

Islam Interpreted: The Dynamics of Fatwas, Ethics and Religious Authority in the Contemporary World (HPRS7029)

Portfolio questions

Q1: Discuss the relevance (if any) of fatwas in contemporary contexts and assess how they might impact societies. Illustrate your answer with examples.

Fatwas are non-binding legal rulings issued by individual Islamic scholars or religious authorities on various matters related to Islamic jurisprudence. They are essential to the ability of Islam to remain relevant by dealing with variety and change in contemporary contexts. Specifically, they are the possible means for creativity and innovation in updating interpretations of Islamic law to speak to and guide the actions of the Muslim faithful in confronting dilemmas manifest in contemporary contexts that are not explicitly provided for in the foundational sacred texts of Islam.

The answer proceeds in two parts. The first outlines how the contemporary nature of fatwa making has changed, compared to premodern and medieval eras of Islamic civilization, but with its essential function of maintaining the balance between unity and diversity in Islam enduring. The second assesses how fatwas may impact at the societal scale, as opposed to the individual Muslim level where Islamic teachings are relatively clear and unambiguous, by having practical purchase on collective action. Fatwas that require, permit, or forbid forms of collective action often need to express or calibrate an Islamic normative value within a reading of the formal legal requirements. Examples are introduced in both parts of the answer to illustrate the relevance of contemporary fatwa-making and their impact on Muslim societies.

Although the costs of the fatwa production, dissemination and consumption may have dropped in the digital era, they continue to function as a link between Islam's scriptural roots in the *Qur'an*, *Sunnah*, and the multitude of *hadith*, the subsequent *fiqh* scholarship of its the major Sunni *madhhabs* of *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali*, and challenges of acting in accordance with Islamic law in the rapidly changing contemporary contexts of the global Muslim world.

Fatwas were germane to the decentralised characteristic of premodern Islamic development¹. In elementary form, they are initiated by individual Muslims (*mustafti*) asking for guidance on Islamic law in specific circumstances in their life. This act of asking for a fatwa, *istifta* (استفتاء), is rendered in Modern Standard Arabic as a questionnaire, a ballot, or a plebiscite². This contemporary language is a clue that fatwas are consultative, bottom-up and non-binding in nature and, in their basic type - see question 2 below - reflect everyday concerns of individual Muslims and their communities³.

Fatwas are central elements in the balance of unity and diversity in Islam and remain a contemporary vehicle for tolerating variation in how important religion is in people's lives; what is truly Islamic in different social, political, and economic contexts; and what Muslims need to do to achieve the goals of an Islamic society. Islam has always been composed of

diverse branches and communities and developed successfully with no overarching governing structure or single recognised leader. In this context, fatwas allow for divergent religious interpretations, within limits, and, in contemporary contexts, different fatwas can serve to preserve a spectrum of religious orientations and interpretations ranging from Salafism, traditionalist Sufi interpretations of Islamic law through to more contextually grounded, reformist readings of Islamic teachings.

Following the death of the Prophet and his companions, the dilemma of how to clarify and seek guidance on Islamic rules was solved by the innovation of *isnad* – root س-ن-د of words about authority, support and establishing tradition⁴ - whereby Islamic scholars *ulema* were established as authorities to transmit a hadith of a statement, action, or tacit approval from the time of the Prophet between generations. As part of the scholarly class, *muftis* were qualified as the authoritative institutional memory of Islam to answer the requests for guidance from individual mustafti by issuing fatwas. A hierarchy of muftis was established from the higher ranked *mujtahids* (those qualified for independent reasoning, *ijtihad*, in offering innovative interpretations of Islam as opposed to lower ranked *muqallids* - root ق-ل-د to imitate and conform⁵ - limited to reproducing standard and widely accepted interpretations of Islam. Overtime these fatwas became increasingly formalised, public, and codified into volumes of something approaching a body of law, most often grouped by the relevant madhab, and available to be inherited by future generations of scholars.

As fatwas are non-binding and are not enforceable by any third party, their impact derives from the authority, trust and respect accorded to the religious scholars or institutions who issue them. In turn, this impact is linked to individual faith and religiosity as well as contemporary contexts of the everyday lived experience of Muslims: this drives the search for religious guidance in the first place, where and from whom Muslims seek guidance, and informs the consent to grant authority to fatwas to shape the individual and collective behaviour of the Muslim community.

Fatwa shopping is an important example of the contemporary context of increasingly interconnected digital devices and greater education. Substituting for the traditional mufti is so-called Sheikh Google; and the istifta process is replaced by rapid fire on-line searches with queries such what does Islam say about A, B, or C? Some observers read the example of increasing use of online fatwa as evidence of a wider 'don't ask, don't tell' trend immanent in the secularisation of Islam in western contexts⁶ in which traditional religious authority is in decline. Other analysis suggested that the use of online fatwas contained evidence of, simultaneously, greater religiosity and more secular trends within Islam. The nature of earthly religious authority in Islamic civilization has always been contingent and provisional – even though they may hold for long stretches over several centuries – and have allowed Islam to revive and rebuild in multiple ways⁷. However, the mustafti-mufti is arguably, despite digital connectivity, more complex in contemporary contexts relative to previous periods in Islamic civilization.⁸

It has been long acknowledged that in the changing digital spaces of Muslim expression, the influence of any Islamic opinion may sometimes be down to marketing and convenience rather than the traditional validity or quality of its content⁹. For example, issues of religious authority are present in the supply of *fatwas* to the digital market place; where traditionally,

ijtihad (reasoning by analogy to the Quran or Sunnah) or some other forms of religious authority would be required, a *fatwa* in digital media spaces is available for all preferences, desires and interests as long as you know where to shop¹⁰. To be a *mujtahid* in online age, one who has the authority or expertise to make or decision or offer sound advice on what Islam requires across manifold issues, demands not just to be a digitally literature supplier but to compete in the fast-paced attention economy in which technological acceleration in communications has created the conditions for an abundance of alternative opinions.

