything that is looked upon as Ma'ruf (that which is good, beneficial or fitting by Islamic law and Muslims of sound intellect). The Nas from the Sunna explains the absoluteness of the Ayah to obeying the Muslims in authority in what is judged to be Ma'ruf. It is obligatory for Muslims to obey those in authority when ordered to do right and good, but not sins. Therefore, if their orders involve any sins, they must not to be obeyed, but it is still not permissible to rebel against them due to this, as the Prophet said: {"Mind you! Anyone who has a ruler appointed over them and sees him committing some act of disobedience to Allah, should hate his (the ruler's) act in disobedience to Allah, but must not withdraw the hand from obedience (to the ruler)." The Prophet also said, {"Anyone who abandons obedience (to the ruler) and withdraws from the Jama'ah (Muslim main body) and then dies, will die the death of one belonging to Jahiliyyah (pre-Islamic time of ignorance, i.e. Will die as a pagan)."} … it is not permissible for Muslims to dispute those in authority or to rebel against them, unless they see clear Kufr for which there is proof from Allah. This is because rebelling against those in authority results in great corruption and evil, which disturbs security, wastes people's right, does not deter the oppressors or help the oppressed, and causes disorder and lack of security…The exception is when the Muslims sees clear Kufr, for which there is proof from Allah. In this case, there is nothing wrong in rebelling against these rulers to depose them, if they have power to do so. However, if this is beyond their ability, they should not rebel. Also, if rebelling would result in worse evil, they should not do so to preserve the public interest."[117]

The Dār al-Iftā' contends that the ruler of a country can be defined as the person who has and extends authority in it. Unless he is an atheist, he can rule the state even if he does not possess a number of the Islamic legal conditions that are required to be a capable and efficient leader.[118] A ruler may, for example, accept the supremacy of God but then promulgate certain laws that transgress the sharī'a in order to advance his personal interests, such as material gain or power. In this instance, the ruler is motivated by his personal self-interest, but this does not entail that he is an apostate or unbeliever. The *fatwā* also stresses the need for obligatory obedience to regulations issued by the ruler, which include regulations associated with passports, social norms and traffic laws.[119] This obedience is grounded within public welfare because these kinds of regulations benefit Muslims.[120] The only exception to obligation to obey arises when those who possess authority provide orders that contradict Islamic law. Even in this case, a Muslim should not actively and rebelliously oppose a ruler who does not act in accordance with Islamic law but should instead advise him that he has failed to fulfil his duty. The ruler is only an apostate if he rules by something other than the sharī'a and accepts what is *ḥarām* (forbidden) as *ḥalāl* (permissible) or vice-

[117] Advice to the Ummah given in the answer to ten important questions, in *Fatwas of Ibn Baz*, 8: 202-204.
[118] Advice to the Ummah given in the answer to ten important questions, in *Fatwas of Ibn Baz*, 8: 202-204 and Obeying rulers and scholars in Ma'ruf to set things right, in *Fatwas of Ibn Baz*, 7:115-119.
[119] Advice to the Ummah given in the answer to ten important questions, in *Fatwas of Ibn Baz*, 8: 208-209.
[120] Ibid.

versa.[121] However, in operating in a country such as Saudi Arabia, whose constitution has been declared to be based on the Qur'an and Sunna,[122] the Dār al-Iftā' presumably grounds its argument relating to obligatory obedience within the assumption that the country is an Islamic country and its rulers are still believers because they rule the country in accordance with Islamic law. The doctrine of Wahhābī *siyāsa shar'iyya*, which the Dār al-Iftā' generally upholds, establishes that even if members of the Saudi government commit a de facto sin (such as gambling, usury, etc.), this does not in itself create a legitimate or valid justification for rebelling against the ruler. Muslims must therefore tolerate and obey the rulers, even they commit sinful acts, while attempting to rectify their sinful acts through advice.

The fact that the Kingdom's constitution was based on the Qur'an and Sunna provides a sufficiently clear justification for the Dār al-Iftā' to pronounce the state to be a legitimate authority while rendering obedience to it to be obligatory. The Dār al-Iftā' asserts that other forms of political systems are not regarded as legitimate authorities under Islamic law because any such approval would be interpreted as establishing a situation in which human-made law and institutions were preferred to divine law and governance. A *fatwā* issued by the Dār al-Iftā' clearly establishes this. It states:

> "Secularism is the call to separate religion from the affairs of state and to take only the acts of worship and leave the other aspects of religion and recognise what is called "freedom of religion." … Secularism and other corrupted beliefs are immoral and bad calls which people must avoid, …"[123]

In a separate *fatwā*, the Dār al-Iftā' states:

> "[P]referring a secularist state to an Islamic one is tantamount to preferring Kufr (disbelief) to Iman (faith), as Allah (exalted be He) says: {Have you not seen those who were given a portion of the scripture? They believe in Jibt and Tâghût and say to the disbelievers that they are better guided as regards the ways than the believers (Muslims).} (the Q. 4:51) … if someone claims that it (referring the Islamic sharī'a) does not suit this age or that man-made laws are more appropriate, they are considered Kafir, for in so doing, they are disavowing Allah and His Messenger (peace be upon him) with respect to the perfection and applicability of Shari'ah to all times and places."[124]

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[121] Advice to the Ummah given in the answer to ten important questions, in *Fatwas of Ibn Baz*, 8: 205.
[122] Royal Decree A/90, March 1, 1992. See "The Basic Law of Governance," Royal Embassy of Saudi Arabia, March 1, 1992, accessed October 08, 2015, https://www.saudiembassy.net/basic-law-governance#Chapter%20One:%20General%20Principles.
[123] Fatwā No. 19351 in *Fatwas of the Permanent Committee*, 22: 238- 248, accessed April 4, 2018, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=8496&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=10010110911109911409709912 1#firstKeyWordFound.
[124] Fatwā No. 18396 in *Fatwas of the Permanent Committee*, 2: 142- 145, accessed April 4, 2018, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=10884&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchT

The rejection of democracy and secularism is presumably based on the assumption that the acceptance of such systems privileges human-made laws and institutions over divine governance. The Dār al-Iftā' maintains that the Qur'an establishes that God is the only supreme legislator and that humans are obliged to obey the sharī'a revealed by God in its entirety. To do otherwise can be taken to imply that human-beings should be equipped with the capacity of Legislator, which is a power reserved merely for God. This Islamic legal view, which is originally grounded within the concept of *tawḥīd* (the unity and oneness of God) in the Wahhābī ideology,[125] probably leads the Dār al-Iftā' to entirely reject secularism along with other political systems that entail the separation of religion and state in the first instance.

In contradistinction to the Dār al-Iftā', the Diyanet has maintained, in the course of issuing many Islamic legal explanation and statements, that democracy and democratic values do not conflict with Islam; in addition, it has also maintained that the fundamental principles of a democratic system are in harmony with Islamic legal doctrines associated with politics. One example can be found in the (hypothetical) *fatwā* which the Diyanet issued in response to a question relating to democracy. It states:

> Question: Some people claim: "Democracy is a kind of polytheistic system. Ruling and making-law belongs only to Allāh." In this regard, what is the Islamic legal ruling regarding the application to human-made laws?
>
> Response: The main sources of Islam, the Qur'an and Sunna, do not suggest any certain political system and government model for the governance of state and society. Their essential aims are to identify the general principles that control the governance of the Muslim states and to draw the general framework that is the most proper for humanity by pointing to the immutable divine laws. After the Prophet, the Hulefâ-i Râşidin (the first four Caliphs after the demise of the Prophet), who assumed the presidency of the state and the governance of the society, demonstrate differences according to the conditions and exigencies of their period, providing that they remain within the border of the general principles identified by the main sources of Islam. In that case, the governance of the state is an issue belonging to the human sphere [social transactions or *mu'āmalāt*] rather than religious sphere so long as it observes the general religious principles established by the Qur'an and Sunna. General principles that are prescribed by Islam take, in sum, as the following form:
>
> 1. Ultimate sovereignty belongs to Allāh. That is to say, legislation, execution and judgement must be in accordance with the *shar'ī* rules.
> 2. The consultation (*shūrā*) is the main principle in the process of decision-making.
> 3. Submission to *haqq* (truth and justice) and obedience to law are fundamental. In other words, the state of law must be instituted.
> 4. Fundamental human rights must be preserved.
> 5. Assignment and commission should be made in accordance with justice, capacity and efficiency.
> 6. Social justice should be secured.

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ype=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=1151010991171080971141051151 09#firstKeyWordFound.

[125] Wiktorowicz, "Anatomy of the Salafi Movement," 208-209.

7. The ideal of the open society should be preserved.

> Accordingly, any form of governments that complies with these general principles is a legitimate political and government system in terms of religion, no matter whether it is democratic, monarchical, parliamentary, republican or semi-presidential. The question of which one will be adopted should ultimately be decided in accordance with the exigencies and needs of a society.
>
> In the most general sense, democracy means "rule of the people". That is, in electing the ruler and determining legislation, the general preference of the public opinion is regarded as the main determining factor. In populous societies, it is impossible to be ruled by the whole people in and of themselves, so different models are developed to put this system into practice. In the contemporary period, the most well-established democratic system institutes an arrangement in which the established political parties stand for governance and are elected by the people through the exercise of their freewill. Insofar as it does not conflict with any of the aforementioned principles, this system of government cannot be said to conflict with Islam. Indeed, two Qur'anic verses establish that important affairs and matters associated with the society should be mutually decided or resolved through consultation. This is established by the Q. 3:159 ("…consult them in affairs (of moment)") and the Q. 42: 38 ("…who (conduct) their affairs by mutual consultation…")
>
> In meeting the requirements of this order and setting his *umma* an example in this sphere, the Prophet also took decisions on issues relating to society through means of consultation…
>
> It is therefore called democracy or something else; a system of government in which the citizens directly exercise power or elect representatives from among themselves to form a governing body is not indicative of *shirk* (polytheism). In a system of government of this kind, the emergence of different opinions and resulting factionalism does not alter the result. Within extended societies, different opinions can congregate under a single rubric. In common with the differences in *ijtihād* (*khilāf*, *ikhtilāf al-'ulamā'*), which transformed into a self-contained *madhhab* in the past, different social demands and views can be organised under distinct parties. This does not conflict with religion. Within this system of government, the essential point is that the will of the people and the agendas of the political parties do not transcend the periphery sketched by the Qur'an and Sunna.
>
> Islam establishes that as long as the source and methods of legislation is legitimate, the laws and regulations enacted by the relevant parliaments and institutions are valid and legitimate. If there are violations in this regard and some laws are enacted without due regard for religious principles, it can be mentioned a sinful act in this situation. It should be noted that the action/deed (*'amal*) is not a part of faith in accordance with the creed of *Ahl al-Sunna* and a great sin does not make the person who commits it a *kāfir*/*mushrik* (unbeliever).[126] [127]

Islam and Islamic law does not prescribe any certain political and governmental model for Muslims to follow; as the Diyanet states, these sides of the life are instead subject to human intellect and developing circumstances of social needs. Even though the political system is grounded within some fundamental Islamic principles, this should not be understood to imply that politics is an integral component and main focus of religion. The Diyanet maintains that democracy is one of the systems of government and that it is compatible with Islam and Islamic law as long as it does not contravene the seven general Islamic principles set out by the institution. In drawing upon the two Qur'anic verses (Q. 42: 38 and Q. 3:159) and the

[126] Aydin et al., *Sorularla İslam*,153-157. This quotation is taken from a question-and-answer book that was published by the Diyanet. The quotation can be a *fatwā* issued in response to either a hypothetical or real person.
[127] Author's translation.

Prophet's Sunna upon consultation (*shūrā*), the Diyanet observes that Islam and Islamic law does not only support democracy and people's participation in the state's affairs but also sets out provisions (within the Qur'anic verses) which encourage consultation and counselling. The Diyanet takes the view that the Qur'an and Sunna provide insight into general ethical and moral principles in the area of social transactions (*mu'āmalāt*) and describe how human beings must conduct their worldly affairs amongst themselves. In setting out the general principles that government systems within Muslim countries should take into account, the Diyanet seeks to support its position with reference to examples drawn from the life of the Prophet. Prior to the Battle of Uhud in 624, the Prophet consulted Muslims in a *majlis* (assembly) which was convened with the intention of identifying how the Meccan enemies could be best repelled.[128] Although the Prophet was instinctively drawn to a defensive war in Medina, he ultimately aligned with the view of the majority which instead favoured countering the Meccan enemies outside Medina.[129] In referring to this, the institution implicitly indicates that even the Prophet consulted his people in worldly matters – by implication Muslims, as the followers of the Prophet, are also required to consult each other with regard to their secular affairs. The Diyanet therefore tentatively asserts a democratic system of government aligned with the general principles as the model of government best suited to the modern world.

This (hypothetical) *fatwā* also challenges the views of some scholars who claim that democracy is an alien concept that has been imposed by secular reformers and Westerners upon Muslim societies. The Diyanet maintains that it is fundamentally mistaken to argue that the concept of public sovereignty denies the Islamic affirmation associated with the sovereignty of God and is therefore a form of idolatry.[130] After issues and matters relating to the government and political systems are placed under the heading of *mu'āmalāt*, this argument is then extended to the proposition that, in the contemporary world, democracy can be said to be a requirement of Islam. Despite functioning within a democratic secular system of government, the Diyanet, in a similar manner to the Dār al-Iftā', also asserts that a proof of disbelief provides a valid exception to rebelling against a ruler who openly commits an act of disbelief. However, the distinction between disbelievers (*kāfir*) and sinful Muslims (*mujrim*) provides the fulcrum of the decisions issued by the two institutions. They both concur that committing major sins (e.g. unlawful sexual intercourse (*zinā*), theft (*sariqa*) and drinking

[128] Aydin et al., *Sorularla İslam*,157.
[129] Ibid.
[130] Ibid, 157-158.

alcohol (*shrub al-khamr*)) does not make a Muslim an unbeliever; rather they are instead an immoral sinner who has weak faith. Both institutions therefore mitigate a possible provocative factor or reason that will be levelled against the political rulers in both countries by referring to the view of *Ahl al-Sunna wal-Jamā'a* – this establishes that a sinner is not a disbeliever (*kāfir*) as a result of their sin as long as they do not consider it to be lawful.[131]

In addition, fear of anarchy and sedition (*fitna*) indirectly present themselves as a supplementary influence that helps to further strengthen loyalty to the state, with this imperative being reiterated within the Diyanet's Islamic legal explanations and statements. The Diyanet generally refers to any divisive, escalatory or provocative actions detrimental to the unity of the state and social order as anarchy and sedition, and the society is strongly encouraged not to participate in such actions and incidents.[132] During the 1970s at the height of leftist-socialist activism, for example, the Diyanet promulgated and published a number of articles that warned the community against the possible divisive, abrasive and perilous effects of this socialist activism upon society.[133] In addressing compliance and deference to the state authority, the Diyanet frequently sought to invoke the authoritative texts that indicates the virtues of obedience to the legitimate authority. The institution has frequently sought to instil loyalty to the state amongst Muslims resident within Turkey – this is embodied within its claim that the state is "the embodiment and political expression of the organic community of the (Turkish) Muslims"[134].[135] The Diyanet's catechism states:

> "Islam emphasises the importance of obedience and loyalty to the state, which it understands to be the broadest social institution. The Qur'an states: "O you believe! Obey Allah, and obey the Messenger (Muhammad), and those charged with authority among you…" (the Q. 4:59) The Prophet also stated: "…obey those who are charge of you, you will enter the Paradise of your Lord." (Tirmidhī, No. 616) The *ḥadīth* emphasises the importance and value of obedience to the state authority. The view of *Ahl al-Sunna wal-Jamā'a* maintains that it is necessary to obey the head of state, even if he is sinful (*mujrim*) or debauched (*fāsiq*)… However, religion does not sufficiently guarantee the safety, tranquillity and welfare of individuals and society, and there is accordingly a need for a state authority to function alongside religion. For this reason, the Prophet sought to construct this structure after migrating from Mecca to Medina. …

[131] More detailed explanation of the view of *Ahl al-Sunna* on that specific issue, see 'Abdullāh ibn 'Abdul-Ḥamīd al-Athari, *Islamic Beliefs: A Brief Introduction to the 'Aqīdah of Ahl as-Sunnah wal-Jamā'ah*, trans. Naṣiruddin al-Khaṭṭab (Riyadh: International Islamic Publishing House, 2005), 140-147.
[132] Gürpınar and Kenar, "The Nation and its Sermons," 70.
[133] Ibid.
[134] Ibid, 63.
[135] In particular, the sermons delivered in thousands of mosques throughout the country are the main important sources that reflect the Diyanet's stance upon the relationship between the state and its subjects. The ideological component of the Diyanet's sermons presents obedience to the state as a moral and religious requirement. Gürpınar and Kenar analyse sermons authorised and delivered by the Diyanet between 1962 and 2006. They argue that these sermons provide general insight into how this religious institution helped to indoctrinate society into unconditional obedience and deference to the state. Gürpınar and Kenar, "The Nation and its Sermons," 63-67, 70.

> The respect of the state to religion becomes a reflection of its deference to society and social values. In this manner, executives gain the respect of society … but it is informed that if there is a case or order encouraging people to rebel against Allāh, [the constituted authority] is not obeyed."[136] [137]

The main argument that the Diyanet uses to legitimize obedience to the state is basically grounded within the proposition that the state maintains social order by preventing anarchy and social disturbances, protecting religion and upholding social unity. It is therefore religiously illegitimate not to obey this authority because it may create anarchy and destroy social order. Social order, public peace and national unity are the main justifications which the Diyanet cites when seeking to substantiate and solidify its Islamic legal stance upon obedience to state authorities. However, Muslims are encouraged not to abide by legal regulations when the rulers order an action which violates an Islamic law.[138] In these circumstances, Muslims are counselled to direct a constructive and warning criticism towards the state's authorities rather than actively rebelling against them.[139] In common with the Dār al-Iftā', the Diyanet also encourages Muslims to comply with state laws and regulations associated with social issues and civil duties, which include mandatory military duty, social security and taxation, by citing the Islamic legal principle of *maṣlaḥa*.[140]

It is possible to notice clear similarities within the Islamic legal views and statements issued by the Dār al-Iftā' and the Diyanet upon the subject of obedience to the state. However, it is noticeable that the form of political authority which the two religious institutions take to be legitimate has been crucially shaped by the political systems which operate in each of the respective countries. In invoking the history of Muslim states, religious scholars within the Dār al-Iftā' and the Diyanet engage with the proposition that the ruler should be obeyed, irrespective of whether s/he is unjust or infringes upon the principles and rulings of Islamic law – this is justified upon the grounds that such a ruler is still better for the community than anarchy, civil strife or social disorder. Taking into account the situation in Syria (a Muslim country), it may be justifiably argued that the main concern of the two institutions is to maintain the public interest, public welfare and social order rather than legitimate their countries' political systems. In 2011, a broad-based uprising sought to overthrow the Syrian Regime and put in place a democratic system. However, this initial

[136] Karaman et al., *İlmihal-II*, 550-551.
[137] Author's translation.
[138] Aydin et al., *Sorularla İslam*, 156.
[139] Karaman et al., *İlmihal-II*, 551-552.
[140] Aydin et al., *Sorularla İslam*, 175-178.

upsurge of popular pressure has since produced social disorder, civil strife, severe human rights violations and the widespread loss of innocent life.[141]

The Dār al-Iftā' and the Diyanet have sought to root the obligation to obey authority-holders within the doctrine of *siyāsa shar'iyya*, which operates within the Sunni school. This is a fundamental legal doctrine related to Islamic governance that establishes the relationship between the state and its subjects. This doctrine was formulated a substantial time ago by prominent scholars, who included Abū Yūsūf (d. 798), Aḥmad b Ḥanbal (d. 855), al-Māwardī (d. 1058) and al-Ghazālī (d.1111). Each justified obedience to a Muslim ruler even if he is personally impious and oppressive in his rule, with the only exception being if he ordains disobedience to God.[142] Rebellion and insubordination are denounced as acts of instigation and dissension (*fitna*) which will drag the Muslim community (*umma*) into civil strife, political disturbance and social chaos.[143]

In attempting to prevent potential anarchy and political turmoil, both institutions draw upon the legal principle of *maṣlaḥa* and seek to use it to justify obedience to state authorities within their respective countries. In doing so, they generally refer to the Q. 4:59[144] and several *ḥadīths* which encourage Muslims to obey the legitimately established authorities. While the Dār al-Iftā' saliently extends a degree of legitimacy to Saudi Arabia's Islamic monarchy, the Diyanet tenuously extends a veil of legitimacy over Turkey's secular democratic political system. The two institutions therefore seek to prevent the likelihood of anarchy and social disorder in their society. Upon this basis, it can be argued that Islamic legal arguments and views developed by the two institutions have the clear imprint of their respective political environments. However, rather than drawing upon the notion of *umma* (the global and universal Muslim community), these scholars make more extensive use of the concept of the nation-state, and this is shown by its continual reoccurrence within their Islamic legal thought on legitimate political authority. The concept has also arguably penetrated into Islamic legal rulings (*fatwās*) issued by the two religious institutions, and they

[141] Raymond Hinnebusch and Omar Imady, *The Syrian Uprising: Domestic Origins and Early Trajectory* (Oxon: Rutledge, 2018), under the title "Introduction: Origins of the Syrian Uprising: Form Structure to Agency" and Paul Rogers, "Lost Cause: Consequences and Implications of the War on Terror," in *Terrorism, Peace and Conflict Studies: Investigating the Crossroad*, ed. Harmonie Toros and Ioannis Tellidis, (Oxon: Routledge, 2014), 19.
[142] Lambton, *State and Government in Medieval Islam,* 19-20, 42, 56-57, 86 and 114-117 and al-Athari, *Islamic Beliefs*, 180-185.
[143] Al-Athari, *Islamic Beliefs*, 180-183.
[144] The verse reads: "O you believe! Obey Allah, and obey the Messenger (Muhammad), and those charged with authority among you. If you differ about anything within yourselves, refer it to Allah and His Prophet (Muhammad), if you believe in Allah and the Last Day: That is best and most suitable for final determination."

have therefore sought to develop Islamic legal views which are aligned with their respective environments and political values.

4) The Influence of Social and Cultural Practices (or Customary Aspects) of Both Societies on the Issued *Fatwās*

Fatwās do not exist in a vacuum and are instead produced within particular social environments and cultures. The influence of cultural practices and social values upon *fatwās* can help to explain the issuance of diametrically opposed *fatwās* by the two institutions. Even though the Qur'an and Sunna, as the fundamental sources of Islamic law, are fixed and immutable authoritative texts, their interpretation in different social contexts and application to different societies are not impervious to the influences of social values and cultural practices. An-Na'im explicitly stresses:

> "[a]lthough derived from the fundamental divine sources of Islam, the Qur'an and Sunna, Shari'a is not divine because it is the product of *human interpretation* of those sources. Moreover, this process of construction through human interpretations took place within a specific historical context which is drastically different from our own."[145]

In extension from this view, it can be argued that the issuance of *fatwās* through human interpretation occurs within a specific social context which most likely shapes the juristic and legal understanding of Muslim scholars. This establishes the possibility that cultural assumptions and social perceptions will influence the interpretation of the authoritative texts and the application of Islamic legal concepts and methodologies. The contents of *fatwās* and the applied legal concepts and doctrines indicate that cultural values, customary practices and social perceptions are effective, albeit invisible, elements in the construction of *fatwās*. Upon this basis, it can be argued that *fatwās* issued by the two institutions potentially bear the imprint of their society's cultural practices and social perceptions.

The influence of cultural values and social perceptions can be most easily observed in the *fatwās* associated with the function, role and status of women in religion and society, along with those that relate to festive and remembrance celebrations and the relationship between Muslims and non-Muslim relations. Chapter Six will examine how pervasive gender attitudes in Saudi Arabia and Turkey affected the *fatwās* on female leadership that were issued by the Dār al-Iftā' and the Diyanet. In attempting to uncover that indirect influence of cultural practices and social presumptions upon the *fatwās*, this section will emphasise several *fatwās* that relate to relationships between Muslims and non-Muslims. A range of

[145] Abdullahi Ahmed an-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990), 185-186.

issues and questions that relate to this theme were discussed and evaluated by both the Dār al-Iftā' and the Diyanet. These include: the acceptance of the testimony of non-Muslims in marriages of non-Muslim women and Muslim men; the attendance to a non-Muslim funeral; loyalty to a non-Muslim polity; residence within a non-Muslim country; the protection of places of worship of non-Muslims and the provision of means that will enable the construction of their own houses of worship in a Muslim country. In each of these respects, it is possible to identify contradictory Islamic legal rulings on similar issues when the Dār al-Iftā's *fatwās* are compared with those issued by the Diyanet. To a certain extent, these divergences can be attributed to established cultural practices and social perceptions in Saudi Arabia and Turkey.

