

Dope and Democracy

Case Studies in Arabic and American e-Fatwas

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For Islam and its viability as a comprehensive approach to life, the twenty-first century has posed an unprecedented set of circumstances. The rate at which ideas diffuse has dramatically increased; internet access has been expanding due to “an exponential growth in the telecommunications sector in some Muslim contexts,” reducing previous issues of prohibitively expensive internet services in many Muslim communities.¹ Historically, scholarship on Islamic law – and the associated methodology by which *fatwas* were expounded – tolerated diverse points of view, entertaining varied opinions on how Muslims should conduct their affairs.² In responding to new situations, especially those which arise in minority-Muslim nations, the adaptability of the *Shari’a* has become clear in the varying answers of jurists situated in those contexts. With a sizeable Muslim minority estimated at 3.45 million in 2017, the

¹ Gary R. Bunt, *iMuslims: Rewiring the House of Islam*, (Chapel Hill: University of North Carolina Press, 2009), 59.

² Khaled Abou El Fadl, *Speaking in God’s Name: Islamic law, Authority and Women*, (Oxford: Oneworld, 2001), 175-176.

United States serves as an intriguing case where rapidly changing ideals precipitated by the Digital Age meet Islamic jurisprudence.³ Despite presenting the hallmarks of what could be potentially classified as a distinct ecosystem of Islamic lawmaking with independent roots, the origins of American *fatwas* (insofar that they originated from the United States) display remarkable similarity to those *fatwas* originating in the Arabic-speaking world. This indicates more commonality between the two ecosystems than a surface-level analysis of their differences reveals.

As to the *fatwa* sources selected for this paper, the Assembly of Muslim Jurists of America (A.M.J.A.) and the *Fiqh* Council of North America (F.C.N.A.) are used as the representatives of American Islamic jurisprudence. Particularly, their *fatwas*' primary publication in digital formats firmly ties them into twenty-first century trends of rapidly increasing internet accessibility; digital *fatwa* resources have become popular, with one Indian *fatwa*-issuer – a branch of *Darul Uloom Deoband* – having reported receiving some 30,000 queries annually by 2014, a growth over the decade before.⁴ The Council for Scientific Research and Legal Opinions (C.R.L.O.), a Saudi-sponsored and Salafist institution, will stand for the

³ "2017 Survey of U.S. Muslims," Pew Research Center, Washington, D.C., July 26, 2017, 30.

⁴ Mohammed Wajihuddin, "Fatwas popular these days, available even on internet," *Times of India*, July 14 2014.

Arabic-speaking world of *fatwas*, especially due to its preeminence among Arabic-language sources.⁵ It is similarly intertwined with the internet, with an extensive archive of *responsa* on various historical theological issues as well as “contemporary issues,” which – to the non-Arabic speaking author’s great fortune – have been translated into English.

Given Islamic law’s traditionally robust system of written reasonings and justifications for *fatwas*, investigating the jurisprudential underpinnings of both American and Arabic rulings serves to establish some baselines which both spheres of *fatwas* share. In choosing a contemporary issue that has become relevant to American Muslims, *fatwas* on cannabis usage – as well as cannabis-derived products – present a facile point of comparison. American *fatwas*, at first reading, seem to deviate from Islam’s perceived strict prohibition against intoxicating substances in most circumstances. From the sources selected, most American jurists adopted a position best described as “allowance for medical purposes”: a collectively adopted ruling by the F.C.N.A. deferred to medical opinions, opining that “if [cannabis-derived] products do not intoxicate...then they are permissible to use in Islam;”⁶ a set of A.M.J.A. *fatwas* effectively

⁵ Abou el Fadl, *Speaking in God’s Name*, 173.