There are multiple fatwas readily accessible online that cover an enormous range of subjects from dilemmas of everyday life as a Muslim through to events of broader public concern such as war, the activities of Daesh/ISIS, COVID lockdown measures, treatment of refugees and AI¹¹. The impact of fatwas at the societal scale is difficult to assess empirically; requiring detailed observations before and after a single fatwa and the analytical means to isolate the promulgation of a fatwa as a causal factor. Nonetheless, we can assess how they might impact societies by articulating the role of faith in impact; this drives demand for fatwa, it is faith that grants authority to religious institutions in producing fatwa and it is faith that is central to balancing the demand and supply of fatwa.

The revival of commitment to the *maqasid al-shari'ah* in different parts of southeast Asia such as Malaysia, Indonesia, and Brunei Darussalam, illustrates the contemporary impact fatwas can have in the administration of public governance. For example, in 2018, the Sultan of Brunei explicitly referenced the *maqasid* as the guiding principles for Brunei Darussalam's long term national plan *Wawasan 2035* and was supported by multiple fatwas from the State Mufti and his department (*Jabatan Mufti Kerajaan*)¹². The *maqasid* expresses the goals of an Islamic society: the preservation or promotion of faith; of life; of intellect; of progeny; and of wealth. The *maqasid* was codified almost four hundred years after times of the prophet and the followers by the celebrated scholars, al-Juwayni and his student al-Ghazali¹³. As the superordinate goals of Islam, they have been used by muftis in several contemporary southeast Asian contexts to extend debate about public action beyond an exclusive reliance to jurists. For example, amidst the rhetoric and media fixation with the *hudood*, the penal code of the shari'a with the fixed and mandated punishments, fatwas hold the potential - though not always realised - to translate the *maqasid* into public action to alleviate genuine problems in modern life. For example, in Brunei, fatwas are widely used to guide public action in improving access to health care, strengthening social care provision for older citizens, and raising animal welfare standards. Fatwas are indispensable as the adjustment valve for Islam in general, the *maqasid* specifically, as societies change. Although critics have observed in much of Islamic revivalism in southeast Asia an absence of a coherent governing programme, instead seeing a tendency to posturing or symbolic gestures¹⁴, fatwas do hold the important potential for to guide progressive and contextual approaches to Islamic governance in different southeast Asian contexts¹⁵.

Q2: Provide an overview of different types of fatwas in terms of diverse religious authority models and platforms.

This answer starts with an overview of how the issuance of a fatwa may be based on different religious authority models and platforms, depending on the source of the fatwa

and the extent of its acceptance among the Muslim community. The second section draws on Skovgaard-Petersen's typology of fatwas¹⁶ to highlight the specific authority issues associated with (i) the state fatwa and (ii) the collective fatwa. These have been selected as significant and novel extensions, in the second half of the twentieth century, to the use of fatwas.

The most elementary form of religious authority to issue a fatwa is the individual Mufti. A mufti is a distinguished Muslim legal expert who, by dint of their training and demonstrated expertise, has been granted the authority to issue fatwas on various issues. In this authority model, the mufti uses their knowledge of Islamic law and jurisprudence to issue a fatwa, which is then accepted by the questioner or sometimes depending on the fatwa the Muslim community, particularly in the geographic region where the mufti is located. Muftis usually have some form attachment to certain religious organizations or institutions, for example *al-Azhar* in Cairo or *al-Qarawiyyin* in Fez, which legitimise their position as an Islamic authority.

Another prominent model of authority used in the issuance of fatwas is the institution of a Fatwa Council. This council is made up of several Islamic scholars, experts, and jurists, who come together to provide collective opinions on matters related to Islamic law. As an authority platform, the Fatwa Councils can produce in-depth analysis backed by in-depth research on complex and sensitive issues, which affect the lives of many Muslims. Fatwa Councils are often established by governments in Muslim-majority countries, for example the Council of Senior Scholars (*Hay'at Kibar al-'Ulama*) in the Kingdom of Saudi Arabia, to provide guidance on issues of social, political, and economic relevance.

The third model of religious authority in the issuance of a fatwa is the Grand Mufti. The Grand Mufti is the highest-ranking Islamic authority in a particular state or region, who is responsible for issuing fatwas on significant issues related to Islamic law and society. Their opinion carries a considerable weight and is often sought after by government officials and other institutions. The Grand Mufti's fatwas are non-binding, however, when explicitly linked to the state and its capacity for coercion they may appear to be binding. The extent to which the Islamic community under the purview of a Grand Mufti accepts and follows his fatwas is a key indicator of the legitimacy of 'regime' or 'state' Islam in that territory.

Another platform for the issuance of fatwas is through a fatwa website. A fatwa website is an online platform, which provides individuals with the opportunity to submit their questions to Islamic scholars, experts, and jurists. The scholars, in turn, issue a fatwa or provide answers in the form of a legal opinion. With the increasing use of technology, fatwa websites have become a popular and accessible way to address many different issues.

