

Ordering Religion, Organizing Politics: The Regulation of the Fatwa in Contemporary Islam

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Abstract

There has recently been a proliferation of voices calling for urgently regulating the production of fatwas (*dawābiṭ al-fatwā, tanzīm al-iftā'*) in the Muslim world. A specific diagnosis of the situation seems to be widely shared, one that cuts across the usual lines of religious and political orientation: For state and non-state actors, be they traditional ulama, Islamists, or secularists, the production of fatwas is now deregulated beyond control. Contradictory religious opinions have been a feature of the Islamic tradition since the very beginning and have not always been perceived as an embarrassment. The phenomenon of competing fatwas thus represents a larger “crisis” within religious institutions. The proliferation of contradictory religious opinions has become a central issue of debate in both Muslim-majority societies and Muslim-minority communities.

Introduction

There has recently been a proliferation of voices urgently calling for regulating the production of fatwas (*dawābiṭ al-fatwā, tanzīm al-iftā'*) in the Muslim world. Perhaps the most prominent call was articulated in The Amman Message of July 2005, when some 200 Muslim scholars outlined, at the request of King Abdallah II of Jordan, the conditions necessary for issuing legitimate fatwas.¹ Several high-profile international conferences devoted to this subject have been held in quick succession since that famous declaration. Religious scholars and public intellectuals have published books about the spread of abnormal fatwas (*fatāwā shādhah*) and attempted to solve this current phenomenon (Ashqar 2009; Bin Bayyah 2007; Jumu‘a 2008; Matar 2009; Qaradawi 2008, 2010).

Many media muftis have reflexively engaged in reflecting upon the dilemmas of issuing fatwas on satellite TV and the Internet. Newspapers and magazines across the Muslim world frequently carry articles and op-eds on the need to organize *iftā'*. A specific diagnosis of the situation seems to be widely shared, one that cuts across the usual lines of religious and political orientation: For state and non-state actors, be they traditional ulama, Islamists, or secularists, the production of fatwas is now deregulated beyond control. The resulting proliferation has led to “chaos” (*fawḍā*), which causes “perplexity” (*ḥīrat*) among Muslims and is considered a major quandary of the contemporary Muslim community.

In this article I suggest that this diagnosis of chaos is less self-evident than is often assumed. While acknowledging that the existing situation poses various challenges to religious authority, I argue that the urgency underlying these calls for regulation is shaped by a specific understanding of the fatwa's functions. I start from a simple observation: Contradictory religious opinions have been a feature of the Islamic tradition since the very beginning and have not always been perceived as constituting an embarrassment. Although the issue cannot be dealt with in all its complexity here, I posit that the plurality of religious opinions posed mainly theological and legal problems to pre-modern Muslim jurists. Theologically, this plurality raised a question about the nature of the Divine Will. Legally, it raised the prospect of uncertainty in adjudication.

Both questions received what were, for many jurists, probably rather satisfying answers. On the one hand, the necessary differentiation between divine source and human fallibility was emphasized (Weiss 1998; Zysow 1984) and, on the other hand, a legal pluralist system was institutionalized under the authority of multiple juristic schools (Hallaq 2001; Rapoport 2003).² Pre-modern jurists apparently dealt with such divergence smoothly; many times they were even willing to valorize this internal pluralism as a strength, a divine mercy. There are undoubtedly many reasons for the current recasting of this proliferation as a “chaos.” In this article, I hypothesize that a transformation of the kind of problem engendered by the plurality of religious opinions is also at stake. I argue that today's conflicting fatwas no longer primarily pose a theological or legal problem, but rather a political-ideological dilemma. I make a first attempt here to identify this dilemma and show how it might be addressed productively.

After a very brief reconstruction of some features of what I call the “narrative of chaos,” I focus on two of its most prominent features. I then detail the approach of Yusuf al-Qaradawi, a prominent contemporary Islamic scholar

whose interventions in many ways problematize this narrative's underlying assumptions. I conclude with some remarks that link the discussion's two sides to the concerns outlined above.

