

A Typology of Fatwas

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Abstract

This paper seeks to shed light on the nature of fatwas as sources for the study of Islamic legal and ethical thought by drawing some distinctions between various basic types of fatwas and the information we may expect to derive from them. It identifies and provides an account of what are here termed as the ephemeral, the school, the court and the public fatwa. In each case it discusses the type of authority they involve and, in the context of this special issue on Islamic bioethics, their particular relevance to issues of health and medicine today.

Keywords

fatwa – mufti – Islamic normativity – Islamic law – sharia

As the established “Q & A” exercise in the Islamic tradition, the consultation for a fatwa (*istiftāʾ*) is the mundane activity through which Islamic norms, ethics and jurisprudence are spread. And *iftāʾ*, the giving of a fatwa, is the simple formulation of a point of revealed law as understood by the scholarly tradition. Bound up with these institutions is the authority of religious knowledge and scholarship, sought for by the *mustaftī* and nominally freely and readily given by the mufti.

As a historical source, then, a fatwa represents an incidence of consultation on the teaching of Islam. In principle, it should therefore reveal some limited information about what at least one Muslim was in doubt about, who he or she considered an authority to ask, and what this authority thought of the matter. But this is not much in itself, for other *mustaftīs* may have had different concerns and recognised different muftis, and other muftis may have given

different answers. In order to shed some light on the nature of fatwas as sources for the study of Islamic legal and ethical concerns and thinking, this paper proposes making some distinctions between various basic types of fatwas and the information we may expect to distil from them. It will thus provide an overview of these different types of fatwas: the ephemeral, the school, the court and the public fatwa. In each case it will discuss the type of authority they involve and, in the context of this special issue on Islamic bioethics, their particular relevance to issues of health and medicine today.

The Ephemeral Fatwa

The first category is the run-of-the mill fatwas of everyday life. Either delivered orally, or on a piece of paper, these fatwas are generally lost, and thus easily ignored by scholars. They are the product of private encounter, and a personal question. They are rarely evidence of a curiosity about Islamic doctrine. Rather, they are evidence of a desire to do things religiously right in personal life conduct. Naturally, such fatwas may well be related to issues of health; they may for instance touch on the legality of medical treatments, questions of purity and impurity, or lifestyle.

The authority of the mufti here can be close to that of a sheikh or a spiritual guide. Precisely because the fatwa is ephemeral and private, the mufti can take the personal status, motivation and personality of the *mustaftī* into account, and calibrate his fatwa so that it affirms an Islamic normativity, all the while making the *mustaftī* commit to a life conduct that is sufficiently Islamic – or on its way towards becoming it. Hussein Agrama gives the example of the permissibility of masturbation as a typical question to a mufti, asked by a concerned believer who cannot quit the habit. Here, it is not so much the general question of whether the practice is *ḥalāl* or *ḥarām*, permitted or forbidden, that is at stake, but what the particular believer can and should do in a particular situation. Agrama witnessed a mufti recommend masturbation as a lesser evil to a man in order to avoid an affair with a married woman.¹ In classical sources, this counseling, which may be oral, is a recommended part of *iftāʾ*.

To sum up, such ephemeral fatwas may tell us many interesting things about Muslim societies, precisely because they are sources for the myriad of applied normativities that believers actually consider and strive to meet in their lives, and that muftis have to take into account. They can be creative and interesting.

1 Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa", *American Ethnologist* 37/1 (2010), pp. 2–18.

But they are not sources that can tell us much about dogmatic normativity in the sense of a conscious restatement of dogma. Their interest remains with the individual believer, and not with the further development of Islamic legal thinking.

The School Fatwa

If ephemeral fatwas are the ones we have never seen because no one could imagine that they would be of any interest to us, the school fatwas are preserved precisely because someone collected them with the conviction that they would be of interest. These are the fatwas we know from the fatwa collections dating back to the 10th century CE. These collections are the product of the classical Islamic legal schools, and most of them are attributed to a specific scholar.

