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CYBER *FATWĀS* AND CLASSICAL ISLAMIC JURISPRUDENCE

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INTRODUCTION

Scores of Muslims¹ currently live in diaspora as a consequence of personal volition, state sponsored persecution, military conflicts, economic hardship, and religious or communal banishment. These expatriates often exist within social, political, and juridical frameworks that disregard Islam as a source of authority and discount its application in secular society. Such emigrants frequently lack access to traditional, institutionalized Islamic authorities from whom they can seek guidance.² Thus, these migrants increasingly connect to the Internet and beseech Islamic jurisconsults³ to answer their questions concerning the interpretation and the application of Islamic law.⁴ Just as these expatriates have resorted to the Internet, so too have Muslims, who reside in Islamic states, recently sought, with ever increasing frequency, answers on the World Wide Web⁵ because they are able to ask embarrassing and per-

* Derek John Illar, Esquire. I greatly appreciate the encouragement and the assistance of my family, friends, and professors. I am especially grateful to Haider Ala Hamoudi for all of his support and guidance. I also wish to commend and to thank the staff of the journal for its assistance.

1. See Muhammad Khalid Masud et al., *Fatwās*, in *THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD* (John Esposito, ed. 2009), available at <http://www.oxfordislamicstudies.com/article/opr/t236/e0243> (noting that “an estimated one-third of the world’s Muslims now live in majority non-Muslim countries”).

2. See generally Vit Sisler, *The Internet and the Construction of Islamic Knowledge in Europe*, 1 *MASARYK U. J. L. & TECH.* 205, 207 (2007).

3. An Islamic jurisconsult is an expert on Islamic law.

4. Fidel Sbeiti, *Internet Fatwas: Strong Impact on the Lives of Believers*, *QANTARA.DE*, (Mona Zaki trans., July 08, 2007), http://www.qantara.de/webcom/show_article.php/_c-478/_nr-653/i.html. See GARY BUNT, *ISLAM IN THE DIGITAL AGE: E-JIHAD, ONLINE FATWAS AND CYBER ISLAMIC ENVIRONMENTS* 20 (Pluto Press 2003) (observing “the presence of diaspora communities, especially in westernized contexts, has had a part to play in the relative success of the Internet as a networking tool and means of ‘answering questions’ about Islam”).

5. See generally Vit Sisler, *Islamic Jurisprudence in Cyberspace: Construction of Interpretative Authority in Muslim Diaspora*, in *CYBERSPACE 2005 CONFERENCE PROCEEDINGS* (R. Polcak et al eds. 2006), available at <http://www.digitalislam.eu/article.do?articleId=1420>.

sonal questions in private and to obtain second opinions with ease.

Notwithstanding the obvious benefits of being able to access scholarly opinions about Islamic jurisprudence on the Internet (cyber *fatwās*), such online opinions potentially can be quite problematic and contrary to classical Islamic jurisprudence. It is imperative to emphasize that these electronic edicts are not, in and of themselves, inherently antithetical to the tenets of Islamic law; rather, the way in which individuals use the Internet as a medium and *fatwās* therein raises serious legal concerns. Islamic jurisconsults hereafter must wrestle with the very legitimacy of cyber *fatwās*, the uncertainty and the confusion that these opinions can create, the impact of shopping for cyber *fatwās*, and the tension between modern practices and classical doctrine.

In the first section of this paper, I will explain what *fatwās* are, why they are important, and what is the relationship between *fatwās* and the Islamic judiciary. This section further will address who can issue such opinions and how scholars reach their conclusions. In the second part of this paper, I will explore the recent emergence of cyber *fatwās*. This section specifically will focus on how Muslims have used this medium and how *fatwās* have manifested themselves therein. In the third portion of this paper, I will identify the problems that cyber *fatwās* create and why they fail to comport with particular tenets of Islamic jurisprudence. I will not endeavor to offer a solution to these problems; rather, I intend on underscoring their existence and raising awareness about these issues so that Muslims can escape their perils and pitfalls.

FATWĀS

One thoroughly and fully cannot comprehend the significance and the ramifications of cyber *fatwās* without also possessing an understanding of the function of *fatwās* in Islamic jurisprudence and the role of *muf-tis*⁶ in issuing such opinions.

WHAT ARE FATWĀS?

Fatwās are responses to inquiries and interrogatories regarding the religion of Islam and the application of Islamic jurisprudence.⁷ These questions encompass all aspects of life, ranging from the most mundane matters to rather complex, contemporary, and novel issues.⁸ Muslims, for instance, have asked, *inter alia*, whether it is permissible to mastur-

6. A mufti is an Islamic legal scholar who possesses the requisite skills and training to issue opinions on matters of Islamic jurisprudence.

7. Masud et al., *supra* note 1.

8. Fidel Sbeiti, *supra* note 4.

bate,⁹ if it is acceptable, as a part of one's job, to recommend establishments in which patrons drink and dance,¹⁰ and whether it is possible to obtain Allah's forgiveness for knowingly have performed an abortion.¹¹ Due to the depth, the breadth, and the frequency of *fatwās* in Islamic society, it is crucial to understand how Islamic jurisprudence regulates the process of asking questions and responding to those inquiries.