The Narrative of Chaos

Chaos or disorder are rather imprecise metaphors. Drawn from the natural sciences, in which these terms suggest unpredictability, the image of chaos is often used in current debates about fatwas to signify a range of different social phenomena. In the discussion below, I focus on two key aspects: the displacing impact of new media and the politicization of fatwas.³

The idea of chaos is perhaps most commonly seen in relation to the impact of new media. By 2009 there were an estimated 200 Arabic television channels and some 260 Islamic websites.⁴ According to the conventional narrative, satellite TV and the Internet have provided a platform for the ulama to publicly display their differences (Matar 2009). While contradictory fatwas existed in the past, their inaccessibility to most Muslims ensured that they were content with following their local imams. Now that the spread of mass media has made these contradictions immediately visible and accessible to unprecedented audiences, they are charged with leading to confusion and uncertainty.⁵

Furthermore, these new media are not only often seen as more than simple instruments from which good and evil alike can be derived (an instrumentalist conception of the media). Rather, they are understood as having changed the kinds of questions that are asked, as well as the competencies required for speaking in Islam's name (a performative conception of the media). Charisma and fame, rather than knowledge and piety, have thus become for some the main criteria for issuing fatwas in the new media world.⁶ To compound the problem, no regulatory bodies exist to control the quality of the fatwas disseminated via the Internet and satellite television.⁷

"Chaos" is also used to speak about the consequences of the perceived intrusion of politics into religion. Commentators speak of the phenomenon of political fatwas (*fatāwā musayyasah*) and the politicization of the fatwa (*tasīyīs al-fatwā*). Analysts often posit the Second Gulf War and the post-9/11 "war on terror" as two pivotal moments.⁸ Saddam Hussein's invasion of Kuwait prompted a "war of fatwas" for and against the American-led military operations in the Gulf (Haddad 1996). The rise in the 1990s of violent movements acting in the name of religion and legitimizing their actions through fatwas gave a further impetus to the discussion. The recent events of Arab Spring have added a heightened urgency to these questions.⁹

One interesting formulation of this problem of religion and politics can be found in the introduction to Fu'ad Matar's *Alf Fatwā wa Fatwā (One Thousand and One Fatwas)*, written by Khalil Ahmad Khalil (Matar 2009: 27-31). Khalil describes how politics has impinged on the production of fatwas in the context of the modern nation-state.¹⁰ One attribute of the modern nation-state's sovereignty is its control over the legal process. Processes of codification have transformed Islamic law from a jurists' law into a state law. Khalil suggests that the modern state's search for legitimacy has created pressures for Muslim scholars to justify its policies, thereby leading to a standoff between the competing powers of the ulama and the state. The rise of political Islamic movements in the wake of the Iranian Revolution has added further impetus to this power struggle. Fatwas have thus become entangled in this standoff, oscillating between support for and contestation of the political regimes and unable to carry out their own metabolism. Matar offers ample examples of the growth of sectarian fatwas (a.k.a. *talwīn al-fatwā*), such as *azhariyah*, *wahhābiyah*, *khumaynīyah*, and *sistaniyah*.

The phenomenon of competing fatwas thus represents a larger "crisis" within religious institutions (al-'Awwa 1998). The media depicts the proliferation of competing religious advice as symptomatic of the "convulsions, contests and inner strife" that result from wider "political, religious, social and ideological factors" in the Muslim world ("Ba'd al-ḥaḳīqah ḍabṭ al-fatāwā," *Okaz*, 27/1/2009). Some observers have criticized attempts to abstract the fatwas from the Muslim world's wider sociopolitical contexts. According to Saudi intellectual Issan al-Haliyan, attempts to regulate fatwas that do not fall within the larger context of Islamic discourse are doomed to fail. Secularists in the Arab world see this proliferation as a symptom of the wave of fundamentalism that spread through Muslim countries after 1967. Although they do not share the secularists' critique of fundamentalism, this phenomenon has made religious scholars committed to the Islamic legal tradition ambivalent toward the Islamic revival.

The narrative of chaos in many ways presents a compelling story. Even from a simple historical perspective, it seems to coincide broadly with the proliferation of satellite television channels and Internet sites. It emerged in the politicized contexts of the Rushdie Affair, the Second Gulf War, and the terrorist attacks of 9/11. But this diagnosis is not unanimous. In a recent discussion on Al-Jazeera, Mauritanian scholar 'Abd Allah Bin Bayyah (vice-president, International Union for Muslim Scholars) appeared to relativize the problem by suggesting that the challenges affecting fatwas in a media world are no different from those affecting politics, economics, and other fields.¹¹ During an interview

with a local newspaper, Mufti of Egypt Ali Jumu‘a declared that very few contemporary fatwas are actually mistaken.¹² He distinguished clearly between the fatwa and the religious discourse in general. In addition, he downplayed differences among muftis by portraying them as mere differences in how the questions are framed and understood, rather than the result of conflicting modes of interpreting Islamic law. These statements suggest that the diagnosis of fatwa chaos is not as self-evident as it sometimes seems.

