When they ask you for a pronouncement [yastaftūnaka] . . .
Say: “God pronounces to you [yutikum] . . .”
QURAN 4:126

Question the people of remembrance, if you do not know.
QURAN 16:43

An important division of juristic labor marks the relation of the shari’a, or Islamic law, to the concrete world of human affairs. Across time and space, two distinct categories of legal interpreters have stood at the meeting points of law and fact. The domain of legal procedure, including adversarial cases, rules of evidence, binding judgments, and state enforcement, belongs to the judge (qādi); the issuance of nonbinding advisory opinions (fatāwā, or fatwās) to an individual questioner (mustafti), whether in connection with litigation or not, is the separate domain of the jurisconsult (mufti). In their different venues, both qadis and muftis have specialized in handling the everyday traffic in conflicts and questions falling within the purview of the shari’a.

Compared to qadis, muftis have received little attention in Western scholarship, in part because of the litigation-oriented expectations of many observers for whom the role of the jurisconsult is unfamiliar, and in part because, in many historical settings, the activity of the mufti was far less institutionalized than that of the qadi. Whereas qadis always were appointed, salaried officials who dispensed justice in public tribunals, many muftis operated privately and unobtrusively without any ties to the political authorities, while others were officially appointed. The significance of the
work of the muftis—whether private or public—rests on the high degree of authority that could be carried by their opinions, which represent the closest Islamic equivalent to the familiar Anglo-American legal mechanism of case-law precedent.

Research focused on muftis and their fatwas is integral to current efforts to refine our understanding of the history of Islamic law. In pre-modern times, the umbrella of the shari’a encompassed not only ritual law but also criminal law and a wide range of contracts. Derived from the Quran and the Sunna (the exemplary behavior of the Prophet Muhammad as recorded in narrative reports, or hadith), the shari’a developed by means of human juristic efforts into a comprehensive and detailed corpus of law that was continuously adjusted to changing circumstances. While the more theoretical aspect of the shari’a is embodied in the literatures dealing with the “branches” of substantive law (furu’ al-fiqh) and with the “roots” of legal methodology and jurisprudence (usūl al-fiqh), its more practical aspect is embodied in fatwas issued by muftis in response to questions posed by individuals in connection with ongoing human affairs. As the corpus of substantive law and jurisprudence grew, acquiring both multiple levels of commentary and authoritative summaries, the accumulation of fatwas issued by muftis in diverse social and historical settings served to stimulate the development of the shari’a from below, in response to the specific needs of particular Muslim communities.

In its many historical manifestations, the muftiship exhibits both a number of consistent family resemblances and, especially on its public side, considerable institutional diversity. As interpreters, individual muftis displayed varying degrees of juristic proficiency and different discursive styles. They issued fatwas in response to a wide range of questions emanating from individual Muslims of every status, including qadis and political authorities such as the caliph or sultan. Reflecting the importance of fatwa giving (iftā’) in the Islamic legal system, both the activity of the mufti and the fatwa genre have been analyzed by Muslim intellectuals of various eras. In this chapter, we outline the history of ifta’ and examine its structure, to help situate the specific worlds invoked by the contributors to this volume.

The Formative Period

The Quran announces itself as a divine revelation communicated to humanity through the medium of the Prophet Muhammad. According to Islamic tradition, the Quran was revealed seriatim over a period of approximately twenty-three years. Muhammad received the first revelation, Sura 96 (“The Blood Clot”), in the year 610, and the last revelation, verse 176 of Sura 4 (“Women”) shortly before his death in 632. The content of these revelations
changed dramatically over time, reflecting a new phase in Muhammad's mission as a prophet and statesman. During the Meccan phase of his career (610–622), Muhammad's primary task was to announce the doctrine of the Oneness of God (tawḥīd) and to summon humanity to His worship and service. The Meccan verses therefore deal largely with the issues of tawḥīd, reward and punishment, and the last judgment. The hegira to Medina in 622 marks a watershed in Islamic history. In Medina, Muhammad established a religio-political community (ʿumma) that accepted God as the ultimate source of authority for all human belief and action, and the verses revealed during this second phase of his career (622–632) deal increasingly with political, social, economic, and ritual matters.

Guided by the revelations, Muhammad instituted a series of rules and practices in the areas of ritual behavior, purity, social relations, and the economy. Inevitably, perhaps, these innovations occasionally met with expressions of incomprehension or resistance from members of the nascent Muslim community, some of whom continued to act in accordance with the customary practices of pre-Islamic Arabia. These reactions may be reflected in a literary structure that occurs repeatedly in the Quran: “When they ask you (yas‘alūnaka) concerning . . . Say . . .” This formulation, which encapsulates the basic features of what would become the classical Islamic activity of fatwa giving, was understood by subsequent generations of Muslim scholars in the following terms: One or more members of the community approach Muhammad and ask him for clarification regarding the continuing validity of a certain practice. Muhammad then awaits the reaction of the Divinity, who issues His response in the form of a revelation that becomes a verse of the Quran. As represented in the Quran, the activity of consultation involves a three-way relationship between God, Muhammad, and the Muslim community, with Muhammad serving as the medium through which community members know God's laws and ordinances (cp. Shaltut 1988:5–14).

The Quran also contains the linguistic forms that would characterize the activity of legal consultation (ṣuṭṭā) in its classical manifestation, for it uses verbal forms derived from the root f-t-y in contexts having to do with asking questions and responding to them. An alternative to the above-mentioned literary structure occurs in two verses of Sura 4 ("Women"). Here, significantly, the verb yas‘alūnaka is replaced by yastaftūnaka, and the resulting Divine pronouncement is signified by yuṭī (the latter two verbs are derived from the root f-t-y). Thus, in verse 176, Muhammad receives the following instruction: “When they ask you for a pronouncement (wa-yastaftūnaka). Say: ‘God pronounces to you (yuṭīkum) concerning al-kalāla . . .’”; the verse proceeds to define the inheritance rights of siblings (on the problematic term “kalāla,” see Powers 1986:22–49). Similarly, in verse 126, God in-
structs Muhammad on the manner in which he should respond to people who ask him about the treatment of orphaned females. From the quranic usage of the verbs *asta* and *ista*tä, it was only a short step to the terminology associated with the classical activity of legal consultation: *mufti*, *mustafi* (questioner), *futya* (legal consultation), *ifta'* (fatwa giving), and *istifä'* (request for a fatwa).⁶

A slightly different pattern of question and response is reflected in the hadith literature, where, typically, we find a Companion approaching Muhammad and asking him a question about a certain practice. Here, without awaiting the reaction of the Divinity, Muhammad responds immediately to his interlocutor, speaking in his own voice. The authoritative nature of his responses came to be understood as being based on verse 63 of Sura 4 ("Women"): “O Believers, obey God, obey the Messenger and those in authority among you.” It is reported, for example, that al-Aqrä' b. Habis (d. ca. 636) asked the Prophet, “O Messenger of God, is the pilgrimage to be performed every year or only once?” He replied, “Only once, and whoever does it more than once, that is an act of supererogation” (al-Azmabadi 1968–1969, 5:144). Similarly, it is reported that the Prophet was once standing in the pulpit of the mosque in Medina when a man asked him, “What is your opinion regarding the night prayer?” He replied, “Two [rak'as, or inclinations] at a time; and when one of you knows that the dawn is near, he should add one [inclination], thereby causing his prayer to have an odd number of inclinations” (al-Bukhari 1862–1898, 1:130). Thus, in the hadith literature, a two-way relationship between Muhammad and the Muslim community complements the three-way relationship that characterizes the activity of question and response in the Quran. Underlying this relationship, of course, is the assumption that Muhammad is divinely inspired, infallible, and speaks in the name of God.

Muhammad's death in 632 marked an important shift in the dynamics of the consultative process. In Sura 33 ("The Confederates"), verse 40, the Quran designates Muhammad as “the Seal of the Prophets,” a phrase that was understood to signify that God no longer would communicate with humanity, either directly through revelation or indirectly through a prophet. The Muslim community found itself separated from the voice of God and the immediate example of His Prophet. But in the aftermath of the Islamic conquests, as the Muslim community increased in size, spread across a wide geographical area, and became increasingly heterogeneous in its ethnic composition, there arose many new issues for which the Quran provided little or no instruction. In the period immediately following Muhammad's death, Muslims turned for guidance to his Companions, that is, to the men and women who had interacted with the Prophet and thus were best suited to determine what constituted proper Islamic behavior. Traditional sources
identify approximately one hundred thirty Companions who are said to have functioned as muftis during the first century A.H./seventh century A.D. (al-Qasimi 1986:35). During his tenure as governor of the Yemen, Mu‘adh b. Jabal (d. 640) is said to have issued fatwas on a wide variety of subjects relating both to the sacred and the profane (al-Bukhari 1928, 8:270). The Prophet’s secretary, Zayd b. Thabit (d. 666), reportedly served as the leader of futya (and several other offices) in Medina between 634 and 666 (Ibn Sa‘d, 1957-1968, 2: pt. 2:115-117). Among all the Companions, the distinction of being the most prolific mufti belongs to Ibn ‘Abbas (d. 687), whose fatwas reportedly were collected in twenty volumes by the great-grandson of the ‘Abbasid Caliph al-Ma’mun (al-Qasimi 1986:35).7

