Fatwa in the Era of Globalization

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Abstract

Issuing religious edicts is one of the last tangible forms of influence that traditional Islamic scholars maintain in a post-modern age of increasing secularization. Expanding Muslim communities living as minorities in western society are facing a crisis of identity as they struggle to assimilate and are no longer as receptive to conventional forms of religious authority as former generations were. Likewise, citizens of Muslim-majority countries are challenging sources of temporal and spiritual leadership. As religious authority in different groups is becoming less dependent on ethnic origin, Islamic scholars must adapt to the changing needs of society for their edicts to continue to be relevant. This paper explores the evolving role of the traditional fatwa as it relates to the new paradigm of global interconnectedness in three parts. First, it conducts an examination of the meanings and origins of the fatwa based on Islamic primary sources and interpretations of traditional scholars. Then, it discusses qualifications and characteristics of the traditional and contemporary mufti. Finally, it discusses and recommends for adaptation examples of new methodologies and areas of focus for Islamic religious edicts.

Introduction: Defining the Term *Fatwa*

The general meaning of the term *fatwa* is related to the verbal noun *al-iftā'*, which means a response that makes something clear.[1] The verbal form appears in the Qur'an with this meaning: "O notables, explain to me my dream, if it be that you can interpret dreams" (Q. 12:43).

Pharaoh had a dream that he thought was of some significance, but did not understand what it was. So he asked the members of his advisory council to clarify its meaning and explain its significance, provided that they could interpret dreams. Since they could not, they deferred their response. Eventually the matter was brought to Prophet Yusuf's attention, who at that time was in

prison, saying: "O Yusuf, man of truth. Explain to us (the dream) of seven fat cows whom seven lean ones were devouring, and of seven green ears of corn, and (seven) others dry" (Q. 12:46).

An alternate meaning of fatwa involves giving suggestion and guidance, as in the case of the Queen of Sheba who asked the members of her council to advise her upon receiving King Solomon's ultimatum: "O chiefs, advise me in (this) case of mine" (Q. 27:32). As they suggested, she sent a delegation to him and eventually embraced Islam.

When used in religious terms, fatwa means to answer a question pertaining to the religious ruling of a particular action.[2] This usage appears in the recorded sayings of Prophet Muhammad: "Sin is that which causes doubts and perturbs the heart, even if people give a fatwa that it is lawful or you seek your own fatwa on the matter."[3]

In its commonly understood application, well-informed Islamic scholars issue a fatwa to inform an individual or the general public about the status of a particular action with regards to its permissibility, prohibition, rewards, and punishment. Like any other field of expertise, those who need consultation or knowledge should seek the most qualified scholar. In fact, Allah the Most High commands us: "Ask the followers of the Remembrance if you know not" (Q. 16:43), even though the actual verse refers to the Jewish scholars' knowledge of previous prophets.

Traditional Applications

Scholars of the sciences of Islamic jurisprudence have divided all possible religious or non-religious actions into five major categories based upon evidence from the primary and secondary sources of Islamic knowledge, namely, the Qur'an, Sunnah (the prophetic traditions), scholarly consensus, and analogy:

1. *Wājib* (Mandatory): Actions that are rewarded if done and punished if not done.
2. *Mustaḥab* (Preferable): Actions that are rewarded if done and not punished if not done.
3. *Mubāḥ* (Permissible): Actions that carry no reward or punishment.
4. *Makrūh* (Not preferable): Actions that are not punished if done but are rewarded if they are not done.
5. *Ḥarām* (Forbidden): Actions that are punished if done but are rewarded if they are not done.

The general public always needs Islamic scholars to clarify the Islamic position on various issues by determining their proper categorization. These scholars, in turn, have a unique responsibility due to their awareness of the sources of Islamic jurisprudence as well as their wisdom and experience in relating this knowledge to reality.[4] Therefore, they and the jurists hold a special position and status because they report to people how Allah, the Creator, views a particular issue.[5] Prophet Muhammad has stated: "Indeed, the [Islamic] scholars are inheritors of the prophets and, verily, the prophets have not left behind gold or silver. Verily, they have left behind knowledge."[6]