Yusuf al-Qaradawi’s Alternative Account

In this section I analyze Qaradawi’s “alternative” account of the fatwa. His interest in the genre is well-known, given the publication of four volumes of his personal religious opinions, *Fatāwā Mu‘aṣirah (Contemporary Fatwas)*, and his attempts to provide adequate methodological guidelines for issuing fatwas. The latter has now yielded three books: *Al-Fatwā bayna al-Inḍibāṭ wa al-Tasayyub*, initially published in the journal *Al-Muslim al-Mu‘āṣir* (and in book format in 1988); *Mūjibāt Taghayyur al-Fatwā fi ‘Aṣrinā* (2008); and *Al-Fatāwā al-Shādhah* (2010). Moreover, he has often discussed the fatwa’s various dimensions and facets during his weekly appearances on “Al-Sharī‘ah wa al-Ḥayāt.” I draw on the transcripts of some of these episodes as well as the above-mentioned books.

Describing his account as “alternative” perhaps requires some explanation. Qaradawi is very much part of the actors and networks calling for the regulation of fatwas.¹³ He has attended and been involved in organizing conferences that seek to counter the proliferation of competing religious opinions. He gave the opening speech at Kuwait’s 2007 symposium on “Al-Iftā’ fi ‘Alam Maftūḥ” (Fatwa-Giving in an Open World) and contributed an article to the proceedings (Qaradawi 2007). Insofar as one of the ulama’s responses to the perceived chaos of fatwas has been to institutionalize collective *fiqh* councils, al-Qaradawi has often been at the forefront of such initiatives. In addition to being the founder and chairman of the International Union of Muslim Scholars (IUMS) and the European Council for Fatwa and Research (ECFR), he regularly participates in the sessions of the Saudi-based international *fiqh* councils. He thus clearly shares many of the concerns of those who support regulation.

However, as I try to show, his account differs from the narrative of chaos in some important ways. For example, to my knowledge Qaradawi has never described the current situation as one of “chaos,” even when pushed to do so by the presenter of “Al-Sharī‘ah wa al-Ḥayāt” in an episode which the producers called “Fawḍā al-Fatāwā.” Unlike many of his contemporaries, Qara-

dawi does not seem to consider this an intractable problem; on the contrary, he recently wrote that its solution is actually very simple.

One must recognize from the outset that Qaradawi's engagement with the problematics of fatwas are framed by his own position as a global media mufti. The use of media has been integral to his activities as a religious scholar and as a moral guide. His books (fatwa collections and theoretical reflections on the fatwa) have already been alluded to. Since 1996, he has also been the primary guest on Al-Jazeera's prime-time "Al-Sharī'ah wa al-Ḥayāt." Setting up a personal website (www.Qaradawi.net) in 1997 was a pioneering move. Qaradawi's reliance upon the mass media to cut across time and space has created a particular set of tensions that is still being worked out. For example, how to reconcile the emphasis on the local context (*fiqh al-wāqi'*) for issuing fatwas with his own position of a global mufti; how to emulate Imam Malik ibn Anas' refusal to answer questions (which Qaradawi and others often cite) during live broadcasts of this particular television program; or the extent to which the repeated emphasis on *ijtihād* and *tajdīd* may help undermine the viability of the very structures capable of maintaining the religious authority that he explicitly seeks to secure.

Traditional Muslim scholars with wide access to the Internet and satellite television are often some of the harshest critics of the new media's impact on the structures of religious authority. Qaradawi, however, is not among them because he operates with a neutral understanding of media technologies. His understanding of the proliferation of conflicting fatwas is therefore to be found elsewhere. His 150-page *Al-Fatāwā al-Shādhah*, originally presented in January 2009 at the Makkan conference on "The Fatwa and its Rules," provides a number of alternative explanations for this phenomenon (Qaradawi 2010: 127-43). In this book, Qaradawi starts by placing this issue within its historical context. Stating that abnormal fatwas have always existed, he then identifies six main reasons for this phenomenon: the mufti's lack of proper qualifications, the lack of respect for specialization in *fiqh*, the rush (*al-tasāru'*) to issue a fatwa,¹⁴ the excessive attachment to one's opinion (*al-i'jāb bi al-ra'ī*) with the associated unwillingness to debate, political motives (*al-ahwā' al-siyāsīyah*), and the excessive use of *maṣlaḥah*.