Building on this overview of basic models of religious authority and platforms, we can describe the following fatwa types: the ephemeral, the school, the court, and the public fatwa¹⁷.

The ephemeral. These are fatwas that concern every day, private lives of Muslims and are issued as a personal answer to a private question. Whilst they indicate a commitment by the individual mustafiti to live their lives in an Islamically correct way, as the vast on-line fatwa banks illustrate¹⁸, much of these fatwas concern quotidian matters of personal habits or

technicalities involved in observing the five pillars of Islam rather than grand questions of religious dogma. These fatwas are designed to be calibrated to individual and in a private encounter the Mufti may be offering advice about what that person can do better in a particular circumstance rather setting standards of Islamic perfection. They are not about development of Islamic legal jurisprudence for contemporary contexts.

The School Fatwa. This type of fatwa is the product of the classical Islamic legal schools and have been collected and stored throughout the history of Islamic civilization. Seminal fatwas that mark important moments in Islamic thought have often been closely associated with the work of scholars and are stored to develop that madhab into the future by allowing generations of scholars to see methodology as well as substantive position on the issue at hand.

The Court Fatwa. These types are employed in courts of law. Premodern period the *qadis* would consult with mufti on an issue. Or litigants may consult a mufti for fatwas to build their case in court. The innovation of a chief mufti, for example the *Sheikh al Islam* in the Ottoman Empire could issue fatwas that meant to be taken account in every court in a state. For example, the Senior Council of Ulama (*Hay'at Kibar al-'Ulama*) in Saudi Arabia is mandated to carry out this function.

The Public Fatwa. This type of fatwa has emerged from the mid-twentieth century onwards as secular, post-colonial Muslim-majority states have continued to negotiate their relationship with Political Islam. The prevalence of this fatwa type has also been catalysed by the growth in the Cyber Islamic Environment, including Q&A channels on YouTube and on-line, searchable fatwa banks. Distinctive from the other types of fatwas, these are initiated by the mufti and their audience is the wider *ummah* while their intent is to offer opinions of general validity beyond the specifics of cases or contexts by offering a clear, plausible, and defensible position on Islamic dogma.

The public fatwa category can be further sub-divided into fatwas given by the officially appointed state mufti and the collective fatwa. The position of official state mufti dates to the nineteenth century and developments in the administration within the Ottoman Empire as well as territories on its borders such as Egypt and Russia. State muftis offer 'official' Islam in the public sphere by producing fatwas around behavioural change that serve as an instrument of public policy. These fatwas remain non-binding legal opinion. In general, courts do not demand fatwas, it is only in the Kingdom of Saudi Arabia that state mufti fatwas are enforceable in court¹⁹. Instead, such fatwas function as a 'soft' law form of public policy to educate and encourage collective behaviours that advance goals of the state.

The position has often been controversial in the rising influence of Political Islam in the second half of the twentieth century, particularly as Arab Nationalism waned from late 1960s onwards. Muslim-majority secular states that had nationalised the mufti role and privatised religion, came under pressure from a variety of groups and movements which drew inspiration from Islam as a political force. The position of state mufti manifests a state-society tension; how to be a mufti who commands religious authority with the faithful and serve the instrumental interests of the state power in a fixed territory. This was observed during the Arab uprisings from December 2010 to mid-2012 and has rumbled on in their

aftermath in the civil wars in Syria and Yemen. The State Muftis of Tunisia, Egypt, Yemen, and Syria all expressed support for secular regimes against the popular uprisings and claimed Islamic authority in encouraging resistance to the protests, an opinion which provoked a backlash of denunciation by other members of the ulama both within their countries and overseas.

Another subset of the public fatwa type is the collective fatwa. These are given not by a single mufti but by a group of muftis who have reached a consensus (*ijma'a*), if not strict unity, on an issue. Due to the deliberative and consensus-seeking nature of their production, and the distinguished quality of the scholars involved, these fatwa carry, informally, greater authority and influence than individual fatwas. Several Muslim majority states have created organisations with the specific purpose of collective istifta; for example, Saudi Arabia has Permanent Committee for Scientific Research and Legal Opinion and Malaysia has the National Fatwa Committee. There are also non-state collective fatwa issuing bodies that are so powerful as to function as a quasi-state, such as the MUI (*Majelis Ulama Indonesia*) in Indonesia.

Since the 1960s there have been several attempts to create transnational fatwa bodies²⁰. For example, encouraged by the Saudi state, the Islamic fiqh academy of the Muslim World League was established in Mecca in 1962 and - after the Nasser regime cracked down on the Muslim Brotherhood - recruited many scholars from Academy of Islamic Research at Al Azhar. More recently, the International Union of Muslim Scholars (IUMS) was established in 2003 Sheikh Yusuf al-Qaradawi with headquarters in Doha and Dublin. The mission of was to produce a single fatwa from one place that held transnationally: relevant and applicable in different contexts. Al Qaradawi stressed a middle way, *wasatiyya*, between completeness and rigidity in a fatwa on the one hand and incomplete and flexibility on the other.

These initiatives represent attempts to develop a transnational standard and uniformity to the process of ifta. However, the success of such efforts has been disrupted over the last twenty years by technology as the volume of modern fatwas available has exploded through the deep digitisation of Islamic discourses and rapid advances in platform and device interconnectivity. Far from transnational fatwa bodies unleashing isomorphic tendencies in fatwa-making, there has been increasing recognition and multiplication of different opinions, a *fauda al-ifta*. This chaos has potential to undermine and discredit all fatwas and has provoked ideas about the need to regulate fatwa production such as explicit certification of mufti, codes of ethics, and schemes to educate the general Muslim public.

