



## One Voice? The Crisis of Legal Authority in Islam

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On February 23, 1998, Osama bin Laden issued a *fatwa*, or 'juridical ruling,' establishing a '*fard 'ayn*,' (individual duty) upon all faithful Muslims to wage holy war against the United States - on its territory, and against its civilian population—in acts of terror.<sup>1</sup> On September 12, 2001, prominent Qatar-based cleric, Yusuf Qaradawi, issued a fatwa condemning the attacks on the World Trade Center and Pentagon, after praising suicide-bombing missions against Israeli civilians, as self-defense. Last year, he designated attacks on U.S. soldiers in Iraq, as acts of 'martyrdom.' On September 12, and December 3, 2001, Sheikh Tantawi, rector of Al-Azhar University, the premier body of Sunni legal scholarship, issued fatwas condemning attacks on civilians under any and all circumstances, as fundamentally 'un-Islamic.' However, he issued a further *fatwa* last March proclaiming the killing of American soldiers in Iraq, an 'individual duty,' for Muslims, to act in defense of their Iraqi brethren.<sup>2</sup>

These conflicting fatwas may cause Western readers to question the nature of *fatwas*. Are they intended to be binding on the

Islamic corpus, as are our laws in positive legal systems? Second, how is it that 'Islam' seems to support so many radically differing interpretations of what is *Islamic*? Finally, is there an authentic, versus an inauthentic version of Islam, and if so, how are they distinguishable within the audience for whom these *fatwas* are intended?

**"...And those who are firmly grounded in knowledge say: 'We believe in the Book; the whole of it is from our Lord:' and none will grasp the Message except men of understanding."**

(Al-Quran, 3:7, Yusuf Ali Translation)

Before we attempt to explore the above issues, it is important to note that most Americans will *never* be struck by the above complexities. The reason is simple: while most Americans will have access to bin Laden's *fatwas* through local and national media coverage,

only some will have heard of Qaradawi, and a scant number will be aware of Al-Azhar's stance in opposition to terrorism. It is because of this disparity of information—where the sensational, fearsome statements of a bin Laden get more coverage than comparably moderate voices within Al-Azhar—that Americans across the country have concluded that there is *one voice* in Islam, and that this voice is the voice of terror.

This article seeks to address the issue of legal authority in Islam, and particularly, to highlight the systemic crisis in authority which plagues governments in Islamic

countries seeking accommodation between *Shari'a*,<sup>3</sup> and modern legal codes in their state legal systems. The polarization of Islamic opinion on recent events in Afghanistan and the Middle East has served to cast suspicion even upon scholars with the most tenuous connection to moderate or liberal Islam, and in the context of current discourse on the conduct of *jihad*,<sup>4</sup> has lent authority to peripheral voices, like Osama bin Laden's.

When the Prophet Muhammad brought God's revelation to the people of seventh century Arabia, it was intended to lay the foundation for a righteous, ethical society. It was claimed by the followers of Muhammad, that the Quran and Sunnah, the main body of revelation and teachings of the Prophet, contained comprehensive prescriptions for correct individual and communal behavior. However, these texts are decidedly sparse in their coverage of human affairs. As Muslim society coalesced and solidified, and particularly as it expanded its borders in military conquests of the seventh and eighth centuries, it became necessary to coax rules and regulations by means of hermeneutics from the reticent text. The science of jurisprudence relating to Islamic law became known as *fiqh*, and is the domain of the religious scholar/jurist throughout Islamic history. *Fiqh* is not an exact science by any means. It utilizes different methods of legal reasoning, giving rise to widely divergent opinions. In order to narrow down legal rulings into an actionable body of law, deference has been given to the consensus, or *ijma* of scholars, and at times, to the emulation of past scholarly opinions. Yet overall, the rich diversity of legal rulings has remained the hallmark of *fiqh* law.