During the first/seventh century, futya was a widespread but largely undifferentiated activity that made an important contribution to the elaboration of a distinctive Islamic identity and lifestyle. The corpus of hadith compiled during the third/ninth century suggests that the activity of futya as practiced by Companions had been linked to the preservation of the prophetic Sunna. For example, it is reported that Masruq (d. 682) once asked the Prophet’s wife, ‘A’isha (d. 678), about the manner in which the Prophet had performed the night prayer. To this question she replied, “[Sometimes] seven [inclinations, sometimes] nine, and [sometimes] eleven” (al-Bukhari 1862-1898, 1:287-288). Similarly, it is reported that ‘Abd al-‘Aziz b. Rufay’ (d. ca. 747) once asked Anas b. Malik (d. ca. 709), “Tell me about something about which you possess knowledge regarding the Prophet. Where did he perform the midday and afternoon prayers on the day of Tarwiyah?” (the day of providing oneself with water on 8 Dhu al-Hijja, during the performance of the pilgrimage). Anas replied, “At Mina.”8

As the generation of Muhammad’s Companions died out, the Muslim community was cut off from the guidance of men and women who had been in direct contact with the Prophet. But an important mechanism had been established for the accurate transmission of both the Quran and the prophetic hadith from one generation of Muslims to the next. This mechanism, which Graham (1993) calls the “isnäd paradigm,” places a high value on the human element in the process of transmitting knowledge from one generation to the next, with the result that Muslims of subsequent generations could experience a sense of personal connection with both the Quran and the hadith. Beginning in the second/eighth century, those Muslims who dedicated themselves to the preservation and analysis of Islamic knowledge (‘ilm) were designated as ‘ulamā’, or scholars. The acquisition of knowledge came to be associated exclusively with individuals who devoted themselves to the study of the Quran, the hadith, and, increasingly, the “roots” and “branches” of substantive law, or fiqh (those who specialized in fiqh are known as fuqaha’). In Mecca, Medina, Damascus, the Yemen, and other
centers of Islamic scholarship, men such as al-Sha'bi (d. ca. 721–722), al-Zuhri (d. 742), Makhul (d. 734), and Ta’us (d. 720) generated discrete legal materials that were used by subsequent generations of scholars to create the fully developed system of Islamic law. Identifying themselves with “those in authority among you” (ulu al-amr) mentioned in Quran 4:63 and with “the people of Remembrance” mentioned in Quran 16:43, this special class of literate scholars acquired religious authority analogous to that exercised by the Prophet. “The mufti,” writes al-Shatibi (d. 1388), “stands before the Muslim community in the same place as the Prophet stood” (1969-1970, 4:224-225). One interpretation of Quran 16:43 holds that Muslims are under an obligation to consult with and seek advice from individuals known to possess knowledge and moral probity (adâla) (al-Tabari 1954-1968, 14:108-109).

The complex interplay between futya, fiqh, and hadith is illustrated by a narrative report that preserves a conversation that reportedly took place in Kufa during the governorship of Bishr b. Marwan (690-694). The hadith specialist ‘Ata’ b. al-Sa‘ib (d. 753-754) approached the Kufan qadi Shurayh (d. between 697 and 718), and said to him, “O Abu Umayya, I need a fatwa from you.” Taking care to inform ‘Ata’ of his jurisdictional limitations, Shurayh replied, “O son of my brother, I am merely a qadi, not a mufti.” But ‘Ata’ persisted, explaining that he wanted not a judgment but an opinion regarding a dispute involving a third party who had designated his house as an endowment in an apparent effort to circumvent the quranic inheritance rules. Shurayh then entered the mosque and, as he was making his way toward the maqṣūra (a special enclosure or compartment), instructed one of his judicial assistants to inform ‘Ata’ that “it is not permitted to create an endowment in circumvention of the shares of [inheritance awarded by] God—may He be glorified and exalted” (al-Tahawi 1968, 4:96, ll. 18–21; cf. al-Bayhaqi 1968, 6:162, ll. 27–31). This last statement, attributed here to Shurayh, subsequently was reformulated as a prophetic hadith (ibid., 6:162, ll. 23–25).

Institutional Manifestations

Futya began as a private activity that was independent of any state control. To a large extent, it was the scholars themselves who regulated their own activities and determined their own professional standards. To issue a fatwa, all that was required of a person was religious knowledge and piety (taqwâ). In the words of a North African mufti, “Anyone who is learned and whose religious sentiments are recognized may issue fatwas” (al-Wansharisi 1981–1983, 8:236). Acting in a private capacity, muftis provided authoritative advice for Muslims unfamiliar with the detailed provisions of Islamic law.
or uncertain that their behavior conformed to what was considered to be properly Islamic. Simultaneously, however, some muftis became members of the judicial administration, and the activity of futya acquired a public and official nature (Ibn Khaldun 1958, 1:452).

Already in Umayyad times (661-750) muftis served as legal consultants for qadis and issued fatwas at the request of provincial governors. The governor of Ailah, Ruzayq b. Hukaym, reportedly wrote to al-Zuhri in Wadi al-Qura, asking whether he should hold the Friday prayer service for the benefit of black slaves who worked certain lands that he managed. Al-Zuhri wrote back instructing Ruzayq that he should indeed hold the Friday service, citing as support for his opinion a Sunna of the Prophet (al-Bukhari 1862-1898, 1:227-228). By the late Umayyad period, fatwa giving also had become an important instrument of political criticism. It is reported, for example, that Sa'id b. al-Jubayr (d. 714) issued a fatwa in which he criticized the tyrannical behavior of al-Hajjaj, and that, despite being threatened with death, the mufti steadfastly refused to recant (al-Qarafi 1989). Nearly a century later, al-Muntasir (d. 862) felt it necessary to secure a fatwa from leading Iraqi jurists before setting in motion the plot that led to the assassination of his father, Caliph al-Mutawakkil (d. 861). In view of the increasing importance of futya as a mechanism of religious legitimation, it is perhaps not surprising that central governments sought to establish a measure of control over the activity. To this end, caliphs (and, later, sultans) began to designate jurists who were deemed qualified to serve the government in an official or semiofficial capacity.

Although a number of contributions to this volume record specific characteristics of futya as practiced in different times and places in the pre-modern era (see Part II), a comparative history of this activity between the tenth and the sixteenth centuries has yet to be written. The following remarks therefore have the limited objectives of indicating the sources for and tracing the broad regional outlines of this history.

The fundamental source of information on the activities of muftis is the collections of their fatwas, which began to appear in the second half of the tenth century and have been produced in a continuous and unending stream until the present (see al-Nadim 1970, 1:493ff.; Hajji Khalifa 1941-1955, 2:1218-1231, 2 [supplement]:155-158; Brockelmann 1943-1949, index, s.v. fatūwā; and Sezgin 1967-, 2: index, s.vv. fatūwā, fatwā, nawāzil). Each collection is identified with a particular school (madhhab) of legal thought. In Sunni Islam, the Hanafi, Maliki, Shafi'i, and Hanbali schools emerged as authoritative, taking the names of the jurists Abu Hanifa (d. 767), Malik b. Anas (d. 795), Muhammad al-Shafi'i (d. 820), and Ibn Hanbal (d. 855), respectively. Among the Shi'is, fatwa collections likewise pertain to specific interpretive communities, such as the Ja'faris (or "Twelvers"), named for
the Imam Ja'far b. Muhammad al-Sadiq, d. 765 (see Tabataba'i 1984). Each of the schools produced biographical dictionaries that constitute important historical sources on the lives of muftis and other jurists and specify the names of teachers, texts studied, students, writings, and positions held.

One of the earliest fatwa collections, the Kitāb al-Nawāzīl compiled by Abu Layth al-Samarqandi (d. 983), contains fatwas issued by a wide range of Hanafi jurists. Subsequently, it became more common for the students of a single jurist to collect fatwas issued by their master and arrange them according to legal categories. Thus, the fatwas of al-Natîfî (d. 1054) appeared as the Majma' al-nawāzīl wa'l-wāqi'āt, and those of Qadîkhân (d. 1195) as Fatawâ Qâdîkhân, to mention only two of the most famous Hanafi collections. As the titles of these two texts indicate, the terms “fatawâ” and “nawāzīl” (cases) were used interchangeably to signify legal opinions issued by jurisprudents (Encyclopaedia of Islam, 2nd ed. 1992, s.v. Nâzīla).

Some geographic regions have historical associations with particular schools of legal thought. In the Islamic West (Andalusia and North Africa), the Maliki school prevailed (see Chapters 3, 4, and 8 in this volume). Among the early Maliki collections are the fatwas of the Cordovan mufti Ibn Sahl (d. 1093), collected as the Kitâb al-Nawâzîl (see Azemmouri 1973), and those of Ibn Rushd (d. 1166), known as Fatawâ Ibn Rushd. Arguably the single most important collection of Maliki fatwas is the Kitâb al-Mîyâr of Ahmad al-Wansharisi (d. 1508), which, like most classical collections, is arranged according to the standard categories of Islamic law. But whereas other collections contain the relatively limited output of individual muftis living in a particular time and place, the Mîyâr contains approximately six thousand fatwas issued by hundreds of muftis (including some thirty issued by the compiler himself) who lived between 1000 and 1496 in the major cities of Ifriqiya, the Maghrib, and al-Andalus. This massive corpus has been used by historians as a source for social, economic, and religious history (Brunschvig 1940–1947; Idris 1962; Kably 1986; Lagardère 1990) and, to a lesser extent, for legal thought and practice (Powers 1990a, 1990b, 1992, 1993).