Q4: Did fatwas have a role during the COVID-19 pandemic?

The COVID-19 pandemic has been a crisis of global governance and with significant, widespread, and ongoing health, social, and economic impacts. Although other international pandemics have been observed in the twenty-first century, for example the SARS outbreak of 2002-3 and the Ebola virus in 2014, the scale and extent of the COVID-19 pandemic marks it as one of the most significant global events of the 21st century, affecting every aspect of life in virtually every corner of the world.

Many religious leaders and Islamic organizations have sought to provide guidance through issuing fatwas to Muslims on how to cope with different dilemmas posed by the crisis. This answer assesses how fatwas had a role in shaping the Islamic response to the COVID-19 pandemic and the numerous challenges it presented for Muslims around the world, particularly in terms of daily religious practices that typically involve communal gatherings, such as prayer, Friday congregational prayers, and observing the rituals of the holy month of Ramadan. Islamic scholars and institutions were quick to respond, issuing guidelines and fatwas that provided guidance on how to adapt to these challenges.

One important and influential case of a fatwa in response to the pandemic was the decision by the Council of Senior Scholars (*Hay'at Kibar al-'Ulama*) in the Kingdom of Saudi Arabia to suspend the daily and Friday congregational prayers in mosques across the country. This decision was made to protect the health and safety of the community amid the pandemic, and it was based on the principle from the *maqasid al-shari'ah* of prioritising the preservation of human life.

Other fatwas provided guidance on issues such as virtual religious gatherings, the performance of ablution and prayer in the absence of running water, and the obligation to seek medical treatment in the event of illness. Scholars also addressed ethical considerations relating to the pandemic, such as the importance of honesty and transparency in reporting cases and working to prevent the spread of the disease.

The role of fatwas during the COVID-19 pandemic extended beyond providing guidance on the practice of religion. Fatwas also played an important role in countering misinformation and promoting public health. For example, some scholars issued fatwas in support of vaccination, stressing the importance of protecting oneself and others from the disease. This helped to counter vaccine hesitancy in some Muslim communities and promote adherence to public health guidelines.

By addressing issues related to religious practice, public health, and ethics, Islamic scholars and institutions were able to support Muslim communities navigate this crisis with a greater sense of clarity and confidence than may have been the case without the issuing of fatwas contemporaneously with the spread of the virus. The role of fatwas in this process highlights how the ongoing Islamic normative tradition has proved able to adapt and cope to changing contemporary circumstances²¹.

There are original scriptural sources about plagues in Prophet's time, and in early years of Islamic civilisations so this is not new there at historical precedents to be drawn on directly. For example, Umar, succeeding Abu Bakr as the second Caliph, turned back his armies en route to Syria on the news of infectious disease outbreaks there and stated that the prophetic advice was to stay out of affected areas²².

The history of fatwas on infectious disease control belies the common charge of fatalism laid against Islam. Indeed, these fatwas show that in the face of pandemics, active treatment and prevention is not just consistent with Islamic law but an obligation. Debates about thinking and deliberation about what to do are important in the Islamic tradition²³. These always start with the Qu'ran and the *maqasid* that sets out objectives and the mind is to

the tool to understand the divine requirements. In this pattern of text first and then thinking, science is based on Islamic theology and not the other way around. This was evident in the speedy issuing of fatwas in uncertain scientific circumstances during the acute phase of the COVID-19 crisis where understanding of the virus and its epidemiology was limited. For example, the International Islamic Fiqh Academy of the Organisation for Islamic Cooperation (OIC) and the European Council for Fatwa and Research (ECFR) offered comprehensive early judgments on a range of issues that the participants addressed and adopted recommendations to cover the various juristic, medical, and public policy dimensions of the COVID-19 pandemic.²⁴

The maqasid al-shari'ah holds the preservation of life as a primary goal of Islam and so preventative measures are possible, even if the consequence of upholding this goal is the disruption of communal worship and the hajj pilgrimage. Further, the maqasid has also supported fatwas opposed to policies directed to achieving herd immunity through mass exposure to rather than through vaccination²⁵. In many ways, Covid 19 is case of fatwas being issued amidst existential crisis shows how dynamic and creative fatwas can be in adjusting Islamic law for application to the exigencies at hand²⁶.

The fatwas issued during the first wave of Covid-19 in 2020 were issued in traditional formats with formal fatwa issuing functions inside and outside government as well as in modern formats such as scholars in protests or Q&A online platform giving answers to question that are captured digitally. In common with the answer to question 1 above, the tremendous impact of digital technology on fatwa-making, many Covid-19 relevant fatwas were issued or announced through Twitter and on YouTube²⁷.

The empirical data suggest common themes in these fatwas around theology and the dilemmas of individual worship in the face of a highly infectious disease and various state-mandated bans on public gathering. Theologically, fatwas were issued on question such as COVID 19 as a punishment from God and a test of your faith in God. A large majority of fatwas concerned acts of worship in conditions of strict infectious disease control: congregational prayer, Friday prayer, Ramadan and *Eid al-Fitr*, Hajj/Umrah, Zakat, and administering Last Rites²⁸.