The Basis for Religious Edicts

Islamic scholars may issue a fatwa only if they are certain about the basis on which it can be made. To determine the answer, they must follow a certain methodology that includes, in general order of importance, the Qur'an, the Sunnah, scholarly consensus (*ijmā'*), analogy of an unknown ruling to a known ruling (*qiyās*), public benefit (*al-maṣāliḥ al-mursalah*), the prevention of harm (*sadd al-ḍarrā'*), the Companions' position, and cultural significance (*'urf*). They are strongly warned against pronouncing any type of verdict based on insufficient information or personal inclinations. Prophet Muhammad said:

> There are three types of judges, two of whom are in hell and one who is in heaven. The first two are those who judge and intentionally give an unjust ruling, and those who rule without knowledge and impinge on people's rights. They are in hell. The judge who rules according to the truth is in heaven.[7]

Distinguishing Characteristics of the Fatwa

The main difference between the positions of Islamic scholars and those of other religions is that an Islamic ruling can only be given on the basis of evidence derived from the sources of revelation in the form of general principles or specific rules.[8] This frame of reference, the Qur'an and Sunnah, has been preserved in order to guide humanity: "Verily We: It is We Who have sent down the remembrance and, surely, We will preserve it" (Q. 15:9).

The principles, information, and laws proclaimed in the Qur'an have been preserved via the uncorrupted Qur'anic text as well as the prophetic traditions. The authenticity of these primary sources is verifiable, thanks to Allah's Mercy and centuries of diligent memorization and Islamic scholarship. Every Qur'anic verse and much of the Prophet's life and speech have been preserved with verifiable chains of narration.

Al-Hafidh Abu Ali al-Ghasaani, an eminent Andalusian hadith scholar, identified the detailed sciences of preserving the authenticity of religious information, its narrators' identities, and the linguistic means by which we can understand its exact meanings: "Allah has given this nation three things that He never gave to any nation before: *al-isnād* (verifiable chains of narration), *al-ansāb* (genealogical knowledge), and *al-'irāb* (precise linguistic vowel-markers)."[9]

The Mufti: Qualifications and Characteristics

The term for someone who holds an official position of giving *iftā'* or is requested to give a fatwa is *mufti*. Imam al-Nawawi detailed the characteristics that such a figure should have.

> The mufti should be responsible for his actions (mature, sane, etc...), Muslim, reliable, safe and free from traces of corruption and inappropriate behavior, wise at heart, mentally capable, able to think clearly, conduct himself well and make correct deductions, and fully conscious. These are the conditions and they are applicable to free people as well as slaves, women, blind people, and mutes, as long as they are able to communicate through writing or understandable gestures.[10]

The responsibility of this position, as with any other position, should be granted based on one's qualifications as opposed to one's social status, race, personal connections, or gender. Although in Islamic civilization women have not traditionally held positions of political leadership or judicial authority, they have played major roles as influential scholars and teachers. The first and best example of this is Aisha, the Prophet's wife who became an influential scholar. The Companions sought her opinions on important matters after her husband's death (632) until her own death almost fifty years later in Madinah.[11]

The muftis' most important qualification is the ability to perform *ijtihād* (interpreting Islamic law so that it can be applied to new situations and issues). The scholars of the sciences of Islamic jurisprudence (*uṣūl al-fiqh*) agree that those who undertake this task (viz., a *mujtahid*) must have mastered five realms of Arabic-language knowledge: the sacred texts of the Qur'an and the Hadith, instances of *ijmā'*, abrogated and abrogating texts (*al-nāsikh wa al-mansūkh*), and *uṣūl al-fiqh*.

The second aspect of the muftis' qualification, after their Islamic knowledge and upright character, is their awareness and understanding of current events and issues upon which they are requested to rule.[12] For example, qual-

ified scholars in Islamic finance should not only be aware of classical writings on trade transactions, but also educated about the intricacies of modern banking and the current economic situation. Only combining classical and contemporary understandings can equip them to issue rulings that will truly reflect and uphold the Shari'ah's deeper goals and objectives (*maqāṣid al-Sharī'ah*), namely, preserving life, religion, property, familial bonds, and honor. According to Abu Aminah Bilal Phillips, "A scholar should be open-minded in his search for knowledge. Otherwise, his rulings are likely to be biased and sectarian."[13]