While these explanations are by and large conventional, they characteristically shift our attention from the impact of new media and toward questions of hermeneutics. Although he generally seems to subscribe to the idea that fatwas are (or should be) non-sectarian, Qaradawi does not seek to downplay differences in juristic approaches or to blame them exclusively on a lack of proper qualifications. The fatwas issued by non-qualified scholars (i.e., those who are

trained in literature, history, philosophy, Sufism, positive law, or in Islamic sciences other than *fiqh*¹⁵) elicit less than three largely generic pages of discussion and without any concrete example (Qaradawi 2010: 26-28).¹⁶ He seems to accept the “intrusion” of non-qualified scholars as an inevitable feature of social life, since there are intruders in “all arts, disciplines and crafts” (p. 27).

Most of the contemporary fatwas he identifies as abnormal in this book seem to be the product of qualified scholars, rather than the product of non-qualified scholars. He considers these differences the result of the issuing scholar’s individual temperament, sensibility and hermeneutics – between those who favor the letter and those who privilege the spirit of the law, those who emphasize *taysīr* and those who stress conformity, and so on. While Qaradawi clearly considers one approach more adequate than the others (both on principled and on contextual grounds: the *taysīr* approach that reads the texts with a *maqāṣidī* vision is closer to the Prophet’s practice, and more appropriate in our contemporary times where piety has become so hard to practice), he does not delegitimize other approaches as un-Islamic or inauthentic.

Qaradawi has also addressed regulation in his weekly talk show.¹⁷ Bearing in mind how the current “chaos” narrative often considers the intrusion of politics into the formulation of fatwas to be a key feature, let’s consider his response to the idea that fatwa and politics should be distinguished. In the episode aired on January 10, 2010, “The Fatwa and Politics,” Qaradawi was asked to consider the possibility of separating the fatwa from politics.¹⁸ This was prompted by a fatwa issued by Shaykh al-Azhar Muhammad Sayyid Tantawi (d. 2010) on behalf of the Majma’ al-Buḥūth al-Islāmīyah allowing the construction of a wall that would separate Egypt from Gaza (thus closing off the tunnels that connected Gaza with the outside world). The episode is unusual insofar as it is the only instance I am aware of in which the presenter (or the producer) repeatedly challenged Qaradawi’s views.

Questions were asked successively in an attempt to elicit his acknowledgment of some form of separation between religion and politics – a separation that Qaradawi rejects¹⁹: “Is it possible for religion to enter into the field of politics?” “If the language and logic of politics differ from those of *fiqh*, how can one trump the other?” “Is it not necessary to distinguish between the fields of religion and politics?” “Should the mufti not understand the science of politics before speaking about politics?” “Should the mufti not refrain from issuing fatwas on participating in elections or the building of the wall?” “What are the religious-legal bases for declaring the building of the wall forbidden?” “Was the war of fatwas during the Iraq invasion of Kuwait not a proof of the political manipulation of religion?” In his answers, al-Qaradawi insisted on

the Shari'ah's totalizing nature, for it rules over all the actions of the moral subject (*al-shari'ah ḥākimah 'alā jamī' af'āl al-mukallaḥīn*).

The logic of *fiqh* trumps that of politics (*al-fiqh huwa al-hākim*). He argues that the term *fatāwā siyāsīyah* is used imprecisely to describe fatwas that conform to the ruler's desires, regardless of whether they are founded or unfounded. Muftis must resist the attempt to limit political discussions to specialized political scientists, just like they resist the attempts to keep debates about running the economy restricted to economists. They must study the issue carefully (*fiqh al-wāqi'*) and may mobilize different types of expertise to grasp what is at stake, but ultimately they must issue a fatwa and decide the case. Qaradawi opines that the idea of the fatwa's politicization has been greatly exaggerated. Even during Iraq's invasion of Kuwait, the fatwas issued by muftis in each Muslim country primarily reflected the regional conflict's local impact, not the policies of each state.

Qaradawi's remarkable unwillingness to cast conflicting fatwas as a problem in this episode seems to be connected to his confidence, reiterated periodically, in the Muslim's ability to distinguish between the opinions of real scholars and those of their inauthentic challengers. He thus challenges the oft-postulated link between conflicting fatwas and confusion of the masses. In addition to perplexity, the standard Muslim responses to the proliferation of fatwas across the Islamic world have been irony, sarcasm, and outright criticism. A particular conception of the fatwa's effects seems to be at play here. Qaradawi sees no direct relation between the mufti's speech act and the Muslims' practices, for fatwas are effective only insofar as Muslims decide to act upon them. He believes that Muslims have sufficient religious awareness to differentiate between conflicting opinions and act responsibly. This, perhaps, underlies his own understanding of regulating fatwas as something simple, as opposed to something intractable, that requires only minimal coordination among religious scholars.

