Ethics, tradition, authority:
Toward an anthropology of the fatwa

ABSTRACT
Prevailing approaches to the fatwa construe it as primarily an instrument of Islamic doctrinal change and reform, as bridging the constant gap between a settled doctrinal past and a future of continual novelty. Underpinning these approaches are familiar but questionable assumptions about temporality, imitation, creativity, and tradition that obscure the fatwa’s integral ethical dimensions and our understandings of its pervasive authority. This article unsettles these assumptions and, through ethnography of the Fatwa Council of Al-Azhar in Cairo, offers a different view of the fatwa that helps us both understand its ethical authority and challenges conventional oppositions between authority and ethical agency. [authority, Egypt, ethics, fatwa, Islam, temporality, tradition]
systematically explored. A consideration of the fatwa may help prompt a rethinking of authority and ethical agency in ways other than the conventional understandings allow. My exploration centers on the fatwas of one of the oldest, most established centers of Islamic authority: Al-Azhar mosque in Cairo, Egypt. I focus, in particular, on fatwas as they are practiced daily in Al-Azhar’s Fatwa Council.

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Its spacious room, located at the main entrance of Al-Azhar mosque, is dimly lit; lined along all four of its darkened walls are leather couches, and spread out on them sit several aged Azhari sheikhs. These are the muftis who provide fatwas freely for any one who asks. Facing the muftis are several plain wooden chairs; on the chairs sit people who are either conversing with a mufti or patiently waiting their turn. I am sitting on the couch, right next to one of the muftis. A married couple is before him now. The husband had pronounced divorce on his wife for the third time. Under the Islamic Sharia, the third divorce is typically final, meaning in effect that the couple cannot be married to each other again.3 But they want to know if there is any possibility for reconciliation. After them comes another married couple, but this time the wife brings along her brothers. They claim that the husband had pronounced divorce for the third and, thus, final time, but he alternately denies this or claims he cannot remember. The mufti has to decide between their conflicting testimonies. Next is another married couple; with them is a very old woman. They say they have just learned that the old woman may have been a wet nurse for them both. Under the Islamic Sharia, children with the same wet nurse are seen to be like siblings and, thus, prohibited from marrying. What is to happen to their marriage, they ask, and what of their children, especially because the wet nurse, aging and forgetful, is not entirely sure if she attended to them both. Then a young unmarried man, a student, sits before the mufti. He has committed adultery with the same woman for the second time. He knows the proper Islamic punishment is to be whipped, so he insists, to the incredulous mufti, to be whipped. Then another man, devastated by a terrible thing he has learned: he has just found out that his father had raped his sister over a decade ago, and that all the family had known, except for him, until now. What is he to do?

These are but some of the issues that arise within the Fatwa Council of Al-Azhar (Lagnat al-Fatwa b’il Azhar). Established in 1935 by the Azhari administration (Skovgaard-Petersen 1997) in response to a perceived demand for fatwas from the Egyptian populace, it remains immensely popular today, frequented by people from all walks of life as attested to by the steady stream of people who enter the council from the moment it opens at 9:30 a.m. until after it closes at 2 p.m. And people continue to come to the mosque late into the afternoon and early evening seeking fatwas about the myriad issues that affect their lives.

The bustling activity of the Fatwa Council is just one expression of the growing interest in fatwas within Egyptian society and the Muslim world more generally. But this growing interest is not limited to the Muslim world; it is also found in the West, where the word fatwa has become a part of common parlance. Although fatwa has been part of English for a long time, ever since the early 17th century, its usage became more common after 1989. That, unsurprisingly, coincides with the famous Salman Rushdie affair, and the crisis and confrontation that was further provoked by the Ayatollah Khomeini’s fatwa condemning him to death. A preliminary search6 of the academic literature shows a steady growth of references to fatwas in the 1990s, but then a massive increase after 2001. In the five years between 2001 and 2006, the number of references to fatwas is almost double what it was in the entire decade of the 1990s.

Again, this is no surprise. But what it makes clear is that Western interest in the fatwa was born out of a felt sense of crisis, a perceived confrontation between modern ideals and a seemingly tenacious religious tradition, and an intensified concern over Islam's capacities for modern reform. The growing academic literature thus reflects the increasing salience of fatwas not only for the Muslim world, where they seem to have become all the more diverse and wide-ranging, but also for the West, as it has become intertwined with the Muslim world in ever more intimate and deadly ways, and in which the entire future seems at stake. As a result, the non-Muslim West is as keen to hear the fatwas of prominent Islamic figures as those Muslims, in the West and the non-West, to whom they are addressed. The sense of clash and crisis that initially riveted Western attention to the fatwa has thus not disappeared; on the contrary, it has become all the more pronounced, as the future is felt to be increasingly uncertain.