The emergence of the fatwa collection as a discrete literary genre points to the increasingly important role played by muftis in the judicial process. Islamic legal doctrine generally encourages qadis to consult with legal experts before issuing a judicial decision (hvkm), especially in difficult, unusual, or sensitive cases (al-Khassaf 1978:105), such as those involving the possible imposition of the death penalty (Powers 1993:94–95). This practice manifests itself most clearly in the Islamic West, where judicial advisers (mushâwârîn) customarily were attached to each court. These advisers, who constituted the qadi's consilium (shûra), issued fatwas at the request of judges, and the institution of the shura became an essential feature of Maliki
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judicial administration in al-Andalus and the Maghrib. Although formally appointed by the caliph or emir, judicial advisers often were chosen directly by individual qadis (Tyan 1955:251-253; Marin 1985a; Powers 1990a:240, 253). The primary function of these mushawarun was to insure that Islamic legal standards were being applied in the courts, and they accordingly played a key role in the process of Islamic judicial review (Powers 1992). In addition, they issued fatwas on policy issues at the request of the political authorities.

Little has been written about the activities of muftis in the central Islamic lands in the period between the eighth and the twelfth centuries, although numerous sources exist to fill in this gap. We are somewhat better informed about the Mamluk period (1250-1516) in Egypt and Syria, although even here the activity of futa has yet to be studied systematically (see Tyan 1960:224). Under the Mamluks, futa was largely a private activity that was performed independently of state control (see Chapters 6 and 7 in this volume). The sole prerequisite was the possession of the necessary moral and intellectual qualifications, as confirmed by established jurists. Private muftis issued written fatwas in response to requests from the individual parties to a dispute and from qadis. It was not uncommon for muftis to attend shari'a courts where qadis might consult with them before issuing their judgments, especially in difficult cases. But the Mamluks did not appoint muftis to the qadi courts, although they did appoint a relatively small number of muftis to serve in the magālim tribunals, special courts of justice established by the sultan and his governors (Tyan 1965:866; Nielsen 1990:933-935). The Mamluk sultans also seem to have employed a small number of muftis who advised them on matters of policy, a function that may have given rise to the office of shaykh ul-islam under the Ottomans, and they appointed muftis to reinforce their political authority in the principal cities (Gibb and Bowen 1957, 1:2:134-135).

The activity of futa during the Ottoman period (1516-1918) is well documented in several important studies (Kramers 1934; Gibb and Bowen 1957, 1:2:133-138; Walsh 1965; Heyd 1969; Krüger 1978; Repp 1986; Johansen 1993). Initially Ottoman muftis acted in a private capacity and were independent of the state. As the state expanded and developed into an empire, Hanafi legal doctrine was adopted and muftis gradually were incorporated into an increasingly centralized judicial administration. Beginning in the reign of Murad II (1421-1451), a single mufti, designated shaykh ul-islam, came to be recognized as the ultimate source of authority in matters relating to the shari’a (Walsh 1965:867). By the time of Selim I (1512-1520), the shaykh ul-islam exercised considerable moral influence in the capital city of Istanbul. These developments culminated in the reign of Sulayman (1520-1566), under whom the shaykh ul-islam became respon-
sible for a complex hierarchy of jurists scattered throughout the empire. As the demand for fetvas (the Ottoman Turkish form of fatwa) increased, the office of shaykh ul-islam underwent a process of bureaucratization. The sultan established an official department for issuing fetvas, with a professional staff headed by the fetva supervisor (fetvâ emîni). The efficiency of this department is reflected in the report that in the sixteenth century, the shaykh ul-islam issued an average of 350 responses to inquiries, twice weekly; Abu al-Su‘ud, who served as shaykh ul-islam from 1545 to 1574, is reported to have claimed that on at least two occasions he wrote more than 1,400 fetvas in a single day (Heyd 1969:46). The fetvas issued by the shaykh ul-islam were systematically recorded in registers, and those issued by certain distinguished shaykhs, such as Abu al-Su‘ud, were collected in book form.

Sensitive to the legitimizing function of a fetva, the Ottoman Sultans customarily would not proceed with any important decision relating to either foreign or domestic policy without first securing a legal opinion from the shaykh ul-islam. In 1516, Selim I requested a fetva from ‘Ali al-Jamali authorizing an attack on the Mamluks of Egypt; in 1570 Selim II obtained a fetva from Abu al-Su‘ud authorizing the Ottoman armies to attack the Venetians. Similarly, the consumption of coffee was made licit in a fetva issued by Abu al-Su‘ud; the operation of a printing-press was authorized in a fetva issued by ‘Abd Allah Effendi in 1727; and the nineteenth-century legal and administrative reforms embodied in the Niżām-i Jâdîd were given legitimacy by a fetva issued by Es‘ad Effendi (Kramers 1934, 4:277).

Within the empire, there was considerable variation in the activity of muftis located in Istanbul, in the Anatolian and European provinces, and in the Arab provinces. For example, the shaykh ul-islam generally did not cite any legal authorities in his fetvas, which tended to be brief and often consisted of merely “yes” or “no” (see Chapter 11). Provincial muftis, on the other hand, did support their views with citations from earlier legal authorities and texts (Heyd 1969:45). Two of the most important collections of Ottoman fetwas are provincial texts: Ibn ‘Abidin’s abridged version of the fatwas of the Damascene mufti Hamid al-‘Imadi, entitled al-‘Uqûd al-durriyya fi tanzîh al-fatâwâ al-hâmidîyya (1883), and the fatwas of the Syrian mufti Khayr al-Din al-Ramlî, compiled by his son and entitled al-Fatâwâ al-khayriyya li-nafî al-bâriyya (1883); on the latter, see Chapter 10. Further, there appears to have been a sharp difference in the status and function of muftis in different parts of the empire. In the Anatolian and European provinces, muftis generally were not members of the ‘ulama’ class but rather were local elders, holding no official position, who were called on to confer authority on judgments issued by qadis, who frequently were outsiders; in the Arab provinces, on the other hand, muftis tended to be
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scholars appointed by the shaykh ul-islam and recognized by the local authorities as the chief religious and judicial officers (Walsh 1965:867).

Further east, in Iran, Central Asia, and South Asia, the institutional history of futya is not well documented. In particular, we are poorly informed about the function of muftis in Shi' i circles, including Twelver groups located in Iran (see Chapter 22) and southern Iraq, the Caucasus, and India (see Chapter 14). To the tension familiar in the Sunni world between the interpretive authority of the jurists and the temporal authority of the state (see, for example, Ibn Khaldun 1958, 3:314) is added, among Twelver Shi'is, the issue of “deputed authority” during the occultation (ghayba) of the Imam (Calmand 1991a:549-550). And in addition to concepts of juristic preeminence (riyasa) common to both Sunni and Shi 'i jurists, the latter elaborated a series of specialized notions of authority and hierarchy, culminating in the title of marja'-i taqlid. This term refers to a single, typically private jurist “who is to be considered during his lifetime, by virtue of his qualities and his wisdom, a model for reference” (Calmand 1991a:548).

Although the precise historical origins of the institution are unclear, in more recent times the marja'-i taqlid has been responsible for guiding his followers by issuing fatwas, which are complemented by other, fatwa-like genres, including both practical treatises (risala-yi 'amaliyya) and works intended to clarify problems of daily life (tawdih al-masa'il). Together, these genres constitute the distinctive discursive context of the high-level Shi'i fatwa (Calmand 1991a:554; Tabataba'i 1984:60). Among the more than fifty fatwa collections of the Ja'fari school listed by Tabataba'i (1984:95-100), two have acquired particular importance in contemporary times. As part of a characteristic orientation toward such authoritative works, leading twentieth-century jurists have written marginal glosses, to indicate slight differences of opinion, on the collected fatwas of al-Yazidi (d. 1919), al-`Uruwa al-wuthqä (in Arabic), and of al-Burujirdi (d. 1961), Tawdih al-masa'il (in Persian).

In Safavid Iran (1501-1722), Twelver Shi' ism became the state religion, and jurists occupied a range of positions, some of which may have included public fatwa-issuing functions. Although the office of shaykh ul-islam under the Safavids appears similar in many respects to its Ottoman counterpart, it is uncertain whether such officials issued fatwas. In Timurid Central Asia, however, an official bearing this title was in charge of all religious matters, including futya: “no legal document or fatwa could be issued without his signature” (Ando, 1995). Among other important Safavid religious officials, the sadr has been characterized as “similar to the mufti of the Turks” (Chardin, cited in Minorsky 1943:111), while in pre-modern India an incumbent sadr was described as “the mufti of the guarded territories [mufti mamalik-i mahrusa]” (Blochmann 1939:284).
Shi‘is generally use the terms “mujtahid” (practitioner of ijtihad) and “faqih” (legal specialist) in a manner synonymous with “mufti” (see Sangilaji 1335/1916:18; Calmard 1991b:295–304). Among the Twelvers, the Akbaris and the Usulis were contending subschools: the former reject ijtihad outright; the latter advocate ijtihad and have been predominant for the last 300 years (Tabatabai 1984; Calmard 1991b). Other Shi‘i subschools include the Twelver Shaykhis (Chapter 13) and the non-Twelver Zaydis of Yemen (Chapter 28).