Conclusion

The proliferation of contradictory religious opinions has become a central issue of debate in both Muslim-majority societies and Muslim-minority communities. The assumptions guiding this debate, however, have rarely been seriously examined. In this paper I have been primarily concerned with two key tropes of the chaos narrative: the new media's impact and the fatwa's politicization. By emphasizing the fragmentation of authority induced by new media technologies, as well as appealing to a normative differentiation between the

spheres of religion and politics, Muslims seem to have borrowed their terms from mainstream western social scientific categories. A close reading of the writings of Islamic scholars reveals some of the tensions and problems inherent in these categories. The idea that the fatwa should not be politicized presupposes understandings of the proper relation between religion and politics that many Muslims might not be prepared to affirm. The strength of the critique of the political fatwa vanishes when one simply refuses, as does Qaradawi, to accept a principled separation between the two realms.

The impact of new media is also more ambivalent than is sometimes portrayed. While it is clear that under certain conditions new technologies may help displace religious authority, it is also apparent that new media have enabled traditional actors and institutions to extend their influence and reach larger audiences.²⁰ On the one hand, the idea of “chaos” does not seem to do justice to the remarkable restraint that Muslims have exercised while using media technologies, including their deferral to recognized religious scholars. On the other hand, Muslim scholars have largely managed to maintain religious authority outside the purview of the nation-state, despite tremendous pressures to assimilate into its framework. A degree of disorder may seem to be an inevitable price for continuing to rely upon the Islamic discursive tradition’s self-regulatory powers.

I turned to Qaradawi writings to complicate the chaos narrative. Rather than shying away from difficult questions, Muslim scholars like Qaradawi have been willing to recognize the role of temperament and sensibility in shaping differing religious opinions. In turn, this recognition has allowed the ulama to preserve and cultivate a shared space of scholarly debate. Religious scholars nevertheless seem reluctant to address a different set of fatwa-related questions. For them, the fatwa’s integrity as an instrument for communicating the Divine Will reposes, understandably, on its construction transcending all sectarian and ideological concern. The idea of the fatwa as somehow being above politics seems, at least in their opinion, to be the key to preserving the Islamic legal tradition.

But this view leads to an impasse, as seen during the discussions on “Al-Sharī’ah wa al-Ḥayāt.” The ulama’s reluctance to further disclose and reflect on the underlying ideological orientations and political commitments that guide the mufti’s search for God’s law – in the way that Khaled Abou El Fadl, for example, has done in *Speaking in God’s Name* – is now being severely tested due to the complex interweaving of religion and politics.²¹ The oft-invoked need to devise a proper understanding of reality (*fiqh al-wāqi’*) is insufficient here, since perceptions of reality are always already mediated by these orien-

tations and commitments. As sociologists have pointed out, reality is a social construction. What actors consider to be phenomena lying outside of their control – in other words, “reality” – varies from individual to individual. *Fiqh al-wāqi* ‘ neither examines this construction nor teaches one how to transform existing social conditions and remake the world. The common accusation leveled by muftis against scholars who “fail to take reality into account” in their fatwas often detracts from the fundamental underlying issues.

The idea of the fatwa as standing above politics was perhaps most plausible when it was no more than an instrument concerned primarily with issues of salvation. Today, however, it has increasingly become embedded in *civilizing processes* that seek not only to shape moral selves, but also to create modern citizenries.²² As the religious scholar Usama Umar al-Ashqar stated in a recent book, fatwas should educate, guide, civilize, and contribute to the political, economic, and social development of Muslim nations (Ashqar 2009). These expectations have extended the fatwa’s role far beyond its traditional purview, and yet the transformation they imply is rarely acknowledged.

One way of understanding this transformation is through *functionalization*.²³ Fatwas have been removed from their original contexts and placed strategically into projects of social governance. The process not only renders the idea of the fatwa as somehow standing above politics increasingly fragile, but also recasts the problem of divergent opinions. Under the current configuration, one of the fatwa’s functions is to enable forms of collective mobilization for a variety of civilizing projects. It is perhaps the unwillingness of traditionalists, Islamists, and secularists alike to give up on the fatwa for purposes of collective mobilization that underlies their intriguing agreement on the diagnosis of the “chaos” of contemporary *ifiā* ‘. More fundamentally, however, it is arguably a misrecognition of the kind of problem represented by conflicting fatwas that makes the phenomenon often appear so intractable.