In addition to acquiring knowledge and information from a variety of sources, scholars should consider the situation and expected outcomes and effects of their religious rulings. An example of wisdom used while considering the questioner's (*mustaftī*) situation is the story of the one who asked Ibn Abbas, the eminent Companion and scholar, about the punishment for murder:

A man asked Ibn Abbas: "Is there a repentance for one who purposely kills a Muslim?" He replied: "No, there is only hellfire." When (the questioner) left, we (Ibn Abbas' students) said to him (Ibn Abbas): "This is not how you used to give us verdicts. You used to say that was possible for someone who killed a Muslim to have his repentance accepted. So what happened today?" Ibn Abbas said: "I perceived him to be in a state of anger, wanting to kill a Muslim." After that, they followed the man and found him to be as Ibn Abbas had described him.[14]

Islamic scholars in general, and muftis in particular, may build their qualifications using a variety of means. In general, they are expected to begin their education by memorizing the Qur'an and a large number of hadith. This memorization can be certified by a school diploma, an *ijāzah* (a personal certification given by a shaykh), or a certificate issued by an institute of Qur'anic memorization. Muftis may complete their higher education in Islamic law at a specialized institute, such as the Mahad al-Haram in Makkah or the Dar al-Hadith. However, as more universities now offer programs in Islamic studies, *fiqh*, Shar'iah, and *uṣūl al-fiqh*, the increasing trend is to give preference to those who have attained the highest degree from such institutions in addition to their specified religious training.[15]

As is true with all scholarly disciplines, the primary barrier to entry is the consensus of well-established scholars regarding the prospective mufti's qualifications.[16] The form and level of consensus, however, may vary greatly from place to place. Recent times have witnessed a partial formalization of the consensus process. In countries with a government-supervised religious estab-

lishment, such as Saudi Arabia and Egypt, the king or executive authority may require some type of license or permission before a scholar may issue a fatwa. In 2010, King Abdullah Al Saud issued a royal decree instructing General Mufti Abdul-Aziz Al Sheikh to report to him regarding those individuals qualified to give fatwas. This decree also prohibited anyone who is not a Council of Senior Scholars member from issuing a fatwa. The order excluded fatwa on simple matters of worship considered a necessity for education.[17] However, government regulation of the fatwa process remains controversial: supporters cite a need for regulation and opponents draw attention to the possible censorship of qualified individuals who can contribute to the body of Islamic knowledge and understanding.[18]

In nations where there is no definitive authority on matters of religion and Shari'ah, the situation is often different. As the Muslim population of many developed nations continues to grow rapidly, the founding and development of scholarly institutions, think tanks, and councils has seldom been sufficient to meet existing needs. This, in turn, has led to many unqualified, uneducated, and previously unknown individuals giving lessons, advice, and rulings on issues that have mislead and misinformed many people. According to King Abdullah: "We have observed the fallout from unqualified people issuing fatwas. It is our duty to stop them in order to preserve our religion."[19]

The Role of Technology and Social Media

In particular, the Internet has been a forum for the rampant distribution of Islamic information and a multitude of opinions without any established standards for credibility or accountability. Abdallah El-Tahawi states, in his article "The Internet is the New Mosque":

> Specifically, the internet has become not only a clearinghouse for Koranic text, but also for religious guidance and even fatwas (religious edicts). The new, global online Islam has been propagated by countless websites maintained by sheikhs, religious scholars, and even laymen. Today, any person can look up a fatwa on any subject, checking whether a particular action is *ḥarām* (forbidden) or *ḥalāl* (permissible), sometimes within minutes, with just a few clicks of the mouse.[20]

On the other hand, if the scholars' credibility and qualification has been sufficiently established, the Internet can be used to enhance accessibility for those who do not live close to a mufti or *mujtahid* and do not possess their personal contact information. El-Tahawy, later in his article, states:

[O]nline fatwas are the new, widely available alternative for the Muslim masses. Regardless of one's stance toward online fatwas, the established fact is that they have become a means for Internet users to present their problems and receive detailed religious advice. Moreover, this impersonal means of communication allows users to ask more frank questions than social norms in their country permit.[21]

We should view the Internet as a tool and means of communication that can be used to benefit and educate or abused for personal gain, as is the case with any other tool. Its future usage as regards issuing fatwas and religious advice will reflect the state of organization as regards the global community of scholars. The degree to which they are united and accredited will be the measurement by which questioners can determine if they are approaching a reliable source for a religious ruling.