Work at recording Covid-19 fatwas also observed significant local variations among fatwas. First, in terms of the timing and severity of outbreaks affected the public health protection emphasis in fatwas. Indeed, in some cases, sometimes same religious authority issued varying fatwas in response to the prevalence of the virus present in their jurisdiction. The strength of government authority mattered; where the capacity of government to control was already strong there was strong alignment of fatwas and formal public policy guidelines. Religious scholars offering public health advice as if quasi-governmental. However, in jurisdictions characterised by weaker political authority, evidence reveals differences between official and Islamic opinions on COVID-19 restrictions. These jurisdictions were more vulnerable to contested expertise in the digitally powered, post-truth world. Many religious scholars in such circumstances were using sheikh google to inform their fatwas rather than following official public health COVID-19 advice holding in their territory.

Q5: How have fatwas on medical issues influenced the treatment of patients?

In a Muslim-majority country, fatwas can have a significant impact on healthcare practices and the treatment of patients. Fatwas can influence medical practices in several ways. For example, a fatwa may rule that a particular medical treatment or procedure is permissible or impermissible within an Islamic normative framework. This can affect how healthcare providers - both individual physicians and medical organisations - approach certain medical issues and procedures, especially if the patient is a devout Muslim.

The transfer of medical knowledge and education across different societies and cultures over the last two hundred years has fostered the assumption that ethical judgements on moral dilemmas in Western secular settings may be extended, with appropriate sensitivity, to religious beliefs to clinical practice and health policy in Muslim contexts. However, ethical reasoning that emanates from the Islamic faith, and not medical science, challenges this assumption. The relevant expertise for Islamic bioethics is not scientific at all but rather the qur'anic methodology for extracting insights into contemporary dilemmas from 1,400-year-old texts and the subsequent transmission, through the issuing of fatwas, of Islamic values, ethics and practices over time and space. Islam, in common with other major world religions, seeks to provide meaning in life, and answers to existential questions that are not amenable to empirical science.

There have been important attempts to unite Muslim communities internationally in a search for solutions grounded in Islamic traditions to ethical guidance in clinical settings and public health around the world²⁹. For example, the Cairo Declaration in 1994 about human rights, health, and Islam attempted to redress this error of universalising and essentialising western medical ethics³⁰. Under Islamic law, Muslims have ritual duties toward God and social obligations to each other. However, courts in the Islamic tradition can only apply the laws on the latter and may never presume to offer judgement on an individual's relationship with God.

Fatwas have had an impact on ethical issues in medicine. For example, fatwas have addressed the issue of organ donation, which is a controversial subject in many Muslim countries. Some scholars have issued fatwas that permit the donation of organs from deceased donors, while others have permitted the donation of organs from living donors. These religious rulings have helped to clarify the ethical issues surrounding organ donation and have encouraged more Muslims to consider becoming organ donors.

This is a risk in relying too much on legalistic reasoning for ethical insights³¹. Broader attention to Islamic ethics, particularly its consequentialist approach to social obligations (*fard al-kifayah*) is needed to understand the role of the divine in biomedical judgements, the law is only one bit of the maqasid al shar'iah methodology should be underpinned by theological and ethical underpinnings. The Sunnah of the Prophet's life is vital to the interpretation of Qur'an in novel settings to balance the strong jurist tradition in the interpretation of a universal principle, grounded in a sacred text, can be used to inspire the judgement of an ethical dilemma in any individual case but with a mode of reasoning that is able to be extended or reapplied in future cases. The notion of precedent is strong in Islamic

bioethics and the burden of proof for contemporary puzzling is that the present case resembles an earlier paradigm case.

Islamic bioethics is a rich and sophisticated tradition which has survived and extended its reach by its ability to deal with change; it is able to be reinterpreted and remade through fatwas, with advances in science and technology as well as the evolution of social institutions. The notable divergence from western thinking is that the autonomy of the individual and their associated is neither sacrosanct nor absolute. In Islam, rights are always accompanied by social obligations (*fard al-kifayah*) and the rights of man are always circumscribed by God's rights. In Islam, the relationship of different rights and obligations is not a strict hierarchy but rather a sophisticated set of relationships in which subtle and fine-grained distinction between God's right and the right of a human being flex according to the case. In term of the human body, this is the purview of God's right: human obligation to preserve body and not cause it harm (against suicide); the relevant human right is limited to seeking retribution or compensation for harm done to it.

For example, a fatwa issued by former rector of Al Azhar, Jadd al Haq, Mufti of Egypt as well as holding several roles in the *Dar al Ifta*³², has been influential in area of artificial insemination. The 1980 opinion started to build a consensus, confirmed by subsequent fatwas, in Islamic jurisprudence on a general prohibition with permitted exceptions. The fatwa's influence was due to several important factors, which are not solely connected with the high profile of the mufti or its issuance soon after the successful birth of the first IVF baby. More importantly, this fatwa became influential due to its rootedness in the tradition, its comprehensive scope, and its impact on subsequent juristic opinions on the issue, not only in Egypt but also in the larger Sunni Islam world.

In some cases, fatwas may also be used to promote preventative healthcare practices, such as encouraging Muslims to adopt healthy lifestyles that align with Islamic teachings, as well as shaping the cultural and religious attitudes towards medical treatments. In many Muslim countries, religious leaders and scholars have issued fatwas on various medical issues ranging from organ donation and infertility treatments to the use of vaccines and contraceptives. These religious rulings have had a profound impact on the way patients are treated and the kind of treatments that are available to them.