As *fiqh* continued to burgeon, it became necessary to contain the uncontrolled expansion of legal interpretations, making it possible to function as a society. One mechanism of control was the eventual division of Sunni scholarship into the four main *madhabs* or 'schools,' in approximately

the tenth century A.D.—the Maliki, Shafi'i, Hanbali and Hanafi. Furthermore, in the public realm, affairs of state—administrative, and public law that were outside the realm of expertise or enforcement of legal scholars—devolved upon the state's temporal rulership, in a parallel legal system called *siyasa*. As long as the Caliph or Sultan did not contravene the Quran and accepted Sunnah, he was free to create a body of state law according to the functional needs of society. The office of the *qadi*, (judge), was established in order to facilitate the implementation of law, and as a conduit between the temporal and religious spheres. While the temporal ruler needed the tacit support of the *ulema* (clerics) in order to legitimate his rule, he often jealously guarded his legal domain, keeping a watchful eye on the religious establishment. In fact, in order to contain the pressure placed upon them by the Abassid rulers to manipulate *fiqh*, the *ulema* of the tenth century declared the infamous 'closing of the gates of *ijtihad*,' by which independent legal reasoning was curtailed in favor of precedent.

This bifurcation of the Islamic legal system continued in a state of more or less uneasy codependence for centuries, until the colonial domination of Europe in the eighteenth and nineteenth centuries swallowed the traditional *fiqh* realm, primarily in areas of civil and criminal law, under the carpet of Western legal codes. With the emergence of independent nation-states across the Middle East and Southwest Asia in the mid-twentieth century, the realm of *siyasa*, or ruler-made law made steady advances over the territory of jurist law. With the exception of Iran and Saudi Arabia, very few countries with majority Muslim populations have attempted to implement *Shari'a* law as the sole state legal system, and even in these cases, there exists a dominant 'siyasa' component.<sup>5</sup>

In states where the overwhelming majority of the population is Muslim, and

where Islam is increasingly the primary identifying factor in people's lives, this can lead to a crisis in legal authority, where the regime is challenged for its un-Islamic laws. In order to ease the introduction of positive legal codes, and placate Islamist forces, several governments needed to place a 'nod' to Shari'a law in their constitutions, where positive legislation must pass the litmus test of non-contravention with the Quran and Sunnah. This harkens back to the *siyasa* system of legislation, absent the commensurate power given to *fiqh* in the private domain.<sup>6</sup> And yet, ironically, it is the ulema that still often hold the key to the 'Islamic legitimacy' of a government. It is for this reason that regimes across the Islamic world have tried with one hand to draw political support and approbation from Islamic scholars, while with the other, attempted to keep Islamist forces at bay.

In countries like Egypt, the government has taken over the funding of religious schools and scholars, and created ministerial posts by which the government is 'advised,' as to what is or is not Islamic. While these positions are often occupied by genuine scholars, in regimes that are criticized for corruption and collusion with Western powers, the ulema in these roles risk tarnishing their own legitimacy. Al-Azhar has thus had its authority impugned for supporting unpopular Egyptian policies, such as the Camp David Accords under Anwar Sadat in 1976, as well as sweeping changes in personal law implemented to increase gender equality. An Al-Azhar fatwa released this year, regarding the permissibility of the French government's headscarf ban, has angered many Muslims. In circumstances such as these, 'official' Islamic spokespersons lose credibility when they declare the fatwas of radicals like bin Laden "un-Islamic." For example, a storm of criticism followed the fatwa of the grand mufti of Saudi Arabia, Shaykh Abd al-Aziz bin Abdallah Aal al-

Shaykh, pronouncing terrorism anathema to Islam.

The controversy over jihad highlights the crisis in authority that arises from the tense and unnatural relations between state and religion. Although discussions of the nature and purpose of jihad are well rooted in works by medieval scholars such as Ibn Taymiyya and Ibn Rushd, current discourse on the use of terror tactics has been at the epicenter of controversy over legislative legitimacy in Islam. In a BBC article following the Al-Azhar fatwa against terrorism, the reaction of the Egyptian public was guardedly dismissive: "Egyptians say that Sheikh Tantawi's views are respected by many Muslims, but that they are not binding by law and that earlier this year, Palestinians in Gaza dismissed as irrelevant the views of government-appointed clerics in Egypt and Saudi Arabia."<sup>7</sup> Osama bin Laden himself, in an interview with a Pakistani journalist, made his contempt clear for the fatwas of Al-Azhar:

Interviewer: The head of Egypt's Al-Azhar has issued a fatwa against you, saying your views and beliefs have nothing to do with Islam. What do you say about that?