Endnotes

1. The Amman Message’s main points were subsequently reiterated by the Organization of Islamic Cooperation (OIC) in December 2005, by its International Islamic Fiqh Academy in July 2006 (with slight modification), and by a large gathering of European Muslim scholars (The Topkapi Declaration).
2. I do not wish to imply that there were no conflicts in pre-modern Islam. While the traditional legal pluralism allowed Muslim societies to manage the different understandings of Islamic law, this was not without its own set of tensions. As Sayf al-Din Abd al-Fattah pointed out in an episode of “Al-Shari’ah wa al-

Hayāt” (“*Ṣinā‘at al-Fatwā*,” November 15, 2009), the *Lisān al-‘Arab* recognizes and defines *al-tafātī* as “fighting or combating via the fatwa.”

3. These two factors do not, of course, tell the whole story. Other oft-mentioned elements include the complexification of knowledge regimes, the rapidity of change, the penetration of market logics, the emergence of Islamist terrorism, intergenerational changes, and others. I cannot do full justice to them here.
4. See Al-Jazeera’s “Al-Sharī‘ah wa al-Hayāt,” episode “*Ṣinā‘at al-Fatwā*” with Shaykh Abd Allah Bin Bayyah, November 15, 2009, <http://www.aljazeera.net/NR/exeres/C4A769DB-3B5F-49BF-A0F0-9C5E9EA76F60>).
5. For a visual illustration of this perplexity, see Yara Qassem’s painting in Omnia El-Desouki’s article on the “Chaos of Fatwas?” *Al-Ahram Weekly*, <http://weekly.ahram.org.eg/2011/1033/feature.htm>).
6. See Usama Umar al-Ashqar, *Fawḍā al-Ifiā’* (Beirut: Dār al-Nafa’is, 2009), 113 and “Tashrī‘ bi Tajrīm al-Fatwā min Ghayr al-Mutakhaṣṣisīn,” *Al-Sharq al-Awsaṭ*, June 22, 2006.
7. See Salman al-‘Awda, “Muftī al-Faḍā’iyyat Hal min Ḍābiṭ?” IslamOnLine.net; Ali al-Qurah Daghi, “Al-Fatāwā al-Mubāshirah fī Wasā’il al-I‘lām,” IslamOnLine.
8. For an analysis of how the fatwa became entangled with the “clash of civilizations” discourse and the making of a new global order, see Sayf al-Dīn Abd al-Fattah Isma‘il, “Fatāwā al-Ummah wa Uṣūl al-Fiqh al-Ḥaḍārī,” *Al-Ifiā’ fī ‘Ālam Maftūh. Al Wāqi’ al-Māthil... wa al-Amal al-Murtajā*, vol. 1 (Kuwait: Al-Markaz al-‘Alami li al-Wasatiyyah, 2007).
9. In 2011, Al-Jazeera’s weekly “Al-Sharī‘ah wa al-Hayāt” discussed the relation between *fuqahā al-thawrah* and *fuqahā’ al-sulṭah* in several episodes.
10. See also Mu‘taz al-Khaṭīb, “Al-Fiqh wa al-Faqīh wa al-Dawlat al-Ḥaḍīthah: Ishkāliyyāt al-Tanāfus bayna Sulṭatay al-Fatwā wa al-Qānūn,” (2007), <http://www.almultaka.net/ShowMaqal.php?module=30a1924ae9f288e2154f90c83936ac14&cat=3&id=51&m=a801508f366c9a149882ebf6c58c91f3>.
11. See Al-Jazeera’s “Al-Sharī‘ah wa al-Hayāt,” episode “*Ṣinā‘at al-Fatwā*.”
12. Ethar Shalaby, “Issuing Incorrect Fatwas Is Uncommon, says Grand Mufti Ali Gomaa,” *The Daily News Egypt*, September 9, 2007.
13. Qaradawi was among the selected twenty-four senior scholars who enabled The Amman Message by answering the king’s questions on the definition of a Muslim, the practice of *takfīr*, and the qualifications required to issue fatwas (“The Amman Message,” vi.) Their answers are available at the “Fatwas of the ‘Ulama,” <http://www.ammanmessage.com/>.
14. Contrary to many, Qaradawi does not associate quickness with the immediacy of satellite television. Rather, he sees the speed with which some muftis issue fatwas as a psychological and moral problem stemming from their misplaced love for fame. See Yusuf Qaradawi, *Al-Fatāwā al-Shāhdhah* (Cairo: Dar al-Shuruq, 2010), 132.

