# Islamic Mediation in Turkey: The Role of Ulema

Talha Köse[1] and Nimet Beriker[2]

1 Altunizade Mah. Kuşbakışı, Üsküdar, Istanbul, Turkey
2 Sabancı University, Orhanlı, Tuzla, Istanbul, Turkey

**Correspondence**

Talha Köse, Altunizade Mah. Kuşbakışı Cad, No. 27, Üsküdar, 34662, Istanbul, Turkey; e-mail: talhakose@sehir.edu.tr.

**Abstract**

In this study, Islamic dispute resolution methods and processes in contemporary Turkey are examined. The findings indicate that the dispute coming to ulema (Islamic scholars who are experts in Islamic legal jurisprudence) forms three cluster types: marital, financial, and those related to fights and accidents. The ulema's legitimacy is faith and knowledge based, and does not depend solely on professional expertise, procedures, or settings. Transformational, facilitative, and muscle mediation approaches do not directly correspond to the ulema's third-party approaches. Family elder/counselor, peace-broker, and facilitator/arbitrator are indigenous third-party roles. Their techniques include elements of the mediation procedures employed in western contexts, as well as those originating in Islamic law, such as *fatwa*, *kısas-diya*, and providing explanations according to *sharia*. Ulema do not get additional help from other third parties and do not socialize with disputants. *Adelet* ("justice"), *mahremiyet* ("privacy"), *kardeşlik* ("brotherhood"), and *bağışlamak* ("forgiveness") are concepts and metaphors to which reference is frequently made in explaining the logic and fundamental values of the ulema's intervention.

The primary objective of this study is to describe the manner in which *ulema* (plural of *alim*) mediate in contemporary Turkish society. Ulema are Islamic scholars who are experts in Islamic legal jurisprudence. Prominent figures in their communities, they are considered wise and knowledgeable. Turkey has experienced significant structural and social transformation since the establishment of the modern, secular Turkish Republic in 1923. According to the new constitution drawn up at that time, the Islamic legal

system and Islamic laws that were part of the Ottoman social order were no longer valid in the new Turkish society. In the Ottoman era, laws based on religion regulated all aspects of public and private life and business. Scholars and practitioners[1] of Islamic legal jurisprudence used to be included within the group of ulema. The ulema, whose primary responsibility was to *Allah*, were thought to represent peace, stability, and comfort within Islamic societies (Gökbilgin, 1997).

The current legal system in Turkey does not allow, let alone encourage, the use of Islamic mediation, arbitration, or other forms of informal conflict resolution. The new civil code was revolutionary and aimed at creating a modern, secular society from the ashes of the Ottoman Empire. Therefore, Islamic tenets of Turkish society were seen as obstacles to the fulfillment of the aim of Westernization; hence, all the Islamic social and political institutions were abolished.

Nevertheless, in contemporary Turkish society, the practice of Islamic Law (*fiqh*), especially in relations within the family, between husband and wife, in matters of inheritance and in commercial partnership dispute cases, continues to exist—along with informal secular dispute resolution practices. People informally consult or resort to the consensual intervention of ulema, who are now defined as scholars of Islamic legal jurisprudence and leading figures of religious brotherhoods.[2] In Ottoman times, it was important for people to conduct their lives free of distrust and suspicion in/of their communities. Informal *sulh* (peacemaking) processes had been conducted and encouraged in addition to the formal legal procedures in the Ottoman Era, especially in financial disputes, debt issues, inheritance disputes, and murders and injuries (Dörtok-Abacı, 2008). However, in most cases, those *sulh* practices were ratified by the courts. At the communal level—in blood feud cases, for example, the aim of resolving communal conflicts was to prevent future generations from being potential suspects in the eyes of the community (Tamdoğan, 2008, 2009). Therefore, ending past conflicts and enabling a peaceful future, relational repair, and community restitution could be listed as the main motives behind these practices (Tamdoğan, 2008). Similar concerns govern the present practices as well. Increasing costs of the court system and fulfilling role obligations of a conservative religious life style could be other reasons for people seeking ulema mediation. The *ulema* consider mediation as a public duty; they provide such a service for ''God's sake.''

## Mediation

A thorough search of the literature provides only two reports (Starr, 1978, 1992; Wall, Beriker, & Wu, 2010) on Turkish community mediation. A recent work by Wall et al. offers a systematic comparison of the mediation techniques employed in the villages located in Western Turkey and in the Eastern provinces—mainly Kurdish villages. Star's work, however, takes a legal anthropological approach in presenting a thick description

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[1]In traditional Ottoman system, there were two types of ulema: Mufti's interpreted the Shariah, whereas Qadi's practiced and enforced Shariah.

[2]Tarikats and cemaats.

of the disputes and settlement mechanisms in a Turkish village (Starr, 1978, 1992). In the absence of an accumulated body of literature in the Turkish context, we are interested in knowing more about the mediation techniques employed by the ulema in urban and rural settings. We have three interconnected goals for conducting this study.

The first objective is related to the substantive importance of the issue. In Turkey, in both the modern urban context and rural settings, resolution of disputes often becomes challenging because of the mismatch between the formal legal system and the cultural tradition and religious values of the conservative communities. In an environment where formal legal procedures have limited legitimacy in private lives, ulema mediation plays a role in easing this normative and procedural gap in problematic practices such as blood feuds, honor crimes, and family disputes.[3] Therefore, we expect that exploration of the practical approaches and underlying values of the informal Islamic mediation practices would deepen our knowledge of community mediation in Turkey.

A second reason for conducting this project concerns our goal of contributing to mediation theory and methodology. More specifically, we hope that our findings will enhance the existing body of literature on mediators' roles, approaches, and techniques.

Transformative mediation (focusing on building relationships), facilitative mediation (focusing on building substantive agreements), and muscle mediation (focusing on adjusting the aspiration of the parties to move them in specific directions) are three traditionally Western approaches to mediation. Within the transformative tradition, strengthening responsiveness, enabling empowerment, helping the parties to make recognition shifts, and promoting interparty perspective taking are some of the goals (Bush & Folger, 2005) The mediator achieves this by reflecting, summarizing, checking in, and open-ended questions. In this approach, the mediator has the role of "process supporter." In the facilitative approach, however, the task of the mediator is to help the parties to reach an agreement (Fisher & Keashly, 1990; Touval & Zartman, 1985). To achieve this purpose, mediators facilitate communication, enhance trust, work on perception, offer their resources, facilitate concession making, deflect the anger of the disputants, help the parties reframe their perspectives, assist in the development of creative solutions, and act as a guarantor. Muscled mediators use their power to influence the decision of the parties. The use of threats, commitments, and bluffs are some of the techniques employed in this tradition (See Wall et al. 2001 for a review of the works that emphasize mediator's techniques).

Different categories are developed for the definition, classification, and application of the mediation techniques. Pruitt, Welton, and Fry (1989) developed and employed a comprehensive classification framework based on U.S community mediation practices. Wall et al. added a number of indigenous categories to this framework and used it in their research on Japanese (Wall & Callister, 1997), Korean (Kim et al. 1999), Malaysian (Wall & Callister, 1999), Chinese (Wall & Blum, 1991; Wall, Sohn, Cleeton, & Jin, 1995), Albanian (Çelik & Shkreli, 2010), and Turkish (Wall et al., 2010) community mediation practices. The application of Wall's typology in different cultural settings

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[3]This gap is also an issue in the states that have large Muslim immigrant population such as United States, UK, Canada, Australia, France, Germany.

made the framework an "etic" research tool for conducting mediation research in different social settings. Table 1 introduces the operational definitions of third-party techniques as they are presented in the study by Wall and Callister (1999).