UBL: The fatwa of any official Aalim (cleric) has no value for me. History is full of such Ulema who justify...the occupation of Palestine by the Jews, who justify the presence of American troops around Harmain Sharifain.<sup>8</sup>

Meanwhile, popular figures like Yusuf Qaradawi struggle to maintain their mantle of 'independence,' yet stand accused of government cooptation for condemning bin Laden's version of jihad. At the same time as Qaradawi is reviled as a 'sell out,' for his facilitative views toward Western culture and science, he is castigated in the Western press for 'radical Islamic views.' Public support for Hamas, and his rulings in favor of suicide bombings in Israel, caused the U.S. State

Department to revoke Qaradawi's visa in 1999. Media have called him a "radical, anti-Western cleric who preaches Muslims will one day "conquer" the United States."<sup>9</sup> That Qaradawi can be accused of being in bed with the West, and labeled a "wicked mufti,"<sup>10</sup> by coreligionists, highlights the tenuous state of the Islamic scholar's legitimacy, and the ever-lurking insinuation of government collusion.

The struggle within Islamic states to maintain an "Islamic legitimacy," while implementing legal reform and engaging in political and economic relations with the West has contributed to the loss of legitimacy, not only on the part of state-supported institutions of Islamic scholarship, but also on 'independents,' such as Qaradawi. It is of concern that Islamic scholars may be, in the future, reticent to share views that are deemed as "too Western."

It must not be forgotten that the backdrop to the current crisis of legal authority in Islam is the traditional crisis of legal authority in Islam—where for centuries, the Islamic polity has struggled to maintain decisive, actionable, positive law, while at the same time, allowing for the dynamic, multifaceted, inconclusive science of fiqh, and the non-binding nature of fatwas. This brings

us to our final question—if there is indeed an authentic, or inauthentic version of Islam – is it distinguishable to the audience for whom these fatwas are intended?

The fluid state of fiqh, the inconclusive and enigmatic texts of the Quran and Sunnah, and current political realities, make it clear that there will probably never be a definitive version of Islam. While a majority of Muslims worldwide condemn bin Laden's violent espousal of a radical interpretation of jihad, an increasing proportion are also turning aside from official clerical bodies such as Al-Azhar, seen as spokespersons for unpopular regimes and/or policies. This trend is worrisome. It seems that the crisis in legal authority in the Muslim world will soon, if it hasn't already, become a crisis for the Western world as well.

*The views and opinions expressed in articles are strictly the author's own, and do not necessarily represent those of Al Nakhlah, its Advisory and Editorial Boards, or the Program on Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.*

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<sup>1</sup> "Saudi Arabia: bin-Ladin, Others Sign Fatwa To 'Kill Americans' Everywhere," Al-Quds al-'Arabi (London), available from <http://www.emergency.com/bladen98.htm>

<sup>2</sup> Fatwa Bank, March 11, 2003, available from <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=94227>

<sup>3</sup> Shari'a is the uncodified law of Islam, collected from the texts of the Quran and Sunnah, (anecdotal collection of actions and sayings of the Prophet), and subjected to exegesis. Shari'a means literally, "a path to water," and figuratively, "the righteous path."

<sup>4</sup> Jihad means "a struggle," and has been used throughout Islamic history to cover anything from man's internal struggle to do good, to a large-scale war in defense of Islam.

<sup>5</sup> In the form of king's decrees (nizam), in Saudi Arabia, or a legislature and supreme jurisconsult in the case of Iran.

<sup>6</sup> For more on the topic of modern day siyasa and its relation to fiqh, see Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (The Netherlands: Koninklijke Brill NV, 2000)

<sup>7</sup> Frank Gardner, "Grand Sheikh Condemns Suicide Bombings," BBC News, December 4, 2001, available from [http://news.bbc.co.uk/1/hi/world/middle\\_east/1690624.stm](http://news.bbc.co.uk/1/hi/world/middle_east/1690624.stm)

<sup>8</sup> Interview given by Hamid Mir, Pakistani journalist, available from The Observer, U.K., November 11, 2001

<sup>9</sup> Jonathan Wells, "Despite Denials, Rad Tied to Hub Mosque," The Boston Herald, March 7, 2004, News, pg. 10

<sup>10</sup> Available from [http://en.wikipedia.org/wiki/Yusuf\\_al-Qaradawi#Opinions\\_on\\_Qaradawi](http://en.wikipedia.org/wiki/Yusuf_al-Qaradawi#Opinions_on_Qaradawi)