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Shuratic Iftaa: The Challenge of Fatwa Collectivization

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ABSTRACT

One of the primary challenges to the process of juristic development in the modern world is the specialization of knowledge that has made the process of issuing legal opinions more difficult than ever before. Among the contributing factors to the challenge are the amount of data available, the sophistication required to understand the data, the variations in cultural context in which juristic decisions are applied, the increasing distance of the jurists from the original languages and contexts of the textual sources, and the complexity of the social conditions in which the decisions are to be applied. A new methodology that has been suggested is that of collectivization of the process of issuing fatwas. The argument has been made that since no single scholar can master all of the knowledge necessary to arrive at a decision on a number of pressing issues some mechanism of collective iftaa is necessary.

We consider the arguments for the collectivization of iftaa and some objections and obstacles. We suggest that rather than develop a totally new collective methodology, we combine the traditional Islamic concept of shura with the modern scientific methodologies of peer review and the new developments in online communication in order to implement techniques that take advantage of the latest developments in technology and scientific collaboration to preserve the fundamental principles of Islamic juridical development. This process supplements the classical texts with the discoveries of scientific inquiries, provides a means for the inclusion of social and physical scientists along with the scholars of the traditional Islamic disciplines, restores the separation between state and scholarship of early Islamic society, and avoids the sectarianization of institutions. We discuss how the results can be made available to civil and political society. We illustrate the issue by applications to particularly difficult contemporary issues such as calendar reform and embryonic stem cell research.

INTRODUCTION

In the classical era of Islamic jurisprudence, the best scholars were those who not only possessed the keen intellect required for clear original analytical reasoning, but those with a broad general knowledge of all the fields that might bear on their legal reasoning. The rate of the development of new knowledge has risen exponentially in recent centuries, and there has been a dearth of “Renaissance men” since, well, the Renaissance. Today, specialists master the intricate details of particular fields of knowledge. People with broad general knowledge are few, and even the best of these can themselves specialize in a few fields at most and must rely on other specialists for detailed knowledge of others. This extreme specialization of knowledge that is a hallmark of modernity poses one of the primary challenges to the process of juristic development in the modern world and has made the process of issuing legal opinions more difficult than ever before.

It has been suggested that we must accept that no single scholar can possibly possess all the necessary knowledge to engage in *ijtihād* on issues that require significant technical knowledge in specialized fields, and that we must develop a new methodology for collectivized *iftāʾ*. In this paper we shall explore the arguments for fatwa collectivization, particular challenges faced in any attempt at such collectivization, and solutions to overcome the obstacles and objections. While it is impossible for any single person to have mastery of all the fields of knowledge in the modern world, it is necessary for anyone engaged in *iftāʾ* in any capacity have a basic understanding of many disciplines, including research methodology, textual analysis and the physical and social sciences.

HISTORICAL PERSPECTIVE

We do not intend to engage in a detailed historical review, but a brief summary with some highlights may put the problem with which we deal into a historical perspective. We may then consider how circumstances have changed and what modifications of methodology are necessary.

As always it is best to begin with a definition of terms. A fatwa is a non-binding legal opinion and *iftāʾ* is the process for the issuance of such opinions. Such a legal opinion must be distinguished from the binding legal judgment called *qadāʾ*, which is issued by a judge (*qāḍī*). The judge is concerned with legal disputes, while the mufti provides jurisconsultation on a very broad range of issues from ritual to family relations, to political questions. The mufti is the one who implements the process of *iftāʾ* and issues the fatwa. The mufti may be of two kinds, one qualified to engage in original legal thought is a *mujtahid* and may issue fatwas based on his own reasoning derived from the sources of Islamic law. One who is not so qualified, but who is well-versed in the analysis of *mujtahids* who have preceded him (a *muqallad*), who must cite the sources for his fatwa.¹

¹ Messick, Brinckley, “Fatwa: Process and Function,” *The Oxford Encyclopedia of the Modern Islamic World*, John Esposito, ed. (Oxford: Oxford Univ. Press, 1995), 10.

