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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-

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³ An Islamic jurisconsult is an expert on Islamic law.


⁵ See generally Vit Sisler, 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”).
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 identity 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-tīs6 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-

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6. A mufī 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.
bate, if it is acceptable, as a part of one’s job, to recommend establishments in which patrons drink and dance, and whether it is possible to obtain Allah’s forgiveness for knowingly have performed an abortion. Due to the depth, the breadth, and the frequency of fatwas 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. Muslims solicit answers to their questions from muftis. The inquirer’s question must concern an actual dispute; that is, it must be neither hypothetical nor imaginary. In practice, however, the problems often are “carefully constructed. . .[and] [contain] motivated and selective renderings of the facts and [the] issues.” Realistically, the inquirers strategically pose questions in sweepingly broad terms and they typically omit intricate details so as to elicit a particular response.

The submission of a question not only initiates the relationship between the parties, but it also constrains the scope of the interpretative process. 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. 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.” Upon satisfaction of these requirements, the muftis duly may reply.

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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’ān, the Sunnah, the hadith, the ijma, 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.

Fatwās and the Judiciary

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

20. Masud et al., supra note 1.
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. 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.” For instance, in Andalusia, the benches conferred with muftis, and in India, magistrates recognized muftis as men of learning who warrant consideration and credence. Jurisconsults, furthermore, have compiled collections of fatwās for Islamic judges to aid them in their interpretation of Shari‘ah. 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. 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, whereby they routinely posed questions to the Messenger, and Mohammed revealed the wisdom of Allah through his responses. The Qur’ān, furthermore, implicitly requires Muslims “to consult with [scholars] and to seek advice from individuals known to possess knowledge and moral probity.” Thus, the authority of muftis ideologically originates from the notion that scholars stand as “the [deputies] and [the] successor[s] to the Prophet” and it legally stems from the legal doctrine of adherence to tradition. 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. The jurisconsult also must

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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’AN**

Where there is question concerning a Muslim’s rights and responsibilities, jurisconsults first refer to Islam’s holy book. The Qur’ân⁴¹ 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’ân 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

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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’ân” is *qar’a*, which means “to read.” Thus, the word “Qur’ân” literally means “recitation” or “reading”).


⁴⁵ See Kamali, Principles of Islamic Jurisprudence, supra note 41 (noting “it is. . .the most authoritative guide for Muslims”).

⁴⁶ *Id.*


⁴⁹ See Qur’ân, 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.\textsuperscript{53} Since the normative and legal scope of the Qur'an is not all encompassing, other sources of law are necessary to supplement it. Islamic scholars, thus, refer to the Sunnah and the hadith.\textsuperscript{54}

**The Sunnah\textsuperscript{55} and the Hadith\textsuperscript{56}**

The Sunnah serves as a “source of . . . Shari'ah next to the Qur'an” in importance, and it represents a collection of “[the Prophet’s] words, acts, and tacit approvals.”\textsuperscript{57} While it refers to the entirety of the Prophet’s conduct, the hadith merely describes his sayings.\textsuperscript{58} According to the Qur'an, Mohammad’s words possess divine inspiration,\textsuperscript{59} and his actions constitute a binding source\textsuperscript{60} of Shari'ah.\textsuperscript{61} For instance, the Qur'an instructs us that “[whomever] obeys the Messenger, verily obeys God,”\textsuperscript{62} and that “whatever the Messenger gives you, accept it, and whatever he forbids you [from doing], abstain (therefrom).”\textsuperscript{63} The Sunnah compliments and supplements the Qur'an insofar as it reinforces the rules therein, clarifies the text’s verses, and addresses issues on which the sacred scripture is silent.\textsuperscript{64} Where these sources are insufficient to respond to a question or to resolve a dispute, scholars will consult the ijmās.

**The Ijmā\textsuperscript{65}**

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.\textsuperscript{66} Such unanimity constitutes a binding, definitive, and infallible source of

\textsuperscript{53} Noel Coulson, A History of Islamic Law 11 (Edinburgh University Press 1964).
\textsuperscript{54} Kamali, Principles of Islamic Jurisprudence supra note 41, at 28.
\textsuperscript{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”).
\textsuperscript{56} Id. at 61 (explaining that the literal translation of the Arabic term “hadith” is “a narrative, communication or news consisting of the factual account of an event”).
\textsuperscript{57} Id. at 61.
\textsuperscript{58} Id.
\textsuperscript{59} Qur'an, supra note 47, at 53:2 to 53:5.
\textsuperscript{60} Id. at 4:59 (commanding the followers of Islam to obey God and to obey the Messenger).
\textsuperscript{61} Kamali, Shari'ah Law: An Introduction supra note 44, at 23.
\textsuperscript{62} Qur'an, supra note 47, at 4:80.
\textsuperscript{63} Id. at 59:7.
\textsuperscript{64} Kamali, Shari'ah Law: An Introduction, supra note 44.
\textsuperscript{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”).
\textsuperscript{66} Id. at 230.
Shari'ah.\textsuperscript{67} The legitimacy of the \textit{ijmās} lies in the \textit{Qur'ān} and the \textit{Sunnah}. According to the \textit{Qur'ān},\textsuperscript{68} Muslims must obey the consensus of Islamic scholars next to the sacred scripture and the \textit{Sunnah}.\textsuperscript{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.”\textsuperscript{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.

