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ELEMENTS OF A FATWA AND THEIR CONTRIBUTION TO CONFIDENCE IN ITS VALIDITY

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MS 28-8707: A collection of fatwas by the Ottoman Shaykh al-Islām Ibn Kemāl Pāsha (d. 940/1536).

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ELEMENTS OF A FATWA & THEIR CONTRIBUTION TO CONFIDENCE IN ITS VALIDITY

Subject: The confidence Sunni Muslims place in the validity of fatwas based on the elements of a fatwa.

Significance: The present exploratory study examines the confidence Sunni Muslims place in the validity of fatwas based on their elements. It recommends that institutes which issue or disseminate fatwas ensure that their muftis are known to the public they serve.

Executive Summary: A survey was conducted to measure the degree of importance fatwa petitioners (*mustaftis*) place on each element of the fatwa when assessing whether it is valid to follow. These measures were then used to rank the elements in the survey. Analysis showed that respondents place the elements in the following ranking: reputation of the person or institution issuing the fatwa; textual evidence from the Quran and Sunnah; explanation of evidence; reference to earlier works of law; and, lastly, inclusion of signature or official stamp. A separate Tabach Analytical Brief reported that fatwa petitioners were consistently more confident with fatwas when communicated by muftis than by non-muftis. The importance of the mufti being known and having a good reputation may explain the relatively low confidence fatwa petitioners have when fatwas are communicated through websites or newspapers, removing the mufti's form, voice, and handwriting – thus effectively reducing him to nothing more than a name. It is suggested that institutes interested in issuing or disseminating fatwas should consider the wisdom of policies that leave the mufti anonymous and unknown to petitioners.

Muslims are required to know the ethico-legal ruling of an act before engaging in it. Muslims often know rulings for the most common, basic situations they encounter in their daily lives. For uncommon deeds, mistakes, and more complex intra-personal situations, they often consult legal experts (muftis) for legal and ethical advice (fatwas). Although these legal experts can operate independently, many countries with large Muslim populations have formal institutions and individuals responsible for assisting the religious community through the provision of legal guidance or fatwa.

In more specific terms, a fatwa is a non-binding legal opinion offered by an individual (known as a mufti) who has been trained to apply Islamic law to individual cases and then authorized by other muftis to do so. (This system of authorization is similar to the doctorate

degree-granting apparatus where current degree holders can grant the degree to candidates who have fulfilled certain conditions.) By definition, a fatwa issued by a mufti is valid and permissible to follow. A fatwa is usually prompted by a question related to a specific problem. The individual presenting the question is known as a *mustafti* (in this work referred to as “fatwa petitioner” or “petitioner”). The petitioner is recommended to seek out muftis who have or are known to have a good reputation amongst scholars for their knowledge and piety.

The mufti’s fatwa will include the petitioner’s question and a definitive statement concerning the ruling of the issue (e.g., lawful, unlawful, obligatory, recommended, offensive, valid, invalid). Classical manuals on the etiquette of muftis, fatwa petitioners, and the craft of fatwa mention that the mufti is not required to state the evidence for his ruling, though it is recommended for him to do so – especially if the petitioner is a judge or another legal scholar seeking the mufti’s advice. If the petitioner asks for evidence and the evidence is a verse from the Quran or account from the Prophet (Allah bless him and give him peace) and can be understood with a simple explanation, the mufti is required to comply. Muftis who adhere to a specific school of law and who are not qualified to derive rulings directly from the textual sources – muftis who are not themselves an absolute *mujtahid* or a bounded *mujtahid* operating within the confines of a legal school – will often site an earlier reference work from within the school. Written fatwas issued by muftis working within fatwa institutes will often bear signatures of other muftis who reviewed the fatwas. Individual muftis and fatwa institutes will sometimes also use an ink or wax stamp to certify the authenticity of a written fatwa.