It is interesting that some of the issues we find in contemporary iftaa have been present from the earliest times, including “fatwa shopping” and evaluation of the competence of the muftis.² Because the overwhelming majority of such opinions were delivered orally, there is no record of them,³ but most were over routine matters that were not controversial and prompted only by the fact that low literacy prevented questioners from looking up the answers to simple questions themselves. In that environment, the paucity of the written record posed no problem to society.⁴ While issues of fiqh and iftaa overlap, the development of fiqh is distinguished by its formal systematic evolution. Iftaa is directed at providing answers to particular real-world inquiries, and is often unrecorded.

Over the centuries changes in the environment (political and scholarly at first, and technological later on) have altered the institutions of iftaa: “Before the eleventh century CE a *mufti* was simply someone who issued *fatwas*, knowledge and recognition by the scholarly community where the only prerequisites for a *mufti*. Beginning in the eleventh century a public office of *mufti* was affixed to the private vocation of *ifta*’.”⁵ Gradually the office was increasingly politicized until under the Ottomans there was a chief mufti, the “*shaykh al-Islâm* appointed and dismissed only by the Sultan” who “depended on the secular authority in the *qâdîs* to execute his judgments.”

With increasing frequency over the last couple of centuries, muftis have asserted a right not to be bound by taqlid to earlier fatwas. Further, the usurpation of the functionality of iftaa by the colonial powers and the postcolonial regimes that inherited their administrative structures resulted in a shift of the focus of the muftis’ attention from questions of daily living into the areas of “anti-colonial resistance and ... the struggle for national independence.”⁶ Muftis must now wrestle with the challenges posed by various aspects of modernity as well.

At the same time, there has been an exponential rise in the amount of knowledge possessed by humankind and in the degree of specialization in the proliferating fields of knowledge. How can a mufti answer a question about medical ethics, for example, if he has no grasp of the medical issues involved and no comprehension of the discourse of ethicists within the medical profession? With no familiarity with the technical information that is available and without the sophistication required to understand that information, the mufti must either make wild guesses or accept the advice of technical

² Messick, 11.

³ Messick, 10.

⁴ Messick, 11.

⁵ Ahmad S. Dallal, “Fatwas: Modern Usage,” *The Oxford Encyclopedia of the Modern Islamic World*, John Esposito, ed. (Oxford: Oxford Univ. Press, 1995), 13.

⁶ Dallal, 15.

advisors who may have no familiarity with the Qur'an and Sunna. In the West, we are confronted with the additional problems posed by the unfamiliarity of immigrant or foreign muftis with the cultural context in which their juristic decisions are applied. Throughout the world, problems are posed by the increasing distance of the jurists from the original languages and contexts of the textual sources and by the complexity of the social conditions in which the decisions are to be applied.

THE CASE FOR COLLECTIVIZATION, OBSTACLES AND OBJECTIONS

It has been proposed that many of the problems alluded to in the preceding section may be addressed by collectivized the process of iftaa. The argument has been made that since no single scholar can master all of the knowledge necessary to arrive at a decision on a number of pressing issues, some mechanism of collective iftaa is necessary. Let us consider the arguments for the collectivization of iftaa and some objections and obstacles.

Setting aside for a moment what the mechanism of a collective iftaa would be, let us only consider the abstract benefits of having multiple participants in the process. In what ways are n heads better than one? By allowing the multiplicity of parties to collaborate in the decision the iftaa group benefits from the complementarity of knowledge of its members. Medical researchers with no knowledge of Qur'anic Arabic, Arab grammarians with no knowledge of medicine, bioethicists unschooled in Islamic history, political theorists with no knowledge of hadith, and classically trained Islamic legal scholars without experience in modern scientific research, can compensate for one another's weaknesses and provide context for each other's contributions in addressing particular problems that might in theory be resolved by a hypothetical al-Azhar graduate in Islamic studies who had won the Nobel prize in medicine, had such a person existed.

Attractive as this fantasy may be, serious objections arise when we tried to imagine the mechanism by which such collaboration may be effected. Let us imagine the assembly of the committee to deal with the issue of embryonic stem cell research. Let us ignore problems posed by the size of such a committee. For the sake of argument, let us assume that every conceivable relevant discipline is represented in the assembly. If this assembly is a deliberative body modeled on a parliament, however, how are their relative areas of strength going to be integrated into the deliberative and decision-making process? Qualified mujtahids on the panel will object to giving any role whatsoever to medical technicians and would instead relegate the latter to the status of advisors who would be consulted for technical information, but should have no vote in the process. Medical experts may well feel that their insights are not sufficiently understood by religious legal experts who are incapable of integrating them into a coherent fatwa.