In the Indian subcontinent and Central Asia, the Hanafi school of Sunni Islam predominated (see Chapters 15, 16, 17, and 21). Although several contemporary scholars (e.g., Ahmad 1941; Qureshi 1958) treat muftis as an integral part of the pre-modern Indian judicial system, suggesting that they were attached to the qadi courts at all levels, this conclusion is not borne out by the primary sources (Masud 1984). Husaini (1952:203) and Ibn Hasan (1967:315) observe that although muftis are mentioned frequently in the sources, they were not regular officials, and judges could seek legal opinions from any well-known scholar.

In this region, the term “fatwa” often denoted an authoritative and accepted opinion of the Hanafi school, not necessarily an opinion issued in response to a question. Pre-modern Indian fatwa collections bear the names of rulers, indicating the status of these texts as authoritative opinions potentially enforceable in state courts. Of eleven major Indian fatwa collections cited by Bhatti (1973:30), the more important are the Fatwâ Ghiyâthiyya of Da‘ud b. Yusuf, dedicated to Ghiyath al-Din Balban (1265–1287); the Fatwâ Qarakhâni of Sadr al-Din Ya‘qub Muzaffar Kirmani, compiled in question-and-answer form by Maqbul Qarakhan, on the order of Sultan Jalal al-Din Firuz Shah Khilji (1296–1295); the Fatwâ Tâtârkhanîyya of ‘Alim b. ‘Ala’ (d. 1384), dedicated to Amir Tatarkan, who solicited the compilation at the behest of Sultan Ghiyath al-Din Tughlaq (1320–1325); and the Fatwâ Bâbarî or Zâhirîyya of Nur al-Din al-Khâwfi, dedicated to Sultan Zahir al-Din Babur (1483–1530), who ordered its compilation. Such sources are utilized in a recent historical study of public endowments in Central Asia (McChesney 1991).

Also listed by Bhatti and of singular importance is al-Fatwâ al-‘Alimgiriyya, which ranks next in authority to the Hidâya, the leading doctrinal law book of the Hanafis (both texts were translated into Urdu and English and were used in colonial British courts). This famous collection, assembled by a committee of forty scholars headed by Shaykh Nizam of Burhanpur (d. 1679), was undertaken at the command of the Mughal emperor, Awrangzeb ‘Alamgir (1618–1707). It contains a systematic arrangement of authoritative Hanafi doctrine, which was previously scattered in a number of legal works (Ansari 1965). Technically, the collection mostly comprises legal doctrine
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(fiqh). Strictly speaking, it is not a fatwa collection, for it neither addresses specific questions nor takes the form of answers to questions. However, in a usage specific to Central Asia and India, a work was characterized as a “fatwa” collection if it concentrated on issues that arose in practice. Such a work’s specific association with the issuance of fatwas derived from the fact that it represented authoritative Hanafi doctrine (al-muftā bihi) on every subject for which a fatwa might be issued. As Schacht has observed (1971:477), the two distinctive features of Indian fatwa collections are state sponsorship and authoritative status (in his view, the Indian “fatwa” collections should be considered systematic works of Islamic law).

Adab al-Mufti

Turning from the historical diversity of institutional forms taken by the muftiship, we now examine the basic identity of the mufti, the formal requirements of the position, and the character of the interpretive relation between muftis and questioners. These matters have been the subject of systematic thought on the part of Muslim social and legal theorists. The usul al-fiqh literature provides standard discussions of the qualifications and status of the mufti, defined in connection with the key activity of legal interpretation. In addition, a small number of works treat the specialized subject of adab al-mufti, which elaborates on the detailed features of the mufti’s position and on the processes of the interpretive interchange. Although the adab al-mufti treatises provide an extensive treatment of the structures and functions of the muftiship, they describe an institution that is fully mature, timeless, and highly ideal in character, paying little attention to historical developments or to the actual circumstances of muftis in specific local settings. An analogous and better known genre concerned with the judgeship, the adab al-qādī literature, sometimes touches on the role of the mufti, but mainly to distinguish it from that of the judge. In a unique work that integrates aspects of these two specialized fields, Shihab al-Din al-Qara’i (d. 1285) provides a synthetic analysis that compares muftis and judges and elucidates the conceptual differences between fatwas and judgments (al-Qara’i 1967; see also Jackson 1991, 1992). Finally, as several of the chapters in this volume demonstrate, analytic statements and brief typologies of muftis and fatwa giving occasionally occur in the fatwas themselves.

As is true of the works on the judgeship, the adab al-mufti treatises typically open with a discussion of the countervailing significance and peril of the position (see, for example, al-Nawawi 1988:13–14; al’Amili 1988–1989:136–137). These dual qualities consist, on the one hand, of a firm societal obligation (fard kifaya) to produce interpreters of the shari‘a, and on the other, an acknowledgment that engaging in this type of interpretation
inevitably exposes the mufti to the possibility of (divinely punished) error. On the positive side, the mufti is identified as “the heir of the prophets” and “the signatory for God Almighty” and as standing “between God Almighty and His creatures” (al-Qasimi 1986:44). Al-Shatibi (n.d., 4:244) regards the mufti as a legislator (shari'i), a title otherwise reserved for the Prophet Muhammad. In general, it is agreed that a mufti’s “reward is great,” as indicated by the well-known hadith “If an interpreter is right he receives two rewards; if he is mistaken he receives one reward.”

On the other hand, the adab al-mufti treatises mention several types of caution (taḥdīb), including qur'anic verses that warn generally against providing false information; prophetic hadith, such as “The most reckless of you in issuing fatwas is the most sure to go to Hell” (Ibn Khaldun 1958, I:452); and cautionary statements attributed to important early practitioners, including the founders of major Sunni law schools. When it was observed that he did not respond to a questioner, al-Shafi'i is said to have remarked that he would not do so “until I know whether silence or a response is better.” Ahmad b. Hanbal was reported to answer “I don’t know,” even in matters in which he was aware of the various possible positions. Commenting on how few his responses were in comparison to the number of questions posed to him, Malik reportedly observed, “He who responds to a matter should, before answering, reflect upon Paradise, Hell, and his own salvation, and [only] then respond.” Reticence on the part of the jurist became a mark of qualification and integrity (al-Nawawi 1988:16).

The adab al-mufti treatises generally distinguish several levels of competence in relation to ijtihad, or interpretation (see Chapter 2), the highest being the absolute (mutlaq) or independent (mustaqill) mufti. The status of mujtahid, proudly claimed by some great Muslim jurists but cautiously declined by others, represents the fullest realization of shari'a knowledge and its associated intellectual skills. It is the absolute, independent mujtahid who fulfills the societal obligation to produce interpreters of the shari'a. This exemplar engages in unfettered ijtihad based on knowledge of the following sources: the Quran (especially the legal verses, including the abrogating and abrogated verses, and the specific and general); the Sunna, together with the biography of the Prophet; hadith reports, especially those relating to legal matters, and the biographies of transmitters; the fiqh literature, including both its applied branches (furū') and its theoretical roots (usūl), and its areas of consensus (ijma') and disagreement; and the Arabic language, including grammar, syntax, and the related linguistic sciences. The basic interpretive techniques of the independent mufti combine the capacity to identify relevant shari'a source texts, such as qur'anic verses or prophetic hadiths, with various methods of reasoning or derivation from those texts, to ascertain the legal assessment or rule (hukm) applicable to
the specific matter in question. At this level, it is strictly forbidden to assume the posture of taqlid, that is, to follow the opinions of others or of an established school of law.

Although documented for earlier periods (Hallaq 1984), in later periods this ideal status was considered by some Sunnis to be unattainable. The typical mufti, in any case, tended to have more modest qualifications, and the treatises accordingly discuss lower levels of “nonindependent” or “affiliated” (muntasib) muftis and their respective characteristics. Below the top level of the independent mujtahid, a mufti was classified as muqallid (practitioner of taqlid), an interpreter who responded within the framework of an existing school (madhhab) of shari'a thought, using as his source texts the leading opinions of that school. With regard to this level, the adab al-mufti treatises emphasize the proper acquisition of the requisite knowledge through the basic instructional mechanism of memorization, with the principal texts being the authoritative manuals of the particular schools. Whereas the independent mufti interpreted directly from the sacredly constituted original sources, the Quran and Sunna, the nonindependent mufti worked from the humanly authored texts of school founders and leading disciples. In responding to questions posed about the shari'a, the independent muftis could create opinions recognized as novel and original. By contrast, affiliated muftis either selected from among or simply transmitted already existing opinions.