THE QUESTION

The formulation of the question is the first step in the process.¹² Muslims solicit answers to their questions from *muftis*.¹³ The inquirer's question must concern an actual dispute; that is, it must be neither hypothetical nor imaginary.¹⁴ In practice, however, the problems often are "carefully constructed. . .[and] [contain] motivated and selective renderings of the facts and [the] issues."¹⁵ Realistically, the inquirers strategically pose questions in sweepingly broad terms and they typically omit intricate details so as to elicit a particular response.¹⁶

The submission of a question not only initiates the relationship between the parties, but it also constrains the scope of the interpretative process.¹⁷ Islamic jurisprudence requires the scholars to accept the facts as though they were true and accurate; that is, they must neither rely upon their own personal knowledge of the situation nor probe into the facts.¹⁸ The only *proviso* to the aforementioned limitation is that *muftis* may utilize their own knowledge if it is "directly reflected in the [articulation] of the question."¹⁹ Upon satisfaction of these requirements, the *muftis* duly may reply.

9. See *Islamic Ruling on Masturbation*, ISLAMONLINE.NET (Sept. 15, 2002), http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503545922.

10. See *He Works in a Hotel and He Tells the Guests About Places Where There is Dancing and Music*, ISLAMONLINE.COM (Mar. 18, 2009, 8:58 AM), http://www.islamonline.com/news/articles/3/He_works_in_a_hotel_and_he_tells_the_guests_about_.html.

11. See *What Should a Woman Who Deliberately Aborts Her Foetus Do (To Expiate For Her Sin)?* ISLAMONLINE.COM (Mar. 17, 2009, 8:58 AM), <http://islamonline.com/news/articles/3/What-should-a-woman-who-deliberately-aborts-her-fo.html>.

12. MUHAMMAD KHALID MASUD ET AL., *ISLAMIC LEGAL INTERPRETATION: MUFTIS AND THEIR FATWAS 22* (Harvard University Press 1996).

13. See Masud et al., *supra* note 1.

14. *Id.*

15. MASUD ET AL., *supra* note 12.

16. See Masud et al., *supra* note 1.

17. MASUD ET AL., *supra* note 12.

18. Masud et al., *supra* note 1.

19. MUHAMMAD KHALID MASUD ET AL., *supra* note 12, at 23.

THE ANSWER

Muftis utilize the *Qur'an*, the *Sunnah*, the *hadith*, the *ijmā*, legal theories, and theological principles to answer the inquirer's question.²⁰ The classical treatises strongly, colorfully, and vividly admonish *muftis* to interpret such sources in accordance with good faith and to refrain from furnishing false information by forewarning them, *inter alia*, of the fact that "[the] most reckless of you. . . is most sure to go to Hell."²¹ Once the *muftis* properly consult the various sources of *Shari'ah*, they may release a *fatwā*.

The technicality and the formality of the *fatwā* will vary depending upon the background of the inquirer and the nature of the question.²² If the inquirer lacks sophistication or education, the *mufti* must use clear, concise, and informal language.²³ If, however, the questioner is a judge or someone who possesses legal training, the *mufti* may furnish a more detailed response.²⁴ The response can be as straightforward as "yes" or "no" or it can be as long as several pages.²⁵

Classical Islamic jurisprudence requires no specific structure or format for *fatwās*, except that the replies must be in writing on the *mufti's* authoritative script.²⁶ Although there are few stylistic criteria, there are two procedural requirements that are worthy of mention. Pursuant to Islamic law, the *muftis* must understand the question and they must consult with other scholarly authorities, if it is necessary, prior to releasing a *fatwā*.

The jurisconsults' replies are not binding because their authority is moral and institutional.²⁷ Should a response be unsatisfactory, an inquirer duly may seek another opinion.²⁸ If, however, the questioner recognizes that the *mufti* is competent and its opinion rests upon a proper interpretation of *Shari'ah*, the inquirer should accept the scholar's reply.²⁹ Although such inquiries exclusively occur outside of Islamic courts, it is important to underscore and to explain the relationship between *fatwās* and the Muslim judiciary.

FATWAS AND THE JUDICIARY

In general, the practice of asking questions and issuing opinions has

20. Masud et al., *supra* note 1.

21. MASUD ET AL., *supra* note 12, at 16.

22. *Id.* at 24.

23. *Id.* at 25.

24. *Id.* at 24.

25. *Id.* at 25.

26. Masud et al., *supra* note 1.

27. *See* Masud et al., *supra* note 1.

28. *Id.*

29. *See id.*

existed independently from the judicial system.³⁰ One, however, prematurely should not come to the conclusion that they are entirely mutually exclusive; in all actuality, *fatwās* compliment the adjudication of claims, and “in some systems[,] *muftis*[,] who [had] issued decrees[,] would be officially seconded to religious courts.”³¹ For instance, in Andalusia, the benches conferred with *muftis*, and in India, magistrates recognized *muftis* as men of learning who warrant consideration and credence.³² Jurisconsults, furthermore, have compiled collections of *fatwās* for Islamic judges to aid them in their interpretation of *Shari’ah*.³³ Classical Islamic legal doctrine indeed recommends that Muslim courts confer with legal experts prior to the issuance of a decision, especially when the case is incredibly complex or the issues therein are rather sensitive.³⁴ The foregoing discussion, nevertheless, compels one to ask why Muslims seek answers to their questions from *muftis*, what authority they have to issue these opinions, and who can act as a *mufti*?