In Saudi Arabia, it is possible to identify a custom and culture that have been strongly moulded by the Wahhābī religious movement, which have a very conservative approach to the religion and which consciously seeks to offset the dangers associated with religious innovation by replicating the model of the Prophet (who established the foundations of Islam) and the *al-Salaf al-Ṣāliḥ* (Muslims who lived in the first three centuries after the Hijra). During the eighteenth and nineteenth centuries, the Saudi-Wahhābī alliance helped the dissemination of Wahhābīsm that include xenophobic and exclusivist discourses against people who did not follow the Wahhābī faith in Saudi Arabia.[146] Shahi notes:

> "After the advent of the modern-nation state, the Saudi ruling machine continued to rely on violence to maintain the new power structures, which were now tailored in favour of the House of Saud and its ruling ideology. Once rivals were eliminated from the political landscape, the Al Saud had fewer challenges against the implementation of its historic religious mandate. In this way the House of Saud gained a monopoly on power; it had the opportunity to enforce the supremacist narratives of Wahhabism, which would result in the marginalisation and violent mistreatment of many religious sects that were considered to be enemies of the new state and of Islam."[147]

The enforcement of Wahhābī ideology contributed to the establishment of a Saudi culture that mainly depends upon the tenets and teachings of Wahhābī movement. The discovery of oil in 1937, a significant moment within Saudi Arabia's history, impacted greatly upon the country's socio-economic development and Wahhābīsation. The steep increase in oil revenues provided the newly established Saudi state with an opportunity to establish administrative and bureaucratic mechanisms (such as the *Muṭawwi'a*) that rigorously enforce and supervise the Wahhābī ideology and policies in the country.[148] This stringent imposition

[146] Okruhlik, "State Power, Religious Privilege," 93-95, 96-97 and 103.
[147] Shahi, *The Politics of Truth Management*, 149.
[148] Ibid, 152

of the Wahhābī ideology led to the emergence of an intolerant and exclusivist Wahhābī-based Saudi culture.

Within the Wahhābī-based Saudi culture, religious minorities endured social discrimination and marginalisation because of their religious convictions and beliefs. The exclusivist attitude that the earlier Wahhābī *'ulamā'* had developed towards other religions later became an entrenched Saudi culture.[149] For a considerable number of decades, non-Muslims, and in particular Westerners, have been portrayed as the enemies of Islam and Saudi society. As Shahi observes, when ideas are repeated for a substantial period of time, they can potentially become socially deep-seated perceptions and values.[150] However, in Saudi Arabia, these ideas and presumptions did not only become established through continual reiteration but also there is the *Muṭawwi'a*, an enforcement mechanism, had been put in place by the state to impose and implement the requirements of this religious ideology. The dissemination and entrenchment of this religious movement were complemented by an established enforcement mechanism that has upheld the Wahhābī practices and values through force. Shahi observes that any religious practices and symbolism which contradict the Wahhābī faith are liable to be harshly repressed by this mechanism. [151]

Despite the fact that there are no official Hindu, Jewish and Christian sanctuaries, the *Muṭawwi'a* does not tolerate even private worship by religious minorities. This entrenched exclusivist attitude finds a fuller expression within state law, as Shashi recognises ("[b]y law, all Saudi nationals are required to be Muslims. This law, which enforces the totality of Islam, justifies the ban on the public practice of any religion other than Islam").[152] Saudi law establishes that the purpose of the state is not to protect and uphold the rights and liberty of individuals who subscribe to other interpretations of Islam or other religions; rather it is instead to protect and promulgate the state-supported version of Islam.

Over time, the intolerance that Wahhābīsm demonstrates towards other religions has created a Saudi society that often tries to physically separate itself from non-Muslims; in addition, it has contributed to the emergence of attitudes and social values that condemn any kind of interaction with non-Muslims.[153] In coming of age within this isolationist society, Saudi Muslim scholars have no doubt been profoundly influenced by this isolationist

[149] Okruhlik, "State Power, Religious Privilege," 94-95 and 98-99.
[150] Shahi, *The Politics of Truth Management*, 157.
[151] Ibid, 158.
[152] Ibid.
[153] Thomas W. Lippman, "A Most Improbable Alliance: Placing Interest over Ideology," in *Religion and Politics in Saudi Arabia: Wahhabism and Saudi Arabia*, ed. Mohammed Ayoop and Hasan Kosabalan (London: Lynne Rienner, 2009), 124-126.

mindset. Any kind of interactions and associations with non-Muslims is perceived as a corrupting influence on the belief of Muslims and a tempting factor straying Muslims from the pure and true path, Islam. General perceptions and presumptions about non-Muslims that are pervasive within Saudi Arabian society therefore most likely find specific embodiment within the Dār al-Iftā's intolerant and restrictive legal views upon the subject of non-Muslim rights. Wiktorowicz points out the xenophobia which is deeply embedded within the purist Wahhābīsm when he writes:

> "For the purists [an implicit allusion to the official Saudi *'ulamā'* and, by extension, the Dār al-Iftā'], Christians, Jews, and the West more generally are seen as eternal enemies determined to destroy Islam by polluting it with their concepts and values."[154]

This exclusivist tendency, which is dominant amongst official Saudi-Wahhābī scholars, has potentially led the members of the Dār al-Iftā' to develop a xenophobic view towards non-Muslims.[155] It is possible to find the reflections of this xenophobic manner and views in the *fatwās* issued by the Dār al-Iftā'. A number of its *fatwās*, for example, advise Muslims resident in non-Muslim countries to leave the lands of disbelief or to limit their interaction with non-Muslims if they cannot afford to leave these countries.[156]

In contrast to the exclusivist attitudes and xenophobic social perceptions that are directed towards religious minorities in Saudi Arabia, Turkey's attitudes upon this issue are more moderate and tolerant. Throughout its history, the country has hosted a diverse range of cultural, ethnic and religious communities. It is possible to find living traces of all three Abrahamic religions – Judaism, Christianity and Islam – that predate the Ottoman Empire.[157] This cultural and religious mosaic was incorporated and developed by the Empire's *millet* system, which defined communities on a religious basis,[158] thus instituting an early

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[154] Wiktorowicz, "Anatomy of the Salafi Movement," 218.
[155] Wiktorowicz places the Saudi official *'ulamā'* within this purist category. He observes: "[o]lder scholars dominate the purist faction and attempt to monopolize religious authority by arguing that they alone have the depth of religious training, knowledge, and experience to render judgements about complex issues. Because the purists control the state religious establishment in Saudi Arabia, including the Council of Senior Ulama (Scholars), they enjoy considerable influence over government policy and have used their position to promote purist interpretations of Islam." See Wiktorowicz, "Anatomy of the Salafi Movement," 221.
[156] Fatwā No. 2635 in *Fatwas of the Permanent Committee*, 12: 51-54, accessed May 07, 2018, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=4306&PageNo=1&BookID=7, Fatwā No. 19670 in *Fatwas of the Permanent Committee*, 12: 56-58, accessed May 07, 2018, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=4309&PageNo=1&BookID=7 and Fatwā No. 19685 in *Fatwas of the Permanent Committee*, 12: 59, accessed May 07, 2018, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=4310&PageNo=1&BookID=7.
[157] Mehmet Şeker, *Anadolu'da Bir Arada Yaşama: Turkiye Selçukluları ve Osmanlılar'a Müslim - Gayri-Müslim İlişkileri* (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2012), 13-85.
[158] Şeker, *Anadolu'da Bir Arada Yaşama*, 112-115 and Bardakoğlu, *Religion and Society*, 41 and 53-54.

arrangement in which religious minorities were recognised and protected. Bayir describes the existential dynamics of pluralism during the Ottoman period in more detail. She observes:

> "[D]ue to the special administrative configuration of the Ottoman Empire, many non-Turkish Muslim groups also kept their linguistic and ethnic characteristic as well as their distinct laws and legal systems."[159]

The multi-cultural, multi-ethnic and multi-religious population of Anatolia and the Ottoman Empire developed a civil society in which Muslims and non-Muslims learned how to live together. The diverse cultural, ethnic and religious communities "lived in peace and even mutual respect, in close proximity, and traded, went into partnership, and developed many relationships with each other".[160] At both the level of government and society, flexibility, negotiation and tolerance became ingrained as key components of the Empire. However, as time passed, this pluralistic legal and social structure was increasingly supplanted by the modern state and its corollaries (e.g. citizenship, egalitarianism and secularisation).

In contrast to the pluralism that was an attribute of the Ottoman Empire, the secularisation project which was initiated by the Republican government aspired towards a homogenised society. This in turn resulted in an excessive state penetration into everyday life which occurred at the expense of ethnic, regional and religious difference.[161] As Kaya observes, the Turkish state extended citizenship to Muslims and non-Muslims alike and restricted any public expression of religion.[162] In contrast to social pressure, this can be designated as a form of state oppression which impacted upon both Muslim and non-Muslim sections of society. This was evidenced by the early Republican government's deliberate policies, which included the closure of religious shrines, the obligatory use of the Turkish language and the prohibition of minority languages – in each of these respects, the Republican government aspired to a homogenised national culture that rested upon the prior destruction of minority cultures and identities. These restrictions began to be relieved in response to both domestic and international influences. In the first respect, important changes derived from Prime Minister Turgut Özal's neoliberal policies of the 1980s and the AKP's (Justice and Development Party) political agenda, which consolidated in the aftermath of

[159] Derya Bayir, *Minorities and Nationalism in Turkish Law* (New York: Routledge, 2016), 15.
[160] Bayir, *Minorities and Nationalism*, 25.
[161] Rifat N. Bali, "The Politics of Turkification during the Single Party Period," in *Turkey beyond Nationalism: Towards Post-Nationalist Identities*, ed. Hans-Lukas Kieser (London: I.B.Tauris, 2006), 48 and Kaya, "Balancing Interlegality," 229.
[162] Kaya, "Balancing Interlegality," 229.

2002; in the second, globalisation had an important 'loosening' impact.[163] The AKP's conscious positioning within the Ottoman lineage has been particularly important in this regard. Beylunioğlu observes:

> "Along with the dissatisfaction of the past, the AKP's distinctive understanding of the Turkish nation as a continuation of the Ottoman Empire seems to induce the government to take more flexible stance against the non-Muslim citizens of the Republic than previous administrations have done."[164]

However, it is important to make a clear distinction at this point. Although earlier state policies had negated earlier cultural, ethnic and religious diversity within the country, concepts of equality before the law, non-discrimination upon the grounds of ethnicity, language and religion, and state neutrality towards any particular community have been recognised and upheld within legal principles and regulations since the establishment of the Turkish Republic.

In apparent defiance of the earlier Republican government's attempt to form a homogenised society, cultural, ethnic and religious pluralism have continued to be an essential part of Turkey's social structure. Individuals from different religions have lived alongside each other in the country throughout the centuries, and the concept of tolerance is deeply ingrained within Turkish society and is still conducted in contemporary Turkey.[165] Although some minorities have been subject to intolerance and mistreatment, the principle of tolerance continues to underpin co-existence within society. Its persistence can be traced back to the Ottoman Empire's cultural and legal pluralism. Despite the fact that the material components of the *millet* system that had granted jurisdiction to religious minorities dissolved in the aftermath of the Empire's collapse, the tolerant attitudes that it had helped to inculcate remain as a core cultural and social antecedent, helping to define the stance of Turkish society towards non-Muslim residents.

A closer engagement with Turkey's heterogeneous and pluralistic social structure makes it possible to observe recent initiatives that have been spearheaded by the Diyanet with the intention of developing communication and interaction with non-Muslims at the social and theoretical levels. These initiatives resulted in the establishment of "the Directorate of

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[163] Anna Maria Beylunioğlu, "Freedom of Religion and Non-Muslim Minorities in Turkey," *Turkish Policy Quarterly* 13, no.4 (2015), 140-142, accessed May 05, 2018, http://turkishpolicy.com/Files/ArticlePDF/freedom-of-religion-and-non-muslim-minorities-in-turkey-winter-2015-en.pdf.

[164] Ibid, 147.

[165] Bardakoğlu, *Religion and Society*, 40-43.

Interreligious Dialogue", which operates within the Diyanet's wider organisational structure.[166] However, these interreligious activities are constrained by law, and this sometimes complicates efforts to engage the needs and requirements of other religious groups."[167] Despite being restricted by these statutory laws, the Diyanet adopts a holistic Islamic view and seeks to adopt a constructive and unifying language that resonates within a religiously heterogenous society. Bardakoğlu observes:

> "The Diyanet takes positive positions with regard to the protection of religious freedom and liberty for minority faith groups in Turkey. It does not support any acts of violence on the national and international levels, including the targeting members and institutions of religious groups. The Diyanet plants seeds of respect, tolerance and acceptance of religious and cultural diversity, believing that freedoms are the basis of social cohesion. It is due to the historical legacy, constitutional provisions and efforts of the Diyanet that Turkey provides a ground where members of various faith groups can live side-by-side as equal citizens of the same state."[168]

The Diyanet intends to inculcate respect for cultural plurality and religious liberty and therefore seeks to perpetuate the religious approach developed by the Ottoman Empire. Bardakoğlu further clarifies that the Diyanet extends the principle of freedom of religion to the Muslim majority, minority faith groups and even atheists (although here it should be acknowledged that the Diyanet's publications extensively include criticism from an Islamic viewpoint with the intention of demonstrating its deficiencies and inconsistencies).[169] The institution also evaluates conversion to other religions within the framework of individual rights and religious freedom.[170]

Existing cultural practices and social perceptions that have implications for interactions with non-Muslims may exert considerable influence upon the Islamic intellectual and legal understanding of Muslim scholars within the Dār al-Iftā' and the Diyanet. The influence of the Wahhābī-Saudi culture may possibly lead the Dār al-Iftā' to adopt an exclusivist and hostile stance towards non-Muslims when engaging with any issue that relates to interaction with non-Muslims. To take one example, when the attendance in a non-Muslim funeral was evaluated by both institutions, they arrived at diametrically opposed Islamic legal rulings, and this was clearly indicated within the respective *fatwās* that they issued. In addressing Islamic rulings that pertain to the greeting of Christians, the attending their

[166] Kaya, "Balancing Interlegality," 229.
[167] Ibid.
[168] Bardakoğlu, *Religion and Society*, 147.
[169] Ibid.
[170] Ibid.

funerals and the offering condolences to them in the aftermath of funerals, the Dār al-Iftā' states:

> "If a Kafir (disbeliever) greets a Muslim, the latter should reply by saying "The same to you" as mentioned in the Sahih (sound) Hadith in which the Prophet (peace be upon him) said, {when the people of the Book greet you, you should say, "The same to you."} However, it is not permissible for a Muslim to follow the funeral of a Kafir, for this is considered an act of loyalty to them which is Haram (prohibited). However, consoling them is acceptable if there is a Shar'y (Islamically lawful) probable interest. In this case, they should say, "I offer you my condolences, may your distress be relieved," but they should not say, "May Allah forgive your deceased," for seeking forgiveness for a Mushrik [polytheist or one engaged in the worship of something other than Allah] is not permissible."[171]

The Dār al-Iftā' evaluated the participation of a Muslim within the funeral ceremonies of non-Muslims by referring to the concept of *al-walā' wal-barā'* (loyalty and disavowal). The *fatwa* creates the impression that the mere act of interaction with non-Muslims can cause a Muslim to diverge from the true path of Islam and tempt him towards unbelief (*kufr*). Although it is permissible to interact in order to proselytise Islam, the Dār al-Iftā' sees little benefit to dialogue and communicate with non-Muslims beyond propagating the faith. As the *fatwā* clearly establishes, if a Muslim does not obtain a pragmatic benefit, s/he should desist from such interactions.

In contrast to the exclusivist stance adopted by the Dār al-Iftā', the Diyanet demonstrates more moderate and tolerant approach when engaging with issues relating to interaction with non-Muslims. Taking into account the tolerant cultural practices and social attitudes which are evidenced towards non-Muslims in Turkish society, it appears logical to presuppose that both will significantly influence the legal interpretation of Muslim scholars who operate within the Diyanet. A similar question (to the one presented to the Dār al-Iftā') was placed before the Diyanet, but the content of this question was narrower than the question that was posed to the Dār al-Iftā' and focused entirely upon the participation of a Muslim in a non-Muslim funeral ceremony. The question of whether there is an inconvenience in attending the funeral ceremonies of non-Muslims in terms of Islamic legal considerations is thereby addressed by the Diyanet. It states:

> "Muslims can attend the funeral ceremonies of non-Muslims with humanitarian aims, such as expressing condolence and giving solace to non-Muslims. However, it is forbidden for a Muslim who attends such ceremonies to participate in the rituals and rites that relate to other religions and to plead mercy for a non-Muslim deceased. When Abū Ṭālib, the uncle of the Prophet, was on his deathbed, the Prophet asked him to repeat the testimony of faith (*lā ilāha illallāh*). Upon encountering his disbelief, the Prophet said: "I swear to Allāh, I will pray and plead mercy for you from Allāh as long as it is not prohibited for me." In the aftermath of this

[171] Fatwā No. 16426 in *Fatwas of the Permanent Committee*, 1: 440, accessed April 3, 2018, http://www.alifta.net/Fatawa/FatawaChapters.aspx?languagename=en&View=Page&PageID=10779&PageNo=1&BookID=7.

> event, the Qur'anic verse (Q. 9:113) which precluded [Muslims] from praying and asking for mercy for non-Muslims was revealed."[172]

The *fatwā* makes it clear that the Diyanet places communication with non-Muslims under the category of humanitarian dialogue. A Muslim is permitted to console the family of the deceased and attend the funeral ceremonies of non-Muslims upon the condition that he/she does not partake in their funeral rituals. The Diyanet clarifies that interaction with non-Muslims does not negatively impact upon the character and faith of Muslims. For this reason, the institution does not begin from the premise that there is a need for Muslims to distance themselves from their non-Muslim counterparts; however, it does contend that such engagement should only occur upon a humanitarian basis. The two *fatwās* reflect the influence of the social context upon both the Dār al-Iftā' and the Diyanet. The Dār al-Iftā's *fatwā* creates a legal and social barrier between Muslims and non-Muslims by applying the notion of *al-walā' wal-barā'*. This may be interpreted as reflecting the construction of physical barriers which separate believers and nonbelievers in contemporary Saudi Arabia. In contrast, the Diyanet alludes to the possibility of peaceful co-existence with people of other religions when it handles this issue in the context of a more focused engagement with human interactions and social relations. This can be seen as one possible illustration of how residence within a multi-cultural, multi-ethnic and multi-religious society can influence the Islamic legal understanding and views of Muslim scholars who serve within the Diyanet and further reflect their tendency to preserve the cultural legacy of respect and tolerance inherited from the Ottoman Empire.

A further example can be derived from the *fatwās* issued by both institutions in response to the question of whether it is permissible to give *zakāt* (obligatory alms) to non-Muslims. The Dār al-Iftā' strongly maintains that it is not acceptable for a Muslim to give his *zakāt* to non-Muslims; it is only acceptable for charity, gift and *uḍhiyya* (meat of sacrificed animals) to be given to them, and this is upon the condition that the respective parties are not in a state of combat.[173] Although the *fatwā* preferably reiterates that it is not acceptable to provide *zakāt* to disbelievers, it can be interpreted as implying that no harm arises when a share is allocated from *zakāt* to *al-mu'allafat al-qulūb* (those whose hearts are inclined to Islam).[174] A separate *fatwā* also states that a Muslim must not participate in non-Muslim celebrations and festivals or extend congratulations during their religious occasions – this is

[172] Din İşleri Yüksek Kurulu, *Fetvalar*, 225.
[173] Muslims Dealing with Non-Muslims, in *Fatwas of Ibn Baz*, 6: 283-285.
[174] Ibid.

because the Dār al-Iftā' interprets such interactions as assisting disbelievers in their sins and demonstrating content and love to them.[175]

In contrast, the Diyanet refers to the possibility of allocating *zakāt* to non-Muslims by drawing upon the verse of the Qur'an which relates to this specific issue.[176] The *fatwā* refers to the position of the four Sunni schools, which draws upon the legal praxis of 'Umar b. al-Khaṭṭāb, the second Caliph, in order to assess whether it is acceptable for a Muslim to provide *zakāt* to non-Muslims. The Diyanet takes the position that the practice of 'Umar does not abrogate the ruling of Q. 9: 60, which had assigned a share for the *al-mu'allafat al-qulūb* in *zakāt*. It therefore observed that 'Umar prevented Muslims from providing *zakāt* to non-Muslims with the intention of preventing those who are not regarded as *al-mu'allafat al-qulūb* from exploiting the prosperity of Muslims.[177] However, it should be remembered that the legal praxis ordered by 'Umar can be held to be a temporary rule that was determined in accordance with the specific circumstances of the period of the second Caliph. The Diyanet therefore incorporates non-Muslims who are not hostile to Islam, who do not oppress Muslims or who do not wage war against them – these are preconditions for the inclusion of those who are entitled to take *zakāt* – into the category of *al-mu'allafat al-qulūb*.[178]

The *fatwās* relating to the construction of houses of worship within Muslim countries can be taken as another illustrative example that demonstrates how dominant cultural practices and social attitudes within both societies influenced the two institutions. At the methodological level, the Dār al-Iftā' draws again upon the concept of *al-walā' wal-barā'* ("… it is evident that setting houses for non-Muslim worship, such as churches or allocating places for them in any Muslim country is of the greatest support for disbelief and endorsement of their faith").[179] The *fatwā* claims that a Muslim should not love and support his non-Muslim fellows but should instead disassociate from them and their religion. The Dār

[175] Ruling on celebrating birthdays, in *Fatwas of Ibn Baz*, 4: 286-288, accessed May 08, 2018, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=358&searchScope=14&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=11209711411610509910511209711610511010303210511003211610410103209910110810109811409711610511111011503211110203211610410103211210111111210810103211110203211610410103209811111110 7#firstKeyWordFound.

[176] See the Q. 9:60: "Zakāh expenditures are only for the poor and for the needy and for those employed for it and bringing hearts together [for Islām] and for freeing captives [or slaves] and for those in debt and for the cause of Allāh and for the [stranded] traveler – an obligation [imposed] by Allāh. And Allāh is Knowing and Wise."

[177] Din İşleri Yüksek Kurulu, *Fetvalar*, 257-258.

[178] Ibid.

[179] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.

al-Iftā' argues that the demonstration of any tolerance to the enemy of God can threaten the individual's belief, as this may in turn result in an acceptance of their customs, faith and tradition.[180] In contrast to the Dār al-Iftā', the Diyanet instead seeks to evaluate the same issue within the scope of the Islamic legal rights of non-Muslims (*ḥuqūq ahl al-dhimma*).[181] Based on the Q. 5: 48, the Q. 10: 99 and the Q. 2: 256, the *fatwā* primarily refers to the religious freedom that Islam extends to non-Muslims.[182] In the most general sense, these Qur'anic verses can be said to emphasise the Islamic legal principle which establishes that the freedom to practice any ideology or religion is a gift and right granted by God. In drawing upon these verses, the Diyanet maintains that, given that diversity in culture and religion is the demonstrated reality of the history of humanity, it would be perverse not to recognise the right to life to religion that extends beyond Islam and its affiliates. The imposition of faith through direct or indirect (e.g. social pressures or inducements of position and/or wealth) means clearly conflicts with the religious freedom ordained by Islam.[183] The *fatwā* proceeds to explain that the faith, life, property and values of non-Muslim residents in an Islamic society must be upheld by the political and legal regulations of Muslim states – this applies because the Prophet and his Companions provided a clear precedent in this respect.[184] There is obviously an explicit indication that the protection of places of worship for other religions (and this extends to the allocation of places of worship and the construction of religious buildings) is an obligation that numbers among the obligations that Muslim rulers owe towards their subjects.