In this work, we follow in the footsteps of Wall et al. and apply the etic categories to our data in order to analyze the features of ulema mediation. Another aim is to enrich the etic categories so that they represent an adequate emic description. To achieve these goals, we are also interested in answering the following questions: What types of disputes are brought to ulema? (1) What kind of mediator roles are being adopted by them? (2) Do transformative, facilitative, and muscled mediation approaches apply to ulema mediation? (3) How does Wall's typology communicate with the techniques used in ulema mediation? (4) What are the dispute-specific techniques? (5) What additional indigenous categories could be offered based on this application? (6)

A third concern of this investigation is to offer a rich-context, thick description of ulema mediation. The field of conflict resolution contains a limited number of studies that explore the ethnographic features of conflict resolution processes. The role of language and underlying linguistic aspects of conflict resolution processes (Cohen, 2000, 2001a,b), ritualistic (Al-Krenawi, 1999; Irani, 1999; Irani & Funk, 1998), ceremonial, symbolic (Deng, 2000; King-Irani, 2000; Pinto, 2000), and religious aspects of conflicts, and conflict resolution processes (Abu-Nimer, 1996; Greenhouse, 1986; Irani, 1999; Steinberg, 2000) are the topics researched in this tradition. "What are the underlying meanings and value systems of the practices of Islamic mediation in the contemporary Turkish context? (7) will be the guiding question of this last section.

## Method

In order to achieve our research goals, we follow two complementary paths. The first set of activities contains an analysis of the collected mediation narratives (cases) by ulema through the Wall and Callister's (1999) categories. We employed the techniques that are described in the Wall and Callister's article, given that other scholars have relied on this list of techniques in previous studies (Kim et al. 1993; Wall & Blum, 1991; Wall and Callister, 1997, 1999; Wall et al., 2010). In addition to these categories, five additional techniques that were found to be specific to Islamic mediation are added to the list (disputants ask for *fatwa*; *alim* decides a fatwa or arbitrates; disputants ask intervention of *alim*; explain decision according to *sharia*; payment of *diya*). This application was conducted to address research questions 1, 2, 3, 4, 5, and 6. In the second part, however, we concentrated on the thick description of the ulema mediation in order to present the underlying meaning and value systems of the practices of Islamic mediation in contemporary Turkey (question 7). As stated before, ulema mediation practices in Turkey take place under legal and social restriction. With limited access to data, we collected a total of 14 narrated mediation cases. Therefore, the decision to adopt a hybrid research design and use a qualitative approach to our analysis is related to both our initial research interests and concern for making best use of the data under given constraints. These two approaches are, indeed, complementary and should not be considered as mutually exclusive and contrary research tracks. Berry (1990, p. 93) has

Table 1
*Mediator Techniques*

| Technique | Description |
| --- | --- |
| Meet separately | Mediator meets with each disputant separately |
| Meet together with disputants | Mediator has disputants state their points |
| Put disputants together | The mediator brings the disputants together for a meeting that otherwise would not take place |
| Listen to disputant's side | Mediator has disputants state their points |
| Being vague | Mediator is intentionally vague when describing the situation or asking for concessions |
| Gather information | Mediator collects or asks for information from the disputants or others and does research to obtain information |
| Gather information from third party | Information, opinion, and advice obtained from third party |
| Analyze the disputants | Mediator analyzes disputants and grasps each disputant's characteristics |
| Educate | Mediator educates, persuades, or advises one disputant as to how he or she should think and act |
| Moral | Mediator points out a specific moral obligation or societal norm |
| Praise disputants | Mediator praises the disputant who is being addressed |
| Have third party criticize | Mediator has third party criticize a disputant's person, attitude, or behavior |
| Have third party educate | Mediator has a third party educate, persuade, or advise one or both disputants on how they should act or think |
| Quote law or rule (from the sources of sharia) | Mediator quotes a specific law or rule that is relevant to the dispute (ex: a verse from Quran, a hadith or relevant rules from sharia) |
| Example | Mediator cites example or similar case |
| Provide logical explanation | Mediator backs up any technique with logic |
| Cite dependency | Mediator expresses similarities or interdependence in disputants' goals, fates, and needs (includes mentioning personal costs of disagreement and benefits of agreement) |
| Have third party argue for concessions | Mediator has a third party argue for has a third party argue for or propose a specific concession or agreement |
| State other's point of view | Mediator presents or argues the other disputant's point of view and asks a disputant to see the other's point of view |
| Meet with third party present | Mediator brings additional third disputants to meeting |
| Have third party assist | Mediator offers or gets third-party's assistance for the disputants or the mediator |
| Mediator assist | Mediator personally offers or gives assistance and takes a specific action |
| Reconcile | Mediator negotiates a general compromise |
| Apologize | Mediator has one disputant apologize or acknowledge his or her fault |
| Obtain forgiveness | Mediator asks one disputant to tolerate or forgive the other |
| Relax | Mediator makes specific statements to calm the disputants |
| Pray | Mediator prays alone or with one or both disputants |

Table 1
(Continued)

| Technique | Description |
| --- | --- |
| Have drink with disputants | Mediator has a drink with the disputants prior to agreement |
| Break time | Mediator stops the quarreling and has disputants rest |
| Separate disputants | Mediator separates the disputants |
| Mediator's data | Mediator provides objective data about the dispute or the environment |
| Threat | Any threat from the mediator |
| Note cost to third party | Mediator points out costs of dispute to others, cites an obligation not to dispute (includes noting benefits of agreement to others |
| Get grasp of situation | Mediator grasps the cause (analyze situation) |
| Criticize | Mediator criticizes a disputant's person, attitude, and behavior or uses a specific label |
| Call for empathy | Mediator enhances the other disputant or calls for respect of the other; mediator puts a positive face on the other disputant |
| Formalization | Mediator caps the agreement with techniques other than a drink |
| Written agreement | Mediator has disputants sign a quasi-legal written agreement governing their future behavior |

suggested a three-step approach that combines a concern for the specific and can be applied where functional equivalence of behaviors in two cultures can be demonstrated.

(**1**) Existing descriptive categories and concepts are applied tentatively, as an imposed etic,

(**2**) These are then modified so that they represent an adequate emic description from within each system, and

(**3**) Shared categories can then be used to build up new categories valid for both systems as a derived etic and can be expanded if desired until they constitute a universal. This derived etic or universal is used as the basis for new measurement instruments and techniques (Berry, 1990, p. 93).

In this research, data are collected by recording semistructured interviews conducted with ulema. Owing to confidentiality concerns, we relied on snowball sampling in order to locate information-rich key informants and critical cases (Patton, 2002).

## Interviews

The practice of sharia is banned in Turkey, and the conduct of Islamic mediation is illegal. Therefore, to be able to establish a working relationship with the ulema, we needed to gain their confidence. For this reason, instead of approaching them directly, we decided to contact prominent figures in the ulema community first (in our case academics from theology departments). Five participants of this study were identified after a process of careful consultation with the scholars of theology at Marmara University, Istanbul University, the Center for Islamic Research (ISAM), and other independent Islamic scholars in Istanbul. Following these meetings, the researchers approached the

six most-mentioned names (ulema) by referring to the names of the credible initial con-
tacts as their references. The first author, prior to his formal recorded interview sessions,
met the six ulema face-to-face. In these encounters, the researcher presented himself
and gave general information about the project. At this stage, it was realized that one of
the ulema was very old and it was hard to communicate effectively with him; therefore,
the researchers skipped that participant and formally interviewed the five remaining
ones who accepted to collaborate. Each participant was asked to narrate intervention
cases that they could recall. One of the participants could only recount one case with
sufficient details to be coded, one participant described four cases, and other three
participants described three cases each.