THE ORIGINS OF ASKING QUESTIONS IN ISLAM AND THE AUTHORITY OF MUFTIS

The practice of asking *muftis* questions presumably and quite possibly reflects the custom of the Prophet’s Companions,³⁵ whereby they routinely posed questions to the Messenger, and Mohammed revealed the wisdom of Allah through his responses.³⁶ The *Qur’ān*, furthermore, implicitly requires Muslims “to consult with [scholars] and to seek advice from individuals known to possess knowledge and moral probity.”³⁷ Thus, the authority of *muftis* ideologically originates from the notion that scholars stand as “the [deputies] and [the] successor[s] to the Prophet”³⁸ and it legally stems from the legal doctrine of adherence to tradition.³⁹ Who, then, qualifies to act as a *mufti*?

THE QUALIFICATIONS OF MUFTIS

To serve as a scholar, one must be a Muslim, an adult, and a person who is proficient in the practice of *ijtihad*.⁴⁰ The jurisconsult also must

30. *See id.*

31. *See id.*

32. *See id.*

33. *See id.*

34. MASUD ET AL., *supra* note 12, at 10.

35. *Id.* at 8.

36. *Id.*

37. *Id.*

38. Masud et al., *supra* note 1.

39. *Id.*

40. MUHAMMAD KHALID MASUD ET AL., *supra* note 12, at 16 (Harvard University Press 1996) (explaining the proficiency in *ijtihad* requires a knowledge of the *Qur’ān*, the *Sun-*

possess good moral character and must exercise sound judgment. Upon satisfaction of the necessary qualifications, a scholar can answer a question by consulting the various sources of *Shari'ah*; yet, what are those sources and why are they relevant?

SOURCES OF *SHARI'AH*

THE QUR'ĀN

Where there is question concerning a Muslim's rights and responsibilities, jurists first refer to Islam's holy book. The *Qur'ān*⁴¹ is a religious text that contains the immutable word of Allah,⁴² which He had revealed to the Prophet through the agency of the archangel Gabriel.⁴³ This sacred scripture contains various commandments, instructions,⁴⁴ and guidance for the followers of Islam.⁴⁵ Scholars consider it to be authoritative, and they recognize its primacy as a source of *Shari'ah*.⁴⁶

The focus of the *Qur'ān* is primarily ethical and religious,⁴⁷ not juridical.⁴⁸ Its legal verses, *inter alia*, focus on issues, such as marriage,⁴⁹ divorce,⁵⁰ adultery,⁵¹ and inheritance.⁵² Its juridical commandments and prescriptions only address several substantive areas of law, and these verses only provide solutions for particular problems rather than

nah, the life of the Prophet, the *hadith*, the lives of the transmitters, the literature on *fiqh*, the *ijmā*, and the theoretical roots of Islamic jurisprudence as well as a mastery of Arabic). See Masud et al., *supra* note 1 (noting that a "*mufti* must be a *mujtahid* (an interpreter of law qualified to exercise legal reasoning independently of schools of law), yet a *muqallid* (an adherent to a school) is also allowed to issue a *fatwā*, as long as he mentions the source of his citation").

41. See MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 16 (The Islamic Texts Soc'y 2003) (1989) (Explaining that the root of the word "*Qur'ān*" is *qar'a*, which means "to read." Thus, the word "*Qur'ān*" literally means "recitation" or "reading").

42. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 32 (11th ed. 2006) (explaining that the term "Allah" means God in Arabic).

43. Syeed Hossein Nasr et al., *Qur'ān*, in ENCYCLOPEDIA BRITANNICA (2010), available at <http://www.britannica.com/EBchecked/topic/487666/Quran>.

44. See MOHAMMAD HASHIM KAMALI, SHARI'AH LAW: AN INTRODUCTION 19-21 (Oneworld Publications 2008) (discussing the contents and the focus of the *Qur'ān*'s verses).

45. See KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE, *supra* note 41 (noting "it is . . . the most authoritative guide for Muslims").

46. *Id.*

47. See QUR'ĀN, 10:57 (Maulana Muhammad Ali, trans., 2002).

48. FAZLUR RAHMAN, ISLAM 3 (University Of Chicago Press 1979).

49. See QUR'ĀN, *supra* note 47, at 4:23 (describing that a prohibition exists against marrying one's mother and daughters).