⁶ Mustafa Umar, “On the Use of Marijuana,” *Fiqh Council of North America*, August 19, 2020.

agree with the F.C.N.A., deferring to the medical value of cannabis.⁷

Tension between American and Arabic *fatwas* on cannabis usage is found when the ruling of the *fatwa* is separated from the reasoning for the respective ruling. In a rather puritanical *fatwa*, the C.R.L.O. deems “it is Islamically prohibited to sell, buy or consume hashish [a derivative of cannabis] whether by eating, smoking or chewing,” further citing the *Sahih al-Bukhari* for a *hadith* stating “every intoxicant is *khamr* [alcohol] and every *khamr* is unlawful;” The *fatwa* goes on to decry engaging in monetary transaction with a dispenser of hashish – for the petitioner’s case, this is their father – as all gains made are “ill gotten [sic].”⁸ The *fatwa* itself makes no mention of the possibility for a medical exemption. Although, it is reasonable to suppose that addressing the medicinal value of cannabis was outside the scope of the original question. A separate *fatwa*, dealing not with cannabis but with *khamr* more generally, explicitly disallows “treatment by...*khamr*,” thereby seeming to disallow treatment with cannabis.⁹ Compared to the consensus among some American jurists that cannabis as a medical

⁷ Waleed Basyouni, “Drugs in medicine,” *Assembly of Muslim Jurists of America*, February 02, 2009; Hatem al-Haj, “ADHD and Medical Marijuana,” *Assembly of Muslim Jurists of America*, February 17, 2011.

⁸ Abdul-Aziz ibn Abdullah ibn Bazj et al., “Is hashish lawful or not?,” *Council for Scientific Research and Legal Opinions*, accessed November 15, 2020.

⁹ Abdul-Aziz ibn Abdullah ibn Bazj et al., “Some Muslims are advised by their doctors to drink Khamr (intoxicant),” *Council for Scientific Research and Legal Opinions*, accessed November 14, 2020.

treatment is Islamically allowable, the C.R.L.O. appears rather conservative.

While the degrees of separation between American and Arabic *fatwas* on the matter may seem significant, observing the devices which both ecosystems of *fatwa* use to create their opinions reveals a shared set of roots; if the *fatwas* themselves are trees, the fruit they yield may taste different, but they originate from the same root system. Returning to the F.C.N.A. *fatwa* on marijuana, the same hadith used by C.R.L.O. authors to justify cannabis as *khamr* is referenced; despite a difference in translation, a nearly word-for-word identical quotation is utilized to elaborate that cannabis is – under normal circumstances – an unlawful intoxicant.¹⁰ Furthermore, A.M.J.A. *fatwas* (even those written by authors of the aforementioned pro-cannabis *fatwas*) demonstrate a great deal of skepticism towards marijuana, warning that cannabis (in the form of hashish) is particularly *haram*,¹¹ and that “opiates and the likes [sic]” may be preferable to cannabis.¹² Ultimately, to return to the analogy of trees, the American and Arabic *fatwas* on cannabis are from the same root – a root that detests intoxicating substances. To explain the discrepancy between the

¹⁰ Mustafa Umar, “On the Use.”

¹¹ Waleed Basyouni, “Is Marijuana haram?,” *Assembly of Muslim Jurists of America*, November 11, 2011.

¹² Hatem al-Haj, “Marijuana for Crohn's disease,” *Assembly of Muslim Jurists of America*, April 25, 2009; Hatem al-Haj, “Marijuana,” *Assembly of Muslim Jurists of America*, November 14, 2012.

American “tree” and the Arabic one, the American jurists’ opinions are more an exception to a shared principle than they are the fruit of a tree whose roots are more liberal towards narcotic usage. It is worth noting that Arabic *fatwas* possess a similar principle of medical *khamr* being allowable, although it is applied to stricter circumstances; one explicit *fatwa* involves soldiers being dispensed medication containing ten percent alcohol.¹³ As such, even the concept of a medical exception is shared, but it is simply expressed to different degrees.