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[180] Fatwā No. 21413 in *Fatwas of the Permanent Committee*, 1: 468-471.
[181] İslam Geleneğinde Gayr-ı Müslim Mabetlerin Dini ve Hukuki Durumu in *Din İşleri Yüsek Kurulu Kararları*.
[182] Although the precise meaning alternates depending upon whether the Q. 5: 48 or the Q. 10: 99 is the reference point, the Diyanet generally argues that had it been the plan or will of God, He would have created an entire community upon the basis of the particular faith and religion. The Q. 5: 48 states: "To you (O Prophet!) We sent the Book (the Qur'an) in truth confirming the Scripture that came before it, and guarding it in safety: So judge between them (those who come to you) by what Allah has revealed, and do not follow their useless wishes, going away from the Truth that has come to you. To each (of the prophets) among you We have prescribed a law (as in Torah and Gospel) and an Open Way. If Allah had so willed, He would have made you (all) a single People, but (His plan) is to test you in what He has given you: So work hard as if (you are) in a race in all the good deeds. The goal for you is Allah: It is He Who will show you the truth of the matters in which you disagree." In addition, the Q. 10: 99 states: "If had been Your Lords Will, all of them would have believed - All who are on earth! (But) will you then compel mankind, against their will, to believe?" In drawing upon these verses, the Diyanet emphatically underlines that mankind has been endowed with various capacities and faculties; in addition, it is his duty to use these divine graces with the aim of exploring the true path. The Diyanet also contends that the Islamic view regaring the general legal principle of freedom of religion and religious worship is expressed in the Q. 2:256. This states: "Let there be no force (or compulsion) in religion: Surely – Truth stands out clear from error: Whoever rejects evil and believes in Allah has held the most trustworthy hand-hold that never breaks. Allah is All Hearing and All Knowing." Here the Diyanet establishes that because every religion builds upon faith and will, any kinds of compulsion by either force or other things contradicts the nature and general principles of Islamic law.
[183] İslam Geleneğinde Gayr-ı Müslim Mabetlerin Dini ve Hukuki Durumu in *Din İşleri Yüsek Kurulu Kararları*.
[184] Ibid.

In addition, the *fatwā* references the covenants that the Prophet made with the Christians and Jews of his time. The treaties that his Companions concluded with non-Muslims and the historical facts serve to substantiate the proposition that Islam envisaged a pluralistic society.[185] The Diyanet also maintains that the relevant Qur'anic injunction provides a full protection to the places of worship of non-Muslims. In justification, it could directly refer to the Q. 22: 40. It states:

> "Did Allah not stop one set of people by means of another, for sure, there have been destroyed monasteries, churches, synagogues, and mosques, where the Name of Allah is praised most often. (Qur'an (22:40)"

It may be argued that the protection of places of worship of non-Muslims and the respect of their religious relics are religious duties that weigh upon both Muslim rulers and residents. *Ta'āyush* (co-existence) therefore emerges as a key concept within the *fatwā*. In drawing upon this concept, the Diyanet establishes that living with non-Muslim citizens and being part of the same society requires positive engagement and a mutual commitment to civic participation from both sides (Muslims and non-Muslims). This is essential to form a healthy and tranquil Muslim nation in which citizenship and equal rights are granted to all members irrespective of their religious belief or practice. In assessing the nature and parameters of normative relationships between Muslims and non-Muslims, the Diyanet mainly grounds its *fatwās* within three important notions (religious freedom, peacefully co-existences with people and tolerance) which serve to demonstrate that *ḥuqūq ahl al-dhimma* is recognised by Islamic law to non-Muslim citizens in a Muslim country. The Diyanet's moderate and tolerant approach towards non-Muslims can be traced back to a democratic and pluralistic (both in culture and religion) Turkish society that has shaped the legal thought and understanding of Muslim scholars to a substantial extent. The refraction of the interpretation of the textual sources through the lens of this tolerant and pluralistic society potentially leads the Diyanet to engage any issues that relate to non-Muslim citizens within the framework of *ḥuqūq ahl al-dhimma*.

Consequently, the practice of *iftā'* is not divorced from societies' cultural practices and social values. The Dār al-Iftā's functioning within a Wahhābī-based Saudi culture that is exclusivist to others may be understood as a major incentive which leads the institution to apply the notion of *al-walā' wa al-barā'* when formulating *fatwās* that relate to interactions with non-Muslims – in this context, this notion is prioritised over other Islamic legal concepts

[185] İslam Geleneğinde Gayr-ı Müslim Mabetlerin Dini ve Hukuki Durumu in *Din İşleri Yüsek Kurulu Kararları*.

and principles. Several *fatwās* categorically affirm that it is illegal to physically harm or inflict injustice upon non-Muslims. However, these specific stipulations are offset, and at least partially undermined the fact that the *fatwās* appear to endorse psychological discrimination and social suppression and exclusion against non-Muslims. The cultural practices and social perceptions that were constructed by the Wahhābī ideology of enmity and hatred against disbelievers (who can even be Muslims) quite clearly, at least in these instances, penetrated deep into the psyche of the Dār al-Iftā's *'ulamā'*. Conversely, the location of the Diyanet within a democratic, heterogenic and secular society can instead be viewed as one of the reasons that lead Muslim scholars within the Diyanet to orientate towards inclusion, moderation and tolerance when engaging with religious issues that relate to non-Muslims. The relevant textual sources associated with the relationships between Muslims and non-Muslims are interpreted through the prism of perceptions and experiences of Muslim scholars who reside within a democratic and pluralistic society. The *fatwās* issued by the institution generally reiterate tolerance and acceptance of the other – the main exception to this is when textual evidence prevents a Muslim from performing certain practices. In opposition to the Dār al-Iftā's *fatwās*, the Diyanet's rulings clearly envisage co-existence of Muslims and non-Muslims within a Muslim state that is supported and sustained by the pillars of civic rights and religious pluralism. It can be asserted that differences between the *fatwās* issued by both institutions are rooted within the perceptions that the Dār al-Iftā' and the Diyanet have of the relationships between Muslims and non-Muslims in their respective environments. The wider context, and specifically customary practices and social values, function as determining and direct factors which closely shape the legal thought of Muslim scholars within the two institutions.

Conclusion

Divergent Islamic legal rulings (*fatwās*) issued by the Dār al-Iftā' and the Diyanet on the same or similar issues are markedly contingent upon both the different contextual interpretation of textual sources and the interaction between Islamic legal methodologies and social environments. The application of selected Islamic legal methodologies, principles and theories to a contemporary issue is, to a certain extent, dependent upon how the two institutions interpret an issue in their surrounding environments. Different understandings make different jurisprudential principles operational in the construction of *fatwās* by the two institutions. The examination of the two institutions and their official *fatwās* from the four thematic perspectives provides an important insight into how different cultural, political,

legal and social contexts have influenced the Islamic legal methodologies deployed by the two institutions and the legal outcomes (*fatwās*) that derive from their legal and intellectual efforts. These four thematic factors are: 1) the predominant *madhhab* affiliation in the two societies, 2) the legal systems of the two countries, 3) the political structures of the two societies and 4) the social presumptions and cultural practices in the two societies.

To a certain extent, the predominant *madhhab* affiliation of both societies has moulded the Islamic legal theories and methodologies followed and espoused by the two institutions. The influence of the Ḥanbalī *madhhab* and the Wahhābī movement can be observed in the *fatwās* issued by the Dār al-Iftā'. The *'ulamā'* in the Dār al-Iftā' still adhere to the authoritative textual sources and transmitted tradition before applying anything else. In complying with the Islamic legal doctrine of the Ḥanbalī *madhhab*, the Dār al-Iftā' generally privileges *naql* (transmitted tradition) over *'aql* (reason). This is manifested in the extensive use of the Qur'an and Sunna and the direct invocation of both by the Dār al-Iftā's *fatwās*. To the same extent, it is possible to observe how the Ḥanafī *madhhab*, which has traditionally guided Turkish religious practice, has exerted influence over the Islamic legal methodologies implemented by the Diyanet within its official statements and *fatwās*. To some extent, the Diyanet has maintained its scholarly authority by applying the jurisprudential tool of *taqlīd*. For the most part, the Diyanet presents the widely accepted legal views of the Ḥanafī *madhhab* to its audiences. However, it is conceivably the case that operating within a secular legal system probably leads the Diyanet to develop a more tolerant approach and to accentuate the ethical dimensions and values of Islam during the construction of *fatwās*. This ethic-based approach to Islamic legal issues, on which the Diyanet focused, in turn probably results in a more flexible predisposition towards other three Sunni *madhhabs*, Shāfi'īsm, Mālikīsm and Ḥanbalīsm. For a legal judgement to be accurate, the Diyanet generally gives its primary consideration to the compatibility of legal rulings (*fatwās*) with the objectives of Islamic law (*maqāṣid al-sharī'a*), the Qur'anic values and the legal principle of public interest (*maṣlaḥa*) rather than the legal doctrinal path behind legal rulings in *fatwās*. Although it does not resemble the Diyanet, the Dār al-Iftā' also demonstrates tolerance to other schools. In broad terms, the two institutions insist on recognising and utilising Islamic legal maxims, principles and theories that have been approved by the traditional Islamic law schools – this course of action is preferred to the creation of an entirely new Islamic legal methodology. An inter-*madhhabs* trend, which appears to originate within a desire to confront contemporary challenges, is discernible within the *fatwās* of the two institutions.

The two institutions draw upon other *madhhabs* and issue their decisions and *fatwās* in accordance with which of the school's doctrine or opinion is, in their view, the most effective or generally pragmatic: in these instances, it is the matter at hand which is the defining criterion.

The legal systems of the two countries is a further contextual factor that helps to specify the authority, function and role of the *fatwās* issued by the two institutions. An Islamic state provides a privileged position to the Dār al-Iftā', and the institution and its official *fatwās* continue to play an important and supplementary role within Saudi Arabia's Islamic legal system. Within this system, official *fatwās* have the potential, subject to the approval of the King, to transform into law as royal decrees. The involvement of the Dār al-Iftā' in the legislative procedure has been evidenced in relation to a substantial number of controversial issues, which include criminal law procedures, ethics and moral issues, family law and social regulations. To a large extent, substantive law is formulated and regulated with full interaction and cooperation between political and religious establishments. In addition, the Dār al-Iftā' possesses a kind of binding coercive authority thanks to *Muṭawwi'a*, an enforcement mechanism, that has implemented the legal rulings of official *fatwās* within the Saudi society. The Diyanet, in direct contrast, instead presents itself as a persuasive authority that is endowed with the authority of religious erudition by Turkey's secular legal system. Its *fatwās* do not therefore possess a binding or coercive authority within Turkish society. Despite this, *fatwās* issued by the Diyanet probably, because they are applied within a society with a Muslim majority, possess the power of social sanction. Even though they are non-binding, the *fatwās* basically assume two main functions within Turkish society. Firstly, because they are obeyed by a majority of Muslims, they can be said to generate socio-religious norms. As in the case of the marriage of foster siblings, a number of *fatwās* take the form of extra rules that are voluntarily followed by all segments of the society, and which apply despite the fact that the Civil Code and the official secular law do not expound regulations upon the issue at hand. Secondly, they can assume a hybrid regulation form – the combination of Islamic legal rulings and secular state laws enables them to simultaneously address the religious priorities of the Muslim population and maintain the public interest and social order.

Political structures within the two countries also provide further insight into the interaction between Islamic legal methodologies and social context. In Saudi Arabia, the relationship between religion and state has been configured in accordance with the alliance

between the Saudi dynasty and the Wahhābī *'ulamā'* that was established in 1745. This alliance still continues today despite a significant number of institutional and social changes. Islam is the state religion and also functions as a source of constitutional and political legitimacy, thus shaping state activities and policies while constituting the country's legal and moral code. The incorporation of the *'ulamā'* into the state administration through the establishment of the Dār al-Iftā' produced changes in the traditional relationship between the Saudi dynasty and the Wahhābī *'ulamā'*. These changes put in place a new *modus operandi* between both sides, with the *'ulamā'* being directly subordinate to the Saudi Government and subject to its control. Despite the fact that the state expanded its jurisdiction to many areas that were formerly regulated and controlled by the *'ulamā'*, the official *'ulamā'* (the Dār al-Iftā') continued to play an important role in legitimating state policies, with this contribution being attributable to the Islamic character of the Kingdom and the rule of the al-Saud family. Both sides developed a mutual partnership within Saudi Arabia's Islamic political system. This can be justified with reference to the Wahhābī *siyāsa shar'iyya*, which institutes both the official *'ulamā'* and the Saudi Government as holders of authority. Within the Islamic monarchical political system, the Dār al-Iftā' performs a central role in legitimating the Saudi Government's political policies, in particular during critical or sensitive situations. To a certain extent, the King or the Saudi Government are obliged to consult the *'ulamā'* (the Dār al-Iftā') and to consider their opinions during state affairs. Within Saudi Arabia, official *fatwās* continue to function as instruments that enable the expression of Islamic explanations and views that are associated with major political events and matters. *Fatwās* relevant to political policies which are generally issued at the request of the Saudi Government have the potential to function as the ultimate statements of Islamic law, and to define and uphold the general policies of the Saudi Government. It can therefore be ascertained that the monarchy has been built on a fusion of political and religious powers whose harmonious relationship is crucial to the stability of the state. The Saudi Government, by virtue of its Islamic character, continually requires the legitimating power of the Dār al-Iftā' (and generally its *fatwās*) in almost all legal, political, religious and social affairs.

In comparison with Saudi Arabia, the relationship between the state and religion (Islam) is quite different in Turkey, and this can be attributed to the country's secular democratic character. The establishment of the Turkish Republic in 1923 was a crucial moment in the development of this relationship, as it embodied and upheld the separation of state and religion. The process of state secularisation has sustained this feature in subsequent

effect. However, it should be acknowledged that Turkish secularism is distinguished from its counterparts by the existence of the Diyanet, which is a state-dependent religious institution. Its foundation, just one year after the establishment of the Turkish Republic, demonstrates how religion has been incorporated into the sphere of state governance. Like the Dār al-Iftā', the Diyanet can be said to be part of the state machinery. In both countries, the political powers that were ascendant at the time when both religious institutions were founded did not tolerate any autonomous religious domain that might compete with them for the loyalty of citizens. However, the incorporation of the Dār al-Iftā' into the state administration assigns its *fatwās* an influential role in the Islamic state, and its interventions help to legitimate the Saudi Government's political policies. As for the official *fatwās* issued by the Diyanet, they do not have any political effect and legitimating power in the secular democratic state structure – the secular state does not require its approval on any specific political issue. However, the Diyanet has developed its own legal approach which, in engaging with questions of state authority and obedience, extends reassurance to Muslims. The Diyanet's Islamic legal rulings and statements are therefore an important resource that reflects the tangible encounter between Islam and modern/post-modern secularism, which are ultimately intelligible in relation to wider secular democratic state structures. Accordingly, many of the Diyanet's decisions, *fatwās* and statements strongly resist attacks upon any governmental system that are grounded within Islamic arguments. Islam, the Diyanet maintains, establishes general ethical and legal principles and enables human beings to form their own political and governmental systems with reference to these general objectives and principles. This means that Muslims are ultimately permitted to choose the system best suited to their immediate circumstances. The Diyanet also clarifies that a system of democratic government is compatible with Islam and Islamic legal principles, upon the condition that the state authority respects religion. With the intention of further substantiating this proposition, the institution draws deeply upon the Islamic tradition to extract concepts such as consultation (*shūrā*), oath of allegiance (*bay'a*) and public interest (*maṣlaḥa*), each of which is understood to provide an effective foundation for describing and legitimating democracy in Islam. *Shūrā* is the concept which the Diyanet most frequently draws upon during the issuance of these *fatwās*. In establishing an analogy between this concept and democratic political systems, the Diyanet makes it clear that democracy and Islam are not incompatible – this impression prevails because the institution's conceptual framing of 'democracy' is subject to various limits and qualifications that are imposed by Islamic law. The concept of *shūrā* presents itself as an operational Islamic legal tool that can be used to justify the democratic character of the

Turkish state with reference to Islamic ethical values and legal principles. In general terms, it is therefore clear that the Diyanet, in seeking to remain loyal to the scholarly Islamic legal heritage, does not interpret Islam in opposition to the state or its secular legal regulations. Turkey's democratic secular structure emerges as one of the potential influences that can cause the institution to adopt a cautious, modest and flexible tone in its Islamic legal statements concerning political issues.

Although the two political systems are quite clearly distinct, both institutions embrace the Sunni school's traditional doctrine of *siyāsa shar'iyya* in order to promote social stability and encourage obedience to state authorities. The Dār al-Iftā' commands Saudi Muslims to obey an absolute Islamic monarchy, while the Diyanet encourages Turkish Muslims to lend their support to secular democratic authority and its associated regulations, upon the condition that they neither conflict with Islamic legal and moral principles. Fear of anarchy and social conflict are the main concerns that lead both institutions to advocate the traditional doctrine of *siyāsa shar'iyya*, which upholds the belief that obedience to the state authority is a religious obligation. It is clear that state authorities within both countries have the right to expect, and even demand, obedience and this applies even if they infringe on some Islamic legal regulations. This obedience is explicitly rendered by the two institutions obligatory with the intention of preserving the social order, unity and welfare. This political doctrine establishes that any act of rebellion or insurgency against the state authorities will be considered to be a prohibited act, and will be denounced upon the basis of its anarchical and divisive effects. The two institutions use the doctrine of *siyāsa shar'iyya* in order to justify acquiescence to immoral or oppressive authority. In this application, it appears as a balancing principle which is grounded within the relationship between the country's government and its subjects.

Finally, cultural practices and social attitudes can be accepted as the wider context which frames and orientates the thought process of individual Muslim scholars. These elements find fuller expression with ideas, outlooks, perceptions and understandings, and directly influence the interpretation of the Qur'an and Sunna, along with the precise legal concepts and methodologies that are deployed during the course of this interpretative process. Even though the authoritative texts are immutable and permanent sources of Islamic law, their interpretation through Islamic legal methodologies and tools is, to a certain extent, linked into pervasive cultural values and social perceptions within a particular society. Divergent contextual interpretations of Islamic legal sources by the two institutions have

sometimes produced different Islamic legal explanations and rulings (*fatwās*) to similar problems. When Islamic legal explanations, rulings and statements issued by both institutions are subject to closer examination, it can be argued that there is an ongoing relationship between social practices and legal thought that produces those *fatwās*. This relationship is not unilateral but is instead cyclical. While *fatwās* can influence aspects of culture and social values, cultural practices and social context can influence the legal understanding of Muslim scholars. Muslim scholars working in the two institutions are conceivably influenced by the cultural assumptions and social perceptions in their respective environments when evaluating any issue directed to them. As with the *fatwās* that demarcate appropriate relations between Muslims and non-Muslims, both institutions seek to substantiate their arguments with reference to the authoritative sources, but then deploy different concepts and methodologies in interpreting these authoritative sources. This generally results in arriving at divergent conclusions by the two institutions. The Wahhābī-based and generally exclusivist Saudi culture is an important influence that leads the Dār al-Iftā' to draw upon the concept of *al-walā' wa al-barā'* when assessing any issue pertaining to the relationship between Muslims and non-Muslims. However, the Diyanet handles similar issues within the scope of *ḥuqūq ahl al-dhimma* and grounds its *fatwās* within peaceful co-existence, religious freedom and tolerance. Turkey's general atmosphere of tolerance towards its non-Muslim residents has therefore impacted the *fatwas* regarding relations with non-Muslims. As a consequence, cultural practices and social values have a kind of energy and potential to influence the legal thought and understanding of Muslim scholars that operate in these two institutions.

CHAPTER 5

A CASE STUDY: ANALYSIS OF *FATWĀ*S ON WOMEN'S LEADERSHIP

Introduction

Issues relating to women's functions, rights, roles and statutes are among the most challenging and debatable subjects that falls within the scope of Islamic law. Female leadership is a particularly controversial subject, and this is reflected by the fact that the majority of Muslim scholars regards women as being legally unqualified to hold high public offices, with the consequence that they are excluded from political authority and judicial posts. Although some scholars do deign to permit women to assume judicial positions, the predominant classical Islamic legal view excludes women from various positions of leadership.

Even in the contemporary period, the issue of female leadership continues to divide Muslim scholars and Islamic legal institutions. Both the Dār al-Iftā' and the Diyanet have engaged with the issue by issuing their own Islamic legal rulings (*fatwās*) that derived from the Qur'an and Sunna. As occurred during the issuance of previous classical Islamic legal rulings which prohibited women from holding high public office, numerous cultural, political and social factors have conceivably influenced the process through which these two institutions issued *fatwās* upon the subject of female leadership. It is necessary to undertake a careful analysis of these *fatwās* in order to bring these influences out in fuller perspective and to provide insight into why the two institutions arrived at different Islamic legal rulings (*fatwās*). This chapter attempts to analyse Islamic legal statements and interpretations (*fatwās*) issued by the two institutions across two levels. In the first instance, each *fatwā* will be examined with reference to the specific Islamic legal methodology adopted by each institution – it is anticipated that this will provide insight into the reason/s why the two institutions diverge upon the question of female leadership. In the second instance, the focus shifts to the social contexts in which these *fatwās* were issued – this provides insight into the extent to which the two diametrically opposed contexts impacted upon the institutional interpretation of the issue. In developing across two phases, this analysis may shed light on the interaction between Islamic legal methodology and social context. By the end of the chapter, the interaction between gender perceptions and Islamic legal methodology within the *fatwās* issued by the Dār al-Iftā' and the Diyanet will be compared with the intention of bringing out specific differences between the two *fatwās.*

A) General Overview to Perceptions about Muslim Women and Islamic Law

The cultural, economic and political attributes of Muslim communities and societies have an important formative influence upon Islamic legal interpretations and practices. As Islam expanded to new territories, nascent Muslim communities confronted a range of challenges, which included the articulation of new customs and values. Over time, the Muslim community gradually and selectively incorporated the cultural, political, social and environmental values of these new territories into its structure. El-Solh and Mabro observe:

> "Over the centuries since its revelation, Islam has been permeated by a succession of cultural accretions reflecting the complex ways in which religious belief and social reality accommodate one another."[1]

The close relationship between religious manifestations and their environments can be clearly observed throughout the history of Islamic law. Contextual and cultural influences can therefore help to explain variations within Islamic law. Roald observes:

> "The historical development of Islamic law indicates how interpretation of the social issues in the Islamic sources results from dynamic interactions between Islamic scholars and society."[2]

This establishes the important insight that cultural, economic, environmental, political and social influences have impacted the interpretation of Islamic legal sources when the given object is of social issues. This also helps to explain why Islamic law is characterised by such diversity in Islamic legal rulings, interpretations and opinions. In addition, this diversity has an important practical implication as it enables the authoritative texts to be reinterpreted with reference to the specific demands of each context and time.

Within the framework of Islamic law, issues particularly related to social transactions (*mu'āmalāt*) reflect differences of jurisprudential opinions and of legal interpretations among major Muslim scholars and Islamic modern institutions. These differences can be traced back to a variety of different originating points. Cultural assumptions, customary practices and regional values have often influenced legal interpretation in important ways. In failing to acknowledge important differences of opinion that pertain to *mu'āmalāt* within the sphere of Islamic law, scholars in both the Muslim and Western world attempt to demonstrate that Islamic law and its regulations impose discrimination and unnecessary regulations upon women. Spence and Chesler inadvertently demonstrate this point when they argue that regulations within Islamic jurisprudence oppress women. They observe:

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[1] Camillia Fawzi Al-Solh and Judy Mabro, *Muslim Women's Choices: Religious Belief and Social Reality* (Oxford: Short Run Press, 1994), 2.
[2] Anne Sofie Roald, *Women in Islam: The Western Experience* (London: Routledge, 2001), VIII.