50. See *id.* at 2:226-232 (discussing the requirements for divorce).

51. See *id.* at 24:2 (stating that an adulterer must submit to one hundred lashes).

52. See *id.* at 4:11-12 and 4:176 (describing how heirs should calculate their portions of the decedent's estate).

comprehensive answers.⁵³ Since the normative and legal scope of the *Qur'ān* is not all encompassing, other sources of law are necessary to supplement it. Islamic scholars, thus, refer to the *Sunnah* and the *hadīth*.⁵⁴

THE SUNNAH⁵⁵ AND THE HADĪTH⁵⁶

The *Sunnah* serves as a “source of. . .*Shari'ah* next to the *Qur'ān*” in importance, and it represents a collection of “[the Prophet’s] words, acts, and tacit approvals.”⁵⁷ While it refers to the entirety of the Prophet’s conduct, the *hadith* merely describes his sayings.⁵⁸ According to the *Qur'ān*, Mohammad’s words possess divine inspiration,⁵⁹ and his actions constitute a binding source⁶⁰ of *Shari'ah*.⁶¹ For instance, the *Qur'ān* instructs us that “[whomever] obeys the Messenger, verily obeys God,”⁶² and that “whatever the Messenger gives you, accept it, and whatever he forbids you [from doing], abstain (therefrom).”⁶³ The *Sunnah* complements and supplements the *Qur'ān* insofar as it reinforces the rules therein, clarifies the text’s verses, and addresses issues on which the sacred scripture is silent.⁶⁴ Where these sources are insufficient to respond to a question or to resolve a dispute, scholars will consult the *ijmās*.

THE IJMĀ⁶⁵

The *ijmās* represent the universal and ubiquitous consensus of Muslim jurisconsults who succeed Mohammed and possess the qualifications, the training, and the knowledge to interpret Islamic law.⁶⁶ Such unanimity constitutes a binding, definitive, and infallible source of

53. NOEL COULSON, A HISTORY OF ISLAMIC LAW 11 (Edinburgh University Press 1964).

54. KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE *supra* note 41, at 28.

55. *Id.* at 58 (explaining that the literal translation of the Arabic term “Sunnah” is “a clear path or a beaten track,” a “normative practice,” or “an established course of conduct”).

56. *Id.* at 61 (explaining that the literal translation of the Arabic term “*hadīth*” is “a narrative, communication or news consisting of the factual account of an event”).

57. *Id.* at 61.

58. *Id.*

59. QUR'ĀN, *supra* note 47, at 53:2 to 53:5.

60. *Id.* at 4:59 (commanding the followers of Islam to obey God and to obey the Messenger).

61. KAMALI, SHARI'AH LAW: AN INTRODUCTION *supra* note 44, at 23.

62. QUR'ĀN, *supra* note 47, at 4:80.

63. *Id.* at 59:7.

64. KAMALI, SHARI'AH LAW: AN INTRODUCTION, *supra* note 44.

65. See KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE, *supra* note 41, at 229 (defining the Arabic word “*ijmā*” as “nothing less than a universal consensus of the scholars of the Muslim community”).

66. *Id.* at 230.

Shari'ah.⁶⁷ The legitimacy of the *ijmās* lies in the *Qur'ān* and the *Sunnah*. According to the *Qur'ān*,⁶⁸ Muslims must obey the consensus of Islamic scholars next to the sacred scripture and the *Sunnah*.⁶⁹ The Prophet explicitly recognized the collective agreement of jurists as a source of law through proclamations, such as "My community shall never agree upon an error" and "God will not let my community agree upon an error."⁷⁰ Notwithstanding the existence of such sources of law, neoteric legal issues arise for which the aforementioned authorities offer no guidance or resolution. In such cases, Islamic jurists employ analogical reasoning.

QIYĀS⁷¹

Qiyās constitute the extension of the aforesaid sources of *Shari'ah* to new issues through the operation of analogy.⁷² For instance, the *Qur'ān* explicitly prohibits the consumption of wine,⁷³ and if a Muslim were to inquire into whether it is permissible to drink malt liquors, a jurist could reply that it, too, is forbidden. Since wine is an intoxicating beverage and the *Qur'ān* prohibits consumption thereof, drinking malt liquors also must be impermissible because these beverages are likewise spirituous. It is the commonality between the settled question and the unsettled question upon which the authority of *qiyās* rests.⁷⁴ Reasoning by analogy is not a new source of law; rather, it constitutes a discovery or a development of existing law.⁷⁵ Islamic scholars only can resort to *qiyās* when the other authorities are silent or inadequate.⁷⁶ Armed with an understanding of *Shari'ah* and *fatwās*, one now has a framework with which to comprehend the recent emergence of cyber *fatwās* and how these electronic opinions differ from traditional ones.

67. *Id.* at 232.

68. QUR'ĀN, *supra* note 47, at 4:59 (stating "O you who believe, you shall obey Allah, and obey the Messenger, and those in authority among you"). See also *id.* at 4:115 (declaring that whomever disregards the Messenger's guidance will face the fires of Hell).

69. KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE, *supra* note 41, at 236.

70. *Id.* at 240.

71. *Id.* at 264. The Arabic term "*qiyā*" literally means "measuring or ascertaining the length, weight, or quality of something" or "comparison with a view to suggesting equality of similarity between two things." *Id.*

72. *Id.*

73. QUR'ĀN, *supra* note 47, at 2:219 (stating "if they ask [you] about intoxicants and games of chance, say: in them is great sin, and some advantage for men, and their sin is greater than their advantage"). See also *Id.* at 5:90-91 (Declaring that intoxicants are the handiwork of the Devil).

74. KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE, *supra* note 41, at 264.

75. *Id.* at 265.

76. *Id.* at 264.

MUFITIS, FATWĀS, AND THE WORLD WIDE WEB

Accounts indicate that Muslims primarily utilize the Internet, *inter alia*, to perform missionary work, to create social networks, to discuss religious topics, to commit electronic *jihad*, and to ask legal and religious questions.⁷⁷ According to recent reports, thousands of Islamic websites and portals specialize in interpreting *Shari'ah* and issuing cyber *fatwās*.⁷⁸ Data reveal that these websites have released several million online opinions or interpretations since their inceptions.⁷⁹ Scholars such as Ibrahim Desai, individual enthusiasts, militant zealots like Osama bin Laden, semi-official committees such as the European Council for *Fatwā* and Research, and state-sponsored institutions like the Saudi Arabian Permanent Committee for Islamic Research and *Fatwā* are responsible for the creation of such sites.⁸⁰ Moreover, many schools of Islamic thought, religious orders, and various political movements likewise have established a presence on the Internet.⁸¹ How though have cyber *fatwās* manifested themselves on the Internet?

TRADITIONAL CYBER ISLAM

Several websites, such as Fatwa-online,⁸² offer opinions in a rather legalistic and formalistic fashion. Fatwa-online is a searchable portal that contains a detailed description of Islam, educational audio lectures, and *fatwās*. The topics of these opinions fall within nine primary categories: Buying and Selling, Creeds, Innovations, Marriage, Women's Issues, Worship, Miscellaneous, Muslim minorities and new Muslims.⁸³ Using the new Muslim section as an example, it is apparent that the breadth and the nature of these inquiries are quite all encompassing, ranging from whether circumcision is necessary to what Muslims must do when their clothing comes into contact with pork.⁸⁴ An examination of these *fatwās* also reveals that this website is rather doctrinal inasmuch as it strictly observes the orthodox tenets of Islamic jurisprudence.

Fatwa-online requires its scholars to possess the classical qualifica-

77. Abdallah El-Tahawy, *The Internet is the New Mosque: Fatwa at the Click of a Mouse*, ARABINSIGHT.ORG, <http://www.arabinsight.org/aiarticles/188.pdf> (last visited May 1, 2009).

78. *See generally*, Sisler, *The Internet and the Construction of Islamic Knowledge in Europe*, *supra* note 2.

79. Sbeiti, *supra* note 4.

80. Sisler, *The Internet and the Construction of Islamic Knowledge in Europe*, *supra* note 2.

81. Muhammad Khalid Masud et al., *supra* note 1.

82. FATWA-ONLINE, <http://www.fatwa-online.com/> (last visited May 1, 2009).

83. BUNT, *supra* note 4, at 144.

84. *Id.*

tions before they can release a *fatwā*.⁸⁵ Thus, these jurisconsults, *inter alia*, have received formal training in Islamic law, possess strong moral character, and are fluent in Arabic.⁸⁶ Fatwa-online's adherence to orthodoxy and formalism is not only apparent in its use of such scholars, but also in the way in which these scholars respond to inquiries.

Once someone raises a question, the *muftis* will consult the quintessential sources of Islamic law; e.g., the *Qur'ān*, the *Sunnah*, *et cetera*.⁸⁷ The jurisconsults usually buttress their opinions by referring to verses in the holy text, quoting the Prophet, and identifying the person who transmitted Mohammed's sayings. With regard to their strict observance of classical Islamic jurisprudence, these scholars will not avail themselves of complimentary disciplines, such as psychology or sociology.⁸⁸ Other websites, however, willfully and enthusiastically employ such interpretative tools.

PROGRESSIVE CYBER ISLAM

Various Islamic websites, such as IslamOnline,⁸⁹ less rigidly observe the requirements of classical Islamic jurisprudence by responding pragmatically and holistically to inquiries. There, Internet users are able to learn about the history of the religion and current happenings in the Muslim world, to submit questions, and to browse through *fatwās*.⁹⁰ Unlike Fatwa-Online, this website's section of *fatwās* lacks categories or topical subsections; nevertheless, users can search for certain material. The essence and the complexity of the inquiries likewise greatly diverge, ranging from whether it is permissible to wear a robe at graduation⁹¹ to whether a Muslim man may marry a chaste Christian woman.⁹² How, though, is IslamOnline so innovative and dynamic?

Unlike other websites, IslamOnline strives to give a comprehensive and well-rounded answer to inquirers' questions by consulting materials and experts that are outside the realm of traditional Islamic jurispru-

85. Sisler, *Islamic Jurisprudence in Cyberspace: Construction of Interpretative Authority in Muslim Diaspora*, *supra* note 5.

86. *See generally id.*

87. *Id.*

88. *Id.* (noting that "[t]he process of decision making is ruled by a strict legalistic pattern" and "the rulings are based only on such authentic sources").