The permissibility of cannabis, though, may seem to some scholars as “minor” given that it is a relatively niche problem being addressed by a small subset of *fatwas*. While such a trivialization of matters is generally dangerous – for what is insignificant to the ivory tower may be critically important to a range of practicing American Muslims – it does beg investigation into whether the concept of “shared roots, different fruits” holds on more encompassing issues. American and Arabic *fatwas*’ stances on democratic participation provide an opening by which *responsa* on “grander” issues can be compared. Notably, democratic values in the American Muslim community are highly valued, with sixty-five percent of American Muslims expressing that “Islam and democracy are

¹³ Abdul-Aziz ibn Abdullah ibn Bazj et al., “A medication that contains ten percent of alcohol,” *Council for Scientific Research and Legal Opinions*, accessed November 14, 2020.

compatible.”¹⁴ Whether it be a reflection of community attitudes or conclusions arrived at independently, American jurists tend to share in the American Muslim community’s participatory view of democracy. As a sort of great testament towards the organization’s opinion on the issue, the findings of the A.M.J.A. fourth annual convention recommended that Muslim participation in the American republic is allowable, possibly even rising to the “degree of being obligatory” in grave enough circumstances.¹⁵ Additionally, numerous other A.M.J.A. *fatwas* deem it permissible for Muslims to engage in democracy-adjacent activities, including public protest as a means of advocating good;¹⁶ organizing behind political parties, even of a non-Muslim variety;¹⁷ and holding administrative post, like that of a governor, in a non-Muslim nation.¹⁸ The wide breadth of explicit allowances for democratic participation are further bolstered by *fatwas* implying that democratic governance can be beneficial to Muslim communities within a broader non-Muslim country.¹⁹ On the whole, American *fatwas* seem to call for Islamic engagement in

¹⁴ “2017 Survey of U.S. Muslims,” 89.

¹⁵ “Decisions and recommendations of AMJA’s fourth annual convention - Egypt,” Assembly of Muslim Jurists of America, Cairo, Egypt, August 01, 2006.

¹⁶ Waleed Basyouni, “Public Protests,” *Assembly of Muslim Jurists of America*, January 08, 2012.

¹⁷ Salah Al-Sawy, “Praying behind a member of a non-Islamic party,” *Assembly of Muslim Jurists of America*, June 30, 2008.

¹⁸ Salah Al-Sawy, “About involvement in political work,” *Assembly of Muslim Jurists of America*, June 10, 2005.

¹⁹ Main Khalid Al-Qudah, “Muslim Board Elections for their masjid,” *Assembly of Muslim Jurists of America*, March 11, 2010.

democratic systems, even within the context of a secular nation-state.

That a shared system of roots exists between democratic American *fatwas* and anti-pluralist Arabic *fatwas* is surprising. C.R.L.O. *fatwas* contend with most aspects of the A.M.J.A. program on Muslim participation in democracy. In no uncertain terms, C.R.L.O. jurists write that “it is [always] impermissible for Muslims to vote for *Kuffar* [disbelievers],” elaborating little on the issue besides the inclusion of a *hadith* deriding the ability of disbelievers to triumph over Muslims.²⁰ Additionally, the C.R.L.O. rules that participation in political parties is strictly forbidden, citing *hadith* in which the Prophet says “do not become *Kafirs* (disbelievers) after me, striking the necks (cutting the throats) of each other” to bolster their view that factionalism is the activity of the nonbeliever, not the Muslim.²¹ The C.R.L.O is no more forgiving to non-Muslim legal systems, as their *fatwas* even go so far as to disallow the study of positive law – unless it is to prove its strict inferiority to Islamic law – and prevent Muslims from suing in the courts of governments who utilize man-made law.²² While it may not

²⁰ Abdul-Aziz ibn Abdullah ibn Bazj et al., “Is it permissible for a Muslim to vote in elections? If yes, is it permissible for them to vote for *Kuffar* (disbelievers)?,” *Council for Scientific Research and Legal Opinions*, accessed November 16, 2020.

²¹ Abdul-Aziz ibn Abdullah ibn Bazj et al., “Ruling on political parties,” *Council for Scientific Research and Legal Opinions*, accessed November 13, 2020.