Employing the fatwa medium itself, Ibn Rushd responded to a question that arose among twelfth-century Maliki jurists of Tangier concerning the qualifications for muftis. In his fatwa he offers a three-tiered typology, beginning, at the lowest level, with the simple memorizers of Maliki doctrine, followed by those who, in addition, were able to distinguish whether opinions were in conformity with the school, and finally, at the highest level, by those who could derive rules from the original sources (cited in Powers 1993:96–98). Beyond such elaborations of ideal levels, Muslim scholars occasionally comment on the actual capacities of historical muftis. “In our days,” Qadi Khan (1893, 1:2) writes in the twelfth-century subcontinent, “when a mufti of our [Hanafi] school is asked about a problem or questioned about an event, he should follow the school and issue his fatwa according to the doctrines of our jurists.” A thirteenth-century adab al-mufti theorist, al-Nawawi (1988:26), notes in passing that some assert that “after the era of al-Shafi'i [d. 820] no independent muftis have been found.” Another thirteenth-century mufti, al-Qaraafi (1967:29), refers to the mufti muqallid as the type existing “in our times.” A late seventeenth-century treatise from the subcontinent states that, technically, “what is called a fatwa in our days is not in fact so, it is rather quoting the statement of a mufti [mujtahid] for the benefit of the questioner” (quoted in Masud 1984:146;
cf. al-Nawawi 1988:41). As Heyd (1969:54) reminds us, distinct levels of fatwa giving were required in practice: "The fatwa in Islam not only served as a means to explain and apply the law in complicated cases; it was also used simply to state it for people who were not in a position to look up a lawbook themselves."

A separate section of the adab al-mufti treatises sets forth the formal "conditions" (shurūt) required of candidates for the position. The specifics of these conditions highlight an initial set of differences between a mufti and a judge. In one such text (al-Nawawi 1988:19) the conditions are that the candidate "be an adult, Muslim, trusted, reliable, free of the causes of sin and defects of character, a jurist in identity, sound of mind, firm in thought, correct in behavior and derivation, [and] alert." The passage continues: "Equally [suitable] are a free man, a slave, a woman, a blind man, and a mute—if he can write or if his gestures are understood." Beyond the generally more stringent moral requirements and higher intellectual standards of the position, the mufti was distinguished from the judge in that the incumbent could be, in theory, a woman or a slave.12

Other distinctive features of the mufti’ship emerge from technical contrasts with the judgeship. Although both muftis and judges interpret the shari’a, their respective positions are defined by the specific status of their interpretive acts. Al-Qarafi (1967:30-31) provides a useful differentiation of the mufti’s fatwa and the judge’s judgment. Whereas the mufti’s interpretive work follows adilla, that is, indications in textual sources (such as the Quran and hadith), that of the judge follows evidential hijaj, which include testimony, acknowledgment, and oath. As a consequence, fatwas and judgments represent different orientations to the relationship of law and fact. In a fatwa, the factual description, as provided by the questioner, is taken as given, as the point of departure for an interpretive solution that engages the sources of law (or the authoritative opinions of a particular school). In a judgment, competing factual versions put forward by the litigants are themselves the crux of the problem, and sorting them out is the judge’s central task. Schematically put (somewhat in the manner of al-Qarafi), fatwas mainly provide determinations of law, assuming a set of facts, while judgments mainly provide determinations of fact, assuming a set of laws.

Fatwas and judgments are also distinguished in ways that derive, in part, from the nature of an appearance before a mufti as opposed to a qadi. The basic circumstances of format—individuals appearing singly to pose questions to the mufti versus pairs of adversaries coming before the judge—are associated with a fundamental difference in the status of the ensuing judicial act: a fatwa is not binding, while a judgment is. The binding (ilzām) quality of the judgment, which is to be expected of formal court rulings, is further defined by means of a linguistic analysis (see especially al-Qarafi 1967:46-
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In this perspective, a judgment is a "creative" (insha'ī) or performative act, a quality it shares with other categories of legal speech acts, such as testimony and binding contractual utterances. Very different as a discursive act is the "informational" (khabari) or communicative nature of the fatwa. In this respect, a mufti is comparable to a transmitter of hadith (al-Nawawi 1988:19; al-Qasimi 1986:53) or to a translator (al-Qarafi 1967:29, 84).

Whereas a judgment entails direct action, a fatwa provides access to shari'a knowledge in the form of a considered opinion. Whereas a judgment carries the presumption of finality, a fatwa enters a world of competing opinions. The authority of a judgment is narrowly specific (ahm), applying only to a particular case and its participants, while that of a fatwa is general (‘umm), potentially extending beyond the circumstances of the given questioner to govern all equivalent cases (Ibn al-Qayyim al-Jawziyya 1969, 1:38; see Ibn Taymiyya 1381/1961, 3:238–240). Accordingly, while copies of judgment texts issued in court cases were entered into local shari'a court records, there was no concept of precedent entailed in such rulings, and thus no system of publishing or referencing. Broader in both address and applicability, important fatwas, by contrast, frequently were collected in book form and cited across space and time. Despite their nonbinding and informational qualities, then, fatwas often had a significant impact on the law, and it is in this light that the burden of the mufti as a human interpreter of God's law may be seen as even greater than that of the judge (see Ibn al-Qayyim al-Jawziyya 1969, 1:38).

While the terms of a judge's jurisdiction, specified as part of the delegation of authority (wilaya) in his appointment, typically included hearing particular cases arising in substantive areas of the shari'a, such as transactions (mu'āmalat), injuries (jinaýāt), and quranic crimes (hudūd), what was the corresponding terrain of the mufti? Al-Nawawi (1988:24) considers the absolute mufti to be competent in "all the chapters of the shari'a," but he also mentions the (contested) notion of a specialized mufti competent "in a particular chapter," such as inheritance. Al-Qarafi (1967:23–24) makes an interesting distinction: a judge gives binding rulings only with respect to conflicts that entail interests of "this world" (al-dunyā), not those of "the hereafter" (al-akhira). In the different, informational medium of their fatwas, by contrast, muftis address questions pertaining to both categories, irrespective of their basis in a conflict. According to al-Qarafi (1925–1926, 4:48), all matters connected with ritual law (iḥādāt), including ablutions, prayer, tithes, fasting, and pilgrimage, fall exclusively within the domain of the mufti. In speculations on the possibility of judges issuing fatwas, it is agreed that this could only occur in connection with nonjusticiable matters, such as rituals (al-Nawawi 1988:22; Jad al-Haqq 1980, 1:22). In certain regional legal cultures, muftis have given responses in domains lying well
beyond the conventional boundaries of the fiqh, including such fields as mysticism. Masud (1984:143,150) argues generally that the scope of fatwas is considerably broader than that of fiqh and is best compared to the breadth of subject matter encountered in the hadith. Some early theorists would limit the response range of muftis, however. Al-Nawawi (1988:65–69), for example, identifies kalām (theology) as a problematic field. He reports that some muftis responded to theological questions by saying, “This is not included in our knowledge,” “We did not sit [to give fatwas] for this,” or “A question other than this I will take.” Al-Nawawi (1988:69–70) also cites two earlier adab al-mufti writers who maintained that the mufti should refer questions relating to qur'anic exegesis (tafsir) to specialists in exegesis, unless they pertained directly to legal rules (aḥkām). In addition to their regular shari'a-oriented activities, Ottoman muftis also addressed a number of subjects, including sultans’ firmans and matters relating to taxation, crime, agriculture, and procedure that were regulated by state law (qānūn).

Both judges and muftis are strictly forbidden to accept bribes (rashwa); judges may not accept gifts of any kind, since their rulings have binding force. While official muftis were salaried or received fees (Heyd 1969:52–53), the prevailing conception concerning private muftis was that they should give fatwas for free (Ibn al-Qayyim al-Jawziyya 1969, 2:262; al-Fatāwā al-ʻĀlamgirīyya, cited in Masud 1984:149, cf. 140; Zafir al-Din 1962, 1:93 ff.), just as teachers ideally were to provide instruction without receiving payment. Of his work issuing fatwas, al-Shawkani (d. 1834) stated, “I acquired knowledge without a price and I wanted to give it thus” (cited in Messick 1993:145). One solution to providing appropriate income for muftis and teachers was to establish pious endowments for their support. The adab al-mufti writers such as al-Nawawi (1988:39–41; see Masud 1984:149) discuss several issues relating to income, including support from the treasury (bayt al-māl), fees collected from questioners, collective support by the community, and gifts.

Questions and Answers

Behind the encounter of mustafri and mufti, the posing of a query and the giving of a fatwa, lies a complex social and interpretive relation. Entering into this important relationship is not always a simple matter. As noted earlier, from the perspective of the jurists, individuals qualified to be muftis are sometimes reluctant to serve or else doubt their own qualifications. Malik is reported to have said, “I did not issue fatwas until seventy individuals swore to me that I was qualified” (cited in al-Nawawi 1988:18). It was in theory the Great Imam, or caliph, the spiritual-temporal leader of the Muslim community, who appointed (public) muftis (al-Qarafi 1967:32; Ibn Khaldun 1958, 1:451). In his adab al-mufti treatise, al-Nawawi (1988:17–
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18) briefly mentions how the Imam ought to go about making appointments and regulating existing muftis. “To ascertain if an individual is competent for al-futūḥ, the Imam was to make inquiries among the scholars of his [the candidate’s] era.” Muftis found to be incompetent are to be officially prohibited from issuing fatwas and punished if they persist (see Tyan 1965:866; Schacht 1964:126). On the private side, although muftis do not receive any specialized training, their activities can be regulated by teachers through the granting of licenses to teach and issue fatwas (al-Qalqashandi 1919, 14:322ff.).