The aim of preserving these particular fatwas has been to further develop the teaching of the *madhhab* so as to instruct future generations of scholars. They have been selected according to the scholarly interest of the individual fatwa, whether its methodology or its actual position on a specific issue. These collections are not, then, necessarily reflections of the interests of ordinary people at the time of the fatwa giving. Rather, they are a valuable source for the development of Islamic normativities – to the point that they may have what Ihsan Abbas has called a “hypothetical nature”.²

A curious example would be a fatwa mentioned by Johannes Benzing in a study of fatwa collections as a source for the historical ethnography of 17th century Anatolia. In one such fatwa, a mufti is asked whether it is obligatory to perform the prayer if the *adhān* has been called by a parrot. Benzing uses this fatwa as evidence that there was a practice of keeping parrots.³ This may well be true, but the fatwa appears to have a speculative, or even didactic, element of playing with categories and norms that suggests that it should be situated within the framework of the *madrasa*, rather than real life.

When trying to extract information on social life from fatwa collections, it may be relevant to investigate the circumstances of the *istiftā'*: was the *mustaftī* an ordinary man or an official? Was the subject controversial? And as Judith

2 Ihsan Abbas, “Hair ad-Din ar-Ramli’s Fatawa: A New Light on Life in Palestine in the Eleventh/Seventeenth Century” in Ulrich Haarman and Peter Bachmann (eds.), *Die islamische Welt zwischen Mittelalter und Neuzeit: Festschrift für Hans Roemer zum 65. Geburtstag* (Beirut and Wiesbaden 1979), p. 1.

3 Johannes Benzing, *Islamische Rechtsgutachten als volkskundliche Quelle* (Mainz 1977), p. 24.

Tucker has pointed out, the position of the mufti himself can also be of significance: “Is this mufti serving temporarily in a city with which he may not be very familiar, or is he issuing opinions to members of a community of which he himself is a part?”⁴

Issues of health and medicine will also figure in the fatwa collections. Normally, however, the collections are organised according to the traditional order of themes that is found in the hadith and fiqh encyclopedias. There was no single chapter exclusively devoted to medical subjects. On the other hand, it is possible to look for, and compare, treatments of specific medical issues in chapters on ablutions, or childbirth, or death.

The Court Fatwa

Fatwas employed in courts of law may have been ephemeral, or they may have become famous and duly noted in the school fatwa literature. But at least in courts of a certain status, they will also have been registered in the court proceedings, the *sijillāt*. Until the modern period, qadis who were faced with a difficult legal issue might consult a mufti to get his opinion on the matter at hand. Or litigants could consult a mufti to obtain a fatwa which they could present in court to strengthen their case. In the Ottoman Empire, in particular, a special institution, the *fetvākhāne*, was perpetually issuing such legal instruments. Finally, top muftis of the pre-modern state – again the Ottoman *Sheikh al-islām* comes to mind – could issue fatwas that were meant to be taken into account by all courts in the country. A modern equivalent would be the Saudi Arabian courts’ acceptance of the fatwas by the Board of Senior Ulama.⁵

Naturally, court fatwas could also deal with issues of health. But as the fatwas have generally been entered into the court registers chronologically, these fatwas are difficult to extract. What makes them interesting, moreover, is not their normativity, but their quality of applied law, related to the very specific circumstances of the individual cases. The court registers are thus not part of the established literature of fiqh that contemporary Muslim scholars would consult.

In a contemporary setting, then, court fatwas are mainly of interest in the Saudi Arabian case where the Board of Senior Ulama issues decisions that are

4 Judith E. Tucker, “‘And God Knows Best’: Fatawa as a Source for the History of Gender in the Arab World” in Amira Sonbol (ed.), *Beyond the Exotic: Women’s Histories in Islamic Societies* (Syracuse 2005), pp. 165–79.

5 Frank Vogel, *Islamic Law and Legal System: Studies in Saudi Arabia* (Leiden 2000), pp. 115f.

accepted in court. These decisions, and the fatwas by the Permanent Committee for Scientific Research and Legal Opinion, often deal with issues of medicine and health, such as contraception, birth control, autopsies or organ transplantation.⁶

The Public Fatwa

This leads me to the most recent and relevant type of fatwa, the public fatwa. While there are forerunners to public fatwas in the form of public announcements, for instance those concerning state affairs such as proclamations of new rulers, by public fatwas I mean published fatwas, whether in print or in other modern mass media. The central point here is that this type of fatwa transcends the nexus between the mufti and the *mustaftī* and introduces a broader public as the real recipient of the fatwa. Well aware of this broader target group, the mufti will avoid taking the individual circumstances of the question into account and seek to issue a generally valid fatwa, thus making it into a clear and defensible statement of Islamic dogma. Or, conversely, he will address a wider audience at a specific juncture in collective history, making the fatwa more like a general public statement, made in the idiom of Islamic scholarship and authority.