²² Abdul-Aziz ibn Abdullah ibn Bazj et al., “Studying man-made laws,” *Council for Scientific Research and Legal Opinions*, accessed November 13, 2020; Abdul-Aziz ibn Abdullah ibn Bazj et al., “The ruling on studying positive (man-made) laws,” *Council for Scientific Research and Legal Opinions*, accessed November 13, 2020;

seem so, the wariness towards non-Muslim democracy [and associated institutions] openly expressed in C.R.L.O. *fatwas* is shared by A.M.J.A. jurists. Rather than growing their tacit permission for Muslim participation in American democracy from an enthusiastic and unique set of roots, the above-mentioned American *fatwas* all write from a cautious place. Their language advocates for Muslims to exercise their voting privileges as a means of advancing a “Muslim agenda;” the same *fatwas* which spoke of Muslims backing non-Muslim political parties also warn that doing so requires a careful balance of potential boons and the innate disbelief associated with sectionalism.²³ Furthermore, other *fatwas* portray political work as a collective duty, with the needs of the community satisfied if only “some Islamists are involved [politically].”²⁴ Once again, despite presenting a distinct outward appearance, the tree that is American *fatwas* about democracy has roots intertwined with the Arabic world. In this case, the common root is a distaste for secular democratic systems; the difference between them is simply how much democracy can [or must, given context] be tolerated or suffered.

Abdul-Aziz ibn Abdullah ibn Bazj et al., “We live in a country controlled by a non-Muslim government that applies man-made laws. Is it permissible for us to pursue lawsuits in their courts?,” *Council for Scientific Research and Legal Opinions*, accessed November 13, 2020.

²³ Salah Al-Sawy, “Praying behind a member of a non-Islamic party.”

²⁴ AMJA Resident Fatwa Committee, “Participating in elections,” *Assembly of Muslim Jurists of America*, July 18, 2004.

While this paper as a dendrological [the study of trees] investigation of Islamic law illuminates the sometimes obfuscated shared foundation of American and Arabic *fatwas*, it does only reach just below the surface. Acknowledging commonality between ecosystems of jurisprudence does not imply a judgment as to *why* these ecosystems are similar in bedrock yet different in results. A possible explanation exists in the pedagogical background of most American and Arabic jurists. Of the six members of the A.M.J.A. Resident Fatwa Committee, all of them obtained “traditionally Islamic” educations at institutions such as Al-Azhar University, perhaps planting their intellectual roots more in Arabia than in America.²⁵ Study into a truly indigenous school of American Islamic jurisprudence, on the other hand, could possibly yield a tree with unique roots. Khaled Abou el Fadl, cited earlier in this work, presents an intriguing contrast as a large portion of his education was completed at American institutions and he demonstrates a more energetic, civic-minded embrace of democracy.²⁶ Following Abou el Fadl’s mold, future Islamic jurists may be provided the seed from which a truly independent ecosystem of American Islamic law may germinate.

²⁵ “Resident Fatwa Committee,” Assembly of Muslim Jurists of America, accessed November 16, 2020.

²⁶ Khaled Abou El Fadl, “On Muslims voting for non-Muslims in a Muslim-majority country,” *The Search for Beauty: on beauty and reason in Islam*, March 13, 2017.

REFERENCES

- Abou El Fadl, Khaled. *Speaking in God's Name: Islamic law, Authority and Women*. Oxford: Oneworld, 2001.
- — —. "On Muslims voting for non-Muslims in a Muslim-majority country." *The Search for Beauty: on beauty and reason in Islam*, March 13, 2017.
<https://www.searchforbeauty.org/2017/06/05/fatwa-on-muslims-voting-for-non-muslims-in-a-muslim-majority-country/>.
- al-Haj, Hatem. "Attention Deficit Hyperactivity Disorder and Medical Marijuana." *Assembly of Muslim Jurists of America*, February 17, 2011.
<https://www.amjaonline.org/fatwa/en/83807/attention-deficit-hyperactivity-disorder-and-medical-marijuana>.
- — —. "Marijuana." *Assembly of Muslim Jurists of America*, November 14, 2012.
<https://www.amjaonline.org/fatwa/en/87728/marijuana>.
- — —. "Marijuana for Crohn's disease." *Assembly of Muslim Jurists of America*, April 25, 2009.
<https://www.amjaonline.org/fatwa/en/78651/marijuana-for-crohns-disease>.
- AMJA Resident Fatwa Committee. "Participating in elections." *Assembly of Muslim Jurists of America*, July 18, 2004.
<https://www.amjaonline.org/fatwa/en/342/participating-in-elections>.
- Al-Qudah, Main Khalid. "Muslim Board Elections for their masjid." *Assembly of Muslim Jurists of America*, March 11, 2010.