The questioner confronts the problems of finding a mufti and of deciding which of several to approach. Like the caliph, but from a very different societal position, the questioner may have to make inquiries and even conduct “research.” Travel might be necessary: “For a single question, many in the earlier generations used to journey days and nights,” al-Nawawi (1988:71) remarks. The questioner’s task is to assess a potential mufti’s scholarly reputation, ideally basing his or her choice on secure public information as to the qualifications of the individual, not just for knowledge or teaching but specifically for fatwa giving. An uneducated questioner faces an obvious difficulty in evaluating information about scholarly credentials. The treatises urge caution in relying on the views of laymen about juristic qualifications and also raise the possibility of misrepresentation (talbīs). The solutions offered to the questioner include relying on his or her own sense of the mufti’s piety (diyāna) or on information provided by a just person (ādīl). However, since muftis typically are well known, such concerns are mainly theoretical in nature.

Equally theoretical, but more directly relevant to understanding the social relation of knowledge and power, is the conceptual distinction between the mufti and the mustaftī, involving diametrically opposed statuses with respect to the key activity of shari’a interpretation. In a concise usūl work, al-Juwaini (1906:38) says that while the mufti must be a qualified interpreter and cannot be a doctrinal follower (muqallid), the questioner cannot be an interpreter and must be a follower. Al-Nawawi (1988:71) describes the questioner as follows: “Anyone not at the level of the mufti with respect to the shari’a rules asked about is a questioner; a doctrinal follower of the one who gives him a fatwa.” Further, in the event of an occurrence necessitating knowledge of a shari’a principle, such an individual is formally obligated to seek an opinion. Especially in pre-modern societies, this sharp differentiation of interpretive roles echoed wider hierarchical differences between the scholar and the uninformed (jāhil) or nonspecialist (āmmī). In diverse historical settings of restricted literacy and restricted control of the essential cultural capital that shari’a knowledge represents, the relation between mufti and questioner is a relation of power.

As an expression of the social honor vested in muftis, they are to be
approached with correct comportment and the appropriate gestures of deference and respect (al-Nawawi 1988:83; see also Chapter 21 in this volume). Since muftis should be exemplary moral figures, a sinner (fasiq) is disqualified from the post. Al-Shatibi (n.d., 4:246, 261) understands the mufti to be a guide and a leader, and he therefore considers the mufti’s personal actions to constitute fatwas. Specifically, a mufti’s own practice must not be contrary to the fatwas he issues, nor should it contradict the doctrines of his school of law. At the fatwa-giving session (majlis), the mufti must be attentive to his appearance and demeanor. Proper dress (al-Qarafi 1967:271) and a dignified and calm manner are required. Like judges, muftis should not engage in interpretive work when their physical states are disturbed by anger, hunger, or fatigue. Just as judges are to strive for equality of treatment of the adversaries who come before them, muftis are to answer questioners without preference and in the order in which they arrive. Implicitly acknowledging that fatwas frequently are issued in connection with adversarial disputes, al-Nawawi (1988:54) cautions muftis to avoid favoritism.

While interest in shari’a interpretation inevitably gravitates toward the fatwa and the potential exercise therein of ijtihad, the interpretive process between mufti and questioner begins with the posing of the question. Questions are of great significance, because they are the means by which concrete concerns and quandaries are formally brought to the attention of qualified legal specialists. Due to the access they provide to the “actual” problems of specific societies, questions posed to muftis are important sources for research. Far from representing simple windows on reality, however, many questions are themselves carefully constructed, containing motivated and selective renderings of the facts and issues. The variations on this theme are many, including purely didactic questions, drafting by the scholarly or literate for the untutored, and, at the extreme, trick questions, or a series of slightly differing questions, designed to elicit a desired response (see Chapter 6). In the highly institutionalized Ottoman case, where the intention was to facilitate brief replies, often a simple “yes” or “no,” the reformulation of the question by official scribes “became a decisive stage in the preparation of the fatwa” (Heyd 1969:49).

It is a characteristic feature of fatwa giving that the question not only initiates the mufti’s interpretive activity but also constrains it. As muftis must answer according to what is asked, their field of response is largely determined by the formulation of the question. Since the mufti is not an investigator of the facts, these are taken as given. In addition, while the issues involved ought to be ones that have actually arisen and should not be purely hypothetical or imaginary (Heyd 1969:53-54; Masud 1984:137, 148), questions are commonly posed in general terms, using the names of fictional individuals, such as Zayd and ‘Amr (Heyd 1969:41), or simply “a man” or
"a woman." Such usage of generic descriptions and fictional names distances the query from the particular evidential circumstances of the questioner. Yet in many settings, the mufti is confronted personally by the questioner, whose name appears below the text of the question. In this distinctive juxtaposition of the abstract and the actual, questions delimit the fatwa as a genre of legal response.

Before getting into the process of formulating an answer, the mufti must comprehend the question. Crucial to this comprehension is knowledge of local customs and colloquial language (see al-Qarafi 1967:231–253). Changing linguistic conventions and differences between a questioner’s manifest expression and actual intent are typical problems. Unlike the judge, the mufti is instructed not to proceed on the basis of his own “knowledge about the real situation,” unless this is directly reflected in the formulation of the question (al-Nawawi 1988:46). If uncertainty regarding the question persists, the mufti may ask for elucidation or append a caveat to his response, such as “this [is the answer] if the matter is thus” (al-Nawawi 1988:45; see al-Wansharisi 1981–1983, cited in Powers 1993:91). Ottoman opinions were given by muftis “according to what [the questioners] made known [to them]” (Heyd 1969:51). Before delivering the fatwa to the questioner, the mufti should read his response to, and seek the advice of, qualified individuals present with him at the fatwa-giving session (al-Nawawi 1988:48).

In the event that a mufti has no answer, a model fatwa-giving license presented by al-Qalqashandi (1919, 14:325) exhorts the incumbent not to “refrain from saying, concerning what he does not know, ‘I do not know.’” On the other hand, both public and private muftis regularly respond to routine informational questions. Heyd (1969:54) writes, “A large number of Ottoman fatwas deal with very simple legal questions the reply to which is obvious and free from any doubt.” Part of the fatwa-issuing work of many noted scholars typically is devoted to the giving of ordinary opinions to private questioners. In nineteenth-century Yemen, al-Shawkani refers both to his major fatwas, which were collected and preserved as a book, and to his “shorter” fatwas, which he said “could never be counted” and which were not recorded (cited in Messick 1993:150). As grand mufti of Egypt at the turn of the twentieth century, Muhammad ‘Abduh “revived a moribund practice of granting opinions to private individuals on their problems of belief and practice, and in this regard he issued a number of controversial fatwas” (Kerr 1966:104).

Thus far, a written form for the question has been assumed; oral communication involves other considerations. Since this form of delivery leaves no documentary trace, the historical incidence of oral questions and answers is unknown. The single reported instance concerns the extremely bureaucr-
tized Ottoman system, where in the late period questioners could request an oral fatwa from a specially designated functionary (Heyd 1969:47). The earlier adab al-mufti writers discuss some implications of oral exchanges between mufti and questioner, and verbal and written fatwas are presented as options (al-Nawawi 1988:44; see al-Qalqashandi 1919, 14:325). One theoretical justification of a mufti’s income invokes the difference between obligatory oral fatwas, given for free, and supplemental written fatwas, given for a fee (al-Nawawi 1988:39; al-Fatāwā al-‘Alamīrriyya, cited in Masud 1984:149).

In general, where reduction to writing limits the scope of inquiry by restricting the mufti’s view of the facts, oral communication can be opened-ended. The treatises specifically recommend use of the spoken word to achieve at least a minimal level of comprehension when this is a problem (al-Nawawi 1988:46, 63). Recourse to the spoken medium is also helpful in a number of difficult situations. “If it becomes apparent to the mufti that the answer goes against the objective of the questioner, and if [the questioner] refuses to have [the answer] written on his paper, then [the mufti] should limit himself to an oral reply” (al-Nawawi 1988:54). In the delicate situation of a mufti’s being shown an inaccurate (written) fatwa obtained from another mufti by a questioner who refuses to have it corrected, a recommended option is to respond orally (al-Nawawi 1988:61; see Chapter 6 in this volume). Advocating an oral response to laymen who inquire about extremely complicated or technical issues, al-Qarafi (1967:283) remarks, “The tongue communicates that which the pen cannot, because it is alive while the pen is dead.”

As the chapters in this volume illustrate, actual fatwas assume a variety of local forms, differing in language and literary style, conventions of inclusion and exclusion, and usage of characteristic rubrics. The work of Uriel Heyd (1969) on the Ottoman period remains the most thorough examination of the textual aspects of a single fatwa-giving tradition. At the level of phrase selection, the adab al-mufti treatises provide samplers of appropriate invocations of the divinity (see Heyd 1969:38–39, on the Ottoman da’vet), opening and closing honorifics, terms of address for figures such as the sultan, and formulas for emphasis. They also discuss the mufti’s disclaimer, some version of which, such as allāhu a’lam, “God knows best,” is characteristic of virtually all fatwas.