This sense of growing crisis and confrontation may be one reason why the expanding literature on the fatwa has focused so heavily on singular issues of public controversy and modern change instead of the quieter, ongoing, commonplace practices that are crucial to how fatwas are sought and provided. Yet it is striking that, for all the attention given to fatwas so far, and all the writing done on them, we still know surprisingly little about how they actually work in Muslims’ daily lives, how they secure their authority through and within living social relationships. There is, to date, precious little ethnography of the fatwa,7 and despite two decades of intense and growing interest, not a single ethnographic text fully devoted to the practices that constitute it. This suggests that, beyond the feelings of anxiety around the fatwa, there is a set of powerful ideological assumptions at work shaping contemporary views of and approaches to it. My aim in this article is to
highlight and question these assumptions and, through ethnography, to offer a different view of the fatwa.

I spent part of my two years of fieldwork in Cairo studying the practices of the Fatwa Council. But when I first began my fieldwork in Egypt, I was not initially focused on the fatwa. It was by chance that I happened on it. My work was centered on the legal system, and how the state’s secular legal power has shaped and continues to shape Islamic tradition in specific ways. So my focus was on the Personal Status courts, which deal with family issues and are governed by the Islamic Sharia. My interest in the specifically legal practices of the Personal Status court, however, became increasingly intertwined with the nonlegal practices of the Fatwa Council. That is because both the Personal Status courts and the council deal with an overlapping range of issues, both base their decisions on the Islamic Sharia, both are also institutions of the state, and interestingly, although fatwas and legal judgments were always distinct activities, they used to be much more closely linked within the Sharia courts of old than they are today. Modernizing reforms of the 19th century separated them into different, reconstituted spheres of action and sensibility, as part of a process of investing the courts with all those elements deemed necessary to the rule of law. Comparing the courts with the council thus helped me identify aspects of the courts’ practices that were distinctly legal, and how they shaped Islamic practice. But that comparison brought up questions that have since increased my attention to the everyday practice of the fatwa in itself.

One of those had to do with a paradoxical difference between the authority of fatwas and Personal Status court judgments. Although both are ostensibly derived from the Islamic Sharia, fatwas exercise significant authority even though they are not officially binding, while the court judgments are looked on with great suspicion despite their legally binding status. In what follows, I describe this paradoxical difference and criticize some commonplace explanations of it. I go on to show how the dominant framings of fatwas—as primarily doctrinal rulings, as creatively adapting age-old doctrine to constantly changing times and, therefore, bridging the gap between a settled past and a future of open, modern possibility—rely on questionable assumptions about tradition, creativity, and temporality that both obscure crucial ethical dimensions of the fatwa and impoverish our understanding of its authority. By bringing out and questioning those assumptions that have overdetermined our inquiries into the fatwa, I hope to open up a range of new questions about it. Finally, I discuss in some detail my fieldwork in the Fatwa Council, in a partial attempt to address these new questions, and to better understand the fatwa’s authority. Note that my concern is not the source of its authority, not the question “why does it bind?” but, rather, its mode, that is, to ask “what kind of binding is it?” Neither is my aim here to develop alternative types or theories of authority. It is only to point to some of the things we might usefully attend to in exploring authority. My argument, most broadly, is that any inquiry into authority might usefully look into the multiple temporalities mediated by the inherited traditions that express it, as well as how the constitutive practices of those traditions work to shape the self and its sensibilities. Authority, it seems, is intimately related to questions of temporality and the self. The practices of the fatwa, I suggest, might be usefully understood as a form of the care of the self, and its authority is linked to how it connects selves to the broader practices, virtues, and aims of contemporary Islamic tradition as it has been shaped and reconstituted under the modern state.

The fatwas of the council and their authority

People do not have to obey the fatwas they receive. There are no institutionalized enforcement mechanisms for them. It is entirely possible for a person to seek more than one fatwa concerning the same issue. Given this, and the broad diversity of fatwas these days, one might expect that people would indeed seek more than one, especially if a particular fatwa put them at a disadvantage. But this is precisely what I did not see. Instead, those who received a fatwa tended to follow it even if this caused them difficulty or some unhappiness. I saw many examples of this.

One was a court case involving Khaled, in which his immediate and extended family was embroiled, over inherited land that had been monopolized by one set of family members. After a drawn-out case, when it looked like his side of the family was to finally win its inherited share, his aunt, who had initiated the litigation on their behalf, shocked his side of the family with the news that his grandmother, who had passed away several years ago, had sold her entire portion of land that the rest of them stood to win in the case. However, his aunt offered to apportion this land to the rest of the family in their approximate inherited shares according to the Sharia, in exchange for greater financial support for her litigation efforts. Her proposed apportionment, however, did not include shares for the grandchildren of Khaled’s grandmother’s previous marriage—that is, the children of the half-sisters and half-brothers of his mother and his aunts and uncles on his mother’s side. To have included them would have reduced his aunt’s share of the land too much, and she refused to do this. Moreover, these half-brothers and half-sisters had since passed away. This led to the question of whether these grandchildren stood to inherit because their parents had passed away even before Khaled’s grandmother did. Because the family knew of my work in the Fatwa Council, they asked me to consult a mufti. The mufti told me that these grandchildren had the right to inherit as if they had inherited their portion of the land from their parents. On that fatwa, the family refused to accept it?
Khaled's aunt's offer, even though this meant foregoing any share in the land that they had long worked to acquire.