The Possibility of Regulation

As scholars have noted, one of the Shari'ah's special qualities is its applicability to every region and age from its revelation to the end of times. As Robert Crane elucidated during his presentation at the Eighteenth Anniversary of the founding of the Institute for Islamic Thought, "Islamic jurisprudence is absolute in principles but relative in application according to time and place."[22] We should hope for the scholarly discipline of interpreting the Shari'ah to adapt to the global environment so that it can once again become a key factor in world affairs.

First of all, some type of standardization of the educational requirements must be devised in order to provide an objective measure of credibility for those claiming to be Islamic scholars and jurists. Implementing standardized tests for those who have completed their higher education as well as memorization requirements may reliably measure what the scholars know, can do with their knowledge, and serve as a performance goal that would be a final barrier of entry to the field, much like the MCAT (medicine), bar (law), and CPA (accounting) exams. A major challenge would entail designing a testing system that adheres to the major principles of standardized testing:

1. Reliability: The exam should produce consistent results.
2. Validity: The exam should measure what it is intended to measure.
3. Fairness: The exam should not place scholars at a disadvantage because of gender, nationality, school of thought, or disability. [23]

Implementing this would require the efforts of scholars who are both knowledgeable and experienced in the Shari'ah, the various methodologies of jurisprudence, as well as the fields of industrial/organizational psychology and standardized testing.

Fatwas in the Private Sector

As the importance of the fatwa and Shari'ah advisory boards continues to grow in the private sector, we should also expect to see the corresponding growth and development of its institutions. Until now, the role of Islamic scholars of finance, for example, has been largely individualistic, unsupervised, and un-regulated. In addition to the lack of defined standards for establishing their qualifications, it has been common for a single scholar to sit on dozens of Shari'ah advisory boards. This situation not only necessitates a conflict of interest, but also prevents the scholar from fully committing his resources and capacities to any particular project. The most active Shari'ah scholar in the Islamic banking world, Dr. Nizam Yaqubi currently is a member of seventy-eight Shari'ah advisory boards and the chairman of ten of them.[24]

The first of two apparent solutions to this dilemma is for a governmental or private accreditation agency to limit the number of boards upon which a Shari'ah advisor can sit. The Bahrain-based Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has already adopted some initiatives related to this practice. However, as they are not really enforced, they are unlikely to have much impact in the near future. A more effective and influential example is the Malaysian government's requirement that each Shari'ah scholar be registered and that each scholar sit on only one advisory board in each sector at any particular time. Perhaps this can serve as a model for future efforts to incorporate scholars as consultants, advisors, and employees in international business and banking ventures.[25] Another alternative to prevent qualified scholars from spreading their talents and services too thinly is to shift the fatwa paradigm from its current focus on the individual to a more collective effort by creating consultative bodies, foundations, and firms that are supervised by senior scholars.[26]

Conclusion

Perhaps the greatest benefit derived from the people's changing demands and needs for relevant interpretations of Islamic law is how scholars and their methodologies will adapt to those needs. The older models based upon the reliance on single schools of thought (*madhāhib*), and the exclusion of others,

no longer suit the needs of cooperating international councils, companies, educational institutions, and policymakers. Instead, decisions will be made after interdisciplinary research and new examinations of established judicial precedents, both of which will take into account the strongest arguments and evidence from all of the classical schools of thought and scholarly deliberations.[27]