The adab al-mufti treatises also address issues relating to form and content. Important variations among fatwas derive either from differences among muftis, discussed earlier, or from differences among questioners. In addressing nonspecialists, muftis are to be concise and informal, while in responding to scholars, especially judges, a fuller technical discussion typically is required (see Chapters 5, 15, and 16). Fatwas may consist of
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one-word answers, such as “true,” “false,” and “permitted”; otherwise, in answering laymen, the mufti should convey his opinion in a mode of expression (‘ibāra) that is both clear and correct (al-Nawawi 1988:48). Where some authors do not require the mufti to specify the opinion’s basis (ḥujja, dalīl) if the questioner is a nonspecialist, al-Nawawi (1988:64) says, “It is not objectionable for the mufti to indicate the ḥujja in his fatwa if it is a text that is clear and short” (see also Rashid Rida 1970–1971, 4:1258–1259). Similarly, the mufti is not required to mention his methods of reasoning (ṭariq al-‘ijtihād wa-wajhat al-qiyās wa‘l-istiṣalā)” unless the intended recipient is a jurist (al-Nawawi 1988:64). Another view holds that such citations should be avoided so as to distinguish the fatwa genre from other types of composition (al-Nawawi 1988:65; see also al-Qaradawi 1981:45). As muftis commonly are affiliated with particular schools of law, in some historical settings they cite authors of authoritative works in their fatwas. Qadi Khan (1893, 1:3) states that a mufti muqallid should accept the opinion of “the best jurist” of his school and “attribute his answer to him.” In later Ottoman times, muftis of the capital did not cite authorities, while provincial muftis characteristically did (Heyd 1969:44–45). Together with the recognition of distinct local traditions of Muslim legal writing, technical considerations, such as the status of the recipient, help clarify some of the variation observed within the fatwa genre. A fatwa that does not cite any source text or engage in formal reasoning thus may be seen as intended for a nonspecialist, rather than, as in the view of Weber (1978:797), the work of a judicial oracle. Complex fatwas delivered to scholars and judges, however, are frequently highly implicit in other ways, and challenge us to read for culturally specific styles of argumentation (see Chapter 8).

The material qualities of fatwas as writings also have drawn attention (e.g., al-Nawawi 1988:46–49, 54, 60; al-Qarafi 1967:254–256, 264–266). Beginning with the desideratum of a balanced, consistent, and clear script, ideally using the same pen throughout, the goal is to assure the authority of the written fatwa text. Recommendations as to the physical placement of writing on the paper and, specifically, the danger of leaving open spaces or mistakes and other defects in either the question or the answer address concerns about forgery and legal stratagems. To avoid a potential stratagem (ḥila), the mufti is cautioned not to use two pieces of paper, but to write on either the margin or the back side of the same piece. As handwriting and signature are the authoritative mark of the individual, when they are consistent an opinion can be conclusively identified. While questions often are written out by a scribe or by someone other than the questioner, the fatwa text and the signature must be in the mufti’s own hand (Heyd 1969:42–43). The paper itself, which may contain previous fatwas, is the property of the questioner and should not be taken away or crossed out without the ques-
tioner's permission. In provincial Yemen, questioners present their question to the mufti on a small piece of paper. The mufti answers immediately, in the space left above the question, and then hands the paper back to the questioner, who departs with it (Messick 1993; Chapter 28 in this volume).

If constructing the question is the initial step in the interpretive process, deconstructing the answer is the last. When the questioner does not understand the fatwa, al-Nawawi (1988:63) counsels the mufti to detain him until he does. Frequently, questioners take their fatwas to individuals in the mufti's entourage, or to others, to have them read or explicated (see Chapter 16). Supplementary or follow-up questions, asking for further details or anticipating implications, are also documented in a number of settings (Heyd 1969:43; Chapter 15 in this volume). To the extent that fatwas are contestable (see Chapters 3, 8, and 17), a dissatisfied questioner might approach another mufti for a second opinion, while opponents might seek out different muftis to vindicate their respective positions. Al-Nawawi (1988:36) discusses the legal implications of a fatwa's subsequent revision (see Chapter 16). If the mufti revises the fatwa because it is contrary to the Quran, the Sunna, or consensus, the questioner must be informed (see Jad al-Haqiq 1980, 1:23–24). If the mufti revises the fatwa on other grounds, the old fatwa may still be valid, if based on ijtihad, and there is no obligation to inform the questioner. Once a questioner has been informed of a revision, however, he or she must follow the new fatwa.

Modern Muftis

How have muftis and the issuance of fatwas fared in modern times? Assessments range from a finding of general “obsolescence” (Tyan 1965:866) to arguments for revitalization and a new mission. This volume, which contains a significant variety of “modern” fatwas, issued in nineteenth- and early twentieth-century contexts of colonial rule and reformist debate (see Part III) and in more contemporary times (Part IV), permits a complex, comparative view of continuities and changes. While the specific detail regarding local settings and circumstances is to be found in the individual chapters, some of the broader currents of the developments surrounding modern muftis and their fatwas may be summarized here.

Of the fundamental changes that have had a direct impact on muftis, perhaps none is more important than the transformation in the essential character of knowledge and its means of transmission. Curricular and organizational changes in educational institutions have meant that the shari’a, or fiqh, formerly the centerpiece of advanced instruction and of Muslim knowledge itself, has been largely displaced by a spectrum of “secular” subjects, many derived from Western models. Typically, the study of fiqh
has been removed to Islamic institutes or to specialized law schools, where it competes with offerings in Western-style law. Rather than muftis, lawyers and law professors are the legal professionals now produced by most mainstream educational systems. While muftis inhabited a social world characterized by patterns of sharply restricted literacy and unequal distribution of the essential shari'‘a-based knowledge, contemporary societies are well on the way to generalized literacy (Eickelman 1992) and reliance on a variety of new and specialized forms of expertise. To the extent that the shari‘a remains relevant or authoritative, it is usually in the domain of family law, as recast in codes, an alteration far more consequential than the move to a new framework of numbered articles might seem to indicate. Beginning with the Ottoman civil code (the Majalla) of the late nineteenth century, and continuing in colonial and nation-state contexts, codification powerfully harnessed shari‘a materials, adapting them to the different epistemology and categories of international legal standards. In the process, a key dimension of interpretive authority passed from the hands of individual jurists, including muftis, to the collective bodies of national legislatures.

The situations of modern muftis, both public and private, vary according to the type of overarching legal and political system in which they operate, as well as according to their educational formation. While the extremely elaborate bureaucratic hierarchies associated with the office of the Ottoman shaykh ul-islam no longer exist (the office was abolished in 1924), patterns of formalization and rationalization are nevertheless characteristic of twentieth-century public muftiships found across the Muslim world. “Grand” muftis and muftis of the republic are currently found in a variety of nation-states, with the incumbents usually serving under government appointments and with their activity regulated by legislation. While the establishment of the Egyptian grand mufti dates to the late nineteenth century, state muftis were not appointed until after the middle of this century in a number of other nations, including Saudi Arabia (1953), Lebanon (1955), Malaysia (1955), Yemen (1962), and Indonesia (1975). In some institutional contexts, fatwa giving is now closely associated with religious propagation and guidance activities (da‘wa and irshād). Formal instructional programs and apprenticeships for the training of muftis have been established in institutions such as Azhar University in Egypt and Dar al-‘Ulum in Karachi, which has a specialized two-year program of courses in ifta’ (Danish 1978:772-775; Chapter 16, this volume). On the other hand, the modern era has also seen fatwa giving by individuals, such as Maudoodi, who had no traditional training. Elsewhere, it has been asserted that authority in matters of shari‘a interpretation should no longer be restricted to the ‘ulama’. In some quarters, muftis in particular have borne the brunt of political criticism.

A significant modern organizational development is the appearance of
specialized committees charged with collective fatwa giving. Institutions with titles such as Dar al-ifta' have appeared in many countries (see Chapters 16, 17, 18, 20, 23, 26). In his discussion of the “fatwa organization [hay'âl] in the contemporary age,” Shaltut (1974:14) refers to two such Egyptian institutions, one based at Azhar University. Other notable fatwa committees include that established by the World Muslim League in Mecca, the Fatwa Committee of the Organization of Islamic Countries, and the Council of Islamic Ideology in Pakistan.

While the roles of mufti and judge, and their respective legal products, the fatwa and the judgment, have remained distinct, at times their interrelation­ship has proved quite complicated. This is illustrated for the twentieth century by the assumptions underpinning a procedural code (based on an Egyptian law of 1931) enacted in Lahj (South Yemen) in 1949. Article 100 of this code states, “No qadi [judge] might issue a fatwa in any claim due to be heard (or which had been heard) by any court of law, any fatwa issued contrary to this rule should be entirely disregarded, and no court should regard itself as in any way bound by a fatwa issued before litigation began” (Anderson 1970:33). As was true of a variety of pre-modern historical settings, notably the Andalusian shūra, modern muftis have been attached directly to courts and have delivered opinions in connection with trial proceedings. Contemporary Indonesia (see Chapter 20) offers a variant in which fatwas are issued by the Islamic courts themselves.

Another possible relationship between mufti and judge, and fatwa and judgment, was illustrated by the situation in Iraq before the drafting of the personal status code in the middle of this century. As in pre-modern contexts, such as in Morocco (see Chapter 8), previously issued fatwas were treated by jurists as a source of established legal rules to guide court outcomes. Collections of fatwas “given at different times, in reference to heterogeneous circumstances” (Anderson 1953:44) were considered authoritative and were applied in case rulings by Iraqi judges no longer qualified as mujtahids competent to carry out their own independent interpretations of the law. In contemporary states, the relationship between muftis and court activity depends on the status of shari'a-based law in the national jurisdictions and also on the existence of a formal legislative mandate.