Another problem we must confront is the scope of the mission of such bodies. Is their mandate revolutionary or evolutionary? Are they to weave an entirely new understanding of Sharia that would replace the old schools of fiqh? Or are they required to hew as closely to precedent as possible, and merely tweak old fatwas by the smallest quanta necessary to meet the challenges posed by the questions that are put to them? For

example, when a resident of Vancouver complains that the old fatwas on when to begin and end fasting are unimplemental because the classic definitions of ishaa and fajr times don't obtain, shall he be told to break fast at his local maghrib time (8:17 p.m. on Ramadan 1 of this year), but begin fast at the dawn time at the Hague of 2:03 a.m.? Or should everyone at his longitude adopt the maghrib and fajr times of the latitude of Mecca, of 6:50 p.m. and 4:22 a.m.?

MODES OF COLLECTIVIZATION

When we consider how we may collectivize what traditionally has been in individualized process, we should begin by identifying the two different modes of collectivization that may be brought to bear. One mode I shall call the parliamentary mode and the other the academic research mode of interaction among the members of the collective.

In the parliamentary mode, once we have identified the participants they engage in a formalized debate on such questions as may be put to them by proposing fatwas. As is customary for such debates the merits of each proposal are discussed. Amendments are put forward and considered in the course of debate. Votes are taken on amendments, substitute amendments, modifications, alterations, etc. until a final form of the fatwa can be agreed upon by a majority or some super majority as may be required.

The drawbacks to such an approach are enormous. As previously mentioned, there will be a debate as to who is entitled to have a vote in such a discussion. Some members of the deliberative body will be more equal than others in the sense that some may be allowed to participate in the debate, but not to vote. In the process of amendment political compromises may be made, and the final fatwa may be a hybrid, which has the full endorsement of few if any of the members of the constituent body, but is the only end product that can be arrived at by the parliamentary process. In other words, what should be a legal process will have been politicized. The similarity of such a method to the process of parliamentary legislation evokes the famous dictum that those who like legislation, like those who enjoy sausage, should never see it being made.

The alternative mode is the academic research mode in which the writer of a fatwa develops the opinion in an iterative fashion submitting it for expert review at each iteration. The criticisms of the peers are considered at each step and incorporated into the next iteration. Further, the publication of such fatwas allows competitors to publish alternative fatwas that are informed by the work of their peers. The drawbacks to this mode are it is slow and it does not guarantee that competing fatwas will not survive the process. I think these drawbacks are an acceptable price to pay for a process that promises to match the success of modern scientific research (which is also slow and often results in competing models) in arriving at the truth. One must recall that in Islamic history we often had competing fatwas. Those who require an instant fatwa may have to be content with an individualized fatwa and forgo the advantages of collectivization.

A PROPOSED MECHANISM

Rather than develop a totally new collective methodology, we suggest that the traditional Islamic concept of shura be combined with modern scientific methodologies of peer review and the new developments in online communication in order to implement techniques that take advantage of the latest developments in technology and scientific collaboration to preserve the fundamental principles of Islamic juridical development. This process supplements the classical texts with the discoveries of scientific inquiries, provides a means for the inclusion of social and physical scientists along with the scholars of the traditional Islamic disciplines, restores the separation between state and scholarship of early Islamic society, and avoids the sectarianization of institutions.