With the introduction of modern territorial states with centralised legal systems, fatwas lost their significance in the courts. And the introduction of new school systems and teaching methods, even in bastions of Islamic learning such as Egypt's al-Azhar, meant that fatwa collections were no longer part of the ordinary training of qadis and muftis.⁷ On the other hand, they were now much more easily available for consultation. And ordinary people would still ask muftis for fatwas, whether ephemeral and private, or published and public.

These public fatwas have been recorded in books, newspapers, and audio and video cassettes. This means that, compared to the earlier types of fatwas, they are easily stored, archived, indexed, searched and accessed, and not only by the scholars. New fatwa services have evolved, from phone-a-fatwa to internet fatwa archives. The big searchable fatwa banks make it very easy to extract numerous fatwas on the same subject. And that, in turn, may encourage new

6 Muhammad Atawneh, *Wahhabi Islam Facing the Challenges of Modernity: Dar al-Ifta in the Modern Saudi State* (Leiden 2010), pp. 134–46.

7 Monique Cardinal, "Islamic Legal Theory Curriculum: Are the Classics Taught Today?" *ILS* 12/2 (2005), pp. 224–72.

mustaftī ethics from reckless “fatwa-shopping” to careful comparisons of the arguments of the various muftis.

Moreover, with the rise of satellite television and the internet, muftis could be far away, and sometimes even difficult to identify. National *iftāʾ* has given way to transnational *iftāʾ*, and attempts at limiting it through national regulation – as Saudi Arabia tried in 2010 – have proven largely ineffectual. The result is a cacophony of fatwas, often contradicting one another. This has given rise to a debate about “fatwa chaos” (*fawḍā al-iftāʾ*) and numerous attempts at curbing it, from certification of muftis, to codes of ethics, to schemes to educate the general public. Some have also tried to re-introduce the individuality of the situation of *iftāʾ* by insisting on methods of contextualisation. For instance, the website Islamonline sought for a mufti residing in the country of the *mustaftī*. As of yet, the issuing of fatwas remains quite unregulated, but given that public fatwas are little more than statements by religious scholars contributed to the general public deliberation, this is unsurprising.

The State Fatwa

A subset of the category of public fatwas is the state fatwa: that is, a fatwa given by a mufti who has been appointed the official mufti of the state.

In many countries, the very fact that state law was considered insufficiently Islamic led to a sustained interest in fatwas as a valuable extralegal source of legitimacy. Most Muslim states realised the importance of having a national public sphere with national media, including in the field of religion. To demonstrate territorial integrity, and bolster their domestic religious legitimacy, many countries instituted the office of state mufti. The task of the state mufti was to represent the state at congresses abroad, to appear at public celebrations, and to serve the administration and the public at large with fatwas. In the hands of state muftis, fatwas went from being a legal and educational instrument to being a state-delivered public service.

More than other public fatwas, state fatwas raise many issues of authority and normativity. When modernising states drafted in state muftis to provide Islamic arguments for policies they were pursuing – in the field of health, the great subject of family planning comes to mind in many countries – they were, so to say, augmenting the authority of the state with that of the Muslim scholar, and vice versa. Predictably, the opposition to the government and its policies would also employ its own muftis to support its case. Hence, contestation over state policies could sometimes be expressed in the form of fatwas, benefiting from the fact that it was difficult for a state to persecute a sheikh for

answering a question from a believer. Especially in the authoritarian phase of modern Arab politics, when overt political contestation was curtailed, fatwas became instruments in a tug-of-war between the regimes and their opponents, for instance in Egypt or in Syria at the outbreak of the civil war of 2011.

The Collective Fatwa

The last type of fatwa I want to mention here is the collective fatwa, that is, a fatwa given not by an individual mufti, but by a group of muftis who have reached a consensus (*ijmāʿ*) on the issue. Appearing in the second half of the 20th century, the collective fatwa can be considered an attempt to procure or deliver fatwas with a degree of authority that is not readily challenged. Important bodies of collective *iftāʾ* have been established by states, but these are rare. Saudi Arabia's Permanent Committee for Scientific Research and Legal Opinion is one such example, another would be the National Fatwa Committee of Malaysia. There are, however, examples of non-state collective fatwa-issuing bodies which are powerful enough to influence state policies and legislation, such as the Majelis Ulama Indonesia.