> "The Islamic law – *Sharia* – that terrorists are fighting to impose upon world mandates institutionalized discrimination against women. Islamic gender apartheid goes far beyond second class citizenship. It is intended to crush and subordinate women."[3]

This, however, overlooks the fact that the various forms of discrimination and oppression that are evidenced within the sphere of women's rights (and their concomitant impact upon women's roles and general status within society) cannot be directly attributed to Islamic law. Closer reflection makes it clear that Islamic legal interpretation must incorporate an analysis of socio-cultural factors in order to obtain a more complete insight into the rights, role and status of Muslim women within Muslim communities. Al-Hibri observes:

> "Cultural assumptions and values that masquerade as religious ones are insidious insofar as they mislead Muslims into believing that they have divine origins, thus denying Muslims the right to assess them critically, or even reject them."[4]

Viewing Islamic law as the sole explanation for the oppression of Muslim women may give rise to the deeply flawed perception that the regulations of Islamic law which relate to women in society are, in themselves, immutable and oppressive. Even though Muslim scholars within the classical period passed legal rules that seek to restrict the participation of Muslim women within political and social life, this does not entail that these interpretations and regulations are valid in all times and places. On any particular issue, different interpretations, which vary in accordance with material and temporal context, have been advanced.[5] To characterize all Muslim women who are subject to Islamic law as subservient is to disregard the inherent flexibility of Islamic law; if pursued to its logical conclusion, this perception can culminate within the belief that Islamic law is patriarchal and directed to the systematic oppression of Muslim women.

Social regulations that relate to women are heavily dependent upon the interpretation of Muslim scholars, along with the wider cultural, economic and social context/s in which they operate. Androcentric worldviews, ignorance of women's rights, patriarchal structures and socio-cultural forms can all contribute, to varying extents, to inhibitive and oppressive regulations that are imposed upon women. However, the cultural, economic and political context of any society most likely provides the mechanism that guides innovations and transformations within the sphere of Islamic law. This clearly reiterates how contemporary

[3] Robert Spencer and Phyllis Chesler, *The Violent Oppression of Women in Islam* (Los Angeles: David Horowitz Freedom Center, 2007), 6.
[4] Azizah Yahia al-Hibri, "Muslim Women's Rights in the Global Village: Challenges and Opportunities," in *Women and Islam: Critical Concept of Sociology; Women's Movements in Muslim Societies*, ed. Haideh Mohissi, vol. III (Oxon: Routledge, 2005), 451.
[5] Roald, *Women in Islam*, 85.

socio-cultural factors impact upon the process of legal interpretation. However, it is also important to acknowledge the extent to which cultural and environmental context can impact upon social affairs – an oversight of this point can contribute to a misinterpretation of women's rights, roles and statuses within the sphere of Islamic jurisprudence. Roald observes:

> "The flexibility of interpretation of social issues in the Islamic sources affords the possibility of developing new interpretations in the new cultural context."[6]

It should therefore be asked if the law can be reinterpreted in a manner that realigns it with local realities, sensibilities and social developments. In this situation, *fatwās* (legal interpretations) issued by present-day Islamic modern institutions or Muslim scholars can be approached and engaged as a legal temporal relativism in the law-finding process. Throughout Islamic history, the declaration of *fatwā* has become increasingly more institutionalised, and this increasingly organised dissemination of *fatwās* has simultaneously expanded in order to engage a wide constellation of cultural, environmental, political and social factors.[7] As the institutionalization of the *fatwā* mechanism has continued apace, specialized committees charged with issuing *fatwās* have emerged to provide contemporary rulings or answers relevant to believers' problems.

Muslim-majority countries evidence a clear variation within the cultural, economic, political and traditional spheres, and this is frequently reflected in the legal interpretations of the Islamic institutions that function in these countries – this again reiterates that Islamic law, when implemented in practice, does not evidence a homogeneous and stagnant character that operates in isolation from contemporary issues and social realities. Moghissi is in danger of overlooking this feature when she criticizes Islamic legal institutions and their role in Muslim societies. She observes:

> "I want to argue that insufficient attention has been given to the inherent dangers in this, that is, overlooking the role of Islamic legal institutions and practices in maintaining, through the ages, the specific patriarchal order which circumscribes women's lives in Muslim societies."[8]

Here it is noticeable that Moghissi does not first acknowledge that it may be considered inappropriate to criticize Islamic law and all Islamic modern institutions as being representative of one particular mode of domination.[9] She also criticises all Islamic legal

[6] Roald, *Women in Islam*, 79.
[7] Mohamad Abdallla, "Do Australian Muslims Need a Mufti," 119.
[8] Moghissi, *Feminism and Islamic Fundamentalism*, 38.
[9] Judith E. Tucker, *Women, Family and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), 24.

institutions upon the grounds that they are patriarchal and oppressive against women. However, it is noticeable that she does not refer to the spatio-temporal *fatwās* concerning female leadership that have been issued by different modern Islamic religious institutions (e.g. the Dār al-Iftā' (the General Presidency of Scholarly Research and Iftā') and the Diyanet (the Presidency of Religious Affairs)); similarly, her account does not appreciably expand to encompass the heterogeneity of culture within Muslim countries or the fact that both the application of *fiqh* (Islamic legal jurisprudence and understanding) and the position of women have experienced substantial change in the modern period. The *fatwās* issued by the Dār al-Iftā' and the Diyanet upon female leadership may still cast light on both the influence of contextual elements and the continuation of 'differences of opinion' among Muslim scholars and Islamic religious institutions in the modern period.

B) The General Presidency of Scholarly Research and Iftā' (Dār al-Iftā') in Saudi Arabia

The Dār al-Iftā' has launched an official website to publish *fatwās*,[10] which provides users with easy access to the *fatwās* that it has promulgated. Visitors to the new website are able to ask questions on a variety issues and also obtain *fatwās* from the Dār al-Iftā', whose members are prominent Islamic scholars. The site offers a large stock of *fatwās* issued by prominent Islamic scholars and there is also a single section dedicated to the *fatwās* of Shaykh 'Abd al-'Azīz ibn Bāz (d. 1999), Saudi Arabia's former grand muftī. The website currently contains two questions that relate to women's leadership (one directly engages with this theme, whereas the other has a more indirect relation). The *fatwā* that directly addresses women's leadership was promulgated under the CRLO, at a time when Shaykh 'Abd al-'Azīz ibn Bāz was chairman, Shaykh 'Abd al-Razzāq 'Afīfī was deputy chairman and Shaykh 'Abd Allāh ibn 'Abd al-Raḥmān al-Ghudayyān was a participant member.

1. A Methodological Evaluation of the Dār al-Iftā's *Fatwā* on Female Leadership

The *fatwā* that directly addresses women's leadership declares that it is not permitted, under any circumstances, for women to lead their community.[11] According to the CRLO, this rule for the prohibition of women's leadership has its basis in the *ḥadīth* narrated by an earlier transmitter - Abū Bakra, the consensus of scholars (*ijmā'*) and the objectives of Islamic law, and is proven further by reality. The CRLO maintained that this prohibition of

[10] Abdallla, "Do Australian Muslims," 220.
[11] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16, accessed August 25, 2015, http://www.alifta.net/Fatawa/fatawacoeval.aspx?languagename=en&View=Page&HajjEntryID=0&HajjEntryName=&RamadanEntryID=0&RamadanEntryName=&NodeID=4660&PageID=6300&SectionID=7&SubjectPageTitlesID=6352&MarkIndex=19&0#Inwhichwomenareprohibitedto.

women's leadership originated within the *ḥadīth* narrated by Abū Bakra, an earlier transmitter. As such it can be said to be consistent with the objectives of Islamic law and scholarly consensus (*ijmā'*) while being closely aligned with reality. The CRLO also justified its reluctance to accept a woman as a leader by referring to the *hadīth*'s general meaning and then elaborated the legal significance of "general term" (*al-lafẓ al-'āmm*) and its precise function as a legal maxim. It observed:

> "The two words "people" and "woman" are mentioned as indefinite nouns that fall under negation, so they have general meanings according to the Shari'ah rule. [T]he general meaning of text supersedes the specific reason for which it was said."[12]

The non-permissibility of female leadership is clearly established by the general meaning of this *ḥadīth*, which also serves to affirm that consideration has been given to the generality of the words, as opposed to the specificity of their content (*al-'ibra fī 'umūm al-lafẓ lā khuṣūṣ al-sabab*). The use of this legal maxim enables the institution to apply this general rule, which has been extracted from the *ḥadīth* narrated by Abū Bakra, to all instances of the relevant concept.

It should be noted that the authentic and normative basis of this *ḥadīth* have been extensively challenged.[13] Abou El Fadl issues a challenge at the second point by arguing that Abū Bakra is not a credible witness[14] (e.g. he does not meet the standards required of a *ḥadīth* transmitter). In observing that the *ḥadīth* concerning female leadership was related by a single transmitter (Abū Bakra), Mernissi challenges its authenticity and normativity upon the grounds that it was *āḥād ḥadīth* (reported by a single transmission).[15] Significantly, Farooq also emphasises this feature. He observes:

> "Rather than constituting a *mutawatir* text, one solitary (*ahad*) report from Abu Bakrah … has resulted in the rigid orthodox position whereby women are barred from exercising executive leadership."[16]

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[12] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16.
[13] Many jurists and scholars argue that this *ḥadīth* cannot be used as justification for the exclusion of women from the social and political life due to the fact that the *ḥadīth* is an *āḥād ḥadīth* reported by a singular transmission. See Asgharali Engineer, *The Rights of Women in Islam* (New Delhi: Sterling Publishers Private Limited, 2004), 90-95, Ahmed Affi and Hassan Affi, *Contemporary Interpretation of Islamic Law* (Leicestershire: Troubador Publishing Ltd, 2014), 149-154 and Syed Mohammed Ali, *The Position of Women in Islam: A Progressive View* (Albany: State University of New York Press, 2004), 123-126.
[14] Abou El Fadl, *Speaking in God's Name,* 111-115.
[15] Fatima Mernissi, *Women and Islam: An Historical and Theological Enquiry*, trans. Mary Jo Lakeland (Oxford: Blackwell Publisher, 1991), 49-59.
[16] Mohammad Omar Farooq, *Toward Our Reformation: From Legalism to Value Oriented Islamic Law and Jurisprudence* (London: The International Institute of Islamic Thought, 2011), 129.

While the legal influence of the *āḥād ḥadīth* continues to be debated by scholars of Islamic jurisprudence and within the various schools, it continues to function as an authoritative and predominant source within the traditional Wahhābī trend. Al-Atawneh further reiterates:

> "CRLO … follows the traditional Wahhābī trend by holding the Sunna to be an extension of the authority of the Qur'ān, as based on divine witness … Jurists tend to consider *ḥadīth*s as authorized and valid; so long as the 'chain of transmitters' (*isnād*) is authentic, the *ḥadīth* must be accepted, whether its *isnād* is: (1) transmitted along multiple paths (*mutawātir*); (2) solitary (*āḥād*); (3) widespread (*mashhūr* or *mustafīḍ*); or (4) strange/rare (*gharīb*)." [17]

In initially engaging with this *āḥād ḥadīth*, the institution demonstrates its adherence to both the doctrine of the Ḥanbalī school and the traditional Wahhābī trend. Its engagement also serves to reiterate that the doctrine of the Ḥanbalī school and the traditional Wahhābī trend privilege the text and the transmitted tradition (*naql*) over reason (*'aql*).[18] The scholars of the CRLO, in responding to a question relating to the application of *āḥād ḥadīth*, have further clarified this point. They state:

> "The Hadith-ul-Ahad that are Sahih (a Hadith that has been transmitted by people known for their uprightness and exactitude; free from eccentricity and blemish) can be used with certitude if they are supported by other evidence, otherwise they will indicate probability. In either case, this type of Hadith must be referred to in establishing creedal issues and all other Islamic legal rulings."[19]

The *fatwā* concerning the applicability of the *āḥād ḥadīth* therefore establishes that the *āḥād ḥadīth* has legal value in matters of *'aqīda* (belief) and laws while the CRLO evaluates the issue that were directed to it.[20]

The CRLO applies a legal maxim (i.e. *al-'ibra fī 'umūm al-lafẓ lā khuṣūṣ al-sabab*) which permits the specific *ḥadīth*, which would otherwise be restricted to a particular matter, to be extended to parallel matters and situations. From the perspective of the CRLO, the utility of this legal maxim derives from the fact that it enables generalisation from the specific to non-specific (although it should be acknowledged that there is a possibility that the *ḥadīth* utilised as a legal indicator (*dalīl*) may be the reflection of historical contingencies, such as the fact that the Persians, who were the Prophet's sworn enemies, were ruled by a woman during his time.)[21] Some scholars (e.g. Jamal Badawi, Khaled Abou El Fadl and

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[17] Al-Atawneh, "Wahhābī Legal Theory," 346.
[18] Ibid, 329.
[19] Fatwā No. 5082 in *Fatwas of the Permanent Committee*, 17: 13-16, accessed December 25, 2015, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=1246&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=097104097100032104097100105116104#firstKeyWordFound.
[20] Ibid.
[21] Abou El Fadl, *Speaking in God's Name*, 111.

Rafiq Zakaria) restrict the *ḥadīth* narrated by Abū Bakra to the historical circumstances in which the *ḥadīth* was uttered and put forward that the *ḥadīth* is a prediction of the seemingly imminent collapse of the neighbouring Sassanid Empire whose ruler was a woman.[22] By providing the historical context of the *ḥadīth*, these scholars support their stance with regard to the non-applicability of the *ḥadīth* as a legal evidence for all circumstances and times. However, the CRLO excludes evaluating the context of this *āḥād ḥadīth* from the process of issuing the *fatwā* concerning women's leadership by arguing that "[t]he general meaning of text supersedes the specific reason for which it was said."[23] It appears that the CRLO firmly locks itself and its Islamic legal argument on the generalisation of the *āḥād ḥadīth* by extending its literal meaning to the contemporary world. This approach opposes any possibility of female leadership as it claims the general meaning of the *ḥadīth* prefers men as leaders within society.

In addition, the resort to the *ijmā'* renders the institution's legal edict as a well-established and unchangeable rule that has been embraced by the *umma*. The term '*umma*' had been equated with 'the people' during the time of the first four caliphs (Abū Bakr, 'Umar b. al-Kaṭṭāb, 'Uthmān b. 'Affān and 'Alī b. Abī Ṭālib, respectively) and the *imāms* of the first three centuries. The CRLO states:

> "The Ummah in the time of the Rightly-Guided Caliphs and the Imams of the early best three centuries practically agreed upon not assigning any power or judicial authority to women, despite the fact that they had well-educated women in various disciplines of religion."[24]

This can be interpreted as the *ijmā'*, an important source of Islamic law which determines or restricts legal issues and rules, and function as an important point of consensus for the contemporaries of the first four caliphs and the *imāms* of the first three centuries. The CRLO's view upon the *ijmā'* brings out its close resemblance to the *ijmā'* doctrine that was

[22] The issue of female leadership is among the controversial issues within Islamic law. The very fundamentalist and conservative scholars insist that a woman cannot be the head of the government in pursuance of the Islamic legal applications and regulations. Despite the rigid stance of the fundamentalist, there are other scholars who claim that there is nothing in the Qur'an and Sunna that prevent women from participating in politics and rising to the highest official positions. The writings of these scholars include new commentaries on the Qur'anic verses associated with the status and roles of women, analyses of the authenticity of the *ḥadīths* related to the issue at hand, scientific proofs of the inaccuracy of certain extra-scriptural assumptions as well as clarifications of Islamic history. All the three scholars cited here represent this new trend in the area of Islamic law. They try to provide an insight into the historical circumstances in which the Prophet said this *ḥadīth* with the aim of restricting the *ḥadīth* to the specific historical incident in Persia. For further detailed explanation, see Jamal Badawi, *Gender Equity in Islam: Basic Principles* (Indiana: American Trust Publications, 1999), 38-41 and Abou El Fadl, *Speaking in God's Name*, 111 and Rafiq Zakaria, *The Trial of Benazir: An Insight into the Status of Woman in Islam* (Bombay: Rekha Printers, 1989), 135.

[23] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16.

[24] Ibid.

expounded in the traditional Wahhābīsm.[25] The CRLO has provided a legal explanation of the *ijmā'*. It states:

> "*Ijmā'* is one of the three fundamental *uṣūl* that must be obeyed: Qur'ān, authentic Sunna (*sunna ṣaḥīḥa*), and *ijmā'* of the *salaf* from among the Prophet's *ṣaḥāba*, since disputes became widespread after them (amongst the later generations), …"[26]

This raises the question of precisely how the CRLO managed to claim that this legal ruling depends on the *ijmā'*. A wealth of evidence is ignored or nullified when this *āḥād ḥadīth* is generalised. For instance, 'Umar b. al-Khaṭṭāb, the second caliph, appointed a woman as a judge of the market,[27] and 'Ā'ishah bint Abī Bakr, the Prophet's wife, commanded men in the Battle of the Camel (35/656).[28] These eventuated occurrences in the time of the first four caliphs justify the absence of the *ijmā'* on the non-permissibility of women's leadership and their political and social participation. Hence, the use of the *ijmā'* as an authoritative source by the CRLO is problematised by these occurrences because they bring its very application to the specific problem (female leadership) into clear question.

The *fatwā* is also supported by allusions to the Qur'anic verses, and specifically the story (*qiṣṣa*) of Queen Bilqīs and Prophet Sulaymān. The exegesis of the CRLO's scholars regarding the story may conceivably provide a legal tool that strengthens and justifies its legal edict by rooting it within the Qur'anic text. To put it differently, the jurisprudential inquiry does focus on maintaining and verifying the socio-political reality by using the text. These Qur'anic verses are interpreted in a way which clearly accentuates androcentric and patriarchal values. The CRLO's statement clarifies:

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[25] The first two *uṣūl* are the texts from the Qur'an and the *ḥadīths* – if either of these two reference points provide an answer, there is no need to look elsewhere. The third source is the consensus (*ijmā'*) of the Companions and the path of least deviation from textual sources. The Wahhābīs therefore acknowledged the need to return to the initial primary sources of Islamic law when researching any given topic. It was only in their aftermath that an engagement could be conceived with the legal opinions reached by the consensus of the Prophets Companions (*Ṣaḥāba*) and the opinions of later generations of scholars, and in particular those who founded schools within Islamic law-Ḥanafī, Mālikī, Shafi'ī, Ḥanbalī and *Vahiri*, as long as they did not contradict the primary sacred sources. See al-Atawneh, *Wahhābī Islam*, 14-15.

[26] Al-Atawneh, "Wahhābī Legal Theory," 348. Cited from Ahmad b. 'Abd al-Rāziq al-Dawīsh, *Fatawā al-Lajna al-Dā'ima li al-Buḥūth al-'Ilmiyya wa al-Iftā wa al-Da'wā wa al-Irshād*, 13. vols. (Riyadh: Maktabad al-'Ibīkān, 2000), 5: 15.

[27] John L. Esposito, *What Everyone Needs to Know about Islam: Answer to Frequently Asked Questions, from One of America's Leading Experts*, 2nd ed. (New York: Oxford University Press, 2011), 105, Farid Younos, *Principles of Islamic Sociology* (Bloomington: AuthorHouse, 2011), 73, and Jamal Badawi, *Gender Equity in Islam,* 18-19.

[28] Cyril Glassé and Huston Simith, *The New Encyclopedia of Islam: Revised Edition of the Concise Encyclopaedia of Islam* (London: Stacey International & Cyril Glassé, 2001), 80, Al-Ṭabarī, "The Community Divided," *The History of al- Ṭabarī*, vol. XVI, 125- 173, and James E. Lindsay, *Daily Life in the Medieval Islamic World* (Westport: Greenwood Press, 2005), 67-70.

> "Given that kings and queens are often characterized by pride, exaltedness and a tendency to protect and keep their reign, she [the Queen Bilqīs] resorted to trickery by means of money, acting like weak people, hoping to protect herself and her reign in this way. Apart from this, there was also astonishment that led her to be uncertain about her throne, and her full admiration for the reign of Sulayman (peace be upon him), which captured her hearth like all other women who tend to be influenced by external appearances because of their strong passion."[29]

The meaning of the Qur'anic verses is formed within the context of an interpretative community that has been profoundly influenced by patriarchal and tribal values. In addition, the Qur'anic text is also asserted to prohibit a woman being appointed leader. This hermeneutical analysis is one example of how the CRLO utilizes Qur'anic exegesis during the issuance of a *fatwā*. Queen Bilqīs's character flaws (emotional inclination, intellectual deficiency, lack of perspicacity and propensity to forget) result in her surrendering to the Prophet Sulaymān, deferring to his *da'wa*, and submitting to Allāh.[30] This renders Queen Bilqīs's submission (to Allāh) equivalent to her surrender (to the Prophet Sulaymān) and reveals a slightly problematic logic in the area of theological foundations. Additionally, the *fatwā* highlights a theoretical disconnect: the fact that women possess diminished mental capacity and emotional tendencies may exclude them from judicial and political administration, but it does not deny the possibility that she may be well-informed in the sciences of religion.[31] The CRLO acknowledges that while knowledgeable and pious Muslim women were consulted in the past, they never aspired to a political position.[32] The acknowledgement that women may possess authority within the sciences of religion may raise the possibility of their participation in religious education, but this will fall short of the expectations for their political participation.

This observation leads into the question of whether it is acceptable for women to lead groups of pilgrims.[33] Here it is important to note that the legal edict for this question draws upon evidences and sources that closely resemble the *fatwā* on women's leadership. The immediate question is therefore framed in the narrower context of women's leadership within society. The *fatwā* relating to this question states:

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[29] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Fatwā No. 610 in *Fatwas of the Permanent Committee*, 23: 403-404, accessed August 25, 2015, http://www.alifta.net/Search/ResultDetails.aspx?languagename=en&lang=en&view=result&fatwaNum=&FatwaNumID=&ID=9140&searchScope=7&SearchScopeLevels1=&SearchScopeLevels2=&highLight=1&SearchType=exact&SearchMoesar=false&bookID=&LeftVal=0&RightVal=0&simple=&SearchCriteria=allwords&PagePath=&siteSection=1&searchkeyword=1191111091011100320971150320970321081010971001011 14#firstKeyWordFound.

> "It is impermissible for women to act as leaders of pilgrims' groups for the generality of Hadith in which the Prophet (peace be upon him) said: {"Never will succeed such a people who place a woman in charge of their affairs."} Moreover, the Prophet (peace be upon him) did not assign any woman to be a ruler of a country or a leader of pilgrims' group. The practice of the Prophet that women were not assigned as rulers of countries or leaders of pilgrims' group was followed by the Rightly-Guided Caliphs and the people of the first three centuries that the Prophet (peace be upon him) witnessed for their goodness. Had it been permissible to assign women as such, this would have not been abandoned for those long periods. Consequently, the prohibition of assigning women as rulers of countries and leaders of pilgrims' groups is established by the practical Ijma' (consensus of scholars) of all these centuries."[34]

The Wahhābī legal tradition is synonymous with the proposition that it is necessary to return to the original sources (the texts from the Qur'an and Sunna). The CRLO invokes this tradition when it presents its legal research as an investigation of the textual evidence that is rooted within original sources, and specifically the *ḥadīth* narrated by Abū Bakra. The practice of selectivity in the use of evidence could enable the CRLO to achieve a particular determination that is consistent with Saudi Arabia's cultural and social values. It is possible to identify that Saudi Arabia's customary practices (*'urf*) are circuitously revealed as invisible factors during CRLO's legal investigation. The prohibition of women's leadership is also connected to the nature and capacities of women. This interrelation is indicated when the *fatwā* concludes by summarizing the general view. It observes:

> "Consequently, the Committee is of the view that it is impermissible for women to act as a leader of a group of pilgrims. Leadership does not conform to women's nature or capabilities that Allah (Exalted be He) has bestowed upon them."[35]

A gender-based assumption of women's nature and capacity becomes part of juristic evaluation, with the operative cause (*'illa*) for the prohibition of assigning women as rulers of countries and leaders of pilgrims' groups being foregrounded within the fact of womanhood. It can therefore be determined that the crux of the matter lies in the customary practices pertaining to gender in the Saudi society – this applies because the assumptions of the CRLO jurists upon the role of women present themselves as a legal predication.