<https://www.amjaonline.org/fatwa/en/81136/muslim-board-elections-for-their-masjid>

Al-Sawy, Salah. "About involvement in political work."
Assembly of Muslim Jurists of America, June 10, 2005.

<https://www.amjaonline.org/fatwa/en/659/about-involvement-in-political-work>

— — —. "Praying behind a member of a non-Islamic party."
Assembly of Muslim Jurists of America, June 30, 2008.
<https://www.amjaonline.org/fatwa/en/23231/praying-behind-a-member-of-a-non-islamic-party>

Assembly of Muslim Jurists of America. "Decisions and recommendations of AMJA's fourth annual convention - Egypt." Cairo, Egypt, August 01, 2006.
<https://www.amjaonline.org/declaration-articles/decisions-and-recommendations-of-amjas-fourth-annual-convention-egypt/>.

— — —. "Resident Fatwa Committee." Accessed November 16, 2020. <https://www.amjaonline.org/about/resident-fatwa-committee/>.

Basyouni, Waleed. "Drugs in medicine." Assembly of Muslim Jurists of America, February 02, 2009.
<https://www.amjaonline.org/fatwa/en/77834/drugs-in-medicine>.

— — —. "Is Marijuana haram?." Assembly of Muslim Jurists of America, November 11, 2011.
<https://www.amjaonline.org/fatwa/en/85873/is-marijuana-haram>.

— — —. "Public Protests." Assembly of Muslim Jurists of America, January 08, 2012.
<https://www.amjaonline.org/fatwa/en/86280/public-protests>.

Bunt, Gary R. *iMuslims: Rewiring the House of Islam*. Chapel Hill: The University of North Carolina Press, 2009.

ibn Bazj, Abdul-Aziz ibn Abdullah, Abdullah ibn Ghudayyan, and Abdullah ibn Qa'ud. "Some Muslims are advised by their doctors to drink Khamr (intoxicant)." Council for Scientific Research and Legal Opinions, accessed November 14, 2020.

ibn Bazj, Abdul-Aziz ibn Abdullah, Abdul-Razzaq Afify, Abdullah ibn Ghudayyan, and Abdullah ibn Qa'ud. "A medication that contains ten percent of alcohol." Council for Scientific Research and Legal Opinions, accessed November 14, 2020.

— — — . "Is hashish lawful or not?." Council for Scientific Research and Legal Opinions, accessed November 15, 2020.

— — — . "Is it permissible for a Muslim to vote in elections? If yes, is it permissible for them to vote for Kuffar (disbelievers)?." Council for Scientific Research and Legal Opinions, accessed November 15, 2020.

— — — . "Ruling on political parties." Council for Scientific Research and Legal Opinions, accessed November 13, 2020.

— — — . "The ruling on studying positive (man-made) laws," Council for Scientific Research and Legal Opinions, accessed November 13, 2020.

— — — . "Studying man-made laws," Council for Scientific Research and Legal Opinions, accessed November 13, 2020.

— — — . “We live in a country controlled by a non-Muslim government that applies man-made laws. Is it permissible for us to pursue lawsuits in their courts?” Council for Scientific Research and Legal Opinions, accessed November 13, 2020.

Pew Research Center. “2017 Survey of U.S. Muslims.” Washington, D.C., July 26, 2017.
<https://www.pewforum.org/2017/07/26/findings-from-pew-research-centers-2017-survey-of-us-muslims/>.

Umar, Mustafa. “On the Use of Marijuana.” Fiqh Council of North America, August 19, 2020.
<http://fiqhouncil.org/on-the-use-of-marijuana-2/>.

Wajihuddin, Mohammed. “Fatwas popular these days, available even on internet.” Times of India, July 14, 2014.