An interview guide was provided to the interviewees so as to ensure that the same
basic lines of inquiry were pursued with each person interviewed. In the interviews, we
used both open-ended and close-ended questions. In other words, we did not rely only
on a limited set of formalized questions. We had a framework of themes to be explored
but were also allowed new topics to be brought up during the interview. Close-ended
questions were necessary to depict concrete steps of mediation, types of disputes, forms
of agreement, etc. To understand the meaning of the actions and underlying assump-
tions of the practices, however, we had to rely on less formal conversations. The follow-
ing questions were asked during the interviews:

- Can you tell us about the few remarkable disputes have been brought to you?
- What was the dispute about?
- How were you related to the disputants?
- Can you explain the mediation/arbitration process in sequential order?
- Where did you accept the disputants?
- How did the dispute end?

To be able to achieve chronological sequence of the processes and to facilitate recall,
we assisted our interviewees by asking questions such as ''Where did you meet the
disputants? ''What did you say upon this?'' ''What question did you ask?'' ''Could you
please tell us the exact words you used?'' We transcribed the mediation account that
was narrated by the interviewee.

During the interviews, we told the ulema that their names could remain anonymous
if they would feel more confident while narrating their experiences. In addition, we
asked interviewees whether they would feel comfortable about their narrations being
recorded. We would just transcribe their narrations if they indicated that would feel
uncomfortable with a tape recorder. Data collected in this part were analyzed through
the application of Wall and Callister's framework. Information obtained through semi-
structured interviews was also used to offer a thick description dense description of
ulema mediation.

## Analyzing Mediation Processes and Techniques

Here, we have categorized each step of the narrated mediation processes according to
the techniques described by Wall and Callister (1999). This arrangement, which con-
sisted of careful reading of the transcript, decision on proper technique, and actual

recording, was performed by the first author. For this purpose, we used a coding sheet on which cases are numbered from one to fourteen in the horizontal row, and mediator techniques are numbered from one to forty-two in the vertical column on the left. For each case, third-party techniques used by the ulema are marked on the table of techniques by taking into consideration their sequence of appearance. A total of 134 techniques were coded in analyzing 14 cases (Table 4). We trained a graduate student in the content of the techniques and asked her to conduct an independent coding. The student was from a different discipline and did not have a prior knowledge of the project. She agreed to conduct this work to expand her research skills on content analysis and gain experience in manifest coding. Intercoder reliability was found to be 0.73. The coding decisions were made across 14 cases and 43 coding categories.

## Disputed Cases

Interviews started with a general conversation on the subject. Prior to giving their own experiences, some of the interviewees talked about some general characteristics of peace-making (*sulh*), mediation, and arbitration in Islamic law and how they were practiced during the Ottoman period.

Based on the above framework, the informants narrated 14 mediation cases, which fall into three main conflict categories: financial disputes, marital disputes, and fights and accidents The next section of the article offers summary descriptions[4] of the dispute cases in which ulema acted as mediators. In these presentations, pseudonyms are used to maintain privacy. Also we do not specify which case belongs to which informant; therefore, "the *alim*" may refer to any one of our four informants who cooperated with us in this project.

## Financial Disputes

### An Industrialist and a Financial Institution
The dispute was between an industrialist who was living and working in Konya and a financial institution that operated according to Islamic financial principles (*interest-free financing*). The dispute was over a 550,000 Deutsche Mark (DM)-credit debt. An industrialist by the name of Ahmet had borrowed 1.4 million DM from the financial institution for an investment. When the loan became due, Ahmet could not pay it back. According to Ahmet's initial statement to the *alim*, the managers of the financial institution had threatened him and had tried to get him to sign a new document, whereupon he accused them of usury. Ahmet said that because of the intimidation, he was forced to accept a new investment project, for which he subsequently received additional loans. As a result of the devaluation and economic crisis, his new investment failed, as a result

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[4]Detailed verbatim transcripts of the cases can be found in Köse T. *Islamic mediation in Turkey: Third party roles of Ulema in the resolution of communal conflicts.* Unpublished Masters Thesis, Sabanci University, July 2002.

of which he lost 550,000 (DM). He blamed the managers of the financial institution for his failure and hence he did not want to pay what amounted to a 550,000 (DM) loss.

### Inefficient Investment

This dispute concerned a commercial partnership between two friends, Hasan and Nihat, who were members of the same religious fellowship. Hasan was an entrepreneur. He had gone to China to buy a pen factory, including its machinery. After a process of negotiation, he decided to purchase the machinery and set up the factory in Turkey. He offered a partnership to his friend Nihat as a form of investment. Nihat accepted Hasan's offer, and they signed a partnership contract. Together they paid 1 million dollars and purchased the machinery in order to establish the factory. While they were trying to do so, Turkey experienced an economic crisis and currency devaluation. Because of the devaluation of the Turkish lira, Hasan and Nihat's investment became insufficient Nihat wanted to withdraw his capital investment, no longer supporting the establishment of the factory. Nihat also felt cheated in his partnership with Hasan.

### An Employer and a Foreman

This was a conflict involving a workplace. In order to motivate his foreman, the employer had promised to pay a 10% premium based on profits. That year, however, the company did not make any profits. In fact, it incurred a substantial loss. The employer could not live up to his promise. Not only that he turned around and wanted the foreman to help make up the loss by paying 10% of it himself. The foreman rejected the demand, arguing that the promise had not been a reciprocal one. The only provision of the agreement made between him and his employer was that he was to get additional pay if profits were made. Nothing was said about him having to share in losses. The employer insisted on his claim, going so far as to threaten the foreman with not giving him the title deed of an apartment that he previously sold to the foreman.

### Offer of a Bribe

This dispute was over the partitioning of a commercial partnership. The disputants were owners of a company that they had established and developed by working together for many long years. The partners had decided to separate their shares, but they faced certain difficulties. Each of the parties wanted to keep the company to himself and wanted to convince the other party to give up his shares in return for a certain amount of money. They could not agree on which one of them would continue the business. Both of the parties were committed to their positions.

## Family Disputes

### The Judge and Her Husband

This case involved a marriage dispute between a woman who was a criminal court judge and her husband who was a high school teacher. During their marriage of more than 10 years, the couple had had many disputes. In the end, they realized their marriage was just not working out anymore. The woman decided to get a divorce. Because both

parties had religious sensitivities and were concerned about religious principles, they consulted an *alim.*

### Distrustful Husband
This case involved a dispute between husband and wife. The disputants were a young couple. Ali, the husband, was 22 years old and Ayse, his wife, was 15 years old when they were married. According to the husband, his wife was constantly talking to her religion teacher on the phone. The teacher was from another town and the young woman respected him, and was infatuated with him because he was a respected religious figure, a wise man (*evliya*). Although her husband warned her about the telephone calls, she continued to call her teacher. After his wife's "disobedience," Ali got angry and took Ayse back to her family's house. He decided to divorce her but he had some reservations.

### Secret Marriage
The dispute was between Hamit and Ayla. Ayla's husband, Hamit, had married a second woman, with whom he had had a son. But Hamit told Ayla neither about his second marriage nor about his son. When Ayla learned about the situation, she was shocked and rejected her husband's second wife and son. Ayla had gone to the *alim* to explain the situation.