In many cases, fatwas on medical issues have promoted new treatments and practices that have improved the quality of life for patients. For example, in 2013, the Grand Mufti of Saudi Arabia approved the use of stem cell therapy for treating diseases and disorders. This fatwa opened new opportunities for researchers and doctors to explore the use of regenerative medicine in treating a wide range of conditions, including diabetes, heart disease, and neurodegenerative disorders.

Similarly, fatwas condemning practices that are deemed harmful or un-Islamic have also had a positive impact on public health. For instance, some religious leaders have issued fatwas prohibiting the practice of smoking on the grounds that it is harmful to both the smoker and those around them. This has led to a reduction in the number of smokers in many Muslim countries, which has improved public health outcomes³³.

The context of the delivery of medical care is also relevant; the absence of underpinning Islamic normativity can lead to psychosocial stress in some Muslim patients³⁴. For example, empirical work in Brunei has shown how explicit inclusion of fatwas to guide the organisational processes for the treatment Muslim patients in both primary and secondary healthcare settings can improve health care service quality. Explicit including Islamic governance components using fatwas can serve to support healthcare environment that is not simply compatible with Islamic requirements but is actively better for the treatment of Muslim patients and support many improvement strategies for healthcare service³⁵.

Q6: How do fatwas influence Muslims in European societies?

Fatwas are Islamic legal opinions that are issued by religious scholars and Islamic authorities consisting of those with the requisite expertise. Fatwas can influence Muslims living in European societies in various ways. Most straightforwardly, fatwas can provide guidance to Muslims living in a culture which, while not totally alien to Islamic civilization, sees all religion as a private matter as a point of political principle separating church and state. Fatwas can help Muslims to navigate unfamiliar situations without Islamic guidelines and make informed decisions about how to conduct themselves in accordance with Islamic principles when the wider society and its institutions provides no instruction or guidance. For example, a fatwa might offer guidance on how to perform proper Islamic burial rites in a European context, where local laws and customs may differ from those practiced in Islamic countries.

Over the last twenty years, despite a long European history of Islam in Spain, Sicily and in the Balkans, the cultural and religious integration of Muslims and Islam in Europe has risen further up the political agenda as a 'problem'. Cartoons published in the Danish newspaper Jyllands-Posten and in the French magazine Charlie Hebdo led to protests in many Islamic countries, some of which escalated into extreme violence. In 2008, the Dutch MP Geert Wilders released a short film portraying Islam as a totalitarian ideology encouraging acts of terrorism, anti-Semitism, violence against women and homosexuals, subjugation of 'infidels' and Islamic universalism.

Among its many dimensions, the question of cultural and religious integration of Muslims and Islam relates to issues linked to identity and belonging as well as dilemmas coercive state action. Fatwas can help Muslims to resist unwelcome assimilation and preserve their cultural and religious identity in a foreign, non-Islamic environment. Fatwas can offer guidance on how to apply Islamic principles to everyday life, including dress codes, dietary restrictions, and social interactions. This guidance can help Muslims to maintain a sense of connection to their religious and cultural traditions, even as they live among non-Muslims. At the same time, fatwas may facilitate a positive biculturalism, a distinctive European Islam and find a place where Muslims are able to be both comfortable with their Islamic faith as well as having a strongly developed sense of belonging to their country or region in Europe³⁶.

Fatwas can also have negative effects on Muslims living in European societies. For example, some fatwas may reinforce negative stereotypes of Islam and Muslims amongst the broader

non-Islamic community, such as the perception that Muslims are violent or intolerant³⁷. In some cases, fatwas have been used to justify extremist or violent behaviour, contributing to a climate of fear and suspicion around Islam and Muslims in general.

The influence of fatwas on Muslims in European societies touches on the theologico-political problem³⁸ of authority; in particular, can any form of political authority in European societies be grounded in religious claims? Secularisation has many meanings but, in Europe, central to notion of legitimacy and political authority is secularisation as governing the rule of rule of law and a rejection the divine rights of kings and queens. Secular rule and the authority of states runs back to medieval as well as contemporary thought. Given that state-authorized coercion needs to be justified, and that the justification of state coercion requires the consent of the people, what role may religious, specifically Islamic, reasons play in justifying state coercion? The answer of many celebrated scholars, located in the broad tradition of liberal thought, is none. For example, Rawls, Habermas, and Nussbaum all say that religious reasons should and can play just a minor role in justifying coercive public policy, as any such coercion that require a religious rationale lacks legitimacy; there is no normative basis on which a diverse society ought to accept it.

Overall, the influence of fatwas on Muslims in European societies is complex and multifaceted. While fatwas can provide valuable guidance and support to Muslims living in unfamiliar cultural contexts, they should be treated with caution, both within the Muslim community and outside it, to avoid reinforcing negative stereotypes about Islam and its alien nature with respect to European values. The key dynamic is at the individual-level; how Muslims interpret and apply fatwas in a way that serves both their religious beliefs and broader social responsibilities as members of European societies.

Relevant to this dynamic is the European Council for Fatwa and Research (ECFR). Established by the internationally renowned late Sheikh Yusuf al Qaradawi in Dublin in 2003, the ECFR central mission is to elaboration of a Muslim jurisprudence for minorities (*fiqh al-aqalliyyat*). This mission is carried out through the production and dissemination of fatwas to provide contextualized religious advice for Muslims living in Europe. The fatwas aim at promoting the identity European Muslims while simultaneously offering advice to facilitate their integration³⁹. Whether the ECFR succeeds in this project depends, on the way integration is defined - and on who defines it - at any juncture but critical to the ECFR's mission is belied that the context in which any fatwa is made matters for its relevance and authoritatively. In other words, for most Muslims living in European it is not possible at access directly authoritative and legitimate legal opinions to speak to their dilemmas in fatwas offered elsewhere, for example from state muftis in Saudi Arabia.