Fatwas have continued to figure at key historical junctures as appropriate vehicles for expressing shari'a views of major political events. When issued at the behest of governments, fatwas have served as the ultimate statements of shari'a principle, defining or supporting general policies. Thus fatwas were obtained at the outbreak of World War I in 1914 (Peters 1979:90–92) and before the Gulf War of 1990 (Chapter 27). As in earlier centuries, an entire branch of modern fatwa activity concerns religious and doctrinal disputes, set in contexts of colonial rule and Islamic reform movements (see
Chapters 12, 14, 17, 19). In very recent years, the fatwa has become a worldwide media phenomenon, especially in connection with the assassination of Anwar al-Sadat and the condemnation of Salman Rushdie (Appignanesi and Maitland 1990; Fischer and Abedi 1990; Asad 1990). In a broader and far less spectacular sense, the fatwas of modern muftis have directly and indirectly registered Muslim reactions to and initiatives in the modern world. New technologies such as the phonograph (Snouck Hurgronje 1915; Masud 1969), birth control policies (Schieffelin 1965; al-Qalqili 1969: "hā"), smoking (al-Shawkani 1969: 47-48; Al al-Shaykh 1979; Calmard 1991: 552), interest banking (Chapter 26), and immigration (Shaltut 1974; al-Qalqili 1969; see also Masud 1990: 42) have all been addressed in fatwas. To back up his statement that his recent collection of 200 Saudi fatwas "should be found in every house," a compiler (al-Shuwadafi 1408/1987-1988: 4) offers examples of relevant topics covered: selling blood, administering medical treatment with alcohol, eating imported chicken, wearing pants and jackets, working in banks, Muslim women going to Muslim and non-Muslim doctors, eating butter from Holland, drinking Coca-Cola, and dealing with nationalization.

Departing from the range of coverage found in older fatwa collections, some recently published volumes, bearing subtitles such as Studies [dirāsāt] in the Problems of the Contemporary Muslim (Shaltut 1974; see also Lemke 1980 and Zebiri 1983), include innovative sections devoted to "social issues" or "social relations." These cover such topics as moon exploration, communism and Islam, religion and development, music and singing, and suicide (Shaltut 1974); minimum wage rates, beer drinking, television watching, and representational art (al-Qaradawi 1982). In the meantime, the relative importance of the old-style fatwa categories appears to be shifting. More than half of the material in collections of fatwas issued by central Middle Eastern muftis such as Makhluf (1965), Shaltut (1974), al-Qaradawi (1982), and Ibn Baz (Ibn Baz et al. 1988) now falls into "religious" categories, that is, ritual law, creed (ʿaqāʾid), and quranic exegesis. Reflecting the smaller place occupied by the shariʿa in many civil law regimes, the formerly prominent transactions (muʿāmalāt) sections are reduced to less than 5 percent of the total in these volumes, while coverage of family law (marriage, divorce, inheritance, and endowments) still represents as much as 25 percent of the fatwas. In sum, while the scope of the modern fatwa appears broader in social address, it has at the same time become more specialized in "religious" issues and, with the exception of the interest maintained in family law, generally less concerned with strictly legal issues.36

Many modern muftis consciously have revised the discourse of their fatwas to accommodate their perceptions of new societal conditions. Echo-
ing a move first seen in the Ottoman Majalla in the last century, in which some usages of the fiqh were replaced by a more widely understood idiom, muftis now tend to utilize more accessible and contemporary language in their fatwas, although they frequently hold to the distinction between laymen (‘awāmīm) and scholars. “We have endeavored to attain simple and clear expression,” writes Makhluf (1965:9). A principle for al-Qaradawi (1982:15) is to “address people in the language of the age.” While many contemporary muftis strive for simplicity and concision, they also are more apt to introduce supporting examples and even comparative material from other religions or philosophies. Reflecting the growth of specialized modern knowledge and disciplines, muftis occasionally must draw on lay experts (Chapter 2.6). Many muftis are concerned about the relevance of their fatwa work. As a consequence, some avoid answering questions lacking in social benefit or contemporary importance, such as questions about the measurements of Paradise (Shaltut 1974:14) or the relative merits of the Family versus the Companions of the Prophet or the createdness of the Quran (al-Qaradawi 1982:18-30). As a relatively “liberal” mufti, al-Qaradawi seeks common ground between contemporary extremes, represented by those “who want to change everything” and those “who want to forbid everything.”

Some contemporary muftis describe their freedom from the constraints of interpretive school (madhhab) doctrine (see Makhluf 1965:9; Shaltut 1974:15; al-Qaradawi 1982:10). Such muftis refer directly to the source texts of the Quran and the Sunna of the Prophet, without citing the positions of the old schools. Al-Qaradawi (1982:11) refers to an equivalent conception of Ibn al-Qayyim al-Jawziyya in identifying his own interpretive work as involving “al-ijtihād al-juṣṭ,” an applied ijtiḥād connected with detailed matters. Addressing the question of the necessity of ijtiḥād, al-Qalqili (1969:“tā’”) states that it is inevitable that muftis will be asked about matters not precisely covered by particular source texts, and that they must then interpretively extract principles from the available sources. For their part, and in a manner parallel to the new panels of judges that replaced the single qadi in some modern jurisdictions, fatwa-giving committees exercise a novel form of collective ijtiḥād (see Masud, 1995).

A more subtle but nevertheless fundamental shift in the way in which muftis operate concerns the media in which contemporary fatwas are delivered. Where the options were formerly handwritten and oral, they now include print and the broadcast media. While the authoritative fatwas of noted pre-modern muftis were collected and circulated in limited fashion as manuscripts, the fatwas of influential modern muftis (and also many famous predecessors) now appear in print and achieve extremely widespread distribution. The adoption of print technology occurred comparatively late in the
central part of the Muslim world, and was marked (in the Ottoman Empire) by the issuance of an authorizing fatwa in 1727 (Kramers 1934, 4:277; Kut 1991:800). Print is important not only for the publication of fatwa collections in book form but also for the wider dissemination of fatwas in newspapers, magazines, and journals, as well as for the gazetting of many opinions in the public legal record. The fatwas of many modern muftis have been published individually in newspapers and later collected in book form. Associated generally with the rise of the nation-state and the growth of mass markets (B. Anderson 1983), print heralds a number of basic discursive changes, including a shift in authorial voice, new rhetorical forms, and a greatly expanded and differently constituted readership (Messick 1993:115–131; Robinson 1993).

Dissemination through the print medium may be transnational as well as national in character, reaching Muslims around the world with a new rapidity. Transnational fatwas tend to rephrase specific local or national problems to speak to the common experiences of widely differing communities. In the early years of the twentieth century, Muhammad Rashid Rida (d. 1935) issued a famous series of fatwas in his publication _al-Manār._ Beginning in 1903, first under the title “Question and Fatwa,” and later “Fatwas of _al-Manār_,” Rida responded to a wide variety of queries sent in by readers from all corners of the Muslim world. His general method was to rely directly on Quran and hadith, and then on “reason” (_’aql_), and his principal aim was to foster Islamic unity. Collected now in six volumes (Rida 1970), the 2,592 fatwas first published in the pages of _al-Manār_ constitute a remarkable record of the preoccupations and interests of early twentieth-century Muslims.

Fatwas are regularly broadcast on radio and television services, and reproduced on audio and video cassettes (Eickelman 1989). These media take the changes brought by print an important step further. Unlike the print medium, literacy is not a requirement for listeners and viewers. For this reason, the broadcast media place a further demand on the authors of fatwas to use more accessible language and, depending on the range of reception, to address concerns in a manner relevant to a mass audience, either national or international in scope (Chapter 28). It is apparent, however, that the issuance of fatwas in the electronic media age retains some of the institution’s former character as a societal barometer, as modern muftis respond to the specific concerns and the changing worldly circumstances of their questioners. Al-Qaradawi (1982:33–35; see also Shaltut 1974:15) has commented on his broadcasting work. Citing the earlier community-building work of the print mufti Muhammad Rashid Rida, he endeavors to find ways for his listeners and viewers to “come together where we agree, and forgive one another where we do not.” Although he advocates exacting analysis
and debate, he maintains that radio and television are not the appropriate media for these activities. Al-Qaradawi also notes an interesting new phenomenon associated with his broadcasts: he receives more requests for fatwas from women than from men.\textsuperscript{38}

One further characteristic of the contemporary age is the striking reuse of terminology,\textsuperscript{39} and the institutional language of the muftiship is no exception. Although perhaps not exclusively a modern phenomenon, the extension of the sense of the term “mufti” to designate not only a legal interpreter but also a political figure has occurred in the cases of the former mufti of Jerusalem (Mattar 1987; Hopwood 1980) and the mufti of the republic in midcentury Lebanon, who became, by legislative decree, the general “religious leader” of the Muslim community (Tyan 1965). A still wider departure from the general notion of ifta’ is the term’s usage in the late Ottoman Empire as a rubric for codification (Berkes 1964:169; Mahmassani 1961:41). In the present day, the old concept of istifta’ (request for a fatwa) is reemployed to refer to a popular referendum or plebiscite.