### Ominous Inheritance
Hatice is a woman who was neighbor of the *alim*. Hatice had inherited a certain amount of property and money when her father died. Hatice and her husband, Haşim, were both rich, so Hatice decided to leave her husband's share of the inheritance to her brother, who had been having some financial difficulties. But Haşim objected to Hatice's decision; he did not want her to give her share to her brother. Hatice was disappointed and wondered if her husband was with her only because of her property. Hatice subsequently decided to divorce her husband, whereupon he visited the *alim* to get a consultation.

### A Young Couple
The disputants were the neighbors of the son of an *alim*. They were a young couple, who, because of certain incompatibilities, had appealed to the court to get a divorce. They were divorced by the court but because they had not obtained an official copy of the court decision, the divorce decision was not considered legally valid. The mother of the man, who was the *alim*'s neighbor, told him about the case and asked him to help the couple reconcile. The *alim* said he would try to help the couple if they had not obtained the legal divorce document.

## Fights and Accidents

### Bloody Fight
The event took place in the Southeastern Anatolian region of Turkey, where two people had fought for an unknown reason. One of the parties died as a result of the fight.

The family of the murderer visited the *alim* and wanted him to mediate between them and the family of the person who has been killed.

### Seasonal Workers
The dispute occurred when a dump truck owner met with an accident while illegally transporting seasonal agricultural workers from poor Southeastern Anatolia on the back of his truck. Negligence and carelessness resulted in the death of several people and the injury of still many more. The family of the driver had gone to the *alim* to have him mediate between the families of the people who had been killed in the accident and the truck driver.

### Injured Relative
Salih and Zeyd, both relatives of *alim*, had been partners in a trade business. They could not agree on how to divide their income between each other. This disagreement gave rise to a physical altercation, which resulted in injuries. The *alim*, hearing about the fight, decided to mediate between his relatives.

### Traffic Accident
The daughter of one of the ulema's friends had died in a car accident. A young male driver, who was a student in Izmir, hit the girl, who died immediately. The young man, who was son of a rich merchant living in Denizli, had been driving over the speed limit when he hit the girl. The driver was found guilty and was put in jail. The young man's father came to the *alim* and wanted him to mediate between him and the girl's family.

### A Prevented Blood Feud
This conflict took place in Urfa.[5] The *alim* was the mufti of the city. Because of a leadership dispute, two of the biggest clans of the city had fought with one another. The fight was a bloody one, resulting in the death of 12 people. One of the clan leaders was the mayor of the city, while the other was an MP who had been elected from the city. The Office of Religious Affairs wanted the *alim* to mediate between the parties in order to prevent a blood feud.

# Findings

## Nature and Types of Disputes

The analyses indicate that the majority of the disagreements were of the form of civil disputes taking place in urban settings. The most common types of disputes that the ulema dealt with were those involving husband and wife and financial disagreements. In the case of husband–wife disputes, the main issues were related to divorce, spousal incompatibility, and secret second marriages entered into by husbands. Financial disputes were related to issues in commercial partnerships and differences concerning the

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[5]A city in the Southeastern Anatolia Region.

Table 2
*Nature of Disputes*

| Dispute types | Case number | Clusters |
| --- | --- | --- |
| Financial and commercial disputes | 1, 2, 3, 4 | Financial disputes 4 |
| Marital disputes | 5, 6, 8, 9 | Marital disputes 5 |
| Wife objects to second marriage | 7 | |
| Accident that causes injury | 12 | Fights and accidents 5 |
| Accident that causes to death | 13 | |
| Fight that causes death | 10, 14 | |
| Fight that causes injuries | 11 | |

distribution of financial profits. The third cluster of disputes included fights or accidents that resulted in murders or injuries. Unintentional[6] murder and injury cases were especially more frequent.

Table 2 contains a classification of the cases described by informants in the interviews. Case numbers refer to the cases that are described in the previous section.

## Mediation Processes and Techniques

Based on this procedure and general statements made by the ulema in the interviews, we make the following remarks about the third-party techniques employed by the informants: As for the most frequently used techniques, the ulema met separately with the parties (12/14), listened to the disputants (14/14), got a grasp of situation (7/14), analyzed the disputants, educated them, and gave moral support (6/14). The ulema stated the other party's point of view (5/14) attempted to reconcile them (5/14) and noted the cost to a third party (6/14) and offered an explanation according to *sharia* (a new category).

Regarding the techniques that are not applicable to ulema mediation, our results indicate that there was always a certain relational distance between the disputants and the ulema. The ulema kept a distance between the disputants and themselves in order to assure their authority, personal prestige, and trustworthiness. They did not "have a drink with disputants" (0/14). Neither did they "pray" (0/14) with them. Ulema did not share their authority with other third parties (0/14). Another finding is that they did not "gather information from third parties," "obtain third-party criticism," "meet while a third party was present," "have third-party assistance," or "have mediator assistance" (0/14). That said, ulema had "third parties argue for concession" (4/14). Similarly, ulema did not allow any third parties other than themselves to "educate" the disputants. The ulema did not use "threats." During the session, ulema did not appeal to "break time" tactics to stop quarreling and let disputants rest (0/14). The ulema mostly relied on the information that was conveyed by the disputants to assess the situation. They did not provide additional objective data about the dispute or the

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[6]Traffic accidents or other accidents and spontaneous fights can be included in unintentional deaths.

Table 3
*Additional Techniques*

| | |
|---|---|
| Disputants ask for *fatwa* | One of the disputants brings the dispute issue to Alim in order to get an initial opinion according to Islamic legal jurisprudence (fiqh) |
| Alim decides a *fatwa* | Alim gives a legal opinion and decision according to the fiqhic principles |
| Explanation according to *sharia* | Alims clarify the issue with reference to sources and methodologies of Islamic law |
| Disputant(s) ask intervention of Alim | Disputant (s) decide to get the support of Alim in dealing their disputes |
| Payment of *diya* | Disputants accept to pay blood money or compensation |

environment. Therefore, they did not ''put the disputants together'' ''for a meeting. In our cases, there were no formal legally binding agreements or ''formalization'' (0/14).

Similarly, our analyses revealed that, in addition to Wall and Callister's (1999) categories, there were novel techniques employed by the ulema (Table 3). Additional ones included ''disputants asking for *fatwa*,''[7] ''*Alim* issuing a *fatwa*,''[8] ''disputants asking for an intervention,'' ''interpretation and decision made according to sharia,''[9] and ''payment of *diya*''[10] (blood money). Therefore, we added these new categories at the bottom of Table 4. Technique number 14 ''quote law or rule'' in the original listing was kept as is but treated as ''quote law or rule from sharia.''

Table 4 summarizes the operational definitions of the new categories.

## Dispute-Specific Techniques

Techniques that were commonly used in all three types[11] of disputes were found as ''listening to the side of the disputant'' (4), ''meeting separately'' (1), and ''gathering

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[7]*Disputants ask for fatwa*: One of the disputants brings the disputed issue to the *alim* in an abstract and impersonal form in order to get an initial opinion according to Islamic Legal Jurisprudence (fiqh). A fatwa is a legal pronouncement in Islam, issued by an expert of fiqh on a specific issue. Usually, a fatwa is issued at the request of an individual or a judge to settle a question where fiqh is unclear.