The ECFR consists of thirty scholars, usually resident in Europe, that possess the appropriate Shari'a qualifications at university level, or to have been committed to the meetings and circles of scholars and subsequently licensed by them, and to have a good command of the Arabic language; and residents of Europe. Their knowledge of Islamic jurisprudence needs complementing by an awareness of, and sensitivity to, the current political, economic, and social contexts in Europe⁴⁰

Historically, Muslims always lived in non-Muslim societies and the function of interpreting Islam for minority contexts has had to be performed by scholars in past⁴¹. There are several perennial questions associated minority fiqh - obligations to majority, non-Muslim social preferences for example - but fatwa opinions have never settled firmly, instead varying over time contexts have shifted. The ECFR puts the needs of Muslims in contemporary Europe and the regulation of their interaction with European societies at the core of its mission⁴².

In recent years the sessions of the ECFR have been largely structured around the presentation of research papers and the drafting of authoritative opinions on an agenda of multiple public issues set by the Council itself, rather than originating in questions from Muslim communities in Europe. These public fatwa in which an opinion come from the college of ECFR members as a collective opinion that has been through several stages of drafting. One of the muftis with the greatest relevant expertise takes the lead in drafting the fatwa proposal by undertaking research on the specifics of the issue and engaging with the authoritative Islamic texts. The final draft discloses the reasoning that underlies the opinion on the specific and seeks to inscribe the specific issue in a broader narrative structure of Islamic jurisprudence.

In these Council debates, the scholars are engaging in a hierarchical ranking of textual authorities, weighing different interests, and establishing priorities; in other words, they set about constructing, each time anew, what al-Qaradawi called a fiqh of balances. This innovation in the role of reality and context in interpretation was established in his long list of fatwas issued over more than six decades. At its core, this approach to fatwa making holds that the sacred texts provide limits on possible opinions, but within the set of possible fiqh opinions, subjectivity is in determining the appropriate balances and in facilitating the life of Muslim faithful. For example, specific issues of Muslim integration in Europe are part of deliberations of the fiqh of balances and collective puzzling about how to foster a sense of belonging to ummah as well as solving local dilemmas of a Muslim life in Europe. For example, fatwa takes account of shifting attitudes to Islam in Europe in majority communities and seeks not to make matters worse for Muslim communities. An instance of this was the split in the ECFR on the French headscarf debate when French members, fully acculturated to the *laïcité* tradition, were much less willing to criticise ban in schools.

The influence of fatwas on Muslims in European societies is affected by both changing attitudes and practices of European Islam and its relationship with debates globally about Islam and its contemporary relevance. The dilemma of being flexibility and adaptable whilst drawing authority from a textual based religious tradition of 1,400 years duration is perennial; the issuing of fatwas in Europe offering opinions to Muslims in Europe is a recent innovation whose impact is highly contingent and conditioned by processes of secularisation and nationalism that emanate from outside the minority Muslim community.