The contemporary inclination of the Dār al-Iftā' towards the Ḥanbalī school is clearly indicated within a methodological approach that seeks to investigate the authoritative sources and illuminate the legal issues. Al-Atawneh observes:

> "Note that for contemporary Wahhābīs, the Ḥanbalī *madhhab* is generally favoured as a method of argumentation, especially in cases of legal disagreement, because the Ḥanbalīs,

[34] Fatwā No. 610 in *Fatwas of the Permanent Committee*, 23: 403-404.
[35] Ibid.

> perhaps more than the other three Sunni *madhhabs*, remain closest to the original sources: the Qur'an, the Sunna and the traditions agreed upon by the Companions of the Prophet."[36]

This is clearly indicated in the fact that CRLO *muftīs* make extensive use of the textual sources and the tradition of the Companions of the Prophet within the two *fatwās* addressed to women's leadership. The CRLO indicates its adherence to the idea of *ijtihād* by rejecting the notion of blind obedience (*taqlīd*) and searching for textual evidence. In internalising the Wahhābī legal trend, it adopts the practice of selectivity in the use of evidence and does not search for other evidence during the process of issuing a *fatwā.* The inclusion of the *ḥadīth* narrated by Abū Bakra, the Qur'anic exegesis and the tradition agreed upon by the Companions of the Prophet may raise the question of whether the CRLO evidences a degree of conscious selectivity in presenting the evidence – this is in turn raises the question of the legal criteria which frames this selectivity and functions to exclude other evidence.

Selectivity within the selection of evidence helps to sustain the CRLO's legal interpretations of women's issues, along with its concomitant values of androcentrism and patriarchy.[37] However, it is still conceivable that these *fatwās* reflect Saudi Arabia's cultural norms and social structures. The description of these legal edicts as anachronistic is defective precisely because, in Saudi Arabia, the two *fatwās* on the issue of women's leadership draw strongly upon the conservatism that is inherent within Saudi society. The CRLO, in acting in accordance with the traditional Wahhābīsm, faithfully follows the Ḥanbalī school's doctrines and methods by emphasising adherence to the text and privileging tradition over reason. This results in the *āḥād ḥadīth* being used to support the legal imperative relating to non-permissibility of women's leadership. Conversely, it is probable that the CRLO diverges from the Ḥanbalī school's Islamic legal methodology when it associates the prohibition of women's leadership with the nature and capacity of women. This applies because the representation of women is framed within the contemporary customary and local values of Saudi society. The Ḥanbalī school's approach to Islamic legal issues is distinguished by its abrupt rejection of blind adherence to local custom and the embodiment of this custom within specific legal tools.[38] However, it is noticeable that the CRLO refers to Saudi Arabia's customary practices when portraying women's capacity and nature.

[36] Al-Atawneh, "Wahhābī Legal Theory," 342.
[37] Abou El Fadl, *Speaking in God's Name*, 220-232.
[38] Al-Atawneh, *Wahhābī Islam*, 15.

2. A Contextual Evaluation of the Dār al-Iftā's *Fatwā* on Female Leadership

The *fatwā*, in functioning as a source of socio-cultural information, is serviceable and useful precisely because it does reflect the cultural, economic, political, legal and social dimensions of the dispute at hand. *Fatwās* issued by the Dār al-Iftā' may also provide insight into the socio-cultural and socio-political attributes of the Saudi state. An analysis of the two *fatwās* from a contextual perspective is useful because it provides insight into the Saudi social context that underpins the legal imprint of women's rights; in addition, it also casts light upon the mutual affinities that conjoin the Dār al-Iftā', society and state within Saudi Arabia. A contextual evaluation may make an important insight as it will bring light the interaction between Islamic legal methodologies to which are applied in *fatwās* and social context from which *fatwās* emerge.

The exclusion of women from decision-making is common across Saudi Arabia, and it occurs within the family, community, government and wider society. The issued *fatwās* upon women's leadership further reflect and reiterate this exclusion at the communal and governmental levels. These *fatwās* clearly demonstrate how the political, legal and social marginalization of women overlaps with strict cultural and social norms, thus to further embed and perpetuate the exclusion and subordination of women within the country. Here it is also important to acknowledge that the CRLO presents women as being excessively emotional, incapable of rational thought and possessed of limited intellectual capacity ("this ruling on women is attributed to their deficient reasoning and rationality, in addition to their passion that prevails over their thinking").[39] It is obvious that the CRLO describes women as a deficient person in intellect. The legal methodology and sources that were used to reach these conclusions are, however, not cited. The CRLO's legal opinions are significant because they can be conceivably impacted by political and social life and reflect the social perceptions that include the further entrenched women's exclusion. Opwis has previously highlighted how context impacts on jurists' interpretative activities. She observes:

> "Although for Muslims the revelation of the law ended with the death of the Prophet Muḥammad, the content of the divine law is, one may say, interpreted anew each time a person, usually a jurist, approaches the texts… His interpretation is influenced, and may even be bound, by his time and his social, political, and economic environment, including its rules and conventions for interpreting language, law, and theology."[40]

[39] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16.
[40] Felicitas Opwis, *Maṣlaḥa and the Purpose of Law: Islamic Discourse on Legal Change from 4th/10th to 8th /14th Century*, (Leiden: Koninklijke Brill NV, 2010), 1.

The perception of gender within Saudi society conceivably impacts upon these *fatwās* because it is likely that the cultural and social environment influences the CRLO *muftīs*' interpretative activities and legal determinations. The *muftīs* seek to advance the impression that women are hesitant, lacking in control (of both their body and mind) and weak. The roots of this interpretation can be traced back to the roots of local custom and patriarchy within Saudi society. It is conceivable that this CRLO statement derives also from the selective basis upon which CRLO scholars engaged with the traditions of the Prophet – it could be argued that this in turn established the foundations for legal determinations that further entrenched the disenfranchisement, exclusion and marginalisation of women from political and social life.[41] Abou El Fadl observes:

> "It is significant, however, that in a large number of legal determinations excluding women from public life and imposing the veil, the C.R.L.O frequently asserts that women are the majority of Hell, and that they are of a limited emotional and intellectual capacity. According to the C.R.L.O, because women are not in control of their emotions and are not as sagacious as men, they should not work outside the home, occupy positions of leadership, drive cars, pursue higher education, visit graves, travel without a male companion, or even attend mosques other than one closest to their homes. Despite its assurance to the contrary, the C.R.L.O employs these traditions in the affirmation of certain typologies - perceptions or social contracts - of the capacities and functions of women. This lays the foundation of for most of the patriarchal and condescendingly paternalistic determinations of Islamic law."[42]

Abou El Fadl argues that the status of Muslim women can be attributed to Wahhābī legal theory, and more specifically its authoritarian discourse and a selective approach to the textual legal evidence during the process of legal interpretation.[43] In this latter regard, it is noticeable that the two *fatwās* are selective in their use of evidence. This becomes apparent when the CRLO jurists refer directly to Abū Bakra's *ḥadīth,* along with the androcentric interpretative strategy of the Qur'anic verses in relation to Queen Bilqīs, to selectively construct the symbolic nature of women. The CRLO does not clarify if the expression 'deficient in intellect' is extracted from the factual perceptions relating to Saudi women or a selective approach to the textual legal evidence. However, it may be assumed that the CRLO that is likely incited by the dominant exclusivist perception of women in Saudi Arabia adopts a selective approach towards the androcentric and patriarchal interpretation of the authoritative texts.

[41] Abou El Fadl, *Speaking in God's Name*, 222-224.
[42] Ibid, 225.
[43] Ibid, 170-200.

The Saudi state sustains its interdependency with kin and tribal solidarity in order to protect the union of the state.[44] This interdependence protects tribal values, and this in turn perpetuates patriarchal practices (Al-Rasheed observes: "[T]he state endeavoured to keep their tribal ethos, which, among other things, keeps women in a patriarchal relationship under the authority of male relatives.")[45] Within the two *fatwās*, the interconnection of androcentric social norms, patriarchal culture and tribal society is expressed in the sustained ostracism of Saudi women. When the CRLO issued the *fatwās* which include a list of requirements of leadership (international travel, mixing with men and the negotiation of treaties with other states) before concluding that each requirement is contrary to the general status of women or the specific rulings intended to protect their chastity, honour, pride, piety and dignity,[46] the influence of patriarchal practices and tribal values were clearly indicated – this is perhaps most clearly indicated in the interpretation of the story of Queen Bilqīs, with her excessive emotionality and female character being used to explain her defeat and surrender to the Prophet Sulaymān. While the issue brings to light the persistence of patriarchy within the country, it can also be argued that the CRLO judgement implicitly makes it possible for patriarchal practices and tribal values to become further embedded within the juristic tradition. The Dār al-Iftā' can, to this extent, be theorised as 'an institutionalised public patriarchy' that implements the religious authority to gain control over women the extent to which the State permits.[47]

In addition, it is necessary to engage with any issue concerning women from sociological and socio-political perspectives, with the intention of gaining a fuller understanding of the relationship between the State and the Wahhābī movement. In Saudi Arabia, the private patriarchy performed by ordinary men latter turned into a religious duty that was enforced by the State.[48] This introduced a new dimension in the subordination of women that was almost entirely imposed and controlled by the state-based institutionalised public patriarchy. Until the contemporary period, this institutionalised public patriarchy has been mainly carried out by the Dār al-Iftā' along with other state apparatus. Through the enforcement of the Wahhābī ideology, the state has undertaken the duty of imposing all

[44] Madawi al-Rasheed, *A Most Masculine State: Gender, Politics, and Religion in Saudi Arabia* (Cambridge: Cambridge University Press, 2013), 5.
[45] Ibid.
[46] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16.
[47] Al-Rasheed, *A Most Masculine State*, 16-17, 57, 119-120 and 153-174.
[48] Ibid, 57.

patriarchal values upon women and thus emerged as the only arbitrator in the determination of women's status, rights and responsibilities.[49]

Over time, religion and power become an inseparable whole in Saudi society, and this culminated in a transformation process of the Wahhābī historical legacy into a state project in which the hegemony of men over women became state and national policy. Wahhābīsm has been closely associated with the proliferation of misogynistic and ultra-conservative discourses, and has thus actively contributed to practices of gender segregation and the spread of restrictive principles that seek to control and limit the function, role and status of women in society. While Wahhābīsm provided the initial framework within which conceptual and theoretical elements embraced conservative and discriminative discourses about women and their role, it eventuated ultimately in the emergence of a modern nation-state that provided the House of Saud and the *'ulamā'* with the opportunity to advance gender segregation in the country.[50] The state uses various instruments and mechanisms in order to enforce a specific vision of women's role within society. Sexual segregation in Saudi Arabia presents itself as an official and systematic enforcement, in which the religious establishment and state work closely together to mould the specific outlines of the public sphere.[51] Shahi relates the customary, legal and religious dimensions of this practice:

> "This sexual segregation, which is based on gender discrimination and social marginalization, is an obvious example of institutional violence against women, which is rationalized both through religious narratives and the laws and customs of the country."[52]

The restriction of the social interaction of unrelated men and women became simultaneously an official state regulation and a religious dictum that sets out the appropriate boundaries between men and women. This restriction upon gender mixing (*ikhtilāṭ*) is upheld by the Dār al-Iftā', and more specifically its issuance of *fatwās* that restrict women's educational, political and social activities.[53]

In its engagement with contemporary issues, the Dār al-Iftā' adopts a dual approach in order to distinguish what is forbidden and permitted. This interjects a paradox into the Dār al-Iftā's legal interpretations. Al-Atawneh highlights differences within the Dār al-Iftā's approach to contemporary issues by arguing that the *fatwās* that address modern innovations

[49] Al-Rasheed, *A Most Masculine State*, 57.
[50] Shahi, *The Politics of Truth Management,* 77 and Al-Yassini, *Religion and State*, 163.
[51] Basically, sexual segregation means the separation of unrelated men and women in any social platform in Saudi Arabia, that is, the prevention of intermingling of men and women who are not *maḥram*. See Shahi, *The Politics of Truth Management*, 163-164.
[52] Shahi, *The Politics of Truth Management*, 163.
[53] Al-Atawneh, *Wahhābī Islam*, 104.

and political issues reflect a somewhat flexible and moderate legal approach – this clearly contrasts with issues pertaining to women, which evidence a markedly more conservative character.[54] This conservatism arguably helps to preserve and maintain the Saudi state's Islamic national identity. Al-Rasheed observes:

> "The Saudi '*ulamā* follow the strictest interpretations on all matters feminine. The legitimacy narrative of the state requires the construction of gender relations in the most conservative manner. The quest to exhibit the Islamic identity of the nation rather than tribalism, or conservatism, lies at the heart of the persistence of such interpretations."[55]

There are a considerable number of state regulations that relate to women's rights that have aimed to protect the State's Islamic identity. To take one example, all women, irrespective of their age and status, are required to have a male guardian. All women need to obtain their guardians' permission for essential activities in their lives, which pertain to divorce, elective surgery, employment, marriage, opening a bank account and traveling.[56] The Dār al-Iftā', which houses the official conservative Saudi *'ulamā'*, in rendering a literal reading of the authoritative sources of Islamic law, further reinforces the State's regulations and enforcements that disenfranchise women. The two conservative *fatwās* echo the State's national and official ideology and further reinforce the appearance of public piety by providing an Islamic justification for the restriction of women's political and social participation.

Al-Rasheed suggests that Saudi Arabia's maintenance of the Wahhābī ideology and its teachings should be interpreted as a quasi-nationalist project that obtains its legitimacy from divine sources.[57] She examines the relationship between Saudi state formation, the Wahhābī religious revivalism and the centrality of gender construction. In line with her observation on the religious nationalism building process of the Saudi state, she maintains that the persistent exclusion of women can be attributed to Wahhābī ideology and argues that Wahhābīsm has been used as a religious nationalism or a politicized religious trend with the intention of constructing a homogeneous nation in which women come to symbolize its authenticity and national identity.[58] In the case of Saudi Arabia, Wahhābīsm has therefore transformed from a religious revival movement to a state project that seeks to create a religious national identity and consolidate a political realm. This is associated with an

[54] Al-Atawneh, *Wahhābī Islam*, XVI, 112-113, 146 and 148-149.
[55] Al-Rasheed, *A Most Masculine State*, 119.
[56] Shahi, *The Politics of Truth Management*, 166.
[57] Al-Rasheed, *A Most Masculine State*, 14-15.
[58] Ibid, 16.

increasing centralization of the public control and state powers which govern Islamic law – this attests to Wahhābīsm's transformation from a 'persuasive' into a 'coercive' authority.[59] The state has therefore applied Wahhābī teachings in order to construct a religious nationalism which renders women invisible.

The interaction between patriarchal socio-cultural forms, the State and Wahhābī religious nationalism establishes a nation in which the citizenship rights and political participation of women are restricted and in which their social visibility is restricted. As al-Rasheed observes, the Dār al-Iftā' asserts itself at this point as an embodiment of religious nationalism that helps to safeguard the piety of the nation.[60] The piety of the nation can therefore be determined or evaluated in accordance with the extent to which the State acts in accordance with the Dār al-Iftā's legal edicts (as Al-Rasheed observes, "[t]he piety of the Saudi state is measured by its compliance with the strictest Islamic interpretations and *fatwas*)."[61] A close and rigid adherence to Wahhābī religious nationalism can most likely be traced back to the CRLO's *fatwās* on women's leadership and an associated failure to recognise that the assumptions and laws that pertain to women's rights are socially constructed and can be reinterpreted in terms of Islamic law. Al-Rasheed observes:

> "Many of the Saudi *fatwas* on women and leadership echo pervasive past and contemporary religious opinions in the Muslim world. However, the importance of such opinions in a country that is founded on religious nationalism is perhaps unique. In Saudi Arabia, women define the religious and moral character of the nation, but cannot lead it."[62]

Within the two *fatwās*, the invisibility of women within the political and social spheres can be understood to be an effect of religious nationalism. The CRLO continues, in rejecting female eligibility for the administration of justice and the offices of political leadership, to adhere to an androcentric and literal interpretation of the Qur'anic verses and Prophetic sayings. This roots the religious nation within the authoritative texts and brings the State's masculine dimensions out in fuller detail. The *fatwās* that relate to women's leadership do not only reveal the unique attributes of Wahhābī Islamic legal thought but also illustrate the Dār al-Iftā's obsessive efforts to construct and maintain the religious nation by drawing upon issues relevant to women.

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[59] Abou El Fadl distinguishes between coercive authority and persuasive authority when he writes: "[c]oercive authority is the ability to direct the conduct of another person through the use of inducements, benefits, threats, or punishments so that a reasonable person would conclude that for all practical purposes they have no choice but to comply it. Persuasive authority involves normative power. It is the ability to direct the belief and conduct of a person because of trust." See Abou El Fadl, *Speaking in God's Name*, 18.
[60] Al-Rasheed, *A Most Masculine State*, 110.
[61] Ibid, 20-21.
[62] Ibid, 115.

The persistent marginalization of Saudi women does not only derive from the various forms of patriarchy embedded within established cultural, social and traditional norms, but can also be said to be a function of historical processes that sought to transform religion into a state religious nationalist ideology. Although the social and tribal ethos continues to influence the two *fatwās*, the connection between the State and Wahhābī religious nationalism appears to provide considerable insight into the exclusion of Saudi women from political participation and positions of leadership. This further reiterates how the *fatwās* can serve as a mechanism that reinforces the interrelation of religion, state and Wahhābī religious nationalism. This also recapitulates that the two *fatwās* need to be understood within their historical, political and social context, as this will demonstrate how this wider environment strongly influenced the approaches, interpretations and understandings of the Dār al-Iftā's members upon the issue of female leadership.

On 25 September 2011, when the second municipal elections took place, King 'Abd Allāh indicated his wish for heightened women's political participation when he announced that women would be appointed to the Consultative Council and would be permitted to participate in the 2015 municipal elections.[63] These two assertions clearly clash with the two *fatwās* issued by the Dār al-Iftā'. The recent inclusion of women as candidates and voters could compel the Dār al-Iftā' to either issue a new adaptive *fatwā* relevant to women's political participation and leadership or adopt an even more conservative or reactionary position on the issue, with a view to retaining the symbolic constitutive elements of the Wahhābī religious nationalism. Given the contextual interaction between the social context and Islamic legal interpretation/methodology, the two *fatwās* highlight the unique attributes of Wahhābī-Ḥanbalī Islamic legal thought and also provide considerable insight into how the cultural, national, political, social and tribal values are imperceptibly and synchronically incorporated into the Dār al-Iftā's *fatwās*. In the first instance, it can be claimed that the Dār al-Iftā' played an important role in creating and maintaining Saudi socio-cultural dynamics and Wahhābī religious nationalism; however, it is also strongly influenced by cultural, patriarchal, social and tribal parameters when issuing its *fatwās.*

C) The Presidency of Religious Affairs (Diyanet) in Turkey

Since its establishment the Diyanet has issued thousands of *fatwās* that inform the Turkish people about Islam and Islamic legal issues. These *fatwās*, which derive from petitions posed by individuals, engage with a wide range of subjects which include

[63] Shahi, *The Politics of Truth Management*, 169 and Al-Rasheed, *A Most Masculine State*, 288.

economics, medicine, rituals, sciences, social life and technology. The official website of the Diyanet is available and it features a series of answers to individual religious questions, decisions of the Religious Council, online publications and reports on religious issues. Within the Diyanet, the High Board of Religious Affairs (henceforth: HBRA) is the Presidency's highest consultative and decision-making service that is tasked with determining and developing the Presidency's policies, while conducting scholarship activities which include answering religious questions, examining religious publications and undertaking research in the area of religion.[64] The issue of women's leadership was engaged under the heading "the Participation of Women in Business and Political life", and the discussion culminated in a religious report which was published by the HBRA in 2002.[65]

1. A Methodological Evaluation of the Diyanet's Report relating to Women's Participation in Business and Politics

In the aforementioned report, the HBRA acknowledges the participation of women in civil service, politics and society and seeks to promote the model of active and energetic Muslim women. The report begins with a statement that explains why it has been issued, and then proceeds to outline the question and answer before setting out the response with legal and religious precision. It is originally observed that men and women are both human and 'servants of Allah'. The fundamental freedoms and rights that apply to both men and women are also set out in considerable detail. In issuing these assertions, the HBRA is guided by the insight that men and women are equally accountable to God, irrespective of their gender. The original conclusion that men and women share an innate spiritual equality enables the HBRA to further expand this initial premise into a series of basic rights and liberties. Rather than referring to the CRLO's assumption of gender-based inferiority, the HBRA instead begins from an assumed equality of status between men and women. It is therefore clear that in the first instance, the HBRA is concerned with anchoring an egalitarian interpretation of gender within Islam's ethical vision.

From the outset, the HBRA, in referencing the Q. 60:13, emphasises the free will of women.[66] However, this is potentially problematic, as a transcription error appears to have been made in relation to the number of the verse. The cited version reads:

[64] Yiğit et al., *Religious Affairs Presidency*, 4.
[65] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.
[66] Ibid.

> "O you who believe! Turn not (for protection) to people on whom is the Anger of Allah. About the Hereafter they are already in pain and suffering, just as the unbelievers are in pain and suffering, about those (buried) in graves" (Q. 60:13).

In referring to this verse, the HBRA explicitly seeks to evidence that women demonstrated free will in presenting the oath of allegiance (*bay'a*) to the Prophet during his life-time. However, this verse does not appear to relate to the acceptance of women's oath of allegiance. If women's oath of allegiance (*bay'a*) was the main preoccupation, then the Q. 60:12, rather than the Q. 60:13, should have been the main preoccupation. It states:

> "O Prophet! When believing women come to you with an oath of their loyalty to you (with a promise, pledging), that they will not associate in worship any other thing whatever with Allah, and they will not steal, and they will not commit adultery and they will not kill their children, that they will not utter slander, fabricating from their hands and feet, and that they will not disobey you in any goodly just matter - Then you accept their pledge (oath) of loyalty, and pray to Allah their forgiveness (of their sins): Verily, Allah is Often Forgiving, Most Merciful."

This verse clearly establishes that HBRA scholars complement their initial allusion to women's free will with an emphasis upon juridical capacity (capacity to act) and its legal counterpart (*jus capiendi*). In grounding itself within analogy (*qiyās*) and discernible effective cause (*'illa*), the report claims that the Prophet's acceptance of women's oath of allegiance can be said to establish an effective cause for acknowledging women's independent free will. Although it does not explicitly use the term *qiyās*, the HBRA's creative adaptation of women's oath of allegiance most probably derives from the analogy. However, as the CRLO's two *fatwās* demonstrate, the preference for the relevant *ḥadīth* by the CRLO results in the use of analogy (*qiyās*) being restricted to a minimum.[67]

In contrast to the CRLO, the HBRA primarily uses analogical reasoning and recognizes its value as an instrument of Islamic legal jurisprudence when evaluating the issue of freedom and its specific relation to women's will. This application of analogical reasoning (*qiyās*) to justify and substantiate the independent free will of women within the sphere of politics clearly derives from the HBRA's debt to the methodology of the Ḥanafī school (which places "greater emphasis on rational system, human logic, as an independent basis for legal discussion".)[68] Kaya clarifies:

[67] Fatwā No. 11780 in *Fatwas of the Permanent Committee*, 17: 13-16, and Fatwā No. 610 in *Fatwas of the Permanent Committee*, 23: 403-404.
[68] Vikør, *Between God and Sultan*, 95.

> "[HBRA members'] bureau also houses a religious inquiries room (*fetva odası*). My experimentation in the room proved that, unless otherwise stated, a Hanafi approach is taken for granted. Shafii catechisms are availed of secondarily."[69]

As Kaya observes, the influence of Islamic legal methodology of and the tradition of the Ḥanafī school are clearly evidenced within the outlines of the HBRA and its *fatwās*. In addition to this clear debt to the Ḥanafī school, it is noticeable that the HBRA practices, to a substantial extent, a variation of collective *ijtihād* when addressing itself to the subject of female leadership. As Chapter Two has already explained in more depth, the HBRA applies two types of *ijtihād* – *ijtihād* by means of *ijtihād inshā'ī* and *takhrīj* – in order to engage with complicated and novel issues that fall within the parameters of collective *ijtihād*. With regard to female leadership, *ijtihād* by means of *takhrīj* is presumably carried out by HBRA members; as such, previously established Islamic legal opinions are evaluated in order to construct a new and practicable Islamic legal ruling compatible with contemporary Turkey's political and social values.