[8]*Alim issues a fatwa*: *Alim* gives a binding legal opinion and decision according to the principles of Islamic Law. Usually, the issue is between two people; therefore, his decisions may also be considered as an implicit arbitration in certain instances. A fatwa is issued after meeting with all parties concerned is held.

[9]*Explanation according to sharia*: In most cases, disputants have an idea about the Islamic rules related to their issue. Sometimes they do some research before going to the Alim, but in most cases their knowledge is either mistaken or incomplete. The ulema clarify the issue with reference to sources and methodologies of Islamic law and provide certain explanations; they may also give some examples. Their explanations are not scholarly ones; rather, they just try to give an idea to disputants in a way that makes sense to them.

[10]*Payment of diya*: Payment of blood money or compensation money. The category of punishment in Islamic law known as *qisas* (equitable retribution) is inflicted in case of deliberate killing or wounding of a person. The penalty can be waived by the victim or his heir in lieu of blood money (*diya*). For unintentional homicide or wounding, there is no retribution; only compensation is paid. In this study, blood money or compensation money has been offered in order to avoid the litigation or blood feuds.

[11]Techniques are found at least in one of the cases in three types of disputes.

Table 4
*Mediator Techniques Practiced Within Cases*

| Techniques | Case numbers | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| Meet separately | 5 | 3 | 3 | | 2 | | 5 | 2 | 1 | 3 | 4 | 2 | 3 | 1 |
| Meet together with disputants | 6 | 5 | 4 | 2 | 9 | | | | | | | | | |
| Put disputants together | | | | | | | | | | | | | | |
| Listen to disputant's side | 1 | 2 | 2 | 3 | 3 | 1 | 1 | 3 | 2 | 2 | 2 | 1 | 2 | 2 |
| Being vague | | | | 4 | | | 4 | 8 | | | | | | |
| Gather information | 7 | | | | | | | | 3 | | 3 | | 5 | |
| Gather information from third party | | | | | | | | | | | | | | |
| Analyze the disputants | | 6 | 5 | | 5 | 2 | | 7 | 4 | | | | | |
| Educate | | | | | | 8 | 5 | | 9 | 10 | 5 | 6 | | |
| Moral | | | | | | 6 | | 8 | | 4 | 8 | 5 | | 5 |
| Praise disputants | | | | | | | | | | | | | | |
| Have third party criticize | | | | | | | | | | | | | | |
| Have third party educate | | | | | | | | | | | | | | |
| Quote law or rule (from sharia) | 8 | | | | | | 3 | | 11 | | | | | 6 |
| Example | | | | | | | | 10 | | | | | | |
| Provide logical explanation | | 7 | | | | | | | | 8 | 9 | | 4 | |
| Cite dependency | | | | | | | 6 | 6 | 6 | | 4 | | | |
| Have third party argue for concessions | | 8 | | | | | | 8 | | | | 7 | 9 | |
| State other's point of view | | | | | | | | 4 | 5 | 6 | 5 | | | |
| Meet with third party present | | | | | | | | | | | | | | |
| Have third party assist | | | | | | | | | | | | | | |
| Mediator assist | | | | | | | | | | | | | | |
| Reconcile | | 9 | | | | | 9 | | 11 | 11 | 13 | | | |
| Apologize | | | | | | | | | | 9 | 10 | 10 | | |
| Obtain forgiveness | | | | | | 7 | | | | 10 | 11 | | | 7 |
| Relax | | | | | | | 2 | 5 | | 7 | | | | 3 |
| Pray | | | | | | | | | | | | | | |
| Have drink with disputants | | | | | | | | | | | | | | |
| Break time | | | | | | | | | | | | | | |
| Separate disputants | | | | | | | | | | | | 3 | | |
| Mediator's data | | | | | | | | | | | | | | |
| Threat | | | | | | | | | | | | | | |
| Note cost to third party | | | | | | | 7 | 11 | 7 | | | 8 | 7 | 4 |
| Get grasp of situation | 3 | 4 | 3 | 5 | 4 | | | | | 6 | | | 6 | |
| Criticize | | | | | | 6 | 3 | | | | | 9 | | |
| Call for empathy | | | | | | | | | 9 | | | | | |
| Formalization | | | | | | | | | | | | | | |
| Written agreement | 10 | | | | 10 | | | | | | | | | |
| Disputants ask for fatwa | 2 | | | | | | | 1 | | | | | | |
| Alim decides a fatwa or arbitrates | 4 | 9 | 6 | | | | | | | | | | | |
| Disputants ask intervention of Alim | | 1 | 1 | 1 | 1 | | | | | 1 | 1 | | 1 | |
| Explanation and decision acc. to sharia | | 6 | 7 | | 7 | 4 | | | | | 7 | | 8 | |
| Payment of diya (compensation) | | | | | | | | | | 12 | 12 | 11 | | |

information'' (6), ''getting a grasp of the situation'' (34), ''quoting from law-sharia,'' (14), ''reconciliation''(23), ''having a third party argue for concession'' (18), and ''disputant asking for intervention of an *alim* (41). Tactics that were used only in Accidents and Fights cases were ''apologizing'' (24), ''praising disputants'' (11), ''separating disputants'' (30), and ''paying of *diya*'' (compensation)'' (43). Similarly, ''issuing a fatwa'' (40) was a technique used uniquely in Financial Disputes. Providing ''examples'' (15) and ''calling for empathy'' (36) were techniques that were found only in Marital disputes. In terms of commonalities of techniques by pairs, financial disputes and accidents and fights had least in common. ''Providing logical information'' (16) was the only technique that was used in both types of cases. Accidents and fights and marital disputes had most in common in terms of tactics that were shared. Among them were ''Educating'' (9), ''Moral (10), ''Citing Dependency'' (17), ''Stating the other's point of view'' (19), ''Obtaining forgiveness'' (25), ''Relaxing'' (26), ''Noting cost to third party'' (33), and ''Criticizing'' (35). In comparing Financial and Marital disputes, we found that ''meeting together with disputants'' (2), ''being vague'' (5), ''analyzing the disputants'' (8), ''written agreement'' (38), and ''disputant asking for Fatwa'' (39) are common techniques used in both types of disputes.

## Financial Cases

In financial disputes, parties asked for the intervention of an *alim*. He first met the disputants separately and listened to them. Later, he met the disputants together. In this phase, the *alim* tried to get ''grasp of the conflict situation.'' After developing an understanding regarding the disputed cases, he analyzed the disputants' characteristics and quoted rules from sharia that were relevant to the dispute. Similarly, he clarified the issues by referring to sources and methodologies of Islamic Law. At the end of the session, the *alim* either issued a fatwa, a binding legal opinion, or negotiated a general compromise. In a few cases, the *alim* had the disputants sign a written agreement.

The ulema did not use ''educating'' (9) and ''providing moral support'' (10) or ''praising the disputant'' (11) techniques in cases of financial dispute. Similarly, they did not attend to giving ''moral support'' (10) to the parties. They also did not try to ''obtain forgiveness'' (25), ''state the other's point of view'' (19), ask for an ''apology'' (24), ''cite dependency'' (17), ''criticize'' (35), call for ''relaxation'' (26), ''separate disputants'' (30),''provide examples''(13) ''call for empathy'' (36), or ''note cost to third party'' (33) in financial disputes. Table 5 presents the sequences of mediation techniques used in case of financial disputes.