89. ISLAM ONLINE, <http://islamonline.com/> (last visited May 1, 2009).

90. *Id.*

91. *Ruling on Wearing a Robe in the Graduation Ceremony*, ISLAMONLINE.COM (Apr. 12, 2009, 7:58 AM), <http://islamonline.com/news/articles/3/Ruling-on-wearing-a-robe-in-the-graduation-ceremon.html>.

92. *Muslim Man Marrying a Chaste Christian Woman*, ISLAMONLINE.COM (Feb. 28, 2008, 8:58 AM), <http://islamonline.com/news/articles/3/Muslim-man-marrying-a-chaste-Christian-woman-.html>.

dence.⁹³ The drafters of these opinions are not only experts in *Shari'ah*, but they are also sociologists, political scientists, psychologists, doctors, economists, writers, and artists.⁹⁴ They assert that jurisconsults with classical training are no longer able to answer all of life's questions, and consultation with specialists is necessary.⁹⁵ IslamOnline's progressive-ness also lies in its consideration of policy objectives.

When responding to a question, IslamOnline's cyber *muftis* review the traditional sources of Islamic law and various complimentary disciplines; however, their scope is not so narrow. These cyber *muftis* actively consider outside policy objectives and social agendas.⁹⁶ The authors specifically contemplate the website's policy of casting Islam in a positive light and unifying the Muslim community.⁹⁷ Notwithstanding the fact that these organizations firmly have established themselves as on-line "authorities" on Islamic law, individuals likewise have hailed themselves cyber *muftis* and have penned online opinions with spiraling frequency.

INDIVIDUAL OPINIONS ON ISLAM

Since the inception of the Internet, clerics, militant extremists, religious fanatics, and so-called, self-proclaimed cyber *muftis* have found a forum in which they can propagate their particular perspective on Islam law. For instance, Osama bin Laden, the leader of a paramilitary terrorist cell, *sua sponte* issued a *fatwā* in print and subsequently on the Internet in which he encouraged all Muslims to embark on a bloodthirsty and ceaseless crusade against America.⁹⁸ Quoting Quranic verses, the Prophet, and the *imams*, he unequivocally and incitingly declared:

93. Bettina Graf, *IslamOnline.net: Independent, Interactive, Popular*, ARAB MEDIA & Soc'y, 2 (Jan. 2008), http://www.arabmediasociety.org/articles/downloads/20080115032719_AMS4_Bettina_Graf.pdf.

94. *Id.*

95. *Id.* (explaining:

"[a] key difference between IslamOnline and its competitors is that IslamOnline invites not only sharia experts to give advice, but also academics from fields including sociology, political science, psychology, medicine and economy, and sometimes even from literature or the arts. This is due to a belief among IOL founders that muftis cannot often give answers to questions which require special knowledge outside the framework of Islamic jurisprudence and theology").

96. Vit Sisler, *Islamic Jurisprudence in Cyberspace: Construction of Interpretative Authority in Muslim Diaspora*, *supra* note 5 (commenting that:

"Islam Online says it wants to present a positive view of the faith to non-Muslims and to strengthen unity in the Muslim world. Thus the authors try to stay away from some controversy-causing issues and besides using classical interpretative methods they often refer to the Holy Bible, scientific arguments and foreign laws.").

97. *Id.*

98. World Islamic Front Statement on Jihad Against Jews and Crusaders (Feb. 23 1998), available at <http://www.fas.org/irp/world/para/docs/980223-fatwa.htm>.

The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque [Mecca] from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim.⁹⁹

His *fatwā* is not archetypal of all online opinions in terms of either substance or scope; however, it is representative of the fact that those who are outside of the conventional juridical community and possess access to the Internet can promulgate their opinions with the mere click of a mouse. Furthermore, Osama bin Laden's *fatwā* and those from websites such as IslamOnline are strikingly illustrative of the legal problems that accompany these online opinions.

ISSUES

LEGITIMACY

According to the tenets of classical Islamic jurisprudence, a *mufti* must possess an intimate understanding of Islamic law and be able to interpret the sources of *Shari'ah* in order to issue an opinion. *Muftis*, thus, implicitly must study the art of *ijtihad*, receive formal training in Islamic law, and gain experience in the field; otherwise, their *fatwās* will lack authority. An inspection of online opinions reveals that many cyber *muftis* lack such qualifications and their *fatwās* arguably are not authoritative.

Osama bin Laden, for instance, issued an online opinion in which he urged all Muslims to crusade against Americans and their allies. Many Muslims answered his call by enlisting themselves in militant groups, committing acts of terrorism, and funding such subversive and violent activities. He, however, released this *fatwā* under false pretenses, acting as though he were an authoritative *mufti*. In all actuality, he neither studied Islamic jurisprudence nor received training under the tutelage of scholars.¹⁰⁰ Osama bin Laden, instead, studied economics and business administration at Jeddah University; yet, he never completed his studies.¹⁰¹ Other reports assert that he might have obtained a degree in public administration or civil engineering.¹⁰² Regardless of his supposed academic accomplishments or lack thereof, he *never* studied Islamic law or exegesis in an institutional setting or under the supervision of a repu-

99. *Id.*

100. See Masud et al., *supra* note 1. (declaring "many Muslim jurists have stressed bin Lāden's lack of the requisite qualifications for either issuing *fatwās* or declaring *jihad*").