The report (*fatwā*) states that the Ḥanafī school and Ibn Ḥazm (d. 1064) explicitly held the permissibility of appointing a female judge in some circumstances wherein her testimony is allowed; meanwhile, scholars such as al-Ḥasan al-Baṣrī (d. 728) and al-Ṭabarī (d. 923) go further to contend that it is possible for a woman to work as a judge without any restrictions.[70] In building upon the contributions of these early Muslim scholars, the HBRA takes the political and social circumstances of Turkey into account and formulates its own Islamic legal view. In interpreting and understanding the Qur'an and Sunna, the HBRA engages the diversity of opinions within the area of Islamic law, and uses this diversity to sketch suggestions for alternative solutions. Dağcı observes:

> "As far as possible, the HBRA draws advantage from the alternative solution suggestions that exist in the Islamic legal legacy. That being said, the decisions of the HBRA does reflect its own views rather than a particular legal school ideology."[71]

The HBRA evidently accepts divergent views on any religious issues as alternatives, and the Islamic historical-cultural legal heritage can be said to be an important reference point for the HBRA's practice of *iftā'*. In this regard, it may be argued that the HBRA gives the appearance of having liberated itself from the shackles of the past, and of enjoying a greater degree of flexibility and freedom in the contemporary interpretations that it applies to new

[69] Kaya, "Balancing Interlegality," 124.
[70] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.
[71] Dağcı, "Din İşleri Yüsek Kurulu,"11.

Islamic legal issues. The report clearly identifies defining attributes of the HBRA's legal interpretations, and in particular those that relate to social issues.

Consensus among Muslim scholars (*ijmā'*)[72] does not only relate to textual sources but can also emerge as a mechanism that endorses the permissibility of female leadership. Among the HBRA scholars, a clear consensus has formed around the fact that Umar b. al-Kaṭṭāb, the second caliph, appointed al-Shifaa' b. 'Abd Allāh, a woman, as an inspector within Medina's marketplace.[73] In further strengthening its argument, the HBRA observes that, during the time of the Prophet and his Companions, women were employed in private and public service jobs and were also entitled to assert their legal opinions.[74] In addition to this the legal opinions attained through the *ijmā'* of the Prophet's Companions (*Ṣaḥāba*) and opinions advanced by successive generations of scholars have been utilized during the issuance of *fatwās*.[75]

However, rather than following the CRLO's methodology that adopts a decontextualized and literal reading of the relevant legal textual sources, the HBRA instead temperately offers a contextual reading that depicts the circumstances, conditions, environment and historical context that prevailed during the time of the Prophet and the Companions – this intends to provide a more authentic Islamic legal ruling that is compatible with Islam's spirit. The HBRA adopts the view that historical events that occurred during the time of the Prophet and the Companions do not, contra the position of the CRLO, justify the imposition of the supposed *ijmā'*, which prohibited women's leadership and their political participation. Two forms of consensus therefore collide. Of the two, the HBRA's position seems more sustainable, because the Companions and Successors do not appear to have commented extensively upon the ruling relating to women in leadership.[76] In addition, the

[72] Consensus (*ijmā'*) is frequently defined as the unanimous agreement of all qualified people in a given period on a particular ruling. Legal theorists often define it in a way that suggests that all competent legal scholars must unanimously agree upon a particular ruling that relates to Islamic legal issues. Whenever this occurs, the ruling becomes a matter of binding legal authority, and any disagreement on the subject is henceforth prohibited. David Solomon Jalajel, "Women & Leadership in Islam: A Critical Analysis of Classical Islamic Legal Texts" (PhD diss., University of the Western Cape, 2013), 100.
[73] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.
[74] Ibid.
[75] "Fetva Yöntemimiz," in *Din İşleri Yüsek Kurulu Dini Bilgilendpirme Platformu*, accessed September 12, 2015, https://fetva.diyanet.gov.tr/FetvaYontem.
[76] In addressing women's political leadership, Jalajel also challenges the assertion of *ijmā'* on this specific issue. He observes: "[t]he argument given for this claim is very weak, simply that no woman is known to have been appointed to a position of political leadership. This is not a case of silent consensus, since this requires a positive statement or action to be carried out which the other jurists learn about and subsequently refrain from criticizing. The mere absence of a women political appointee does not require the jurists to even think on the

CRLO also asserts *ijmā'* when discussing the appointment of women to judicial posts; however, upon this issue *ijmā'* cannot be presumed to be a powerful argument – this is partly because women are permitted to provide judgements on non-capital crimes and also partially because of al-Ṭabarī's widely acknowledged position that women should be granted an unconditional right to serve as a judge.[77]

It is clear that the HBRA attains its legitimacy by interpreting the relevant Qur'anic verses, applying the authentic Sunna, resorting to consensus (*ijmā'*), and using analogy (*qiyās*).[78] The HBRA maintains that the Qur'an and authentic Sunna are the fundamental textual sources. Dağcı observes:

> "In the process of answering questions, the Qur'an and authentic Sunna (*sunna ṣaḥīḥa*) are in the position of the fundamental legal source and base. The HBRA adopts the wording-content integrity as an essential principle in understanding and interpreting of the Qur'an and Sunna, and acts carefully to avoid from the use of style that results in misunderstandings and uneasiness."[79]

The HBRA's approach to the Sunna, along with the application and evaluation of certain *ḥadīths*, clearly diverges from the CRLO. The HBRA scholars do however appear to adopt a more flexible attitude towards the *ḥadīth* narrated by Abū Bakra, an earlier transmitter.[80] This *ḥadīth* is not criticized or rejected but is instead evaluated in its context. The HBRA, in assessing this *ḥadīth*, follows a different approach when it questions what the Prophet really meant in this *ḥadīth* – this extends to the associated questions of its context and legal value. The orientation towards these questions is also evidenced within the HBRA report. The scholars state:

> "With regard to the aforementioned *ḥadīth* which warns against women's leadership, the Prophet had been remarking on the seemingly imminent collapse of the neighbouring Sassanid Empire whose ruler was a woman. Indeed, this empire expired only a short while later."[81]

This statement clearly clarifies that the HBRA's hermeneutic reading of the *ḥadīth* proceeds through a tripartite analysis. The first part focuses upon the context in which the Prophet

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matter, let alone object to it. The most it could indicate is that it is permissible for women to be absent from the high echelons of political authority at a given time and place." Jalajel, "Women & Leadership," 105-106.

[77] Jalajel, "Women & Leadership," 106.

[78] "Fetva Yöntemimiz," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.

[79] Dağcı, "Din İşleri Yüsek Kurulu," 11.

[80] Abū Bakra relates: "God benefited me during the days (of the battle) of *Al-Jamal* [Camel], Allāh benefited me with a word I heard from Allāh's Messenger after I had been about to join the companions of *Al-Jamal* (i.e., the camel) and fight along with them. When Allāh's Messenger was informed that the Persians had crowned the daughter of Kisra (Khosrau) as their ruler, he said, "Such people as ruled by a lady will never be successful." Al-Buhārī, *Ṣaḥīḥ al-Bukharī*, ḥadīth no. 4425, vol. V, 436.

[81] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.

issued his statement. In engaging at this point, the HBRA report discusses the possibility that the Prophet had commented on the developing situation in Sassanid Empire, and the HBRA therefore attempts to assess the Prophet's statement with reference to historical facts. The second part of the analysis seeks to evaluate the *ḥadīth* from the Qur'anic perspective. To put it differently, the HBRA stresses the absence of any negative statement within the Qur'an which relates to Bilqīs, the Queen of Sheba, and her leadership. This closely corresponds to an Islamic legal maxim in Islamic law which holds that if two general texts contradict each another, one can be reinterpreted in order to achieve reconciliation. This legal maxim has the clear benefit that it prevents either text from being discarded. It can be argued that the HBRA, in comparing the *ḥadīth* narrated by Abū Bakra with the Qur'anic story, seeks to prevent a clear contradiction from arising. The text relating to Queen Bilqīs, which is presented in its initial meaning, is viewed as indicating the true intent of the Lawgiver and thus requiring the *ḥadīth* narrated by Abū Bakra to be reinterpreted. At this point, the *ḥadīth* is viewed as being open to reinterpretation. The final part of the analysis seeks to assess the application of the *ḥadīth* as the basis for a legal matter. In suggesting that the significance of this *ḥadīth* is restricted to the leadership of the Sassanid Empire during the time of the Prophet, the HBRA's scholars strongly imply that it does not provide a sufficiently strong legal basis for a general rule that operates within Islamic law. This explains why the HBRA focuses upon the question of whether the *ḥadīth* should be regarded as a legal foundation, as opposed to its authenticity.

The HBRA's tripartite analysis of the *ḥadīth* literature clearly reiterates the importance of contextual evaluation during the issuance of a *fatwā* or Islamic legal decision. In contrast to the CRLO's approach to Abū Bakra's *ḥadīth*, the HBRA seeks to restrict the *ḥadīth* to a particular context by defining it as an indication of the imminent collapse of the neighbouring Sassanid Empire. Rather than applying wordings within their general meaning, the HBRA instead adopts the legal maxim which holds that particular circumstances do not establish generality, or *takhṣīṣ al-'āmm* (specification of the general term) when interpreting the legal consequences of the *ḥadīth*. This is why HBRA members, in engaging with the aforementioned *ḥadīth*, interpret general terms and words more restrictively than their literal sense would suggest.

The HBRA also avoids accepting rulings that are derived from, or influenced by, local customs and practices (*'urf*), both of which are viewed as non-fixed and changeable

determinations in the process of legal interpretation.[82] The report suggests that while *'urf* can be legitimately applied as a determinative and explicative standard, it should not be engaged as a legal tool or principle. The HBRA selects a number of classical opinions relevant to the issue of female leadership and evaluates them by arguing that Muslim jurists and scholars were implicitly impacted by their regional customs and social norms when formulating legal decisions relating to women's leadership.[83] It is noticeable that *'urf* has been used as an essential criterion to explain the positive and negative views that Muslim scholars have advanced on the subject. The HBRA scholars state:

> "Ḥanafīs and Ibn Ḥazm argued that a woman may serve as a judge in the type of cases in which they are able to act as a witness. Some Islamic scholars, such as al-Ṭabarī and al-Ḥasan al-Baṣrī also held that women may serve as judges in all cases without any restrictions. These indicate that Islamic scholars of the classical period presented their opinions concerning the issue of women's judgeship by acting on the knowledge, culture, and experience of their time. Nevertheless, in the sources of classical Islamic jurisprudence, there were judgements which state that women are not qualified to serve as the ranking government executives. These legal judgments also depended on the information, culture, and experience of those Islamic jurists who asserted that women are not capable of holding any political and judicial position."[84]

This contribution appears to establish that the HBRA accepts *'urf* as a local practice or standard which influences jurists' legal interpretations in accordance with context and time. The HBRA, in acknowledging the possibility of female leadership in Islam, recognises scholarly debates and notes how *'urf* was an important influence upon earlier Muslim scholars who sought to define their views on women's leadership by extracting customary, traditional and social values from their own society.

The HBRA therefore maintains that Islamic jurisprudence remains open to alternative possibilities when addressing itself to social issues for which there are no unequivocal premises (*naṣṣ*). It states:

> "However, these demonstrations of women's rights and competencies are entirely contingent upon socio-economic, cultural circumstances and needs. On this issue, Islam merely determines the fundamental rights and principles, and the remaining part is left to the progress of Muslim societies."[85]

The scholars of the HBRA distinguish the laws that regulate fixed and immutable ritual practices (*'ibādāt*) from rulings that are addressed to social transactions (*mu'āmalāt*). This distinction is implicitly invoked when the HBRA asserts that the obligations of leaders,

[82] "Fetva Yöntemimiz," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.
[83] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.
[84] Ibid.
[85] Ibid.

including delivering the Friday sermon and leading Friday prayers, can be implemented by a person who has been appointed by the head of state. The *fatwā* that addressed the question of whether women can lead men in prayer provides considerable insight into the approach adopted by the HBRA. The *fatwā* maintains that all *madhhabs* clearly establish that it is entirely unacceptable for a woman to lead men in congregational prayers; the introduction of any such measure would create a *bid'a* (unprecedented innovation) in religion.[86] The HBRA therefore argues that the leadership of prayers and the state should be designated to two entirely separate spheres. Here it is worthwhile to note that in the view of the HBRA, the derivation of Islamic legal rulings concerning social issues from the authoritative textual sources should be made by reason. The issue of female leadership is most probably engaged as a social issue whose regulations have the potential to change in accordance with place and time; in contrast, the leadership of the Friday prayer and prayer more generally would be categorised under fixed and infallible ritual practices (*'ibādāt*). The HBRA's approach allows a certain amount of flexibility and could conceivably precipitate the emergence of female leadership within the political area.

In operating within the democratic, modern and secular context of contemporary Turkey, the HBRA members have applied a contextual and historical reading of Islamic law's authoritative sources in order to identify general Islamic legal principles that relate to women's leadership; as such, the objectives of the sharī'a (*maqāṣid al-sharī'a*) possibly emerge as another Islamic legal tool that can be implicitly drawn upon by the HBRA during the process of legal interpretation. While no specific explanation is forthcoming about the objectives of the sharī'a, it is likely that the report substitutes the word 'Islam' for 'objectives of the sharī'a'. The HBRA states:

> "By virtue of the fact that judgeship and leadership are important civil services within society, Islam critically highlights that individuals charged in such positions ought to have the qualifications to conduct matters appropriately and do not discriminate with respect to class, age or race."[87]

Here it is noticeable that it is not class, race or sex that is deemed to be the essential criterion; instead, capacity and qualifications are foregrounded as the essential attributes that should be demanded of a leader. Both are deemed to be aligned with the fundamental principles of Islamic law that relates to the head of state. In invoking this general principle, the HBRA presumably seeks to indicate that these characteristics and qualifications are not restricted to

[86] Din İşleri Yüksek Kurulu, *Fetvalar* (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2015), 169.
[87] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.

men – accordingly, anybody who possesses these required attributes can be tasked with the duty of state leadership. It can therefore be concluded that the HBRA's general Islamic legal approach to the issue opens up the way for evaluating the issue in accordance with the needs and demands of contemporary society, the objectives of the sharī'a and ethicality. Kaya observes:

> "This decided ethicality on which the Diyanet is locked, can be fulfilled only by elasticity. Accordingly, for a judgement to be accurate, rather than the doctrinaire path of legal reasoning behind it, its compatibility with the higher objectives of Sharia (*maqāṣid al-sharī'a*) is to be given primary consideration."[88]

The HBRA's approach accommodates legal norms to social realities, focuses upon aligning Islamic principles with contemporary realities and also makes extensive use of reasoning. Although it applies these key principles in an understated manner, the HBRA seeks to enhance an eclectic, ethically and legally developed interpretation by drawing extensively upon the views of earlier Islamic scholars. For possible solution on the issue at hand, the HBRA initially searches the earlier Muslim scholars view to construct its own legal ruling and *fatwā*. Once it is identified, the solution is then closely aligned with the conditions of Muslim within contemporary Turkey. The HBRA's approach to women's leadership is characterised by an eclectic method that privileges social cohesion over the decontextualized and literal reading advanced by the CRLO.

2. A Contextual Evaluation of the Diyanet's Report relating to Women's Participation in Business and Politics

In comparison to their counterparts in other Muslim countries, Turkish women enjoy considerable civil and political rights and are more visible in the public and social domain. Within the Muslim World, Turkey's achievements in the field of women's rights (educational, legal and political) are widely recognised and acknowledged as being unparalleled.[89] Key protections are legislatively guaranteed by the Turkish Civil Code (1926), whose features closely resemble the Swiss Civil Code, its direct inspiration.[90] The adoption of this Code severed all judicial and legislative links with Islamic law, and thereby transformed the civil, educational, personal and political status of women. In keeping with the provisions of the Civil Code, marriage partners were provided with equal rights (in matters pertaining to child custody, divorce and marriage), polygamy was prohibited and

[88] Kaya, "Balancing Interlegality," 199.
[89] Deniz Kandiyoti, "End of Empire: Islam, Nationalism and Women in Turkey," in *Women, Islam and the State*, ed. Deniz Kandiyoti (London: Palgrave Macmillan, 1991), 22.
[90] Kandiyoti, "End of Empire: Islam, Nationalism," 22.

women gained the right to choose their own spouses.[91] In addition to these significant innovations, women were enfranchised in two stages; the right to vote and stand as candidates in municipal elections were granted in 1930, and the same rights were extended to national elections four years later.[92] However, this advance, while important in its own right, potentially concealed the fact that women had been active in Turkish politics and society since the Republican regime was established in 1923. On 16 June of this year, for example, the Women's People Party (*Kadınlar Halk Fırkası*) had been established.[93] This party, which was never formally recognised, sought to educate women about their rights in the economic, political and social spheres.[94] On 7 February of the following year, the members of this party established the Union of Turkish Women (*Türk Kadınlar Birliği*).[95] This party sought to achieve women's enfranchisement by pressurising the Parliament on this issue.[96] However, the chamber rejected this proposition with the strong support of the national press. Although the adoption of the new Civil Code upheld women's legal equality, Republican leaders did not see fit to grant this right to women until the beginning of the 1930s.[97] On 5 December 1934, women gained the right to vote and hold office before, one year later, seventeen women were elected as deputies to the Grand National Assembly.[98] Since then, women have been repeatedly supported and encouraged in the exercise of their right to vote and stand for election. Although these rights recognised to all women were not equally enjoyed by all women, significant numbers of Turkish women were able to benefit from education, access employment opportunities and participate in public offices.

Over time, the active participation of women in political and social life has gradually increased, and their presence has grown in equal proportion. As a result, women's rights have become established as constitutive part of contemporary Turkey's domestic political settlement. In 1993, Turkey elected Tansu Çiller as its first female prime minister and she served in this role until 1996,[99] after then (between 1996-97) serving as Turkey's deputy

[91] Zehra F. Arat, "Turkish Women and the Republican Reconstruction of Tradition," in *Reconstructing Gender in the Middle East: Tradition, Identity, and Power*, ed. Fatma Müge Göçek and Shiva Balaghi (New York: Columbia University Press, 1994), 62-63.
[92] Arat, "Turkish Women and the Republican," 57.
[93] Ömer Çaha, *Women and Civil Society in Turkey: Women's Movement in a Muslim Society* (Surrey: Ashgate Publishing Limited, 2013), 50.
[94] Ibid.
[95] Ibid.
[96] Ibid, 50-51.
[97] Ibid, 51.
[98] Jad Adam, *Women and the Vote: A World History* (Oxford: Oxford University Press, 2014), 404.
[99] Clinton Bennett, *Muslim women of Power: Gender, Politics and Culture in Islam* (London: Replika Press Pvt Ltd, 2010), 109.

prime minister and foreign minister.[100] Although True Path, her political party, exerted considerable indirect influence during the period 1999-2000, it won the smallest number of seats (85) in 1999 and then lost its entire parliamentary representation three years later, with Ciller's resignation following shortly afterwards.[101] Her political contribution was nonetheless hugely significant, and she succeeded in crafting a leadership style that was simultaneously egalitarian, feminine and modern. In no small part due to her contribution, seventy-nine female deputies were elected in the 2011 General Election, and three further female deputies were elected in the General Election which followed four years later.[102] Although women's political representation still remains low in comparison to the European Union average, there is an ongoing effort to increase women's participation in economic, political, and social life.[103] Since the Republic of Turkey was established, women's parliamentary representation and political participation has increased, and women have occupied senior diplomatic and judicial posts. Turkey has become established as a country which supports women's empowerment and their full participation in all spheres of society, including full participation in decision-making processes.

Although the socio-political status of women in Turkey has advanced in important respects, some continued constraints reiterate that this is an issue which the Diyanet must approach with considerable caution. Questions relating to the rights, role and status of women in relation to Islam and Turkish society and state continue to confront the Diyanet. By virtue of the fact that the Diyanet is situated within the Turkish state and circumscribed by various cultural forms, both secular regulations and cultural norms present themselves as important points of reference when the Diyanet addresses itself to issues pertaining to gender issues. The Diyanet's approach to two controversial issues, the ban on headscarf in public places (including public buildings, schools and universities) and the customary practice of honour killing, specifically indicate the institution's ability to handle issues of considerable sensitivity – its engagement in both of these respects have done much to dispel the misconception that the Diyanet is an ideological apparatus of the state whose agency is highly restricted by secular legal regulations. In the first instance, the Diyanet's approach to the headscarf issue can be said to reflect its attitude towards secular regulations and state

[100] Bennett, *Muslim women of Power*, 109.
[101] Ibid, 109-13.
[102] Çiçek Tahaoğlu, "*7 Haziran ve 1 Kasım Kadın Vekil Oranları*," accessed October 05, 2015, http://bianet.org/bianet/siyaset/168890-kadin-vekil-orani-dustu-43-ilden-sadece-erkek-vekil-cikti.
[103] Yesim Sevig, "The Participation of Women in Economic, Professional and Social Life in Turkey," *Quaderns de la Mediterrània* 22 (2015), 129-131, accessed February 12, 2018, http://www.iemed.org/observatori/arees-danalisi/arxius-adjunts/qm22/95Quaderns_%20ParticipationWomenTurkey_YSevig.pdf.

policies. The Diyanet's view is that the wearing of the headscarf is a religious requirement for Muslim women,[104] which clearly conflicted with the Constitutional Court's ruling against veiling within public buildings.[105] In its engagement with honour killings, the institution has also made a considerable effort to prevent its reaching out to women.[106] Taking these two cases into account, it could be argued that the Diyanet is a service department for the religious needs of the public; it is not, to this extent, an institution that is entirely controlled by the State. These two cases demonstrate, to a certain extent, the autonomy of the Diyanet from cultural norms and the State's secular regulations.

Taking into account the fact that the Diyanet has freedom of speech on religious issues, it should be acknowledged that the report relating to female leadership derives from its own Islamic legal view rather than secular regulations. The report on female leadership is composed of an eclectic mixture of democratic values and Islamic legal principles, which has been engendered by the HBRA. In operating within Turkey's multi-dimensional and multi-layered political and social environment, the HBRA has been increasingly predisposed to approach the issue of female participation in politics from a modern Islamic legal perspective. In its initial stages, the report refers to the equality between men and women as servants of God and maintains that Islam recognises the equal economic, educational, political and social rights for both men and women. It states:

> "In our religion, the basic rights and liberties given to men are also recognized for women. Accordingly this, it does not make mention any discrimination between women and men in terms of fundamental rights, such as the right to life, the right to maintenance and improvement of material property and spiritual existence; personal freedom and security; the liberty of conscience, religious belief, and conviction; the right of possession and disposition; the right to assert a claim and standing as a plaintiff or litigious before the judicial authority by appealing to legitimate means and ways; the right of equality before the law and of justly treatment; the right of immunity of domicile; the right to defend of dignity and honor; the right to marry and start a family; the right of privacy, its immunity, and subsistence warranty."[107]

In many respects, the Islamic rights that the Diyanet recognises overlap with the fundamental rights that the Turkish secular legal system extends to both men and women. Rather than perpetuating the impression that the HBRA is preoccupied with aligning with the State's democratic and secular sensitivities, the report reflects the collective effort of the HBRA members within a secular democratic state. The report is, to a certain extent, the Islamic legal

[104] Zeyno Baran, *Torn Country Turkey between Secularism and Islamism* (California: Hoover Institution Press Publication, 2010), 90.
[105] Kaya, "Balancing Interlegality," 220.
[106] Kaya, "Balancing Interlegality," 265 and Bardakoğlu, *Religion and Society New Perspectives*, 157.
[107] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.

product of Muslim scholars whose mindset has been extensively shaped by the democratic and social values Turkey and its wider social environment. It can therefore be argued that the report relating to women's leadership reflects the affinity and compromise between Islamic legal principles and the values of the democratic secular establishment. In addition, it also brings out the overlap between two legal systems – Islamic and secular – that are frequently assumed to be diametrically opposed to each other.