## Marital Cases

In marital disputes, the *alim* met the disputants separately, listened to them, and analyzed the disputants' claims in order to examine points of discordance and the underlying dimensions of the problems. In his attempt at reconciling the parties, the *alim* presented the other disputant's point of view and offered advice to the disputants as to how he or she should think or act. In three of the five cases, if the couple had a child

Table 5

*Techniques Used in Financial Disputes—In Order of Use (4 Cases)*

| Case no: 1 | 2 | 3 | 4 |
|---|---|---|---|
| Listen to disputant's side | Disputant asks for intervention of Alim | Disputant asks for intervention of Alim | Disputant asks for intervention of Alim |
| Disputant asks for Fatwa | Listen to disputant's side | Listen to disputant's side | Meet together with disputants |
| Get grasp of the situation | Meet separately | Meet separately | Listen to disputant's side |
| Alim decides a Fatwa or arbitrates | Get grasp of situation | Meet together with disputants | Being vague |
| Meet separately | Meet together with disputants | Analyze disputants | Get grasp of the situation |
| Meet together with disputants | Analyze the disputants/ explanation according to Sharia | Alim decides a Fatwa or arbitrates | |
| Gather information | Provide logical explanation | Explanation according to Sharia | |
| Quote law (Sharia) | Have third party argue for concession | | |
| Alim decides Fatwa or arbitrates | Reconcile | | |
| Written agreement | | | |

or children, the ulema highlighted interdependencies and pointed out costs of disputes to others. In two cases, after meeting the spouses, ulema were not able to reconcile the parties and did not insist on a constructive solution. In these cases, they ''explain(ed) according to Sharia'' (41) the conditions of divorce. Similarly, they gave examples from the Prophets life, thus providing ''moral (10)'' criteria rather than mentioning direct rules and procedures. The ulema ''criticize(d)'' (35) married couples for being irresponsible. In addition, they used such techniques as ''being vague'' (5), ''quoting law or rules'' (14), ''reconciliation'' (23), and ''relaxation'' (26). The end of the mediation sessions often resulted by obtaining reconciliation, a written agreement or forgiveness. Table 6 presents the techniques used in marital disputes.

## Accidents and Fights

In all of the cases, disputants asked for the intervention of ulema. The ulema listened to them and met separately with the conflicting parties in order to gather information and get grasp of the situation. In four of the five cases, the ulema pointed out ''moral'' obligations or societal norms to convince the disputants. The ulema ''provided logical explanation'' and indicated costs of disputes to others in order to convince the parties to find a peaceful solution to their differences. Similarly, asking for verbal or nonverbal ''statements of apology,'' ''asking for forgiveness,'' and having other third parties argue

Table 6
*Techniques Used in Marital Disputes—In Order of Use (5 Cases)*

| Case no: 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|
| Disputants ask for intervention of Alim | Listen to disputant's side | Listen to disputant's side | Disputant asks for Fatwa | Meet separately |
| Meet separately | Analyze the disputants | Relax | Meet separately | Listen to disputant's side |
| Listen to disputant's side | Criticize | Quote law (Sharia) | Listen to disputant's side | Gather information |
| Get grasp of the situation | Being vague | Explanation and decision according to Sharia | State other's point of view | Analyze disputants |
| Analyze the disputant/state other's point of view | Educate | Meet separately | Relax | State the other's point of view |
| Criticize | Moral | Cite dependency | Cite dependency | Cite dependency |
| Explanation according to Sharia | Obtain forgiveness | Note cost to third party | Analyze disputants | Note cost to third party |
| Educate | | Being vague | Moral | Have third party argue for concession |
| Meet together with disputants | | Reconcile | Educate | Call for empathy |
| Written agreement | | | Example | Educate |
| | | | Note cost to third party | Reconcile/quote law-sharia |

for concession were important elements of their mediation activity. At the end of session, the ulema obtained forgiveness, or a general compromise. In some cases, parties agreed to pay blood money or compensation.

Table 7 lists the mediation techniques used in fights and accident cases according to their order of use.

# Discussion

## Mediator Roles and Approaches

The three categories of mediator approaches—transformative, facilitative, and manipulative—do not directly correspond to the ulema's third-party intervention styles. Having said that, among the three mediation styles, the facilitative approach appears to have some similarities with the characteristics of ulema intervention. In facilitative mediation, mediator facilitates communication, enhances trust, and helps the parties reframe their perspectives. In our study, in all disputes, ulema met separately with the disputants, gathered information, and tried to understand the situation in order to help the parties to reach an agreement. The only difference here was that in our cases in addition to

Table 7

*Techniques Used in Fights and Accidents—In Order of Use (5 Cases)*

| Case no: 10 | 11 | 12 | 13 | 14 |
|---|---|---|---|---|
| Disputants ask for intervention of Alim | Disputants ask for intervention of Alim | Listen to disputant's side | Disputants ask for intervention of Alim | Meet separately |
| Listen to disputant's side | Listen to disputant's side | Meet separately | Listen to disputant's side | Listen to disputant's side |
| Meet separately | Gather information | Separate disputants | Meet separately | Relax |
| Moral | Meet separately | Cite dependency | Provide logical explanation | Note cost to third party |
| Educate | State other's point of view | Moral | Gather information | Moral |
| State other's point of view | Get grasp of the situation | Educate | Get grasp of the situation | Quote law/Sharia |
| Relax | Explanation and decision according to Sharia | Have third party argue for concession | Note cost to third party | Obtain forgiveness |
| Provide logical explanation | Moral | Note cost to third party | Explanation according to Sharia | |
| Apologize | Provide logical explanation | Criticize | Have third party argue for concession | |
| Obtain forgiveness | Apologize | Apologize | | |
| Reconcile/Praise disputants | Obtain forgiveness | Payment of Diya | | |
| Payment of diya (compensation) | Payment of diya (compensation) | | | |
| | Reconcile | | | |

those facilitative tactics they resorted to indigenous techniques. Within the transformative tradition, the aim of the mediator is to empower parties in such a way that their capacity to address their own issues increases (Bush and Folger, 2005). Similarly, parties are expected to develop their skills to recognize and understand the other person's point of view. In this tradition, reaching an agreement is often a secondary aim. Our cases showed that, especially in marital cases, the ulema often stated the other's point of view and called for empathy to promote interparty perspective taking. However, when engaging in such activities, the primary goal of the ulema was to facilitate concession making and reaching an agreement-not to increase conflict resolution capacities of the disputants. Therefore, these practices did have much communality with the principles of transformative mediation. The ulema never used overt power strategies in the mediation sessions. In other words, muscle mediation was not practiced in ulema mediations. Using threats or other directive tactics are not part of the mediation processes. However, their credentials and status in the conservative communities denote a situation of embedded power. Power is naturally executed because of their status in the society and also religious teachings they base their practices. Keeping the harmony of the community is another social power executed to the participants.

The findings indicate that the dispute types seen by the ulema fall into three main clusters: marital, financial, and those related to fights and accidents. Formal ADR procedures, in the North American context, place importance on rational and expectable measures; therefore, in such contexts, there are generally fixed and predetermined steps for handling disputes. These involve "behaving professionally" and "portraying a "business image" so as to give the mediator credibility (Abu-Nimer, 1996). The ulema do not follow the standard procedure that one would expect in a formal ADR session. Their legitimacies do not derive simply from their predetermined procedural interventions or from their instrumental rationality. People trust ulema because they consider them as agents of justice. Their techniques include elements from the accepted mediating procedures employed in the western contexts, as well as those originating in Islamic law, such as fatwa, *kısas-diya*, and providing explanations according to sharia.