101. PETER BERGEN, *THE OSAMA BIN LADEN I KNOW*, 17 (Free Press 2006).

102. The Hunt for Osama bin Laden, PBS <http://www.pbs.org/wgbh/pages/frontline/shows/binladen> (last visited May 1, 2009).

table and learned jurisconsult. He, however, is not alone in issuing *fatwās* without possessing the requisite training and background.

Websites, such as IslamOnline, routinely consult unorthodox experts and materials prior to issuing an opinion. There, psychologists, sociologists, and other professionals,¹⁰³ *not just* jurisconsults, draft *fatwās*. Although they possess expertise in their respective fields, they conceivably lack the knowledge and the skills that classical Islamic jurisprudence necessitates to answer questions. Thus, those who have absolutely no legal training whatsoever and who arguably have no authority, at least in a conventional legal sense, are releasing online opinions upon which others may rely. It is important to emphasize that Islamic jurisprudence does not forbid *muftis* from consulting outside specialists or incorporating these experts' advice; rather, it prohibits *muftis* from offering opinions that are entirely outside of the realm of jurisprudence and that are completely separate and disassociated from legal reasoning. The tension between the traditional legal requirements and the dubious legitimacy of cyber *fatwās* becomes even more apparent when one considers the way in which others utilize the Internet as a forum.

Internet users are able to create websites with ease in which they can portray themselves as anything and anyone. Moreover, people can act under the cloak of anonymity and disassociate their online personalities from their corporeal selves. Thus, anyone, anywhere in the world, who has access to the World Wide Web, can pretend to be a *mufti*, falsify his qualifications, and issue a seemingly authoritative *fatwā*. Such a practice can be detrimental insofar as unsuspecting, unknowledgeable, and inexperienced Muslims will read these online opinions as though they were gospel and will act in conformity therewith. Unbeknownst to them, those cyber *muftis* could be nothing more than mischievous adolescents in an Internet café, disgruntled practitioners, or disenchanting converts. This is not to say that the Internet, in and of itself, mystically has empowered people to commit such acts; indeed, charlatans undoubtedly have existed since time immemorial. One, instead, should recognize that the Internet, through its veil of anonymity and its lack of verification mechanisms, greatly has facilitated the ease with which people can commit such acts. Not only are cyber *fatwās* and the Internet problematic because of the aforesaid concerns, but also because Muslims can shop for *fatwās* and act in ways that are contrary to Islamic law.

FATWĀS SHOPPING

Islamic jurisprudence permits inquirers to solicit a second opinion if a *mufti's fatwā* is incomplete or inadequate. Where, however, a jurisconsult possesses the requisite training and the scholar's response stems

103. Graf, *supra* note 93.

from a proper interpretation of *Shari'ah*, the questioner should not seek another answer. Furthermore, if the questioner constantly receives the same response, it should not continue to engage in that practice. Notwithstanding these rules, the anonymity and the freedom of the Internet essentially nullify the application of these rules, permit Muslims to engage in *fatwā* shopping without impunity, and enable individuals to act in a particular way that otherwise would not have been permissible. One need not look any further than the Suitcase Bombers to understand the impact of shopping for cyber *fatwās*.

On September 30, 2005, *Jyllands-Posten*, a Danish newspaper,¹⁰⁴ released an article entitled *The Face of Mohammad*.¹⁰⁵ Its publication was on the heels of a national debate concerning the freedom of expression, the tension between secularism and theocracies, and the relationship between Europeans and Muslims.¹⁰⁶ The article contained twelve cartoons of the Prophet.¹⁰⁷ The publication immediately sparked a controversy amidst Muslims and it caused a rather heated, violent, and emotive outcry from members of the Islamic community.¹⁰⁸ This article particularly provoked a fervent response from two Muslims in Germany.

Upon seeing these caricatures, Jihad Hamad and Youssef Mohammed vowed to exact revenge against those who had committed this affront.¹⁰⁹ These men consequently plotted to place explosive devices on board two commuter trains.¹¹⁰ Hamad and Mohammed scoured the Internet for a *fatwā* that would legitimize the murder of civilians.¹¹¹ Completely disregarding countless opinions, which prohibited their intended course of action, they continually searched the Internet until they finally found a *fatwā* that authorized the murder of civilians.¹¹² Acting with what they thought was permission, Hamad and Mohammed proceeded to install incendiary devices on the *Dortmund-Koblenz* regional trains.¹¹³ The explosives fortunately failed to detonate due to a construction error;

104. Martin Asser, *What the Muhammad Cartoons Portray*, BBC NEWS, http://news.bbc.co.uk/2/hi/middle_east/4693292.stm (last updated Jan. 2, 2010 4:34 AM).

105. Af Flemming Rose, *Muhammeds ansigt*, JYLLANDS-POSTEN, at 3 (Sept. 30, 2005), available at http://multimedia.jp.dk/archive/00080/Avisside_Muhammed-te_80003a.00pdf.