Indeed, the increasing global need for competent, capable, and wise Islamic scholars, researchers, and muftis will continue to challenge students to develop themselves as carriers of knowledge who are in touch with the realities of a fast-changing world. Educators and academic institutions need to constantly reexamine and update their curricula to reflect these emerging needs. They should use case studies and recent examples to illustrate the complex situations that are unique to the modern era and encourage a balanced approach to Islam that considers an issue's various aspects as well as the merits and methodologies of different opinions regarding their rulings and solutions. Most importantly, the increasing Muslim population will prove to be the most important factor influencing the fatwa's role and future impact. The degree to which they adhere to Islam and search for solutions within an Islamic framework will be the degree to which fatwa will play a decisive role in this era of globalization.
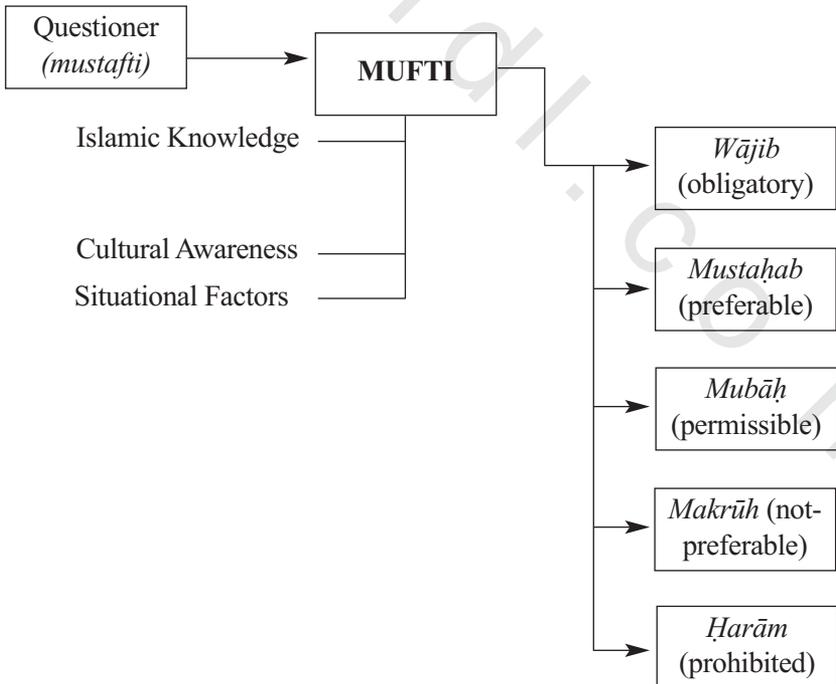
Endnotes

1. M. Ibn Manthur, *Lisān al-Arab* (Bulaq: al-Matba'ah al-Kubra al-Amiriyyah, 1890), 5:3348.
2. U. U. Al-Ashqar, *Fawḍā al-Iftā'* (Jerusalem: Dar al-Nafa'is, 2008), 9.
3. Ibn Hanbal, *Musnad al-Imām Aḥmad* (Cairo: Mu'assasat Qurtubah, 2001), 4:243.
4. A. K. Zaydaan, *An Introduction to Shar'iah Studies* (Baghdad: Mu'assasat al-Risalah, 1969), 29.
5. Al-Ashqar, *Fawḍā,* 11.
6. M. I. al-Tirmithi, *Al-Jāmi' al-Ṣaḥīḥ* (Riyadh: Dar al-Salam, 2008) 3:123.
7. Ibid.
8. Zaydaan, *Introduction,* 38.
9. J. Al-Suyuti, *Tadrīb Al-Rāwī fī Sharḥ Taqrīb al-Nawawī* (Cairo: al-Kawthar Library, 1994), 1:112
10. Y. I. al-Nawawi, *Adab al-Fatwā wa al-Muftī wa al-Mustaftī* (Cairo: Mu'assasat alIhram, 1998), 47.
11. S. R. Al-Mubarakpuri, *The Sealed Nectar* (Riyadh: Dar al-Salam, 2002), 234.
12. Ibid.
13. B. Philips, *The Evolution of Fiqh* (Raleigh, NC: International Islamic Pubilishing House, 1983), 132.
14. A. B. Ibn Abi Shaybah, *Musanaf Ibn Abī Shaybah* (Riyadh: Maktabat Alrushd, 2004), 4:92.
15. M. M. Scott-Baumann, *The Training and Development of Muslim Faith Leaders: Current Practice and Future Possibilities* (London: Communities and Local Government Publications, Crown 2010), 44.
16. Al-Nawawi, *Adab al-Fatwā*, 23.
17. F. Sidya, "Fatwas Only by Senior Scholars: King," *Arab News*, 2010.
18. Al-Ashqar, *Fawḍā al-Iftā',* 32.
19. Ibid.
20. A. El-Tahawy, "The Internet is the New Mosque: Fatwa at the Click of a Mouse," arabinsight.org, arabinsight.orgaiarticles188.pdf., 11, accessed March 2011.
21. Ibid., 13.
22. R. D. Crane, "*Maqāṣid al-Shari'ah*: A Strategy to Rehabilitate Religion in America. Eighteenth Birthday Celebration," 1999, 7.
23. S. Zucker, *Fundamentals of Standardized Testing*, 3.
24. M. Parker, "Are Shari'ah Advisories Becoming an Endangered Species?" *Arab News,* 2010.
25. Ibid.
26. Ibid.
27. S. Tahir, *The Future of Islamic Banking* (Tehran: 2003).