Our findings indicate that the ulema do not get any assistance from other third parties to conduct the mediation process. Similarly, using time out to caucus with the parties—a widely used tactic in a US setting—is not applicable in dispute resolution setting involving ulema. Another difference is that the ulema rely on the declared statements of the parties involved in order to process the mediation session. They do not provide additional objective data about the dispute environment—a crucial role in formal ADR processes. Unlike their Asian or Middle Eastern counterparts, they do not socialize or pray with the disputants during the process. They prefer to keep a distance so as to preserve their authority and legitimacy. This finding is also supported by the conclusions driven by Wall et al. (2010).

There are dispute-specific tactics that the ulema employ. Compared with the other two types of disputes, accidents and fights are complicated and harder cases for the ulema. This is because they generally reflect a high level of animosity, which makes it particularly important for the mediator to attempt to get one disputant to apologize or acknowledge his or her fault. Our findings show that in cases of murder and injury, this is a major step in the process of reconciliation. The victim's family can forgive the perpetrator or ask for *diya* payment. If the perpetrator's side accepts payment for material compensation (*diya*), the *alim* calculates the amount of compensation according to Islamic law. At the end of mediation session, the *alim* praises the parties and shows his appreciation. Only in this type of dispute does the *alim* not bring the parties together. In emotionally charged cases, he prefers running the sessions as isolated efforts.

In marital disputes, attitudinal and relational dimensions are important elements. In these cases, emotional issues, poor communication or miscommunication, and repetitive negative behavior can lead to relational misconduct between the disputants. In marital disputes, ulema cite examples of comparable cases to show that other people, too, have similar problems and, by calling for empathy, he puts a positive face on the other disputant in order to restore perceptual problems.

Compared with the other types of disputes, financial ones involve a clearly defined issue, based on facts and tables. Therefore, in these cases, the *alim*'s decision constitutes the basis for a practical solution. Unlike in other types of disputes, in financial cases, the *alim* issues a fatwa as a final decision. Another finding is common to all cases: the *alim* listened to the disputants. In financial cases, the *alim* did not just depend on what

the disputants reported, but again in all cases, he analyzed the situation thoroughly in order to get a good grasp of facts and figures, and to prevent material losses to either side. Despite the fact that financial disputes involve distribution of material resources, one side's gain is often perceived as the other party's loss. This may cause the ulema to be extra cautious about the situation. In nearly all cases, the ulema met the disputants separately. That said, in all financial disputes, they also brought the disputants together toward the end of the process. This may indicate that the ulema feel comfortable in bringing the parties together in interest-based conflicts in which tangible resources are being partitioned. In other types of disputes, they are hesitant to bring the parties together.

In almost all cases of fights and accidents, the ulema pointed out a specific moral obligation or societal norm. People are considered within webs of relationships. In particular, there is a significant emphasis on family solidarity and harmonious relationships with religious ''brothers and sisters.'' People's choices and interactions are considered and evaluated within these webs of relationships. The ulema constantly emphasized the charity and benefits of sustaining peaceful and harmonious relations within the community of believers. In general, the ulema advised almost all disputants to concede for the sake of maintaining peaceful communal relationships. In almost all the cases, there was an emphasis on the communal values and normative consensus. In disputes over the distribution of scarce material resources, the ulema rarely referred to communally oriented values. Similarly, they educated the parties as to how they should think and act in order to be good members of the community.

Again, in almost all marital disputes, the ulema analyzed the disputants in order to be able to grasp each disputant's characteristics. Similarly, they examined points of discordance and tried to find the underlying dimensions of these problems by ''analyzing'' the psychological states of the spouses. In such cases, the informants mentioned the importance of understanding the psychological situations and underlying frustrations of the disputants. In analyzing the psychological states of the disputants, the ulema benefited from their personal experiences rather than from professional training. If the couple had a child or children, in three of the five cases, the ulema ''cited dependency.'' Similarly, in three cases, the ulema attempted to ease the communication between the couples by ''stating the other party's point of view.'' In order to reconcile disputants, the ulema would mention the positive views of the party they previously had met to the other person and the vice versa. They usually avoided conveying the negative views held by the disputants of one another.

Therefore, we conclude that the ulema pursue eclectic and flexible approaches that are rooted in the Turkish–Islamic cultural context. We offer three alternative third-party roles that we believe have better capacity in capturing the processes that the Ulema have adopted. The three-third-party roles are as follows: (a) family elder/counselor; (b) peace-broker; and (c) facilitator/arbitrator. The first approach, assuming the role of family elder/counselor, mostly emerges in cases of marital dispute. The second one, playing the role of peace-broker, is employed in the cases of fights and accidents. The third approach, that of facilitator/arbitrator, is used in *financial* disputes.

## Family Elder/Counselor

Marital disputes and family disputes have dynamics that are very different from those of financial disputes. Marital disputes often arise out of emotional issues, poor communication or miscommunication, or repetitive intolerable behavior. The ulema do not act as neutral facilitators in these cases since they feel social responsibility and prefer acting as moral guides. They tend to act like family elders whose aim is to take care of the harmony of the family and the community. Emphasis on Islamic values, giving references to the Prophet's life, and advising are some of the oft-used techniques. In some marital disputes and family disputes, the ulema act like therapists or family counselors. They provide examples of the possible implications of disputants' behavior if they get divorced. In their separate meetings with the parties, they listen to disputants and give them moral advice to help them change attitudes and behavior that are causing trouble in their relationships. In analyzing the psychological states of the disputants and giving advice, the ulema rely on personal experiences rather than on professional training. People tell them private (*mahrem*) information about their marriages, spouses, and family members that they would never dare to pronounce in court hearings. After giving clear guidance and advice, they leave the final decision to disputants. Asking for the ulema's help is often a face-saving mechanism for the party that appears disadvantaged in the course of events. In a secret marriage case, for example, the wife has accepted the extra-marital affair and the child born from that relationship. In a social setting where women do not perceive divorce as the best option, visiting ulema gave the wife a legitimate reason to accept the situation and eliminates social—perhaps psychological—pressure to deal with the issue. Often women get empowered in their marriage because of the fact that they took their cases to a higher religious authority.

## Peace-Broker

Murder and accident cases are more complicated and more difficult for the ulema to solve. The level of hatred and negative feelings is very high in murder and injury cases. Such cases necessitate more intense intervention and more active involvement of third parties. In murder and injury cases, the ulema do not directly intervene after accidents and fights. Usually, the parties who have caused the death or injury of another initially request the intervention of an *alim* in order to avoid litigation, blood feuds, and cycles of victimization and vengeance. The ulema usually agree to mediate in such cases, acting like peace-brokers. The purpose of this role is to achieve restorative justice and to make sure that revenge will not be taken against the family of the perpetrator, leading to further escalation of the conflict (Irani & Funk, 1998).

If the perpetrator's family is rich, it may offer compensation in order to avoid litigation. The victim's family can forgive the perpetrator or ask for *diya* payment. If the perpetrator's side accepts payment for material compensation (*diya*), the *alim* calculates the amount of compensation according to Islamic law and negotiates on behalf of both parties. When determining the *diya* amount, the ulema take into consideration the

financial situation of the disputants. In cases of fights and accidents, they consider customs and communal values in addition to the religious values and principles.