I use the initials OCI to signify **an online collaborative iftaa** to designate a method for the development of collectivized fatwas that combines academic research mode with the expert review capabilities of the latest technology, while still preserving the benefits of an evolutionary approach that remains linked to traditional methods. The wiki technology (best known for its implementation in Wikipedia, the online encyclopedia) is a popular method of online collaboration. The work of an initial drafter is published online and approved collaborators alter and add to it. However, it is plagued by problems of “thrashing” that result from persons of different perspectives repeatedly changing one another's material and I do not propose it as a viable OCI method. My proposal is closer to what is called a collaborative Q&A site, such as those powered by the online technology called stackoverflow.⁷

An OCI site may be established and the general public permitted to post questions for which they desire a fatwa. Responses of particular draft fatwas will be posted to a closed audience of reviewers and then revised by authorized peers and commented upon by a broader circle of experts permitted to comment but not change the posted text. Once a fatwa has been refined and stabilized into a final form, it will be available to the general public for reading and further comments. Nothing in this model prevents competing fatwas from being published in response to a single inquiry. Mechanisms for combing or reconciling such fatwas could be put in place, but the possibility of admitting to multiple solutions (even if mutually exclusive) must be retained if we are to avoid sectarianism. If, for example, there is both a Sunni and a Shia answer to a particular inquiry, there is no reason not to publish both. The traditions to which they belong would be clearly identified to make it easy for non-experts to select between them.

Writers for the initial draft may either be mujtahids with some knowledge of the technical areas of expertise in the question or technical experts with some familiarity with the traditional texts on related issues. Commentators and editors may base their comments and amendments on technical, maqasidi, or traditional considerations, since it is desirable that the final product takes all of these into consideration. As with scientific peer review, the writers of the fatwas need to take fully into consideration all possible criticisms, although they may rebut any of them as well. As much of the debate over controversial

⁷ See stackoverflow.com accessed 7/17/2011.

points would be retained in the final fatwa as is historically found in a well-written classical fatwa. All fatwas would conclude *Allahu a`lam*.

The implementation of this proposal will require cooperating teams of computer programmers and an administrative board to screen and appoint the fatwa writers, editors, and consulting experts. The propagation of the results is built into the mechanism itself as the Internet provides its own propagation. Civil society institutions, such as mosques and Islamic federations, can be motivated to make use of the product by giving them a role in the recruitment and administrative process. Muslim businesses can be invited to advertise on the site providing them with an incentive for its wide use. It is essential however, that the academic integrity of selection and review process be maintained. Constitutional safeguards would need to be in place to insulate operations from corruption such as, for example, an advertiser seeking a fatwa favorable to a halal designation for a particular food or financial product. The prescription for such safeguards is beyond the scope of this paper.

ILLUSTRATED APPLICATIONS

Calendar Reform

The Fiqh Council of North America (FCNA) has attempted a reform of the Islamic calendar using the parliamentary mode of collective iftaa. One particular effort,⁸ which was almost successful, involved the official members of the council consulting with three non-member scientists: an engineer, a nuclear physicist, and an astronomer. The scientific consultants presented their three competing proposals for dealing with the issue of defining the date of the hilal crescent and were questioned by the FCNA members. In turn, as the FCNA members made their iftaa arguments, the scientists were allowed to comment and question. A vote was taken settling on the adoption of the proposal of the astronomer, the “Uniform Islamic Calendar for the Western Hemisphere” (UIC),⁹ that the date of the new month would be based on the convention of astronomical new moon before sunset at Makkah. However, within 48 hours the FCNA reversed itself, out of session, adopting instead the proposal of the nuclear physicist (who had lobbied privately after the session had ended) adopting the convention of birth of the new moon at noon GMT, which would result in a one-day delay in the start of the Hijri month in about one case out of eight. The official position given at the FCNA website only says that “to determine a lunar Islamic calendar, a conventional point of reference must be used. The International Date Line (IDL) or the Greenwich Mean Time (GMT) may be used.”¹⁰ The very next year the FCNA changed its position again, this time adopting the position of the

⁸ June 2006.

⁹ Imad-ad-Dean Ahmad. *A Uniform Islamic Calendar for the Western Hemisphere*, (Bethesda: Imad-ad-Dean, Inc., 1990).

¹⁰ FCNA, “Decision on Determining the Islamic Lunar Calendar,” FCNA (12/5/2010) <http://www.fiqhcouncil.org/node/13>. Accessed 5/26/2011.