Bibliography

Al-Ashqar, U. U. *Fawḍā al-Iftā'*. Jerusalem: Dar al-Nafa'is, 2008.

al-Mubarakpuri, S. R. *The Sealed Nectar.* Riyadh: Dar al-Salam, 2002.

Al-Nawawi, Y. I. (d. 1380). *Adab al-Fatwā wa al-Muftī wa al-Mustaftī*. Cairo: Mu'assasat al-Ihram, 1998.

Assulami, A. *Uṣul al-Fiqh* (Matters that the Judicial Scholar Must Not Be Ignorant of). Riyadh: Dar al-Tadmuriyyah, 2005.

Al-Suyuti, J. (d. 1505). *Tadrīb al-Rāwī fī Sharḥ Taqrīb al-Nawawī*. Cairo: al-Kawthar Library.

Al-Tirmidhi, M. I. (d. 892). *Al-Jāmiʿ al- Ṣaḥīḥ*. Riyadh: Dar al-Salam, 2008.

Crane, R. D. "Maqāṣid al-Sharīʿah: A Strategy to Rehabilitate Religion in America. Eighteenth Birthday Celebration." Herndon, VA: IIIT, 1999.

El-Tahawy, A. (d. 933). "The Internet Is the New Mosque: Fatwa at the Click of a Mouse." Retrieved March 2011 from arabinsight.org.arabinsight.orgaiarticles 188.pdf.

Farooq, M. O. "The Riba-Interest Equation and Islam: Reeaxamination of Traditional Arguments." Fayette: Upper Iowa University, 2005.

Goolam, N. "*Ijtihād* and its Significance for Islamic Legal Interpretation." *Michigan State Law Review* (2006).

Hilal, I. "Studies in Uṣūl al-Fiqh," 1999. Retrieved from Islamic Truth: www.islamic-truth.fsnet.co.uk

Ibn Abi Shaybah, A. B. (d. 235 AH). *Musanaf Ibn Abī Shaybah*. Riyadh: Maktabat al-Rushd, 2004.

Ibn Hanbal, I. A. (d. 855). *Musnad Imam Ahmad ibn Hanbal*. Bierut: Mu'assasat al-Risalah, 2001.

Ibn Manzur, M. (d. 1311). *Lisān al-Arab*. Bulaq: al-Matbaʿah al-Kubra al-Amiriyyah, 1890.

Parker, M. "Are Shariʿah Advisories Becoming an Endangered Species?" *Arab News*, December 12, 2010.

Philips, B. *The Evolution of Fiqh*. Raleigh, NC: International Islamic Publishing House, 1983.

Ramadan, H. M. "The Future of Islamic Law Scholarship." *Michigan State Law Review* (2006).

Scott-Baumann, M. M. *The Training and Development of Muslim Faith Leaders: Current Practice and Future Possibilities.* London: Communities and Local Government Publications, 2010.

Sidya, F. "Fatwas only by Senior Scholars: King." *Arab News*, August 12, 2010.

Tahir, S. *The Future of Islamic Banking.* Jeddah: Central Bank of the Islamic Republic of Iran and the Islamic Research & Training Institute of the IDB, 2003.

Y-Sing, L. "Islamic Finance Taps Women Scholars." Reuters. 2010.

Zaydaan, A. K. *An Introduction to Islamic Shariah*. Baghdad: Mu'assasat al-Risalah, 1969.

Zucker, S. *Fundamentals of Standardized Testing*. San Antonio: Pearson, 2003.