The HBRA expresses the view that Islam opens up considerable space for a sustained encounter between human reasoning and historical processes, Qur'anic principles and social circumstances. The general objectives and principles established by Islam enable human beings to constitute their own political and social structures.[108] There is no issue with installing women within a position of leadership as long as this does not conflict with general objectives and principles put in place by Islam and Islamic law. The HBRA concludes its decision by referring to three points, which are as follows:

> a) In Islam, fundamental rights and liberties attributed to men are also extended to women – by logical extension, female status does not justify the restriction of judicial capacity and *jus capiendi*;
> b) In meeting Islamic requirements, all people, both men and women, have the right to participate in business life, trade and work.
> c) No objections can be made to efficient women who possess the required qualifications in their undertaking all kinds of administration and assuming the role of head of state.[109]

These three points demonstrate that the report, in addressing female leadership, extends its analysis to the ties between the contemporary life of Turkish society and religion. Çaha, in drawing upon extensive fieldwork, observes that both familial structures and political and social life are, at least in relation to gender roles, defined by an egalitarian ethos.[110] This predisposition towards egalitarian sentiment is invoked within the report's allusion to "the equality between men and women", which serves to define gender equality as one of the objectives of Islamic law.[111] The objectives of Islamic law are referred to with the intention of attenuating the potential impact of predominant classical Islamic legal rulings upon female leadership and therefore those legal rulings are disregarded upon the basis that pre-modern societies lacked the educational, political and social means to support a system of gender

[108] Aydin et al., *Sorularla İslam*, 153.
[109] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.
[110] Ömer Çaha, "Attitudes towards the Status of Women in Turkish Society: The Case of Istanbul*," European Journal of Economic and Political Studies* 3, no. 2 (2010), 160-161, accessed February 10, 2018, http://academos.ro/sites/default/files/biblio-docs/837/102.pdf.
[111] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.

egalitarianism. The HBRA therefore treats the objectives of Islamic law as voluntary moral principles, thus ethicizing them in a society where the political participation of women has been fully internalized.

At an administrative and representative level, the Diyanet has sought to promote social peace and solidarity by focusing upon the social aims of religion, which can be said to be supra-legal and moral.[112] From this perspective, the HBRA's approach to female leadership appears to strongly depend upon rational and social praxis rather than a literal reading of the authoritative legal texts. While the Diyanet adopts a more democratic, inclusive and moderate approach to issues pertaining to women, its Islamic legal statements and religious activities have nonetheless incurred strong criticism. Baran observes:

> "In recent years, however, the *Diyanet* has strayed beyond this narrow scope of activities, and begun to convey Islamic norms into private life on behalf of the state … The *Diyanet* has also distributes pamphlets for women on marriage, sexuality, and duties as a proper housewife.
>
> Such apparent efforts by the Turkish government to dictate social norms to women on the basis of Islam are having a significant and negative impact on one of the greatest achievements Atatürk's reforms, gender equality."[113]

Baran's critics may seem inconsistent and injudicious when the advisory character of the Diyanet's Islamic legal decisions and statements (*fatwās*) are taken into account. Yavuz also stresses this advisory and non-binding dimension. He observes:

> "[The Department of Religious Affairs] issues "answers" (fatwas), which are non-binding religious opinions. It is left to believers to decide whether they want to implement them. Thus, in Turkey shari'a, as the operationalization of Quranic principles, takes the form of fatwas rather than binding law."[114]

In addition, the report relating to the participation of women in business and political life creates the impression that the Diyanet methodologically follows an Islamic legal interpretation style which appears to exquisite, inclusivist, positive and supportive of women's rights – features which appear to directly refute Baran's allegation against the Diyanet. Taking the HBRA's report into account, it will also be noted that the HBRA scholars address the issue of female leadership by taking Turkey's political and social realities into account – in this respect, it is instructive to reflect upon the fact that the HBRA report was published in 2002 after Turkey had already had a female prime minister in politics. It is likely that the Diyanet sometimes does not immediately issue a *fatwā*, especially when addressing itself to complicated or novel issues. In these circumstances, the institution

[112] Yavuz, "Tukey: Islam without Shari'a," 165-166.
[113] Baran, *Torn Country Turkey*, 90-1.
[114] Yavuz, "Tukey: Islam without Shari'a," 164.

more frequently adopts a pragmatic attitude, and only issues a *fatwā* after considering the possible impacts of the issue upon society. Given the fact that Turkey had a female prime minister in 1993 and that the Diyanet issued its *fatwā* concerning women leadership in 2002, the *fatwā* may be perceived as one of these kinds of *fatwās*.

In contrast to the CRLO, the HBRA does not attribute female leadership to biological factors and does not present women as being deficient in reason. Instead, the qualifications of the person who will be assigned the position of leadership is held to be the key consideration. The HBRA maintains that the person who governs a country or government has to be the individual best-suited to the job. The HBRA states:

> "As in all areas of civil service, competence and efficiency are paramount. The individual considered for the position of head of state is evaluated in accordance with their worthiness to assume this high rank rather than his/her gender.
>
> Importantly then, it is not compulsory that the head of state personally commands the army in the war time, delivers the Friday sermon, and leads the Friday prayer."[115]

This establishes that the most suitable person ought to serve as the administrator of Muslim affairs. It is noticeable that the HBRA has adopted a practical theory which enables it to consider changing circumstances and social realities. In the view of the HBRA, political leadership is not a question of gender; rather it is instead a matter of capacity, efficiency and knowledge. It has already been noted that the HBRA maintains that the two types of leadership (leadership in civil society and leadership in prayer) originate within different Islamic conditions and legal regulations. This may be interpreted as reflect to the Turkish political structure, in which power (economic, military, political and religious) are dispersed across separate administrative structures and institutional bodies. The grounding of Turkey's political system within a separation of powers significantly enhances the likelihood that it will influence the HBRA's legal interpretation. In the first instance, it should be noted that the HBRA retains a close connection with Islamic legal tradition in the area of *'ibādāt* – this is evidenced within the concept of the partial leaderships whose rulings are distributed among the army, parliament and religion. This observation may be qualified by a recognition that the HBRA remains open to alternative readings of the authoritative texts and the Islamic legal legacy, a feature which is clearly reiterated by the fact that female leadership is included within the scope of *mu'āmalāt*.

[115] "Kadınların İş Hayatında ve Siyasette Yer Almaları," in *Din İşleri Yüsek Kurulu Dini Bilgilendirme Platformu*.

With the intention of substantiating the permissibility of female leadership, the HBRA scholars adopt a contextual reading of the authoritative texts that provides a solid theoretical foundation for the improvement of women's rights. The portrait of gender in the *fatwā* clearly demonstrates how the perspectives of Muslim scholars who work within the Diyanet are extensively influenced and moulded by the society in which they live. It is possible to sketch a clear linear connection which conjoins the HBRA's Islamic legal methodology and the perceptions and values of Turkish women. Dominant social perceptions and values relating to the role of women in Turkey should be theorised as powerful influences that compel HBRA members to adopt a contextual reading of the authoritative texts in the process of drafting an Islamic ruling that relates to the political participation of women. In acknowledging the connection between democracy and women's rights, Akbar observes:

> "There is indeed an intimate relationship between the process of democratisation and promoting gender equality, since democracy necessitate equality between men and women."[116]

Akbar's contribution further reiterates that the functions, roles and statuses assigned to men and women within a secular democratic society should be theorised as specific tacit parameters that have been internalised by HBRA members, which provide an important framework of reference when they practice *iftā'* – in this respect, the HBRA's report clearly reiterates the extent to which Islamic law is compatible with democracy and modernity. In a more specific sense, women's political empowerment is supported by the textual evidences, the views of classical jurists and the legal rationale of HBRA members, each of which functions to reflect gender-related attitudes and perceptions that are pervasive in Turkish society. This demonstrates how prevailing perceptions about women and their political, public and social roles can influence the HBRA's legal ruling upon women's political participation. It is therefore likely that the report reflects the increased status of women within men's regard and Turkish society more generally.

Conclusion

In addressing the issue of female leadership, the two institutions adopt different methodologies and utilise various techniques before issuing legal opinions (*fatwās*). Various forces and influences endeavour to ensure that Islamic law can be made compatible with its cultural, political and social environment. In issuing legal interpretations upon women's

[116] Ali Akbar, "Promoting Gender Equality within Islamic Tradition via Contextualist Approach," *International Scholarly Scientific Research & Innovation* 10, no. 8 (2016), 2591, accessed February 7, 2018, https://zenodo.org/record/1125643#.Wnt0Nqhl-M8.

leadership, the two institutions have drawn attention to two main trends; firstly, the patriarchal Wahhābī-Ḥanbalī strand; and secondly, its neo-Ḥanafī (or eclectic reformulation) counterpart. While the categorisation of these institutions is problematic, the issue of female leadership could conceivably provide a basis for doing so.

The patriarchal Wahhābī-Ḥanbalī trend has been adopted by the CRLO (Dār al-Iftā'). While 'patriarchal' describes an ideology, the word 'Wahhābī-Ḥanbalī' relates a legal methodology that is applied during the process of issuing a *fatwā* that relates to women. The word 'patriarchal' is borrowed from the analysis of Khaled Abou El Fadl, and specifically from his claim that the CRLO scholars deploy a patriarchal and paternalistic interpretation when engaging with the issue of women.[117] In addressing itself to the capacities and functions of women, the CRLO employs certain typologies which originated within Saudi society.[118] This in turn results in paternalistic and patriarchal legal edicts. Yet, Al-Atawneh characterizes the CRLO's approach to social issues as 'puritanical' when he writes:

> "[w]hen dealing with modern innovations and political issues, Saudi Arabian muftīs are relatively open and liberal, whereas, in the realms of social norms (e.g. ritual, the status of women), they maintain a 'Puritanical' Wahhābī approach."[119]

The word 'puritanical' used by al-Atawneh can create the impression that its scholars are absolutist and intolerant individuals. Closer inspection suggests that it would be more consistent with the CRLO's hermeneutical method of authoritative texts to classify the approach as 'patriarchal'. When the interpretation style of the authoritative textual sources and the cognitive perception of the CRLO's scholars pertaining to women are taken into account, the CRLO's legal edict on women's leadership can therefore be said to embody a patriarchal interpretation of the Qur'an and Sunna. With the patriarchal hermeneutical technic adopted by the CRLO, the *ḥadīth* narrated by Abū Bakra has been interpreted as the main source that establishes the non-permissibility of women's leadership. This renders tribal and patriarchal values and the transformation of Wahhābīsm from a religious revival moment to a religious nationalism project as determining factors which need to be taken into account when interpreting the verses pertaining to Queen Bilqīs. In aligning itself with this trend, the CRLO does not only insert Saudi patriarchal values and perceptions of women within the process of legal interpretation; rather, it also, in applying the original sources of Islamic law (the Qur'an and sunna), aligns itself with the traditional Wahhābī-Ḥanbalī strand.

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[117] Abou El Fadl, *Speaking in God's Name*, 222-226.
[118] Ibid, 225.
[119] Al-Atawneh, *Wahhābī Islam*, XVI.

While the neo-Ḥanafī trend (or eclectic reformulation) acknowledges the Islamic legal heritage as part of Islamic legal sources, it contends that the distinction between culture and religion is crucial for understanding Islamic legal heritage and jurisprudence. The HBRA (Diyanet) lends its support to this development by emphasizing that the legal interpretation of earlier jurists reflected their cultural, political and social environment. In evidencing a clear eclectic approach, the HRBA introduces the views of earlier scholars that relate to the issue of female leadership and then selects possible solutions which are the most suitable for Muslims living within a secular state. The HBRA scholars do not reject the importance of Islamic legal heritage, but they do seek to balance the Islamic legal tradition and the conditions of Muslims who live within Turkey's secular system. In attending to the issue of female leadership, it is therefore possible to conclude that the HBRA searches Islamic legal heritage for a possible solution while taking space and time into account as important considerations. Upon locating this solution, the HBRA then subjects it to conditional language and cautious phrasing before ultimately adopting it. The HBRA's report on female leadership is compatible with the state regulations because Turkish women were granted full electoral rights by the 1934 legislation. Since then, the participation and representation of women have become an established political fact within the Republic of Turkey. In operating within this context, the HBRA report seeks to align women's leadership and its Islamic norms by focusing upon the objectives of sharī'a (*maqāṣid al-sharī'a*) and reiterating the importance of social cohesion with changing time and circumstances. It can therefore be claimed that the HBRA attempts to mediate between the Islamic legal view and Turkey's secular structure by utilizing *maqāṣid al-sharī'a* to promote peace and social cohesion within the state.

In addition, the evidence and methodological approaches that are applied in the aforementioned *fatwās* provide important insight into the links that conjoin the interpretation of Islamic legal theory espoused by the two institutions and the social contexts in which they operate. Pervasive gender assumptions in both Saudi Arabia and Turkey have therefore penetrated, both directly and indirectly, into the *fatwās*. They affected the employment of scriptural texts and the thought of Muslim scholars based within the two institutions. This is illustrated by the fact that the HBRA evaluates the *ḥadīth* narrated by Abū Bakra with reference to its legal values, while simultaneously emphasising the need to distinguish between ritualistic and transactional laws (*'ibādāt*/*mu'āmalāt*). In addition, the HBRA also claims that it is acceptable for women to be the leader of a community because there is no an

unequivocal ruling within the Qur'an and Sunna that prevents women from assuming any position of leadership, with the exception of leading prayer. In the view of the HBRA, the *ḥadīth*, which the CRLO has acknowledged to be the general rule by referring to the semantics of the "general term" (*al-lafẓ al-'āmm*), should be interpreted in its context. This clearly contrasts with the CRLO's approach to the *ḥadīth* and the hermeneutical technique that it applies to the legal maxim of *al-'ibra fī 'umūm al-lafẓ lā khuṣūṣ al-sabab* thereby reiterating its utility as a valuable interpretive tool that can be drawn upon during the issuance of the report (*fatwā*). In general terms, the surrounding context of the Qur'an and Sunna presents itself as a determining factor that plays a significant role within the HBRA's legal interpretation. While both the CRLO and the HBRA use Quranic exegesis by drawing upon the verses that relate to the story of Queen Bilqīs, their exegetical products are entirely different from each other. The HBRA is more inclusive of women, and also approaches this story as the inversion of the traditional interpretation of Abū Bakra's *ḥadīth*. The HBRA instead maintains that Queen Bilqīs is a woman model ruler who relies on deliberation, justice and reason in her political decision-making. The existence of this model ruler in the Qur'an clearly problematises the use of this *ḥadīth* as an authoritative legal justification for excluding women from public offices. It is undoubtedly the case that the experience of witnessing the positive contribution of women to public life has led the HBRA to re-evaluate female political participation through the lens of Islamic law. In this regard, it is essential to note that the heightened visibility of women within Turkey's political, public and social life has been promoted and sustained by the egalitarian legislative structure. In operating within Turkey's socio-legal and socio-political structures, the HBRA has developed a sophisticated Islamic perspective that invokes Islamic law and tradition to promote gender equality and women's legal and political rights.

In contrast to the HBRA, the CRLO presents Queen Bilqīs as a weak leader whose passion predominates her rationality. In the view of this institution, her status as a woman was inextricably linked to the weaknesses that resulted in her surrender to the Prophet Sulaymān. For the CRLO, Sulaymān's status as a male was an *a priori* advantage. It is conceivable that the socio-legal system and values which prevent women from fully participating in political and social life may have caused the CRLO members to develop an androcentric perspective orientated towards the segregation of the sexes. The CRLO members' rendering of male authority, female deficiencies and gendered public space is inextricably linked to the 'natural' gender roles and social hierarchies which had privileged

men in Saudi Arabia. This social context provides considerable insight into the CRLO's adoption of an androcentric and patriarchal language to describe women and their capabilities. Biological and psychological differences are understood to imply separate duties and functions and situate women within a subordinate position. For this reason, the CRLO asserts that only men should operate in a leadership position. This directly contrasts with the HBRA, which instead establishes competence, efficiency and proficiency as the preconditions of effective leadership, regardless of whether the person who will appoint to the leadership position is either a man or a woman. The divergence of these two Islamic legal interpretations (*fatwās*) of female leadership can be traced back to Islamic legal methodologies and the wider social context, both of which overlap and intertwine with each other. As the preceding discussion has suggested, the wider social context plays an essential role in helping to 'frame' the interpretations of Muslim scholars working within the CRLO and the HBRA. To put it differently, the social reality and contextual environment of the two institutions seem to be an influential hidden impetus that affects, directly or indirectly, the Islamic legal thinking of Muslim scholars working in the CRLO and the HBRA and, by implication, Islamic legal methodologies followed by those scholars in the process of the interpretation of the authoritative texts. The two institutions use different legal methods and theories in their environments, and this attests to the influence of culture, politics and wider society.

It is also implicitly apparent that the shattering of stereotypes and their replacement with a complex and multi-faceted legal interpretation can be justified with reference to the examined *fatwās* issued by the CRLO and the HBRA. The legal interpretations of the two institutions make an invaluable contribution by challenging the misconception that Islamic law resists change and innovation. In the first instance, this is achieved by challenging the proposition that Islamic law is inherently androcentric, and misogynistic. Their contributions clearly reiterate that Islamic law is not frozen or immutable, something which is clearly attested to by the fact that it can adjust to the exigencies that Muslims may encounter in different contexts and time-periods.

CONCLUSION

This study has provided insight into the organic interaction between contextual elements and Islamic legal methodologies by focusing upon the two religious institutions (Saudi Arabia's Dār al-Iftā' and Turkey's Diyanet) and their official *fatwās*. The practice of *iftā'* is an important mechanism that establishes and enhances an ongoing communication between Islamic law and Muslims. This mechanism has assumed a functional and operative role by establishing a vivid connection between Islamic legal methodologies and contextual environments. Until recently, many academics and scholars in the area of Islamic law have specifically focused upon disassociating Islamic law from independent legal reasoning (*ijtihād*) and replacing it with adherence to imitation (*taqlīd*). This may be true, to some extent, when it is examined with reference to the immutable sides and aspects of Islamic law.

However, if Islamic law is instead interpreted as an area of science that is guided by a systematic process of accumulation, it becomes possible to identify particular features that attest to its changing, flexible and mutable character. As Chapter One demonstrates in more detail, the practice of *iftā'* can be interpreted as one of these features. The diachronic development of Islamic law renders a process in which this mechanism has adjusted in accordance with circumstances and time. During early periods of Islamic law, this practice was conducted by individual scholars, but this arrangement has been superseded by institutionalisation over time. In the aftermath of the nineteenth century, the practice of *iftā'* became, as a result of initiatives undertaken by Muslim nation-states who sought to control almost aspect of social relations, subject to an institutionalisation, modernisation and nationalisation process. Through these initiatives, almost every Muslim state established their own national religious institutions that provided a setting in which Muslim scholars could perform the practice of *iftā'* upon a collective rather than an individual basis. Meanwhile novel variations of *fatwās*, which included collective, public and state *fatwās*, began to appear in the area of Islamic law. In operating within these institutions, scholars resorted to independent legal reasoning by practicing collective *ijtihād* in order to issue Islamic legal decisions and rulings upon a range of contemporary issues, which included abortion, autopsy, birth control, euthanasia, insurance, mortgage (*rahn*) and organ donation. The application of *iftā'* as an influential legal instrument underlines the possibilities of adaptability, change and flexibility within Islamic law, providing a clear rebuttal to alternating accounts which contend that Islamic law is disconnected from the contemporary accounts or that it is, by its very nature, an immutable, fixed and frozen legal system.

Subsequent to the establishment of national religious institutions, which were generally dependent upon the state, the practice of *iftā'* began to mostly be implemented by these institutions in their local environments. This study has engaged with institutions in two specific contexts – the Dār al-Iftā' in Saudi Arabia and the Diyanet in Turkey. In considering the two institutions and their official *fatwās* in a comparative framework, the study has provided insight into the interaction between these contexts and Islamic legal methodologies. The two institutions work in diametrically opposed cultural, legal, political and social contexts. The Dār al-Iftā's engagement with the practice of *iftā'* occurs within the wider context of an extremely Islamic state, while the Diyanet issues its *fatwās* in the wider context of an ultra-secular democratic state. In seeking to demonstrate how these institutions operate within these diametrically opposed societies, this study incorporated socio-cultural, socio-legal and socio-political perspectives in order to engage with the relationship between religion, society and state. In addition to this, the study sought to answer the question of how the two institutions engage at each of these points and their mutual interrelations while dealing in more detail with the issuance of *fatwās* by the two institutions.

As Chapter Two illustrates in more detail, Saudi Arabia's Dār al-Iftā' has experienced a long process of centralisation that was completed in 1993 when the office of Grand Muftī was re-established. This official religious body was established in 1951 and was restructured 20 years later with the appointment of a number of senior scholars. In operating under the leadership of the State Grand Muftī, the BSU and CRLO, as the highest authorities within the Dār al-Iftā', are responsible for conducting religious research, interpreting Islamic legal sources and issuing *fatwās*. The dramatic increase within oil revenues contributed to a sustained institutionalisation and modernisation process which impacted upon the practice of *iftā'* and the religious establishment. King Fayṣal's initial attempt to reform the Dār al-Iftā' was strongly influenced by the fact that he required the support of the religious establishment in order to achieve his reform policies. It is clear that the restructuring of the Dār al-Iftā' simultaneously derived from the conscious efforts of the Saudi Government to control the religious establishment and impersonal economic and social changes that ensued from the discovery of petroleum resources in the country. The incorporation of the Dār al-Iftā' into the Saudi state administration made it an official partner of the Saudi Government, or the ruling house, and it accordingly assumed a role in deciding legal, religious and social policies and legitimating the Saudi Government's political agenda. As a consequence, the indigenous structure of cooperative religious power was created by the Saudi Government, and this

religious establishment gradually strengthened its official prestige and position by reinforcing the religious character of the Saudi state. However, this religious establishment is not autonomous or independent of the state because the King retains the right to appoint and dismiss members in accordance with his will or interest. This dependence notwithstanding, the Dār al-Iftā' and its official *fatwās* simultaneously perform important roles in the legal, religious and social spheres. It might be inferred that this institution has assumed a kind of pre-legislative and pre-consultative mechanism role. It is a pre-legislative mechanism in the sense that the institution's decisions and *fatwās* have always had the potential, subject to the approval of the King, to become law. It can be said to be a consultative mechanism because the institution serves as a consultative body for the King, and his inquiries and questions receive preferential treatment during the issuance of *fatwās* and Islamic legal decisions.

The Diyanet, which is examined in Chapter Three, can be viewed as an extension or remnant of the *Shaykh al-Islām*, the Ottoman Empire's religious establishment. Between the nineteenth and twentieth centuries, the newly-established Turkish Republic implemented many reforms with the aim of modernising and secularising the society. In functioning within the wider context of the state secularisation strategy, the office of *Shaykh al-Islām* was transformed into the Diyanet, which is a bureaucratic religious establisment subject to state control. The reconfiguration of that Ottoman office within the guise of the Diyanet resulted in Muslim scholars losing power because the office was deprived of a number of duties and tasks it had previously executed. The office of *Shaykh al-Islām*, which commanded the highest rank in religious affairs, was charged with administering justice, conducting educational and religious services, legitimising the Sultan's political policies and managing religious endowments in the Empire. The duty of legitimising the Sultan's policies was particularly important as it established the office as an influential legal and political power in the Empire. However, after the religious office was transformed into the Diyanet, Muslim scholars in Turkey were deprived of their political influence and power.

Act 429, which came into force in 1924, established the Diyanet as a religious administrative body that was responsible for managing religious affairs under the control of the prime minister's office. This was a historical moment that clearly embodied the separation of politics and religion and the exertion of state control over religion in Turkey. The political agenda of the early Republican party and its stance towards religion clearly attests to the intention to establish an "assertive secularism" that would institute religion as a purely personal matter. While this state policy resulted in the short-term marginalisation of

Islam and Turkey's Islamic legacy, it fell short of the ultimate aspiration of building a modern, secular and unified society. During this period, the Diyanet presented itself as a restricted and inactive religious institution that was established with the aim of diffusing the state's interpretation of Islam within Turkish society. The religious policy of the early Republican government did however produce a social crisis and resulted in the state changing its stance towards the Diyanet and religion more generally. Subsequent to the 1950s, when state policy on religion became more moderate and tolerant, the Diyanet increasingly took on the form of an influential and prestigious religious institution that would exert influence over public life. In the aftermath of the 1980 military coup, the Diyanet became established as one of the foremost state instruments which would contribute to the promulgation of the Turkish-Islamic synthesis (an Islamo-nationalistic religious ideology) within both Turkey and amongst diaspora Turkish communities. This helps to affirm how the religious institution and the secular state arrived at an agreement of mutual recognition. This agreement is upheld by Articles 2 and 136 of the Constitution, which respectively protect secularism and the Diyanet. In addition to their distinct contributions, both articles serve to reiterate how religion and secularism are strongly interwoven in Turkey.