\textbf{QIYĀS}\textsuperscript{71}

\textit{Qiyās} constitute the extension of the aforesaid sources of \textit{Shari'ah} to new issues through the operation of analogy.\textsuperscript{72} For instance, the \textit{Qur'ān} explicitly prohibits the consumption of wine,\textsuperscript{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 \textit{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 \textit{qiyās} rests.\textsuperscript{74} Reasoning by analogy is not a new source of law; rather, it constitutes a discovery or a development of existing law.\textsuperscript{75} Islamic scholars only can resort to \textit{qiyās} when the other authorities are silent or inadequate.\textsuperscript{76} Armed with an understanding of \textit{Shari'ah} and \textit{fatwās}, one now has a framework with which to comprehend the recent emergence of cyber \textit{fatwās} and how these electronic opinions differ from traditional ones.

\textsuperscript{67} Id. at 232.
\textsuperscript{68} \textit{Qur'ān}, surpa 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).
\textsuperscript{69} KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE, supra note 41, at 236.
\textsuperscript{70} Id. at 240.
\textsuperscript{71} Id. at 264. The Arabic term \textit{“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.
\textsuperscript{72} Id.
\textsuperscript{73} \textit{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).
\textsuperscript{74} KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE, supra note 41, at 264.
\textsuperscript{75} Id. at 265.
\textsuperscript{76} Id. at 264.
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.\footnote{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).} According to recent reports, thousands of Islamic websites and portals specialize in interpreting *Shari'ah* and issuing cyber *fatwās*.\footnote{See generally, Sisler, The Internet and the Construction of Islamic Knowledge in Europe, supra note 2.} Data reveal that these websites have released several million online opinions or interpretations since their inceptions.\footnote{Sbeiti, supra note 4.} 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.\footnote{Sisler, The Internet and the Construction of Islamic Knowledge in Europe, supra note 2.} Moreover, many schools of Islamic thought, religious orders, and various political movements likewise have established a presence on the Internet.\footnote{Muhammad Khalid Masud et al., supra note 1. How though have cyber *fatwās* manifested themselves on the Internet?

**Traditional Cyber Islam**

Several websites, such as Fatwa-online,\footnote{FATWA-ONLINE, http://www.fatwa-online.com/ (last visited May 1, 2009).} 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.\footnote{BUNT, supra note 4, at 144.} 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.\footnote{Id.} 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-
tions before they can release a *fatwā*. Thus, these jurisconsults, *inter alia*, have received formal training in Islamic law, possess strong moral character, and are fluent in Arabic. 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. 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. Other websites, however, willfully and enthusiastically employ such interpretative tools.

**PROGRESSIVE CYBER ISLAM**

Various Islamic websites, such as IslamOnline, 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*. 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 graduation to whether a Muslim man may marry a chaste Christian woman. 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-
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. They assert that jurists with classical training are no longer able to answer all of life's questions, and consultation with specialists is necessary. IslamOnline's progressiveness 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. The authors specifically contemplate the website's policy of casting Islam in a positive light and unifying the Muslim community. 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 fatwâ in print and subsequently on the Internet in which he encouraged all Muslims to embark on a bloodthirsty and ceaseless crusade against America. Quoting Quranic verses, the Prophet, and the imams, he unequivocally and incitingly declared:


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.

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 Laden’s lack of the requisite qualifications for either issuing fatwās or declaring jihād”).
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 disenchanted 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, released an article entitled The Face of Mohammed. 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. The article contained twelve cartoons of the Prophet. The publication immediately sparked a controversy amidst Muslims and it caused a rather heated, violent, and emotive outcry from members of the Islamic community. 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. These men consequently plotted to place explosive devices on board two commuter trains. Hamad and Mohammed scoured the Internet for a fatwā that would legitimize the murder of civilians. 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. Acting with what they thought was permission, Hamad and Mohammed proceeded to install incendiary devices on the Dortmund-Koblenz regional trains. The explosives fortunately failed to detonate due to a construction error;

106. Asser, supra note 104.
107. Id.
108. Id.
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 fatwās¹¹⁴ that explicitly prohibit plastic surgery

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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. 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.