

Collective Ijtihad: Regulating Fatwa in Postnormal Times

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In this book, Hossam Sabry Othman examines the relationship between fatwa issuance, *maslahah*, and the application of collective or deliberative *ijtihad* (*ijtihad jama'i*) in the modern context. Othman compares contemporary models of decision-making to traditional mechanisms, as well as analysing the role that jurists (muftis, *mujtahids* and imams) play in shaping fatwa rulings and final outcomes. While fatwas are technically non-binding, in reality such is the trust and respect that Muslims have for jurists and the institutions that issue them, that they play an important role in shaping Muslim opinion and religious and social norms in the modern context. Othman calls for a reassessment of current institutional practices, contending that Muslim societies need not be vulnerable to the demands of a media driven, technocratic age. Instead, in the interests of a healthy functioning society, the issuance of fatwas should be done in a manner cognizant of the wider modern context, incorporating specialist

knowledge, and take in the cultural diversity that exists within the wider ummatic identity. Additionally, for Othman a significant element of the current context is the need to move beyond a simple weighing of matters in terms of their harm and benefits, and to apply the important legal principle of *maslahah* in a more comprehensive manner that takes into account the *maqasid al-shariah* in its assessments.

Othman asserts that despite the existence of various international bodies, councils and fatwa-issuing committees that externally exhibit an aura of confidence to the wider Muslim public, there exist deep issues within them that cannot be ignored. For instance, are dissenting opinions to be marginalised in favour of a majority vote if no unanimous consensus is achieved? Issues such as this, Sabry argues, have to be able to withstand external scrutiny, because in today's terms the social implications are global, and the demands of modern life both complex and challenging. As a result, jurists (especially if operating alone), are often out of their depth, but nevertheless are responsible for the moral well-being of not only local, but international Muslim communities. Worryingly, muftis are often under pressure to compromise in their rulings. Othman shines a light on the nature of that pressure, calling for constraints to be placed on the state and corporate powers to allow muftis to fully and freely exercise their judgement and resist popular sentiment. Othman furthermore calls for greater regulation of the mufti selection process, claiming the best-qualified should be employed and of course rewarded according to strict parameters that focus on productivity rather than personal ambition or appeasing employers and shareholders. Moreover, Othman argues that muftis must be inclined to share the obligations of their position. Here, Othman means that as part of the decision-making, deliberative process, an inter-disciplinary approach through collective *ijtihad* should be adopted. This process would allow experts to contribute to respective discourses with a view to aiding the processing of information and providing insight into concepts to address an issue fully. Experts should not be given authority in this process, but rather a distinct role which should be recognised in its own right. For Othman, this is an entirely rational approach since we cannot reasonably expect scholars to struggle with ever specialised developments in scientific and

non-scientific knowledge. This is especially the case when there is insufficient time and insufficient resources to manage or digest the various elements that govern a particular issue. Consequently, inter-disciplinary analysis is essential. A clumsy and fragmented assessment of an issue will neither lead to innovative insight nor to a conceptual understanding that will bring about the best outcomes, not only today but in the future.

There needs to be a shared understanding of this state of affairs. In his work, Othman looks to the past in particular to the Qur'anic call for *shura* (consultation), the practice of the Sahabah in terms of consultation, and early scholars. Othman discusses in detail the concept of *ifta'*, whereby scholars historically consulted one another, overcame divergence of opinion, respected one another's thinking and ultimately reached some level of common agreement. After all, this is how the various schools of thought (*madhahib*) came to be formed. These practices (i.e., *ijtihad*) later gave rise to attempts to codify Islamic law. With regard to the codification of Islamic law, Othman discusses two of the most important examples, both of which bore witness to innovative information management processes and the utilisation of a systematic methodology. The result of this was the collation and classification of a vast body of information, for easy reference by *fuqaha'*. The Mughal and Ottoman empires instigated these processes respectively, which resulted in the monumental *al-Fatāwā al-Ālamgīriyya* a compendium of Islamic law (six volumes). This work contains authoritative doctrines and established juridical rulings relating to various branches of law, including religious, civil, penal and international issues from the viewpoint of the Ḥanafī school. The *Mecelle (Majallah el-Ahkam-i-Adliya)*, issued in 16 volumes, became the civil code of the Ottoman Empire in the late 19th and early 20th centuries.