106. Asser, *supra* note 104.

107. *Id.*

108. *Id.*

109. *German Suitcase Bomber Says Mohammed Cartoons Set Him Off*, DEUTSCHE WELLE, (Sept. 11, 2006), <http://www.dw-world.de/dw/article/0,2144,2230864,00.html>.

110. Gotz Nordbruch, *Cyber Islam and Online Fatwas*, QANTARA.DE (Aug. 19, 2008), http://en.qantara.de/webcom/show_article.php/_c-478/_/_nr-800/i.html (interviewing Dr. Alev Inan, Research Associate, University of Passau, in Germany).

111. *Id.*

112. *Id.*

113. *Id.*

yet, this case demonstrates that the fuse for underlying issues still is burning brightly.

The Internet is problematic because it facilitates *fatwā* shopping and nullifies the traditional Islamic rules pertaining thereto. This medium essentially eliminates all temporal concerns, geographical constraints, and transactional-costs that accompany *fatwās* shopping; that is, Muslims gratuitously and instantaneously can transverse the globe and can contact thousands of *muftis* in different countries with the mere click of a mouse. Cyberspace, furthermore, shrouds Muslims in a cloak of anonymity that consequentially permits them to contact various *muftis* whenever they want and as often as they want without any negative consequences. Muslims, thus, freely can disregard cyber *fatwās* even if they emanate from duly trained jurists and rest upon a proper interpretation of *Shari'ah*. They, furthermore, continuously can search for an opinion that suits their interests without fear that they are violating the traditional rules regarding second opinions.

The way in which the Internet has facilitated the practice of *fatwā* shopping is also troublesome because it arguably enables Muslims to obtain permission for impermissible conduct that they otherwise would not have been able to procure. The acts of the Suitcase Bombers, for instance, aptly prove this proposition. In clear contravention of conventional precepts, they repeatedly disregarded countless opinions that prohibited the murder of civilians for a religious affront. Despite continually receiving the same answer, they found one *fatwā* that sanctioned their prospective course of conduct. In the real world, Hamad and Mohammed conceivably would not ever have been able to contact thousands of *muftis* in different countries and to discover the *lone opinion* that authorized their course of action in light of financial considerations, travel logistics, and other practicalities. In addition to the aforementioned, the presence of countless *fatwās* and *fatwā* shopping are also worrisome because they can create inconsistency and doubt.

SCHISMS, UNCERTAINTY, AND CONFUSION

The existence of countless different, and sometimes jarring, opinions proves to be problematic insofar as they can create confusion, uncertainty, and schisms in the interpretation of *Shari'ah*. Suppose a Muslim woman wanted to have plastic surgery and had doubts as to whether it was contrary to *Shari'ah*. She consequently searches the Internet for *fatwās* regarding the permissibility of aesthetic operations. This Muslim discovers several cyber *fatwās*¹¹⁴ that explicitly prohibit plastic surgery

114. See *Islam's Stance on Plastic Surgery*, ISLAMONLINE.NET (June 19, 2002) http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503543166 (last visited May 1, 2009).; See also *Plastic Surgery*,

for the purposes of personal beautification, but expressly permit it for reconstruction or alleviation of pain. Suppose further that these *fatwās* were unable to assuage her doubts and she searches for another *fatwā* to ensure that the other *muftis* were right. She subsequently discovers a *fatwā* that is similar to the others; however, it introduces the idea of weighing the harm to the person, public and personal interests, and the objectives of *Shari'ah*.¹¹⁵ In light of this *fatwā*, what then should she do, whom should she believe, and what is the right response?

Such conflicting online opinions arguably can create internal incongruence. If different *fatwās* resolve the same issues in different ways, it conceivably becomes quite difficult to know what *Shari'ah* requires or forbids. Furthermore, the multitude of diverging cyber *fatwās* can create confusion and uncertainty. This is problematic inasmuch as Muslims might refrain from engaging in certain conduct or might act in a manner that is clearly antithetical to the traditional rules of Islamic law. As with the other issues, the Internet itself is not solely responsible for such problems; however, it substantially has worsened the situation since it permits people across the globe, with a keystroke, to be cyber *muftis* and to access millions of opinions.

CONCLUSION

The way in which Muslims use the Internet as a medium as well as the presence and the proliferation of cyber *fatwās* present pressing and far-reaching issues for the Islamic legal community. These problems implicate the very validity of these *fatwās*, the practice of *fatwā* shopping and its adverse effects, and the creation of confusion, uncertainty, and discordance. Armed with an understanding of the potential problems that cyber *fatwās* can create, Islamic scholars and Muslims can collaborate to ameliorate the situation and to harmonize Islamic jurisprudence on the Internet and in the real world.

for *Beautification*, ISLAMWEB.NET, (May 27, 2004), <http://www.islamweb.net/ver2/fatwa/ShowFatwa.php?Option=FatwaId&lang=E&Id=87848>.

115. See Zeinab Al-'Alawani, *Undergoing Plastic Surgery, to Remove a Birthmark*, FATWA MANAGEMENT SYSTEM, (June 27, 2004), <http://infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=10691>.