Fatwa and the Making and Renewal of Islamic Law: From the Classical Period to the Present

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Islamic law, its classical origins and modern resurgence, has been the subject of increasing attention in academia. Whereas previous literature in the area of Islamic law often carried orientalist leanings, modern research attempts to re-evaluate the Islamic legal tradition on its own merits. Dr. Omer Awass contributes to this effort in, *Fatwa and the Making and Renewal of Islamic Law: From the Classical Period to the Present*. Awass examines the formation, history, and transformation of Islamic legal discourse and institutions through the lens of the fatwa, or legal opinion. He explores how the issuing of fatwas was influential in the development of the legal tradition generally, while at the same time serving as a social instrument that contributed to the formation of the Muslim societies. Awass' investigation of fatwas is historically contextualized and he demonstrates legal development through his selection of fatwas. Furthermore, his analysis provides a fascinating window into

the minds of renowned Muslim jurists and their engagement with the legal tradition. Finally, while Awass' main focus is on the Sunnī legal tradition, his inclusion of non-Sunnī sects, Zaydī and Ibāḍī traditions respectively, while informative, could be improved with a stronger comparative context.

Dr. Omar Awass completed his Ph.D. in Religious Studies from Temple University with a specialization in Islamic Law. The present text is an extension of his dissertation entitled, "The Evolution of Fatwa and Its Influence on Muslim Society." He is currently an Associate Professor of Arabic and Islamic Studies at American Islamic College. Overall, Awass' stylistic approach to the topic of the Islamic legal tradition is comprehensive and would benefit new students to the study of Islamic law. Due to the fact that Awass discusses a broad time span—from the classical period to modern day and is not limited geographically, this text is ideally suited for students that are interested in gaining a broad view of Islamic legal history, through the case study of the fatwa.

Awass organizes his text chronologically. He begins by placing the intellectual birth of the fatwa squarely in the primary sources of the Islamic tradition: the Qur'an and the Sunnah. He follows the shaping of the fatwa from the post-Prophetic period, through the classical age. He elaborates on the impact of *madhhab*-establishment on the issuing of fatwas, arguing that strict adherence to the *madhhab*s limited juristic freedom scholars had previously enjoyed. He discusses the devastating impact of colonization on the Islamic legal system. Specifically, he highlights how British colonizers, frustrated by the unpredictable nature of Islamic law, created dual legal systems that would ultimately rob the Islamic courts of their relevance and power. Finally, Awass analyzes the re-emergence of the fatwa in the post-colonial era. He examines fatwas issued by two institutions, the OIC (Organization of Islamic Cooperation), an intergovernmental organization that arose in the post-colonial nation-state era and the IIFA (International Islamic Fiqh Academy), a subsidiary organization that consists of expert jurists and scholars of Islamic jurisprudence. He concludes that while the Islamic legal tradition remains intact, there has been a shift in the post-colonial period from a text-based approach to one that is more contextualized.

Awass provides a concise and thorough historical context for each of the different stages of development in Islamic law and demonstrates legal development effectively through his chosen fatwas. For example, Awass selects the fatwas of Rashīd Ridā (1865-1935) to highlight legal development over time. In this section, he first offers the necessary historical context on the figure of Rashīd Riḍā: he was a Muslim reformist that sought to re-examine foundational sources, independent of the strict interpretations imposed by the *madhhab*s. Next, he looks at two of Ridā's fatwas on the topic of *ribā* (usury), separated temporally by twenty years. In undertaking this analysis, Awass makes his intention clear: "The purpose of looking at these fatwas, both of which focus on the issue of usury, is to examine the progression of Riḍā's reformist agenda throughout his career" (218). In the first, known as the Calcutta fatwa Riḍā defines *ribā* according to the established Sunnī schools of law and then evaluates whether the transaction he is asked about constitutes *ribā* according to those definitions. In other words, he offers deference to the *madhhab* paradigm. "He ultimately concludes that this modern interest-based transaction is legitimate from the point of view of Islamic law because it resembles what the Prophet had done with his debts by willingly giving back more than what was owed" (220).

Twenty years later, Riḍā issued the Hyderabad fatwa in response to a similar question on *ribā*. In high contrast to his previous approach, in the Hyderabad fatwa, Riḍā clearly differentiates himself from *madhhab*-followers. Riḍā says that his fatwa will be strictly based on the Qur'ān and Sunnah and not on one of the opinions found in the *madhhab*s (76). Awass expounds upon what factors led to this change in Riḍā's legal thinking. Through this example, Awass clearly demonstrates how a jurist's legal approach and philosophy evolves, even on a singular topic. This fatwa is the perfect case study to demonstrate such development because it is the author's own legal reasoning.

Awass' approach, aside from reporting the substantive content of the fatwa, also provides a unique window into the minds of prominent legal thinkers and how they crafted their opinions. In other words, which sources of authority they appealed to in order to deliver the most effective fatwa. Interestingly, throughout his book Awass chose the fatwas

of historical giants, like Ibn Taymiyya, Rashīd Riḍā, and ʿUthmān Dan Fodio, among others, as the focal point of his analysis. All of these figures are often thought of as socio-political revolutionaries, but Awass' analysis of their fatwas also draws out their legal nature, providing a greater layer of complexity to their personas.