-
- ¹ Mustafa, A. R. (2023) Innovation in premodern Islam: between non-religion, irreligion and the secular, *Journal of Islamic Studies*, 34, 1, pp.1-41.
- ² Hans Wehr (1994) *Dictionary of Modern Written Arabic*, 4 ed, Ithaca: Spoken Language Services, p.816
- ³ Masud, M.K., Messick, B. and Powers, D.S. (1996) Muftis, Fatwas, and Islamic Legal Interpretation, in Masud, M.K., Messick, B. and Powers, D.S. (eds) *Islamic Legal Interpretation*, Cambridge, Mass: Harvard University Press, chapter one.
- ⁴ Wehr, *Dictionary*, p.509
- ⁵ Wehr, *Dictionary*, p.348
- ⁶ Whyte, S. A. (2022) Islamic Religious Authority in Cyberspace: A Qualitative Study of Muslim Religious Actors in Australia, *Religions*, 13 (1), <https://doi.org/10.3390/rel13010069>.
- ⁷ www.thethinkingmuslim.com *The Thinking Muslim*, episode 61 'The Ottoman Ulema 1: Osman, The Caliphate & The Mamluks' - With Dr Yakoob Ahmed; episode 62 'The Ottoman Ulema 2: The Printing Press, Coffee and Secularisation' with Dr Yakoob Ahmed [accessed 20 December 2022]
- ⁸ Masud, Messick, and Powers, *Islamic Legal Interpretation*, chapter one.
- ⁹ Bunt, G. R. (2018) *Hashtag Islam*, Chapel Hill: UNC Press.
- ¹⁰ Bunt, *Hashtag Islam*.
- ¹¹ American Fiqh Academy (fiqhacademy.com); European Council for Fatwa and Research (e-cfr.org); British Fatwa Council (www.britishfatwacouncil.org); Islamonline.net; islamqa.info.
- ¹² See <https://www.mufti.gov.bn/Theme/Home.aspx> [accessed 6 May 2023]
- ¹³ Black, A. (2011) *The History of Islamic Political Thought from the Prophet to the Present*, 2nd edn, Edinburgh: Edinburgh University Press.
- ¹⁴ Ibrahim, A. (2014) *Islamic Discourse in the Malay-Indonesian World*, chapter 2.
- ¹⁵ Abdul Aziz, A. (2015) Governance in a Contemporary Islamic Negara, *The Journal of Islamic Governance*, 1, 1, pp.1-9.
- ¹⁶ Skovgaard-Petersen, J. (2015) A Typology of Fatwas, *Die Welt des Islams* 55, pp.278-285.
- ¹⁷ Skovgaard-Petersen, *A Typology of Fatwas*
- ¹⁸ American Fiqh Academy (fiqhacademy.com); European Council for Fatwa and Research (e-cfr.org); British Fatwa Council (www.britishfatwacouncil.org)
- ¹⁹ Skovgaard-Petersen, J. (2017) Historical Retrospective on Muftiship: Muftis, State Muftis and Official Muftis, in Racijs, E. and Zhelyazkova, A. (eds.) *Islamic Leadership in the European Lands of the Former Ottoman and Russian Empires*, Brill, pp. 12-27
- ²⁰ Mandaville, P. (ed) *Wahhabism and the World Understanding Saudi Arabia's Global Influence on Islam*, Oxford: Oxford University Press.
- ²¹ Shabana, A. (2021) From the Plague to the Coronavirus: Islamic Ethics and Responses to the COVID-19 Pandemic, *Journal of Islamic Ethics*, 5, pp.1-37.
- ²² Shabana, *Journal of Islamic Ethics*.
- ²³ Ramadan, T. (2017) *Islam: The Essentials*, Pelican Books.
- ²⁴ Organisation of Islamic Cooperation (2020) *2020 Second Medical Fiqh Symposium Recommendations The Novel Coronavirus (Covid-19): Medical Treatments and Shariah Ruling* https://www.oic-oci.org/topic/?t_id=23480&t_ref=13985&lan=en [accessed 23 April 2023]
- ²⁵ Yan, M., Shaw-Shaliba K., Karyana M., Lau C-Y. (2021) Sharia (Islamic Law) Perspectives of COVID-19 Vaccines *Frontiers in Tropical Diseases*, 2, doi=10.3389/ftd.2021.788188
- ²⁶ Zulfiqar, A. (2020) Mapping Legal Responses to Covid-19: The Case of Islamic Law, webinar, Ali Vural AK Center for Global Islamic Studies, George Mason University, Fairfax, VA, August 7, 2020.
- ²⁷ Zulfiqar, Mapping Legal Responses to Covid-19.
- ²⁸ Zulfiqar, Mapping Legal Responses to Covid-19.
- ²⁹ Mansur Ali (2019) Our bodies belong to God, so what? God's ownership v human rights in the Muslim organ transplantation debate, *Journal of Arabic and Islamic Studies*, 19, pp.57-80.
- ³⁰ Abdullah al-Ahsan (2008) Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights, *Journal of Law and Religion*, 24, 2, pp. 569 – 597.
- ³¹ Abdulaziz Sachedina 2009 *Islamic Biomedical Ethics Principles and Application*, Oxford University Press: *Oxford Scholarship On-Line*, DOI: 10.1093/acprof:oso/9780195378504.001.0001
- ³² Shabana, A. (2021) Islamic Normative Principles Underlying Fatwas on Assisted Reproductive Technologies: Al-Azhar Fatwa on Artificial Insemination, *The Muslim World*, 111, pp.511-533.

-
- ³³ Baker, P., Kay, A. and Walls, H. (2015) Strengthening trade and health governance capacities to address non-communicable diseases in Asia: challenges and ways forward, *Asia & the Pacific Policy Studies*, vol 2, no 2, pp.310-323.
- ³⁴ Abdul Rahman, H., Abdul Aziz, A., Ibrahim, M.A, Suhaili, N-A. (2021) Implications of Islamic Governance towards Psychosocial Work Stressors and Work Productivity, *Journal of Religion and Health*, 60(1): 1-12
- ³⁵ Abdul Rahman, H., Abdul Aziz, A., Ibrahim, M.A, Suhaili, N-A. (2019) Development and validation of Islamic Governance tool in health care settings, *International Journal of Health Governance*, doi: 10.1108/IJHG-09-2019-0068
- ³⁶ The Economist (2019) Islam in the West, *Special Report*, 16 February.
- ³⁷ Lewis, B. (1991) Behind the Rushdie Affair, *The American Scholar*, 60, 2, pp.185-196.
- ³⁸ Strauss, Leo. 1997. "Preface to Hobbes politische Wissenschaft." In Kenneth Hart Green, ed. *Jewish Philosophy and the Crisis of Modernity*. Albany, NY: SUNY Press: 453-56. Rorty, Richard. 2003. "Religion in the Public Square: A Reconsideration." *Journal of Religious Ethics* 31: 141-49.; Qutb, Sayyed. N.D. *Milestones*. Cedar Rapids, IA: The Mother Mosque Foundation.
- ³⁹ Caeiro, A. (2011) The Making of the Fatwa: The Production of Islamic Legal Expertise in Europe, *Archives de Sciences Sociales des Religions*, 155, 81-100.
- ⁴⁰ Caeiro, *Archives de Sciences Sociales des Religions*
- ⁴¹ Caeiro, A. (2010) The power of European fatwas: the minority fiqh project and the making of an Islamic counterpublic, *International Journal of Middle East Studies*, 42, 3, pp.435-449.
- ⁴² Caeiro, *Archives de Sciences Sociales des Religions*