Over the past centuries, however, several reform movements have arisen that advocate reducing the influence of prior works of law (if not abandoning them altogether), and emphasize deriving all rulings directly from the two primary textual sources – the Quran and Sunnah.

This study provides a preliminary investigation as to what fatwa petitioners look at when determining the validity of a fatwa investigating the confidence fatwa consumers place in the validity of a fatwa based on its elements.

The results of this study will help muftis and disseminators of fatwas identify which elements of the fatwa engender the highest validity with their intended audience. These answers also provide information about legal authority: is it the mufti, the evidence, the fatwa petitioner’s ability to understand the evidence, the citation of earlier legal references, signatures or stamps?

METHOD OF APPROACH

The present study used a survey to measure the confidence of respondents in the validity of a fatwa when receiving it from a fatwa producer or fatwa reporter, across a range of common media. The survey also measured their confidence that a fatwa is valid given its various elements: the mufti, evidence cited, explanation of the evidence, citing legal references, the inclusion of signatures or a stamp.

A custom survey instrument was designed since a similar study had not already been conducted. The survey instrument consisted of questions related to fatwa confidence, and several questions concerning respondent demographics. Most questions were answered using a 5-level Likert item which included the following levels: Strongly disagree – Disagree – Neither agree nor disagree – Agree – Strongly agree. To assist ranking during analysis, the first two categories were combined, as were the last two.

A convenience sample was obtained through the Internet. The survey was conducted in English and Arabic and moreover announced through Twitter and Facebook, as these two social media platforms have gained widespread penetration worldwide especially in Muslim populations. The survey ran between 15 May and 8 June, 2013. Removing clearly erroneous answers and filtering for respondents who self-identified as Sunnis left 1,162 complete responses. These respondents are fatwa consumers – whether potentially or in practice. Descriptive statistics was used to compare different means to conveyance, and rank them according to confidence of validity.

RESULTS

Overall Demographics

The survey was delivered in both Arabic and English with respondents given the option of either one. Arabic responses totaled 779 (67.0%), and English 383 (33.0%).

Female respondents numbered 346 (29.8% of the total), to 812 male respondents (69.9%); 4 respondents chose not to specify their sex.

Respondents came from a wide range of ages: 33 were less than eighteen years of age (2.9%), 322 between eighteen and twenty-four (28.4%), 252 between twenty-five and twenty-nine (22.2%), 229 between the ages of thirty and thirty-four (20.2%), 133 between thirty-five and thirty-nine (11.7%), and 164 forty and above (14.5%).

Survey responses came from 50 countries of residence. Seven countries accounted for 879 (75.6%) of the responses: Egypt with 321 responses (27.6%); Saudi Arabia with 146 (12.6%); the United States 135 (11.6%); Yemen and the United Kingdom – each with 72 (6.2%); Canada 67 (5.8%); and the United Arab Emirates with 66 respondents (5.7%).

Ranking contribution of fatwa elements to confidence

The third section of the survey included questions of the form “In order for me to be confident that a fatwa is valid to follow, it should...”, followed by various elements typically found in a fatwa, including: that it comes from a known, reputable mufti or fatwa institution; states the supporting textual evidence from the Quran and Sunnah; explains its supporting textual evidence; references earlier works of law; and includes signatures or an official stamp.

Summing each question's results for "agree" and "strongly agree" suggests that respondents rank the elements of a fatwa in the following order (see Table 1):

1. coming from a known, reputable mufti, or fatwa institute (94.4%)
2. stating the supporting textual evidence from the Quran and Sunnah (85.7%)
3. explaining its supporting textual evidence (82.2%)
4. referencing earlier works of law (66.7%)
5. including signatures or an official stamp (51.0%)

Table 1. Rank of contribution of fatwa elements to confidence

	Agree	%
coming from a known, reputable mufti, or fatwa institute	1097	94.4
stating the supporting textual evidence from the Quran and Sunnah	996	85.7
explaining its supporting textual evidence	955	82.2
referencing earlier works of law	775	66.7
including signatures or an official stamp	592	51.0

Chi-square analysis¹ was used to test whether there was a statistically significant difference between the values given in each pair of adjacent ranks, or whether the adjacent ranks should be considered a tie. The analysis revealed that adjacent rankings were statistically significant, $\chi^2 (1, N = 1162), p < .05$. (See Table 2.)