In the 1960s, ambitious attempts were even made to set up international fatwa issuing bodies, namely the Academy of Islamic Research at the al-Azhar University in Cairo (est. 1961), and the Islamic Fiqh Academy of the Muslim World League in Mecca (est. 1962). Both organisations appointed well-known and respected muftis to sit on their fiqh committees in order not only to take authoritative decisions, but also to disseminate them across the Muslim world. In the normal procedure, these collective bodies would agree on a working list of topics and ask members to prepare a study, typically on issues considered either divisive or of some general importance, and then discuss them at a later meeting and issue a statement. Medical issues would appear prominently, but here mainly in the form of new technologies and practices such as in vitro fertilisation.⁸ More recently, a new International Union of Muslim Scholars was established in 2003 in Dublin by a group of well-known Islamist scholars, led by the Qatar-based Yūṣuf al-Qaraḏāwī. The stated ambition of the IUMS is to make use of the new media to enable ulama interaction beyond the influence of any state. Although moderately successful in setting the agenda of Muslim scholarly politics, the IUMS has not succeeded in establishing itself as an authority that could standardise and unify the process of *iftāʾ*, which, due to the easy access the internet provides, appears more chaotic than ever before.

8 Reinhard Schulze, *Islamischer Internationalismus im 20. Jahrhundert* (Leiden 1990), p. 301.

Conclusion

A centrepiece in classical definitions of fatwas in the *uṣūl al-fiqh* literature is the discussion of the difference between the mufti and the qadi, and, consequently, between the fatwa and the *ḥukm* (verdict). In the introduction to what is still the best scholarly treatment of the fatwas, Masud, Messick and Powers delineate this difference in detail.⁹ A *ḥukm*, however, can also be a ruling pronounced by the mufti. To some, such as the Mufti of Egypt ‘Alī Jum‘a, the *ḥukm* is the kernel of any fatwa, the textual focal point that is being elicited and announced in the hermeneutical process of *iftā’*.¹⁰ Other muftis – and many websites – make a distinction between *fatāwa* and *aḥkām*, considering the latter more binding. The collective fatwa-issuing bodies often employ the term *qarārāt* (decisions) for fatwas that are issued after studies, preparations and discussions. These are examples of intra-Islamic typologies and delineation, but they also testify to a certain confusion. In many instances the public does not seem to make these distinctions but may use the term fatwa for them all; Ayatollah Khomeini’s infamous fatwa calling for the murder of the author Salman Rushdie termed itself a *ḥukm* but was widely referred to as a fatwa – in the Muslim world as well as beyond it.

A fatwa is not just an instance of a meeting between reality and Islamic doctrine. It is also part of an ongoing Muslim scholarly discussion about Islamic norms and their applicability. As Baber Johansen has demonstrated, along with the commentary literature (*shurūḥ* and *ḥawāshī*) fatwas were the vehicle for the introduction of new thinking and new rulings in the literature of the *madhhab*. Only whereas the commentaries could list the different opinions of the masters, the fatwa should be shorter and was thus “the confirmation (*taṣḥīḥ*) and the choice of a legal opinion by the mufti”.¹¹ This makes fatwas a main source of change in Islamic legal and ethical doctrines, even today. Given careful attention to the type of fatwa, and its context, this genre allows us also to trace underlying developments in the thinking of Muslim religious authorities and their understanding of the categories they employ. In this age, when it comes to medico-ethical issues, these subtle conceptual developments may include gradual shifts in their understanding of life, death, and humanity itself.

9 Khaled Masud, Brinkley Messick and David Powers, *Islamic Legal Interpretation: Muftis and their Fatwas* (Cambridge 1996), pp. 15–9.

10 Ali Gomaa, *Responding from the Tradition: One Hundred Contemporary Fatwas by the Grand Mufti of Egypt* (Louisville 2011), pp. 22f.

11 Baber Johansen, *Contingency in Islamic Law* (Leiden 1999), p. 449.