European Council for Fatwa and Research (ECFR) that that the conjunction must take place before sunset in Makkah **and** moon must set after sunset in Makkah. This allowed the date to be one day *earlier* than by the UIC about one time in eight and than the FCNA's previous position about one time in four.¹¹

The above history demonstrates the politicization of the iftaa process to which a parliamentary approach is susceptible. The continued changing of position, not to mention the frequent failure to follow one's one fatwa, which is too well-known to require citation here, are among the problems of such an approach. How might events have unfolded if an OCI had been employed? A fatwa based on the UIC could have been the original draft with the comments, questions, and criticisms of the consulting scientists and the FCNA members annotated and debated online with ongoing evolution of the proposal until it coalesced into a final form, or failing convergence, into two or three variations. It seems to me that even in the event of divergence it is unlikely that we would have ended up with more than the three different positions described in the history above or that the process of evolution would have taken more than the five years that have passed since that original FCNA meeting in 2006 to arrive at the vague statement on the FCNA website cited above.

Embryonic Stem Cell Research

The Shi'a position on embryonic stem cell research is well established¹² and research in Iran on the subject is reportedly well underway.¹³ The American Muslim community was still wrestling with this issue as recently as last year when the Islamic Institute "convened a panel of experts, in cooperation with the Fiqh Council of North America (FCNA, North American council of Islamic jurisprudence), the Graduate School of Islamic and Social Sciences (GSISS), and the International Institute of Islamic Thought (IIIT) ... consisting of medical doctors, scientists, and Islamic scholars" to deliberate "all aspects of this topic at length, in order to develop an Islamic perspective on stem-cell research."¹⁴ Their conclusion was that embryonic stem cell research is permissible subject to certain conditions, but they conclude with the statement, "It is an Islamic opinion subject to further enhancements in the case of scientific developments unknown to us at this time."¹⁵

¹¹ This convention is identical to the Umm al Qurra calendar used by Saudi Arabia as its civil calendar.

¹² Megan Meyer. "Stem Cell Research Is Consistent with Shia Islam" Muslim Voices (12/9/2009) <http://muslimvoices.org/stem-cell-research-consistant-shiite-islam/>. Accessed 5/26/2011.

¹³ Washington Times. "Iran at forefront of stem cell research," Washington Times (4/15/2009) <http://www.washingtontimes.com/news/2009/apr/15/iran-at-forefront-of-stem-cell-research/?page=1>. Accessed 5/26/2011.

¹⁴ FCNA. "Embryonic Stem-Cell Research," FCNA (12/6/2010). <http://www.fiqhcouncil.org/node/23>. Accessed 5/26/2011.

¹⁵ Ibid.

An OCI could have started with the statement of the Shia position with the consultants participating in the FCNA conference making whatever comments and changes they wished. The unlimited varieties of areas of expertise that can be brought to bear in an OCI would provide a remedy for the lack of training in bioethics that is a fact of life for the muftis who have dealt with this subject to date.¹⁶ The worst-case scenario is that convergence would not have been complete at this time, but in that case, the current state of opinion would be constantly updated and available to inquirers without the necessity of additional conferences being held. In other words, there would be a state-of-the-art fatwa available at all times.

CONCLUSIONS

We live in an era of high literacy, including computer literacy, when more and more Muslims can avail themselves of the ability to “look up” a fatwa rather than rely on an oral delivery. This has exacerbated the problems of fatwa shopping on the demand side and posting of fatwas of undetermined pedigree on the supply side. The creation of a well-organized OCI provides the mechanism by which both these problems may be addressed. Participants will receive a real-time as-needed education in the relevant areas of texts, tafsir, context, science, and technology. A “one stop” site for online fatwas provides the opportunity for quality control on the demand side and a market deterrent to proliferation of fatwa sites on the supply side (as Wikipedia and Google dominated the wiki encyclopedia and online search engine respectively). The inclusion of all experts in the process can act as a deterrent to sectarianism while enhancing the quality of the fatwas at the same time. The mass marketing aspects of the Internet can facilitate education on iftaa and the propagation and adoption of the fatwas produced. Neither the ideas proposed here nor any form of collectivization can remove the need for participants in modern iftaa to have a basic understanding of multiple disciplines including research methodology, textual analysis and the physical and social sciences.

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¹⁶ Abdulaziz Sachedina. “Islam, Healthcare, and Spirituality,” IIIT Summer Institute on Iftaa and Fatwa in the Muslim World and the West: Challenges of Authority, Legitimacy, and Relevance (IIIT Herndon, VA, 2011) submitted for publication.