In this book, Othman does not simply theorise, but he also delves into real world issues. The issues include: surrogacy, artificial insemination, organ donation, cloning, complex financial instruments, digital investment etc. What does Islam have to say on such topics? Here, Othman analyses the world of modern fatwa pronouncements – packaged, circulated, broadcasted and supplied in a matter of minutes – as part of a 'mentality' of 'one fatwa-fits-all.' As the situations currently stands,

Muslims today wherever in the world or whatever their circumstances happen to be, can simply text, telephone, or email their requests. They will then be provided with an answer by on-line muftis with an immediacy that makes the whole process seem, on certain levels, to Othman to be a decidedly un-sacred affair. Time, the consultation of scholarly sources, and the attention to the unique nature of each case with the provision of detailed explanation that emulate the centuries old classical scholarly tradition would seem, Othman argues, to no longer have currency. Instead, today muftis have to concede to the demands of schedules and growing queues of people wanting an answer.

This is not the only problem. Othman also critiques what he views as a failure by muftis to analyse technical issues involving modern disciplines in the most informed and reasoned manner by making use of the help of experts. An encyclopaedic knowledge of Islamic law is not enough. Some good examples, Othman states, are those of the advances in science, medicine and finance, which are progressively transforming our understanding of what constitutes life and money. These kinds of changes lead to a need for muftis to address many of the new issues that arise, particularly in fields like genetics and reproduction. Given that muftis are not expected to be polymaths and cannot draw on the complex bodies of knowledge required to solve certain intricate problems of the modern age, few would dispute Othman's call for the assistance of experts through collective *ijtihad*. The role of these experts would be to elaborate, clarify, and explain from the perspectives of their expertise in order to aid in the juristic process, and not to actually issue the rulings. The authority of the mufti would remain intact.

Othman's work also analyses in detail the ways in which rulings are controlled, rather than issued with full independence and authority by jurists. Othman points to the practice of muftis working for organisations, e.g., banks. This relationship, Othman claims, leads to attendant pressures on muftis to massage rulings to accord with the demands of those paying their salaries. Then, there are those jurists who are so woefully out of touch with the world around them, Othman asserts, and very out-dated in their thinking. Othman severely criticizes those whom he considers as issuing ridiculous fatwas, those who prefer to be extremely

lax, and those who choose to burden petitioners with the strictest of options. Othman points to the damage such ignorance can cause, not just to Muslims on an individual level, but also potentially to society at large. Indeed, both individual, group, and state sponsored fatwa/juristic activities, as well as the organizational elements which govern them, are analyzed in Othman's work. His analysis is carefully argued, with recommendations given with regards to reform and improvement.

At the heart of all this, and why it is of vital significance for Muslims to get their fatwa house in order is that, for Othman, in the modern world Muslim societies are facing serious moral, financial, medical and other dilemmas. A cavalier approach to fatwa issuance will do much harm, and what is needed is a serious theological perspective. The practice of collective *ijtihad* should utilise the help of experts, and even regulate the qualifications of jurists, in order to better influence policy on matters which concern us all and are likely to have grave societal impact.

Although the face of fatwas and juristic rulings in our times has seen a radical transformation in terms of online programs and social media, Othman argues that the basic precepts of the classical tradition still apply today more than ever. He examines the various Islamic organisations, fatwa councils, fatwa committees, academies and other Muslim organisations that have been set up over the decades. He outlines some of the debates that have taken place, and shows how each has chosen to framework its own understanding and interpretation of the issues at hand. In so doing, Othman offers a methodology (collective *ijtihad*) and various solutions to aid jurists and regulate this process. The key point for Othman is to be extremely vigilant, and not betray the Qur'an's spiritual principles, and the highest standards set by the Prophet, the Sahabah, and early scholars.

Othman hypothesises that the issue of fatwa issuance will become increasingly more complex and problematic as knowledge and technology continue to proliferate, with societies evolving in response. In other words, Muslims will continue to find themselves in highly unusual, challenging situations. This will lead to demands for a correct theological response from jurists. For Othman, internal processes need to be managed today through a strategy employing collective *ijtihad*, so that

Muslim stability is not threatened tomorrow when those evolutions and complexities become too unwieldy.

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