Table 2. Chi-square analysis to ensure ranks were statistically significant

Element A	Element B	N	df	χ^2	p-value
coming from a known, reputable mufti, or fatwa institute	stating the supporting textual evidence from the Quran and Sunnah	1162	1	49.03	.0

1. In simplified terms, Chi-square analysis allows us to quantify the relationship between variables and to then determine whether that relationship is significant enough to reject the hypothesis that the variables are not related and, consequently, accept the alternative hypothesis that the variables are related. It does this by measuring discrepancies between what we expect to observe if the variables are not related and what we actually observe, and how probable it is that the discrepancy can be explained by chance. It is common practice to accept that a relationship is significant when the probability that the discrepancy can be explained by chance is less than or equal to 5% (written as "p < .05"). This study represents Chi-square analysis in the following format:

$$\chi^2 (1, N = 1162) = 0.39, p = .53$$

where the first number after the opening parenthesis indicates the degrees of freedom, N indicates the sample size, the number after the closing parenthesis is the measure of the relationship, and p indicates the probability value (p-value) that the relationship can be explained by chance (lower p-values indicate stronger relationships). When interpreting these results for this study, a p of less than or equal to .05 is understood to indicate a statistically significant relationship.

stating the supporting textual evidence from the Quran and Sunnah	explaining its supporting textual evidence	1162	1	5.37	.02
explaining its supporting textual evidence	referencing earlier works of law	1162	1	73.27	.0
referencing earlier works of law	including signatures or an official stamp	1162	1	59.49	.0

DISCUSSION

Analysis of the survey suggests that the confidence respondents have in the validity of a fatwa based on its elements can be ranked in the following order:

1. coming from a known, reputable mufti, or fatwa institute
2. stating the supporting textual evidence from the Quran and Sunnah
3. explaining its supporting textual evidence
4. referencing earlier works of law
5. including signatures or an official stamp

The analysis shows that fatwa petitioners consider the mufti to be the most important element of the fatwa with regards to validity. This agrees with the findings in a study of the confidence respondents place in the validity of fatwas communicated through a variety of communication scenarios, also using the same survey data. The other study found that fatwa petitioners were consistently more confident with fatwas communicated by muftis than with fatwas communicated by non-muftis (Furber, 2013). The importance of the mufti being known and having a good reputation may also explain the relatively low confidence fatwa petitioners have in fatwas when they are communicated through websites or newspapers, and remove the mufti's form, voice, and handwriting – thus effectively reducing him to nothing more than a name. Institutes interested in issuing or disseminating fatwas should consider the wisdom of policies which leave the mufti anonymous and unknown to petitioners.

Evidence is very important for the contemporary petitioners. While fatwa petitioners place much importance on evidence, the previous analysis shows that they place an almost equal emphasis on understanding how the evidence relates to the ruling. Muftis who want their fatwas to be accepted with a high degree of confidence should make a point of including evidence with a simple explanation.

Earlier works of law are invaluable for most muftis who are not themselves qualified to derive rulings directly from textual evidence. The ranking of earlier works of law indicates that mentioning them is important, but perhaps of lesser importance to a certain segment of the fatwa petitioners.

Conclusion: In the preceding study, we examined the confidence respondents place in the validity of fatwas based on their elements. Analysis showed that respondents place the elements in the following ranking: reputation of the person or institution issuing the fatwa; textual evidence from the Quran and Sunnah; explanation of evidence; reference to earlier works of law; and, lastly, inclusion of signature or official stamp. It is suggested that institutes interested in issuing or disseminating fatwas should consider the wisdom of policies that leave the mufti anonymous and unknown to petitioners.

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