Discussion

Discussant: Mahmoud Ayoub

The Internet is creating confusion in many fields, including this one, but we cannot deny its importance. You can write a question to someone like Yusuf al-Qaradawi and get an answer within three days. You should be careful of your high bar for a mufti's qualification. The mufti is also usually a *faqīh*, and usually those who issue fatwas about medical or scientific matters ask experts in those areas. The *marāji'* in the Shi'a system, due to the zakat system, often control a great deal of wealth. I think we should institutionalize *iftā'* rather than limit it to individuals. Asked about a conventional mortgage, an *'ālim* who does not know enough about finance or the American environment may issue a peculiar fatwa. For example, one *'ālim* said one could have a car loan but not a home loan, even though the latter is more important. Many fatwas today require more research that an institution can facilitate and then store in a fatwa bank.

Including women in *iftā'* is neither simple nor easy, given the *fiqh* limitations on them. You know the famous, or infamous, hadith related on the authority of Ibn Mas'ud that a woman is deficient in reason and religion. The idea that her testimony is half that of a man has prevented women from being judges. We must deal with these issues before saying that they should be included in *iftā'*. We have a lot of work to do before we can entertain this particular possibility. But I admire your ideals and hope that we can rise to the standard you have set.

Discussant: Alexandre Caeiro

I think the paper provides a largely normative account of the fatwa that draws on the traditional genre. At first sight it looks like a mere repetition of previous accounts with a striking sense of continuity that allows Mustafa to draw legitimately and eclectically from a thirteenth-century Shafi'i jurist, al-Nawawi, and a contemporary Jordanian Usama Sulayman al-Ashqar. The genre is also reflexive with a certain contemporary naivety that provides interesting material on the Muslim understanding of religious authority. In the future, Mustafa might wish to explore the differences between these two scholars' accounts. There is a familiar narrative of the fatwa's decline both in terms of the mufti's quality and piety. There is also the idea that the mufti has the right to paint a negative picture of society if it will prompt people to greater piety.

I would raise three questions on these lines: standardization, the Internet, and the shifting fatwa: (1) Do you agree that the suggestion of standardization implies that the problem of strange fatwas today is due to the lack of qualified ulama? (2) You have a nuanced analysis of the Internet's impact. The social sciences never see the media as neutral (viz., the medium is the message). Don't you think that websites with known scholars are privileged over other websites? 3) The paper ends with a call for a shift in the fatwa paradigm from an individual to a collective process, which is already taking place within fiqh councils. How would you respond to the claim that such a shift would take us to a framework that is very different from the traditional Islamic legal tradition with which you open your paper?

Kassem: The Internet can educate and benefit or be used for personal gain like any other tool. It will ultimately reflect the international community of scholars. I was concerned with those people who do not know who is and who is not a scholar. My understanding of the hadith about women is that the Prophet said: "I have never seen a people so deficient in thinking and religion." I took it as a response to a particular situation as opposed to a general comment pronouncement on their qualities or deficiencies.

General Discussion

- When you analyze it, the hadith is not a proper hadith; rather, it is *mudraj*, because it is Ibn Masʿud's words and not those of the Prophet. But that is not the issue. The hadith "A people led by a woman will not prosper" is the problem.
- The actual text of the other hadith calls upon women to do more good deeds because no one takes away the common sense of a man more than a woman.
- Neither hadith is acceptable because we know that the Prophet loved women. After all, he said that three things were made lovable in this world: women and perfume (which are related) and then prayer.
- We should consider including women on consultative bodies, beginning with research. We shall never be finished with *iftāʾ* because we will always have new questions. Including young people is important. Islamic finance prompts a resurgence in fatwas as the science of economics becomes more familiar to people. We cannot test *taqwā* on a bubble sheet, but we can test critical thinking and knowledge. We need some tools for investigation, and this might be one of them. As for the shift in the fatwa paradigm, the instruction "consult your heart" is very important, for it does not deal with issues that are completely clear, like whether to pray or drink wine. There are cases where you should ask the scholars about their methodology and proofs so you can make the decision yourself. We need to remember "consult your heart" and treat scholars as servants of the *dīn* who exist to serve the people and increase their knowledge.
- A clear distinction is needed between fatwas relating to *ʿibādāt* and *muʿāmalāt*. The paper's shift of paradigm was from the individual to the collective; perhaps it should be from being a reactive mufti to a proactive mufti. Then instead of deliberative bodies, we should be promoting think tanks that deal with technology and globalization in an attempt to influence policy rather than just answering questions. As a process of question and answer *iftāʾ* has always had a small audience; in reality, it has never been used as an educational tool to expose the ummah to larger questions.
- A fatwa is a response to a question or a need. Perhaps the need is the more important focus now. Some people may be qualified to answer a question in a limited area only. This duty could be extended to specialized think tanks. Having Islamic scholars on board with other experts is another way to address that problem.