## Facilitator/Arbitrator

Financial disputes may initially be brought to the ulema in the form of asking for a fatwa. In this case, one of the disputants visits the alim and asks for a legal opinion. Based on an alim's fatwa, he may invite the other party to tackle the issue through guidance provided by the alim. In some other financial cases, however, all parties concerned visit the alim. After listening to the disputants, he issues a fatwa. At this stage, a fatwa resembles an arbitration decision. Following this stage, the parties have different options. They may choose to live with the alim's decision, go on to formal litigation, or decide to negotiate on the basis of the alim's fatwa. In most cases, following this stage, both parties try to handle their differences with the assistance of the alim. In such instances, ulema may either adopt a passive role in facilitating the negotiation in order to help the parties reach an agreement on the basis of his decision, or he may prefer not to get further involved. We call this approach the "facilitator/arbitrator" role of the alim. In sum, the ulema pursue different roles depending on the nature of the disputes and the dynamics of relationships of the disputants. Table 8 summarizes the third-party roles of the ulema.

# Key Metaphors of Interventions by Ulema: A Thick Description

During the interviews, the ulema frequently referred to certain concepts and metaphors in explaining the logic and fundamental principles of their intervention practices. The ones that stand out the most are *adalet* ("justice"), *mahremiyet* ("privacy"), *kardeşlik* ("brotherhood"), and *bağışlamak* ("forgiveness"). These concepts are also elements of an Islamic worldview and Turkish communal traditions. Understanding these metaphors gives valuable hints about the larger value systems in which the third-party intervention of the ulema takes place.

*Adalet* is concept having Arabic (adl) origins and has a rich range of meanings, including "justice," "equity," "fairness," and "consistency with morals and religious law." It is the fundamental principle of Islamic social and political order, as well as Islamic law and conflict resolution. According to Islamic theology, there is a clear-cut ontological hierarchy between *Allah* (creator of everything), and human beings and all the other created things. *Allah* arranges the rules of relationships between Himself and

Table 8
*Types of Disputes and Third-Party Strategies*

| Type of disputes | Third-party strategies |
| --- | --- |
| Financial disputes | Facilitator/Arbitrator |
| Marital disputes | Marriage counselor/Family elder |
| Murders fights and accidents | Peace-dealer |

human beings and sets the basic rules of conduct among human beings. He also arranges the relationships between human beings and all other created things. The principle of *adalet,* according to which the ulema try to operate in their interventions, is mainly the representation of Allah's order in the social, political, and economic domains. It is believed that if all the Muslims obey the law of Allah (*sharia*), there will be no conflicts or problems within the community of Muslims. The ulema feel responsibility for sustaining *adalet* in *Muslim* communities.

The second important metaphor is *mahremiyet*, which means privacy and confidentiality. In Turkey, many people avoid going to official courts to resolve marital or family disputes because of their concern with privacy. According to our informants, Turkish people, especially religious people, do not want to publicize their private disputes. Disputants may share with ulema very private information that they would not dare to pronounce in the official courts. Some people do not even directly discuss their family issues and disputes with ulema. Instead, they inquire about their disputes in the form of a *fatwa* or question. In *fatwa* cases, people describe the disputed issues without giving the real names of the persons and ask the legal opinions of the ulema.

In the Turkish context, *kardeşlik* ("brotherhood") is used by ulema as an important and efficient conciliatory metaphor. The ulema used the metaphor of *din kardeşliği* ("religious brotherhood") in order to emphasize the commonalities and the normative bond between the disputants. *Din Kardeşliği* is a religious metaphor, and it is not so easy for disputants to violate Allah's order for minor issues. *Kardeşlik* emphasizes the importance of relational dimension of the dispute against substantial dimensions that prevent agreements.

The fourth important metaphor is *bağışlamak* ("forgiving"). The value of being flexible and tolerant in intracommunal relations and the charity of forgiving are reiterated in the key sources of Islam. These references are very commonly referred to by every kind of Muslim peace-maker at any level of social relations. Allah wants Muslims to forgive and not make the mistakes of their religious brethren public; especially in cases of fights and accidents, the ulema often request disputants to forgive each other and try to convince the party that initiated the problem to apologize verbally as well as with symbolic gestures.

We should also note that during their interventions, the ulema tend to function according to certain religious teachings and customs. Our informants mentioned that when they are dealing with the dispute cases, if there are relevant references from the sources of sharia, they first take those sources into consideration. There is a hierarchy in the sources of sharia, our informants said; when a dispute comes to them, they check following sources sequentially: Quran, Sunna (traditions of the Prophet and Hadith), ijma of ulema (consensus of religious scholars), qiyas (analogy), ijtihads (personal decisions according to sharia) of madhab imams (leaders of Islamic legal schools), and urf (customs). This is a typical practice in interpreting fiqh (Karaman, 1987, 1997; Schacht, 1982). While they interpret and apply these sources to their cases, they do not approach these sources as if they were static rules. They usually interpret those sources flexibly in order to reach a consensus-based solution. In some cases, *ulema* did not have direct references from the sources of sharia; in those situations, they resort to personal initiatives and interpretations. Informants also made special emphasis on the *urf*

(customs), as their important guiding principles. In any case, they do not want to contradict the sources of sharia.

In concluding, in contemporary Turkish urban social settings, people informally consult or resort to the consensual intervention of the ulema, whose legitimacy is faith and knowledge based and does not solely depend on the professional expertise, procedures, and settings. Ulema act as family elders/counselors, peace-brokers, and facilitator/arbitrators, depending on the nature of the disputes. Their techniques include some elements of basic procedures of mediation—such as facilitative techniques those employed in North American contexts, as well as additional approaches that originate in Islamic law. Ulema interventions take place in conservative religious communities. These entities could qualify as collectivist cultures where social interactions are conducted in hierarchical order. Therefore, evaluating our findings with reference to cross-cultural comparison frames, such as cultural tightness and looseness (Gelfand, Nishii, & Raver, 2006); uncertainty avoidance and power distance (Hofstede, 1984); individualism versus collectivism (Triandis, 1989, 1994); high context-low/context divisions (Hall, 1977; Ting-Toomey et al., 1991); hierarchy and egalitarianism (Brett and Okumura 1998) could be a promising start for future research.

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**Nimet Beriker** is an associate professor in the Conflict Analysis and Resolution Program at Sabanci University, Istanbul. Her research interests are on international negotiation, mediation, integrative agreements, content analysis, and social simulation techniques. Her publications appeared in ''International Journal of Conflict Management'', ''Simulation and Gaming'', ''The Annals of the American Academy of Political and Social Science'', ''Journal of Social Psychology'', ''Journal of Applied Social Psychology'', ''Security Dialogue'' and ''Foreign Policy''. Professor Beriker offered numerous conflict resolution and negotiation trainings to non-governmental and state institutions, including the Turkish Ministry of Foreign Affairs, and the Turkish General Staff. She received her Ph.D. in Conflict Analysis and Resolution from George Mason University. Prior to joining the faculty of Sabanci University in 1998, she worked in the International Relations department at Bilkent University, Ankara Turkey.

**Talha Köse** is an Assistant Professor of Political Science and International Relations at İstanbul Şehir University. Dr. Köse completed his doctoral studies at the Institute for Conflict Analysis and Resolution (ICAR)-George Mason University in January 2010. His doctoral research focuses on the transformation of Alevi identity within the post-1980 milieu of Turkey. Talha Köse worked as a research fellow at the Center for Global Islamic Studies at George Mason University (2010) and served as a visiting lecturer at George Mason University and University Maastricht (Netherlands). His research interests are on ethnic-sectarian and identity based conflicts; approaches to inter-cultural reconciliation, community mediation in Turkey, Alevi issues in Turkey, and Conflict Resolution approaches in foreign policy.