This hybrid secular feature is also reiterated by the consensus between the Diyanet and the State upon the attainment of higher objectives of social peace and solidarity. Since its establishment, the Diyanet has focused upon the objectives during times of political and social controversy or civil strife. In operating within a secular state structure, the Diyanet has strongly emphasised the Sunni school's basic doctrine of politics and governance which demands collaboration between scholars and rulers (*'ulamā'-'umarā'*) – this clearly establishes that the Diyanet and its pro-system orientation are not a novelty introduced by the Republic. Instead, this traditional practice can be traced back to the Ottoman and Seljuk Empires. The changing ideologies and policies that the state has adopted towards religion indicate alternating phases of activity and passivity – however in this regard it is important to note that the Diyanet has never marginalised by the state except during the first period of its existence (1924 – the mid-1940s). In addition, state ideologies and policies have influenced the Diyanet's religious approaches, discourses and policies. The Diyanet has remained aligned with a state ideology that seeks to establish a uniform and monolithic nation by disseminating the ideology of Turkish-Islamic synthesis. Its infusion of this ideology that was embodied in its publications during the 1970s and the 1990s should be understood in this context. Subsequent to the 2000s, the state's political predisposition towards uniformity

began to be shaken, and the state was gradually compelled to adopt a post-modern pluralist social ideology that recognised the threads of pluralism and religious diversity within the society. This change within state ideology has percolated to the Diyanet's activities and publications, and it has encouraged the institution to adopt a new ideal that, in building upon pre-existent religious diversity within society, orientates towards the middle ground between diversity and unity. The principle of equidistance towards all religious communities, groups and sects has therefore been reproduced within the institution's practice.

If the two institutions are compared with reference to their institutionalisation, it is possible to identify differences within the authority, function, influence and power that they exert within their respective societies. The Dār al-Iftā' issues *fatwās* in response to questions that have been submitted to it by the general public, government agencies and the King. Its activities, composition, duties and responsibilities have been specified by Royal Decrees issued at different points in time – this serves to clarify and reiterate that the institution's authority, modes of operation and organizational structure are generally set out by the King. It is therefore important to acknowledge that the *'ulamā'* in the current Saudi state came to depend upon the Saudi ruling house for their survival and that this dependence became increasingly pronounced after the institutionalization of the religious domain began. Despite the fact that the *'ulamā'* have been transformed into 'paid religious civil servants or officials' appointed by the state, the institutionalization of the *'ulamā'*, as embodied by the establishment of the Dār al-Iftā', potentially increased the formal and official influence of their *fatwās* in governmental circles, the Saudi legal system and Saudi society more generally. However, the religious scholars of the Diyanet, after the transition process of the office of *Shaykh al-Islām*, almost lost their all authority, functional power and prestige within the respective spheres – educational, financial, legislative and political – in which they exerted influence. As the secularization policy of the early Republican period proceeded apace, the political and religious spheres were separated, and state control expanded over the domains that had previously been controlled by Muslim scholars.

In contrast to the institutionalization of the *'ulamā'* in Saudi Arabia, the Muslim scholars in Turkey, whose influence was now restricted to the area of religion and religious affairs, lost their authority and power (juridical, legislative and political) which was now subsumed within Turkey's secular legal system. In a comparable manner to the Dār al-Iftā', the Diyanet also provides its services within the framework of the Constitution, laws and regulations – the Diyanet's administrative and organizational structure, jurisdictional power

and selection of members (including its president) – are therefore subject to the State's regulations. Although the Diyanet, as a state-dependent institution, is administratively and structurally part of the State's bureaucratic system, it enjoys freedom in the intellectual discussion of Islamic issues, the production of religious knowledge and scholarly activities. This originates something of a paradox: while the relationship between the two institutions and their respective state authorities may sometimes detract from their religious authority, in other circumstances this dependence is an attribute or even condition of this same authority.

The Islamic legal methodology espoused by both institutions also serves to highlight important differences in the practice of *iftā'*. To a substantial extent, the Dār al-Iftā' remains loyal to the doctrines and Islamic legal methodology of Ḥanbalī *madhhab* when issuing *fatwās*. As the examined *fatwās* demonstrate, the institution's members frequently ground their *fatwās* within the literal meaning of the Qur'an and Sunna, thus offsetting the need to apply reason or rational tools. However, there are indications that the Dār al-Iftā' benefits to some extent from the application of other Islamic exegetical tools and legal methods, which include *qiyās*, *maṣlaḥa* and *ḍarūra*, each of which is specific to the Sunni schools (e.g. Ḥanafīsm, Mālikīsm and Shāfi'īsm). The application of these legal tools, and in particular *maṣlaḥa*, has enabled the institution to approve particularly controversial government policies – the *fatwā* which approved the deployment of US military personnel in Saudi Arabias during the first Gulf War is a particularly striking example. Even though there are signs of changes within their doctrinal and methodological alignment with the Ḥanbalī *madhhab*, these adjustments continue to be very limited and pragmatic in character. Exegetical methods and tools from other Sunni schools are generally applied by the Dār al-Iftā' when the relevant issue is controversial and/or multi-faceted – relevant examples include autopsies, internet use, organ transplantation and the political policies at both domestic and international levels.

In issuing *fatwās*, the Diyanet remains faithful to the doctrines, opinions and tenets of the Ḥanafī *madhhab* to a certain extent, especially when the issues posed to the institution are associated with classical Islamic legal problems or *'ibādāt* (ritual practices). In answering these questions, the institution does not need to practice collective *ijtihād* if traditional Islamic legal rulings put in place by earlier Muslim scholars are appropriate and applicable to given circumstances. Questions are generally answered by prioritising the traditional opinions of the Ḥanafī, although Shāfi'ī *madhhabs* feature to a lesser extent. As part of an attempt to address contemporary issues, Muslim scholars (predominantly Ḥanafī) have performed the practice of collective *ijtihād* in order to establish the contemporary boundaries of the

forbidden and the permissible. In doing so, the Diyanet has sought to identify the fundamental Islamic ethical and legal principles in the light of the Qur'an, with a view to then constructing its *fatwās* upon these foundations. It is even sometimes the case that classical Islamic legal rulings relating to *mu'āmalāt* can be re-examined in order to update specific Islamic legal rulings. The ostensible appearance of the Diyanet's legal approach to contemporary issues suggests that Qur'anic principles that are specified by generally using *maqāṣid al-sharī'a* and *maṣlaḥa* can provide a basis for the derivation of an Islamic ruling. The Qur'anic text and its established overarching principles are given priority over all other sources of Islamic law, and the *ḥadīth* literature and *fiqhī* texts are subservient to these principles. The heavily contextualised Qur'anic passages and the *ḥadīth* corpus are generally reinterpreted in the light of contemporary contexts through the deployment of analytical reasoning. In common with their Ḥanafī predecessors, Muslim scholars in the Diyanet also cautiously and critically applies to *āḥād ḥadīths* when issuing *fatwās* - these *ḥadīths* are exposed to analytical and moral examination in order to identify their legal validity when establishing a legal ruling on them. Chapter Four illustrates that when the Diyanet examines the legal position of houses of worship belonging to non-Muslims in Muslim countries, it stresses the fact that the relevant *ḥadīth* (which does not permit a religion other than Islam to be present in the Arabian Peninsula) contradicts the established Qur'anic principles of freedom, free will and tolerance. There are a number of signs which suggest that the Diyanet's Islamic legal approach shifts from a focus upon doctrine to ethics or principles when examining contemporary issues.

The *fatwās* examined in this study can be said to be in large part products of their social and temporal context. The constituent elements that constitute these textual materials provide considerable insight into the interaction between cultural, legal, political and social contexts and Islamic legal methodologies. These *fatwās* are not merely products of intellectual exertion but can also be said to reflect the environments in which they emerge. As Chapter Four demonstrates in more detail, it is appropriate to situate the thought processes and legal interpretations of scholars in both institutions within the wider context of their worldview (which is conditioned by culture, religious outlook and sectarian/theological belief) and socio-cultural and socio-political milieu. When the two institutions issue their official *fatwās*, the wider contextual elements are reproduced in their Islamic legal rulings, statements and opinions (*fatwās*). These 'wider elements' should be theorised as part of the thought process and should be theorised as being intrinsic to Muslim scholars' ideas,

outlooks and perceptions. Chapter Four has distinguished these surrounding factors into four thematic categories: 1) the *madhhab* affiliation which is predominant in the two societies; 2) the legal systems of the two countries; 3) the political structures of the two societies; and 4) the cultural practices and social presumptions in the two societies.

With regard to the first category, the Dār al-Iftā' relies mainly on the doctrines and methodologies of the Ḥanbalī *madhhab*, to which is adhered by the majority of the populace in Saudi Arabia, when issuing its *fatwās*. The Ḥanafī *madhhab*, which commands the loyalty of a majority of Turkish Muslims, has a substantial influence upon the Diyanet – the institution does not only follow the methodologies and theories of this school but also adopts its distinctive Islamic opinions and rulings when issuing *fatwās*. Secondly, the Islamic character of the Saudi legal system provides a practical impetus to the *fatwās* issued by the Dār al-Iftā'. They also have the potential to transform into law (legal regulation), although this is subject to the approval of the King, and have been drawn upon by judges as secondary sources. In contrast, *fatwās* issued by the Diyanet do not have any influence upon the secular Turkish legal system. Nonetheless, they do have the potential to exert a power of social sanction. Despite the fact that they do not have any legal authority in the Turkish judicial system, they can formulise moral values and social norms. In operating within a secular legal system, the Diyanet is also normally compelled to issue hybrid *fatwās* that combine religious and secular law – the *fatwās* relating to religious marriage are an important example in this regard.

The political systems of the two countries, in addition to exerting an important influence over the authority, power and role of the two institutions, can also impact the content of *fatwās* that relate to political issues. In the Saudi Islamic monarchy, there is ongoing cooperation between the *'ulamā'* (the Dār al-Iftā') and the *'umarā'* (the Saudi Government), both of whom are designated as holders of authority by the classical Wahhābī doctrine of *siyāsa shar'iyya*. While the Dār al-Iftā' helps to legitimise the King's policies, he is also obliged to consult the institution and take its opinion into account when making a decision on any legal, political, religious or social issue. In contrast, within Turkey, the Diyanet and its *fatwās* do not exert any influence within the secular democratic system. With regard to any political issue, the democratic secular government is not in need of the assent of its religious institution on account of the state's secular nature. Although the political systems of the two countries diverge in each of the aforementioned respects, it is important to recognise that both institutions draw upon the Sunni schools' traditional doctrine of *siyāsa*

shar'iyya with the intention of enhancing social stability within their respective countries by encouraging Muslims' obedience to state authority. While the Dār al-Iftā' pronounces the country's absolute monarchic system as Islamic by maintaining that the constitution is grounded within the Qur'an and Sunna, the Diyanet seeks to legitimise Turkey's democratic structures by invoking the concept of *shūrā*, an established part of the Islamic tradition.

Finally, cultural practices and social presumptions present themselves as influential implicit elements that encourage Muslim scholars within both institutions to draw upon particular Islamic legal concepts and principles when addressing themselves to identical issues. Chapter Four suggests that the influence of the exclusivist Wahhābī-based Saudi culture can be interpreted as an effective factor that influences the Dār al-Iftā's application of *al-walā' wal-barā'* to its *fatwās* when it is engaged with relations between Muslims and non-Muslims. Conversely, the influence of a more democratic and tolerant Turkish culture leads scholars within the Diyanet to examine issues pertaining to relations with non-Muslims within the scope of *ḥuqūq ahl al-dhimma*.

The contextual elements either directly or indirectly influence the interpretation of the Qur'an and Sunna and the deployment of Islamic legal methodologies by the Dār al-Iftā' and the Diyanet. The *fatwās* relating to female leadership provide a clear insight into how gender attitudes and perceptions in the two societies exert influence and condition the deployment of particular Islamic legal methodologies and theories. Common assumptions about women's intellectual capacities, social roles and status can therefore exert a strong influence upon the interpretation of textual sources - the Qur'anic story concerning Queen Bilqīs and the *ḥadīth* narrated by Abū Bakra are both important reference points in this regard. The Dār al-Iftā' interprets these sources through patriarchal assumptions and therefore argues that the weak female character and female deficiencies within reason should prevent a woman from assigning as a political leader even being considered as a judge. The Diyanet reached a fundamentally opposed conclusion when considering the same issue and referencing the same authoritative sources. The disapproval of the traditional Sunni schools notwithstanding, the absence of any negative statement upon Queen Bilqīs's leadership is understood to confirm that women can assume the responsibilities of political leadership. Conceivably, the interpretation of the same authoritative sources through the prism of common democratic and women-friendly values in the Turkish society leads the Diyanet to state that women can undertake all kinds of administration and even become the head of state. Laconically, the examined *fatwās* demonstrate that the existing social, political, cultural and legal values,

judgements and conceptions should reckon among important tacit factors and parameters in casting Muslims scholars' legal thinking in the practice of *iftā'*.

The preceding examples serve to establish that the interpretation of textual sources is conceivably influenced by the surrounding socio-cultural, socio-legal and socio-political factors. The examination of the official *fatwās* issued by the two institutions do not only highlight the connection between religion, society and state but also bring out the intricate interaction between Islamic legal theories and contextual environments. In the context of these insights, it becomes easier for an observer to recognise that the divergences of institutional opinion are not attributable to the authoritative textual sources of Islamic law but can be attributed to interpretations and rationalizations of these sources. Consequently, the differences can be traced back to the questions of how the two institutions interpret those authoritative textual sources; which Islamic legal methodologies, principles and maxims are predominantly espoused by the two; and in which cultural, political, legal and societal environment these institutions work.

APPENDIX

APPENDIX A: THE DĀR AL-IFTĀ'S *FATWĀ*

Fatwā No. 11780: Women Holding Positions and Leading Men

Query: Is it permissible for a group of Muslim women, who are more educated than men, to lead men? Besides the prohibition of leadership of women in Salah (Prayer), what are the other cases in which women are prohibited to assume leadership and office, and why?

Response: The Sunnah (whatever is reported from the Prophet), objectives of Shari'ah (Islamic law), Ijma' (consensus of scholars), and reality indicate that women should not assume power or the judiciary, because of the general meaning of the Hadith narrated by Abu Bakrah that when the Prophet (peace be upon him) heard that the Persians had assigned a woman to rule them, he said: {"Never will succeed such a people who place a woman to be in charge of their affairs."} The two words "people" and "woman" are mentioned as indefinite nouns that fall under negation, so they have general meanings according to the Shari'ah rule, "The general meaning of text supersedes the specific reason for which it was said." This ruling on women is attributed to their deficient reasoning and rationality, in addition to their passion that prevails over their thinking. Moreover, one of the concerns of power is to inspect the conditions of matters and handle public affairs. This requires travelling throughout the countries, meeting people, commanding the army in times of Jihad (striving in the Cause of Allah), confronting enemies in concluding treaties and agreements, making pledges of allegiance with members and groups of the Ummah (nation based on one creed), men and women, in war and peace, in addition to other acts that neither coincide with a woman's status nor with the rulings that were prescribed to protect her honor and keep her away from immorality. The Ummah in the time of the Rightly-Guided Caliphs and the Imams of the early best three centuries practically agreed upon not assigning any power or judicial authority to women, despite the fact that they had well-educated women in various disciplines of religion. There were women who were references and authorities in the Sciences of Qur'an, Hadith and rulings; yet they did not even think of assuming any power or office. We also have examples from the past before this Ummah; one of which is the story of Bilqis (the Queen of Saba [or Sheba] in Yemen, who ruled during the lifetime of Prophet Sulayman. She and her people were sun worshippers) who reigned over Yemen. She was helpless and broke down after she received the letter of prophet Sulayman (Solomon, peace be upon him), even though her people had shown power and strength, and were willing to fight against whoever thought of showing them enmity or invading their country, to protect her and her reign, and to throw back any attack by their enemies. However, this did not ward off her fears of losing her reign, glory, and power. She failed to strive and protect her crown and ward off any transgression by the force of arms, preferring to send a gift to Sulayman, hoping that he might retreat from attacking her country and achieve peace to her reign and country. However, prophet Sulayman (peace be upon him), the man of reformation, guidance, power and might, was not deceived by this gift; rather, he said what Allah says about him in the Qur'an: {Nay, you rejoice in your gift!} Then he (peace be upon him) ordered her throne to be brought to him. When she arrived, it was said to her: {"Is your throne like this?" She said: "(It is) as through it were the very same."} Then she was told: {"Enter As-Sarh" (a glass of surface with water underneath it or palace): but when she saw it, she thought it was a pool, and she (tucked up her clothes) uncovering her legs. (Sulaimân (Solomon)) said: "Verily, it is a Sarh (a glass surface water underneath it or a palace)." She said: "My Lord! Verily, I have wronged myself, and I submit [in Islâm, together with Sulaimân (Solomon)] to Allâh, the Lord of the 'Alamîn (mankind, jinn and all that exists)."} Accordingly, you can conclude from this story how afraid Bilqis was when she received the letter of Sulayman that included threats, warnings, and a command to surrender. You can also see how she failed to confront him in battle, even though her people get declared having great

strength and power. Given that kings and queens are often characterized by pride, exaltedness and a tendency to protect and keep their reign, she resorted to trickery by means of money, acting like weak people, hoping to protect herself and her reign in this way. Apart from this, there was also astonishment that led her to be uncertain about her throne, and her full admiration for the reign of Sulayman (peace be upon him), which captured her hearth like all other women who tend to be influenced by external appearances because of their strong passion. This drove her to surrender to Sulayman (peace be upon him), follow his Da'wah (call to Allah), and submit with him to Allah, the Lord of all Worlds. May Allah grant us success. May peace and blessings be upon our Prophet Muhammad, his family, and Companions.

The Permanent Committee for Scientific Research and Legal Opinion

Shaykh 'Abd al-Azīz b. Bāz (Chairman); Shaykh 'Abd al-Razzāq 'Afīfī (Deputy Chairman); Shaykh 'Abd Allāh b. 'Abd al-Raḥmān al-Ghudayyān (Member).

APPENDIX B: THE DIYANET'S TRANSLATED REPORT (*FATWĀ*)

The Participation of Women in Business and Political life:

The High Board of Religious Affairs (HBRA) convened under the chairmanship of Dr. Şamil Dağcı on 24 October 2002. The report on the issue of 'the participation of women in business and political life' prepared by the Commission for Responding Religious Questions was discussed. The discussion concluded with the following points:

In Islam, there is no difference between men and women from the standpoint of being human; both must adhere to the orders and prohibitions of the most exalted Allah. All human beings, whether men or women, are ordained to construct the world around them and to serve Allah within it. In Islam, there is no discrimination between men and women in terms of fundamental rights and duties as there is no segregation amongst humankind in the worship of Allah.

In our religion, the basic rights and liberties given to men are also recognized for women. Accordingly this, it does not make mention any discrimination between women and men in terms of fundamental rights, such as the right to life, the right to maintenance and improvement of material property and spiritual existence; personal freedom and security; the liberty of conscience, religious belief and conviction; the right of possession and disposition; the right to assert a claim and standing as a plaintiff or litigious before the judicial authority by appealing to legitimate means and ways; the right of equality before the law and of justly treatment; the right of immunity of domicile; the right to defend of dignity and honor; the right to marry and start a family; the right of privacy, its immunity, and subsistence warranty.

In the Qur'an, there is a mention about accepting women's oath of allegiance (*bay'a*) (Mumtaḥina, 60/13). This reveals the independence of the freewill of women in Islam. In this respect, being a woman is not a reason which narrows lawn capacitas (*jus capiendi*) and juridical capacity (capacity to act). In the case of a violation of her rights by her husband or someone else, a woman has the right to litigate for demanding the removal of injustice.

Within Islam, there are a considerable amount of debates on the status and rights of women which focus on their participation in social life, work and civil service.

…

The Leadership of Women

In some sources, there were views and rulings that restrict women's participation in civil service. However, these views and rulings were the decisions which jurists deduced by taking into consideration their socio-cultural and economic conditions instead of depending the statements of the unequivocal premises (*naṣṣ*).

Since the time of the Prophet, women have worked in various private sector and public service roles, such as teaching, medicine, nursing and being a police officer. As a matter of fact, Umar b. al-Kaṭṭāb appointed a woman, al-Shifaa' b. 'Abd Allāh, to serve as an inspector judge in the market place of Medina. Almost all jurists agreed upon this issue. In addition to this, there were significant disagreements on the issue of women to serve as judges and uber-directors. The majority of Islamic jurists advocated the idea that women could not be a judge. However, this idea which was not based on the unequivocal premises (*naṣṣ*), was derived from the tradition and concepts of these jurists' society. Ḥanafītes and Ibn Ḥazm argued that a woman may serve as a judge in the type of cases in which they are able to act as a witness. Some Islamic scholars, such as al-Ṭabarī and al-Ḥasan al-Baṣrī, also held that women may serve as judges in all cases without any restrictions. These indicate that Islamic scholars of the classical period presented their opinions concerning the issue of women's judgeship by acting upon the knowledge, culture and experience of their time. Nevertheless, in the sources of classical Islamic jurisprudence, there were judgements which states that women are not qualified to serve as the ranking government executives. These legal judgments also depended on the information, culture and experience of those Islamic jurists who asserted that women are not capable of holding any political and judicial position.

By virtue of the fact that judgeship and leadership are important civil services within society, Islam critically highlights that individuals charged in such positions ought to have the qualifications to conduct matters appropriately and does not discriminate with respect to class, age or race. During the time of the Prophet and the Companions women exercised *ijtihād*, decided legal verdicts (*ḥukm*) and legal opinions (*fatwās*), attended wars and engaged in political activities, partly influencing decisions of regime (administration) although adverse prejudgments about them were still continuing. However, these demonstrations of women's rights and competencies are entirely contingent upon socio-economic, cultural circumstances and needs. On this issue, Islam merely determines the fundamental rights and principles, and the remaining part is left to the progress of Muslim societies.

In that vein, classical sources regarded being a male as among the necessary qualifications for head of state, adduced to the *ḥadīth* which states that a people who entrust their affairs to a woman will not succeed. In an attempt to promote this idea, it was also to be asserted that a leader was required to lead the military in war, lead the Friday prayer, and deliver the Friday sermon (*khuṭbah*).

As in all areas of civil service, competence and efficiency are paramount. The individual under consideration for the position of head of state is evaluated in compliance with whether they are worthy of this high position rather than his/her gender.

Importantly then, it is not compulsory that the head of state personally commands the army in the war time, delivers the Friday sermon and leads the Friday prayer. It is possible that these duties can be delegated to people appointed by the head of state. With regard to the aforementioned *ḥadīth* which warns against women's leadership, the Prophet had been remarking on the seemingly imminent collapse of the neighbouring Sassanid Empire whose ruler was a woman. Indeed, this empire expired only a short while later. Alternatively, the Qur'an expresses no negativity in its mention of the Queen of Sheba, Bilqīs, and countries whose leaders were women. It can be understood then that their collective existences, in the history and at the present time, potently demonstrate that this saying of the Prophet does not include the general ruling (*ḥukm*).

From this interpretation, there is no unequivocal, certain and binding premises (*naṣṣ*) in Islam which prohibits women from undertaking civil service. Thus, it can be surmised that there should exist no objections for capable women who possess the necessary qualifications to undertake all kinds of administrative roles, including the head of state.

Conclusion

In the light of above explanations;

a) In Islam, the fundamental rights and liberties given to men are recognized to women, and being a female is not a reason restricting the judicial capacity and *jus capiendi*;
b) With meeting the requirements of Islamic principles and provisions, and public decency, all people, men and women, have the right to work, to trade and to participate in business life;
c) There are no objections for efficient women who possess the required qualifications to undertake all kinds of administration as well as the head of state.

were decided.

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