- The paper paints a bleak picture of both the muftis and those who are asking questions. The further people move away from the *qalb* (heart), the more they need to ask questions. A different kind of educational process would reduce the need for people to call an expert in Saudi Arabia for a fatwa. The mufti doesn't do that kind of education. Peer review bodies like to mirror themselves. Islam has offered other solutions to these issues.

- The standards mentioned in the paper for a mufti are those of a *mujtahid*. People follow popular religious leaders rather than apply standards. People are driven by the answers they desire.

- There is a difference between fatwa and *irshād* (religious guidance) Also, we need social scientists to participate in the *iftā'* process.

- Can't we ask the society, instead of the mufti, and have a fatwa by the nation? Despite globalization, we have a multiplicity of cultures.

- In the past, the qualifications have always been the traditional ones; now, however, we are seeing a synthesis between academic and traditional qualifications. This can have a balancing effect and address other issues, such as cultural sensitivity. Cultural awareness should be required for all muftis.

- We are broadening the definition of a fatwa too much for it to remain a fatwa. *Irshād* may involve a fatwa, but not necessarily. Fatwa is a matter of clarification, while *irshād* may be helping people.

- A fatwa is good council, whether it is done individually or collectively. Even when a fatwa comes out of a research institution, the head of the institution could still sign it. Perhaps we need a mechanism to make fatwas international.

- Where does this idea that women are not supposed to be heard come from? Women issued fatwas, or were at least respected scholars, during the Prophet's lifetime. We are less liberal on this issue now than were the Prophet and his contemporaries.

- Perhaps the reason *iftā'* has become an issue is because of the atrocities that have taken place in the Muslim world. We need a clear definition for fatwa and mufti. One condition for a mufti is that he must know the questioner, a condition that cannot be met over the Internet. We need to distinguish between the imam, who is also a counselor, the mufti, and the *faqīh*. Even in face-to-face situations there is incomplete familiarity between the mufti and the questioner, so we should not discount the Internet too quickly. The Shi'a on the Internet will only give general answers and then refer the questioner to their local mufti for a more specific answer.

- We have gone past the point described above as regards women. Their role in these issues is a matter of qualification. The earliest Muslims consulted with women even on the *khalīfah*'s succession. The politicization of fatwas deserves a paper of its own. In the Shari'ah Council in Pakistan, the politicization was painful. We have no *marāji'* among the Sunnis, for it is the ummah that gives credibility to the muftis, not the political leadership. What we have arrived at in the last ten-fifteen years is that the role of Shari'ah has become the re-articulation

of the *maqāṣid*, regardless of the issue. With millions of Muslims living under non-Muslim rule, we have to articulate a *fiqh al-aqallīyāt*. A number of PhD dissertations have been written on *fiqh al-jamʿīyah* (collective jurisprudence). With all of our reservations about Egypt, its grand mufti does have thirty paid researchers. We have a golden opportunity to bring Sunni and Shiʿa together in *madāris al-fatwā*. Not a single Sunni *iftāʾ* body has a single Shiʿi scholar and vice versa. Commercialization has been a disgrace on scholarship (see Bin Bayyah's recent book on fatwas). On the issue of incorporating education, we note the following: Out of thirty-five applicants from al-Azhar for a position on the Fiqh Council of North America, only one survived on the basis of showing common sense during the interview. But the other thirty-four are serving somewhere in the world today. If first-generation scholars could consult with merchants and women, why can't we?

- Twenty years ago Shaykh Taha commented on this non-hadith that women are deficient in intellect and religion. How could the Prophet possibly, on the occasion of Eid, disgrace a group of women in such a fashion?
- Suggesting that governments should appoint the fatwa boards is an invitation to oppression.
- The issues we discussed today come down to the question of authority. In many comments, authority was reduced to knowledge. Does this apply now, when other things have more impact than knowledge? If we want to speak of women in the *iftāʾ* process, we should recognize that institutional authority, rather than any hadith, determines their absence.