The first fatwa is that of Taqī al-Dīn Aḥmad ibn Taymiyya (d. 728/1328) on the Mongol incursions. Awass equips the reader first with an important introduction: Ibn Taymiyya, while being a Ḥanbalī jurist, was not entirely deferential to the schools of law. In his fatwa, Ibn Taymiyya concluded that the Tartars could not be considered legally Muslims even though they declared the *shahadah* (declaration of faith), so it was necessary to resist them as foreign invaders. Awass does insightful work highlighting Ibn Taymiyya's approach to reaching this legal conclusion. He notes that Ibn Taymiyya recognizes three levels of authority in his opinion: text of Qur'an and Hadith, the authority of early scholars, and historical precedent of early Muslims in similar situations (160). Ibn Taymiyya relies less on *madhhab* precedent and prefers jurists of his time, and yet masterfully cites opinions of all the *madhhab*s. Awass captures Ibn Taymiyya's legal genius and says, "his legal discourse represents a kind of integrative jurisprudence where politics, morality, and history coalesce to cope with realities of the present without necessarily disregarding the legal precedents that had been established before him nor confining himself to the conclusions that were reached in those precedents" (162). This summary, and the prior analysis, allows the reader to appreciate, not only the fatwa for its historical significance, but also the multi-faceted legal reasoning of Ibn Taymiyya.

Awass also dives into a fatwa of ʿUthmān Dan Fodio (1754–1817), a jurist-scholar and social reformer from West Africa. Dan Fodio famously permitted his followers to repossess properties that had been confiscated from them from the political authority he would eventually defeat. Aside from the fatwa's conclusion, Awass allows the reader to examine Dan Fodio's thought process and legal logic as he crafted his fatwa. Dan Fodio first appeals to an analogous situation from the history of the Songhai Empire in Mali in the late fifteenth and early sixteenth century. He then cites the ruling of a preceding jurist and his own brother's fatwa. While

Dan Fodio draws on the Mālikī *madhhab* to legitimize his fatwa, he also employs purposive (i.e., legal principles-based) language. Awass notes, "Dan Fodio's ruling supports peoples' rights to reclaim their usurped properties under any conditions except those situations that would lead to greater upheaval/corruption (*mafsadah*). This latter position echoes the fundamental principle behind Islamic law: "to promote the common good and deter corruption (jalb al-maṣlaḥ*ah wa-dar' al-mafsadah*)" (191).

While Awass' primary narrative follows the development of Sunnī law, he dedicates substantial sections to non-Sunnī sects, including the Zaydī and Ibāḍī Schools; these sections are informative, but could be supported by a greater comparative contextualization. In discussing a fatwa issued by Yaḥyā ibn al-Ḥusayn (d. 298/911) or al-Hādī, a Zaydī legal scholar, Awass first introduces him as a later scholar that had a direct impact on the way Zaydīsm is practiced today in Yemen. He further provides the context for why al-Hādī's fatwa on water resources is particularly important geographically because rain water was a primarily source of irrigation in this region. As a means of introducing Zaydīsm generally speaking, however as a theological and legal tradition separate from Sunnī Islam, Awass writes: "a defining characteristic of the Zaydī legal school maintains that for a jurist to be qualified to issue legal opinions, they must possess all of the tools for independent legal reasoning (*ijtihād*) and not base their opinions on precedent (73)." He later adds that, "Zaydīsm limits the role of reason in lawmaking to *qiyās* (analogy) (73)."

This background and the accompanying historical context, could be more fully developed to better appreciate the nuanced differences between Sunnī and Zaydī Islam. This section could be strengthened by adding a section on how and when Zaydīsm, as a theology, branched off from Sunnī Islam, and how the legal trajectory of Zaydīsm diverges, both in theory and practice, from the Sunnī framework. Awass' contextualization on Ibāḍīsm was far more comprehensive. He traces the foundation of Ibāḍīsm through the authority of Jābir ibn Zayd (d. 93/711), whom early shapers of the Ibāḍī *madhhab* used as the focal point of their legal decisions. He adds that Ibāḍī law also recognizes the Qur'ān, Sunnah, *ijmāʿ*, and *qiyās*. He adds that, "the proliferation of *ḥadīth* further facilitated within the Ibāḍī *madhhab*, which always acknowledged the prophetic

practice as a source of law." These comments allow the reader to identify some differences between Ibāḍīsm and Sunnī law, but a fuller discussion would be beneficial.

These sections also leave the reader with unanswered questions. What specifically about Jābir and his approach found traction in the Iraqi legal milieu? Was it theological differences between Ibāḍīsm and Sunnī Islam that ultimately bred the later political and legal differences? While these questions are not directly related to the topic of legal development and fatwa, it seems necessary to provide this context to gain a fuller picture of the different *madhhab*s' approach to law.

Fatwa and the Making and Renewal of Islamic Law is a valuable contribution to the field of Islamic legal theory, history and development. Awass' exploration of fatwas effectively demonstrates how the Muslim civilization grappled with the challenges of their time and legally negotiated solutions. Awass' coverage of the topic is historically well contextualized and he effectively demonstrates legal development through his selection of fatwas. Furthermore, Awass' analysis provides insight into how Muslim jurists engagement with the legal tradition. Finally, while Awass' main focus is on the Sunnī legal tradition, his inclusion of non-Sunnī traditions could be enhanced with a more extensive comparative element. In recounting the trajectory of how fatwas began and have been used over time at the hands of jurists that span the globe, Awass positions himself well to comment on where Islamic legal theory is heading. While he adequately describes the current state of affairs as being more contextual than text based, he leaves open-ended the query of whether the current trend will become a mainstay of the legal landscape or whether this is a temporary phase.

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