15. This claim is somewhat ironic, given Qaradawi's own training in *uṣūl al-dīn* and the perception in some Muslim circles that he is more of a *dā'iyah* than a *faqīh*.
16. On p. 30 of Qaradawi, *Al-Fatāwā al-Shādhah*, Qaradawi discusses the *ijtihād* of the late Tunisian president Habib Bourguiba on dividing inheritance shares equally between brother and sister. He cites this example not as a fatwa from a non-qualified mufti, but as an application of *ijtihād* outside its legitimate field.
17. For studies of Qaradawi in "Al-Shari'ah wa al-Hayāt," see Noah Feldman, "Shari'a and Islamic Democracy in the Age of Al-Jazeera," in *Shari'a: Islamic Law in the Contemporary Context*, ed. Abbas Amanat and Frank Griffel (Stanford: Stanford University Press, 2007); Ehab Galal, "Yusuf al-Qaradawi and the New Islamic TV," in *The Global Mufti: The Phenomenon of Yusuf al-Qaradawi*, ed. Bettina Gräf and Jakob Skovgaard-Petersen (London: Hurst, 2009); Anne-Sofie Roald, "The Wise Men: Democratization and Gender Equalization in the Islamic Message: Yusuf al-Qaradawi and Ahmad al-Kubaisi on the Air," *Encounters* 7, no. 1 (2001); Jakob Skovgaard-Petersen, "The Global Mufti," in *Globalization and the Muslim World: Culture, Religion, and Modernity*, ed. Birgit Schaebler and Leif Stenberg. Syracuse: Syracuse University Press, 2004.
18. The full transcript of this exchange is available at <http://www.aljazeera.net/NR/exeres/EEA730DD-B44F-4888-B19F-1668FA6E1444>.
19. This principled refusal to accept a separation between religion and politics does not make Qaradawi an advocate of a theocratic state. Indeed, his views on democracy are subtle and seemingly shifting. For his views on Islamic democracy, see Feldman, "Shari'a and Islamic Democracy," 2007.
20. For an instructive discussion of the impact of new media, see Charles Hirschkind, *The Ethical Soundscape* (New York: Columbia University Press, 2006).
21. One might, however, read the current proliferation of scholarly discourses on the *maqāsid al-Sharī'ah* as an attempt to address the issue.
22. Armando Salvatore made this point in the context of public Islam's emergence in Egypt at the turn of the twentieth century.
23. I borrow the concept of functionalization from anthropologist Gregory Starrett, for whom it denotes "processes of translation in which intellectual objects from one discourse come to serve the strategic or utilitarian ends of another discourse. This translation not only places intellectual objects in new fields of significance, but radically shifts the meaning of their initial context." See Gregory Starrett, *Putting Islam to Work: Education, Politics, and Religious Transformation in Egypt* (Berkeley, Los Angeles, and London: University of California Press, 1998), 9. For an interesting discussion of religion's functions from the perspective of Islamic scholars, see the episode of "Al-Sharī'ah wa al-Hayāt" on "Wazā'if al-Dīn" with Moroccan scholar Ahmad al-Raysuni, which aired on March 14, 2010 (<http://www.aljazeera.net/NR/exeres/59D5A2F8-2A42-4D3A-AF23-96476E422A5F>).

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Discussion

Discussant: Jamal Barzinji

I congratulate Alexandre for this quality paper. The chaos in fatwa is only a reflection of the chaos in the ummah itself. As the ummah settles down, I think this will work itself out. The governments and rulers are not trusted by the people and have no right to criminalize *iftā'*. What is missing is a platform in which debate can take place. Until the new regime came into power in Turkey, there was no Muslim country in which a free debate could occur, an approach that could marginalize extreme views and make room for meaningful debate.

I think Shaykh Yusef stopped short of pointing finger at those fatwas issued to please a ruler. In Saudi Arabia there was a real fear that Saddam Hussein would invade and there was honest confusion; but Shaykh Tantawi faced a ruthless regime and had no choice, though only Allah knows what was in his heart. I respect his position that the ummah has always confronted ridiculous fatwas, but this did not concern the ummah until now, given that it is now under pressure from the West about terrorism, or perhaps out of our own greater sensitivity. I think Tantawi was a sincere man trying to honestly address the question without alienating himself from the regime.

I don't think that an invisible hand regulates *iftā'*; rather, it is a very visible hand. Trust in the ummah; be patient for the scholars to regulate one another by their debates.

Discussant: Imad-ad-Dean Ahmad

Both supply and demand, as well as price intermediation, distinguishes the "market-place of ideas" from ordinary markets. The new media does not cause the problems of chaos, but rather exacerbates them by reducing the costs of seeking and issuing fatwas. Qaradawi is correct that the mufti is effective only as long as his followers are willing to act on his opinion. But to what degree is his own ambiguity political?

Cairo: I did not want to circulate this paper because it is so chaotic. I wonder to what degree the perception that there is new crisis is due to our idealization of the

past and to what degree the people who depict a crisis have an agenda. I wonder to what degree it is the military superiority of the West that is the crisis. Perhaps we pay too much attention to that. People sometimes think that establishing a supreme *iftā'* council will solve the problem; I question that. Maybe it is a good thing that issuing one fatwa prompts a counter-fatwa. The contrary view seems authoritarian. I like Dr. Jamal's notion of the "visible hand" that leads to an eventual consensus over time.

While "market" is a common metaphor in sociology, it is a lazy one. If there is no price intermediation, then is it really a market? Maybe it is the public rather than the market that should be the focus. Qaradawi's motives may be political, but he is aware of the need to create a dis-embedded Islamic thinking. We all operate in a politicized world, but maybe he is more willing to engage in discussion than some others.

General Discussion

- A measure of chaos is necessary and healthy. It might be helpful to have an authority like a supreme council of *iftā'* where one is necessary, but what is really essential is the mufti's character. People are reluctant to give fatwas, fearing they may make a mistake to people or God. The alternative to chaos is something far worse. There are always those eager to replace chaos with dictatorship. Maybe we should look at chaos as a creative force.
- The difference between Tantawi and Qaradawi on the Gaza wall may be an example of differences due to phrasing.
- Without dismissing the suggestion that an alternative metaphor to the market is needed when speaking of the public contestation of ideas, that particular metaphor can also be applied to the blood supply, which also is a market without price intermediation. After disasters when the need for blood rises, so does the supply. When the crisis is over, both the supply and demand drop. The market may be the appropriate metaphor because there is a supply of and demand for fatwas.
- Are we speaking of chaos or diversity? Is there a place in the paper for unity in diversity? Traditional Islamic society was built on diversity. Modernism seems to see diversity as dispersive, as a threat. Seeing the chaos of fatwa as a threat is a little like the communists seeing more than one brand of soap on the shelf as a threat.
- In the huge demonstrations against the buildup to the Iraq war, not a single sign supported Saddam Hussein. Maybe this diversity is not chaos, but rather a mercy to the ummah. The elephant in the room is engaging in terrorism based on fatwas. Putting the muftis under a single authority may not be in the spirit of Islam.
- Perhaps some fatwas are shocking because they deal with subjects that have not been discussed for a long time.
- Chaos is in the nature of *iftā'*. Crisis comes from the fatwa's substance.
- There seems to be a public ability in the ummah to always take the middle of the way and reject extremist tendencies. For instance, the Shi'a groups that have survived and done well are the most moderate. The others either disappeared or

were pushed to the fringe. In Sufism too, Ibn al-Arabi is Shaykh al-Akbar for a rather small minority of Sufi scholars. There is a level on which *ijmā'* operates and supports the hadith "My community does not agree on error."

- Chaos is not diversity; *fawḍā* is not *tabī'ah*. Chaos is that which cannot be predicted or regulated, like long-term weather. The creative chaos of diversity is positive.
- The opposite of chaos is cosmos, not control, but order. Why should a council be considered an alternative to chaos? Why can't you have both: let the open issuance of fatwas continue, but also have multiple fatwa councils.
- It would be appreciated if this institutionalization could give Muslims in the United States a role.
- Is chaos the right translation of *fawḍā*, which comes from a root that puts everyone on the same level, anarchistic as opposed to hierarchical?
- Laziness in metaphors is a reference to the term "market logic," which doesn't really say anything since there are multiple markets with multiple logics. I need to look further into the question of social entropy. Chaos means unpredictability; that is in the nature of the social world. Merely having a website doesn't make one equal to everyone else with a website. AMJA (the Association of Muslim Jurists in America) is based all over the world. How do its members incorporate the view that the fatwa should be responsive to local times and places? There is an intergenerational dimension to this perception of chaos. Thanks for the distinction between crisis and chaos; I shall give that thought. There are different concepts of order that need to be historicized, and Muslims should be asked how they conceive order.
- The Bible says the heavens and Earth were in chaos until God imposed the cosmos.
- What is missing from the notion of chaos is relating plurality to the notion of the scholars' lack of qualifications. There is a literal vs. a purposive understanding. When Qaradawi tells people to vote, they ask for whom they should vote. He suggests those who oppose homosexuality, but there are no such parties in France.
- A scholar can be expelled from his own country or killed as an apostate because of his fatwa.