Khaled's family did not have to follow this fatwa. It was not binding in law, and they could have searched for another that better suited their interests, especially with the immense diversity of fatwas these days. His family, it seems, is not peculiar in this. It did not seem often that people ran after fatwas to suit their interests. In those instances in which I saw people seek a second fatwa, it was often because they had received one in their favor, which yet somehow made them feel uncomfortable. And this just seemed to confirm how seriously fatwas were taken by those who sought and received them.

Another instance was of a young married couple, still in college, who wanted to be reconciled after a divorce. The mufti, after learning that they married without the knowledge of the wife's parents, refused to reconcile them, stating categorically that their divorce is irreconcilable. They begged the mufti, with increasing desperation and tears, to find them a way to reconcile, but the mufti resolutely refused, saying they could never be together again. The couple stood from their chairs slowly, both crying, and walked out of the council, at more than an arms length apart and looking away from each other as if ashamed, so different from when they had walked into the council together almost shoulder to shoulder. It is hard to think from their reactions that they did not take this fatwa seriously. The same could be said from the reactions of those who came to the council generally, as subsequent ethnography will also show.

The authority of these everyday fatwas was quite different from the suspicion cast on the judgments of the Personal Status courts, which are also based on the Islamic Sharia. And although judgments are supposed to be binding, people generally follow them only if forced to. This becomes a major problem for the courts when enforcement loopholes arise. For example, the personal status law reforms of the year 2000 eliminated jail sentences in cases in which husbands refused to pay their wives their monthly support (nafaqa). Such short jail sentences were used by judges to compel husbands into payment. Under the new law, judgments rendered for the wives enabled them to get payments from a special bank fund instead; the bank would then charge the husband. But that fund had not been successfully set up since the law was passed.

In the meantime, husbands could not be legally coerced into resuming payments. Lawyers told me that this created a tremendous compliance problem, leaving so many married women without financial support that the old personal status provision had to be reintroduced. The fatwas of the council, however, have no identifiable institutionalized enforcement mechanisms yet are taken very seriously by those who receive them.

And herein lies the paradox. Both the Personal Status law and fatwas are derived from the Islamic Sharia, and both deal with an overlapping range of issues in daily life. It is on the basis of their derivation from the Sharia that they are able to claim whatever legitimacy they have. Thus, most Egyptians would see the Sharia basis of Personal Status law as indispensable to it and would reject wholesale any such law without a Sharia basis. But despite this and despite that Personal Status judgments are legally binding while fatwas are not, the fatwas exercise great authority while the judgments are looked on with great suspicion. What explains this?

This paradox led me into a deeper investigation of the fatwa. I began to wonder: how should we describe the fatwa's authority? What mode of authority is it? How is it structured? And the more I thought about this, the more it seemed to me that many of our longstanding descriptions of authority were no longer adequate for clarifying the fatwa's authority. Part of the problem is that they rest on concepts that have since been rethought. For example, it seems no longer adequate to describe the fatwa as "religious authority," simply because we have become skeptical of the idea of religion as a cross-cultural, transhistorical essence. More importantly, this idea of religious authority also presupposes essentialist religious subjectivities and sensibilities, things we are no longer sure can be presupposed. It also does not help to cast the fatwa simply as "traditional authority," if only because the concept of "tradition" has been subject to much rethinking, so that "traditional authority" itself is in need of explanation. But if not those, then what? How should we understand the authority of the fatwa? And what of our longstanding concepts of authority?

Why commonplace explanations do not work

A number of commonplace explanations might be given for these paradoxical differences. They are seemingly compelling and should be considered. One such explanation is that these differences arise precisely because the law is coercive while the fatwa is not. Just the fact that people willingly seek a fatwa means that they are willing, or more likely, to accept the decision they asked for. But people often come to the courts unwillingly, compelled by court order or the potential material consequences of an unfavorable judgment. So at the outset they are inclined to reject any decision against them. Those engaged in a suit are adversaries, and one will win while the other will lose; but with the fatwa, people are often aiming at some kind of reconciliation. These differences, one might argue, trump any of the claimed legitimacy of a court judgment on the basis of its derivation from the Islamic Sharia. Moreover, judges who give judgments in the Personal Status courts are not Azhari-trained sheikhs, while the muftis of the Fatwa...
Council are. On top of that, the mufti directly accesses, or claims to directly access, classical Sharia sources and texts to formulate his fatwas; the judge's access, by contrast, is mediated because he refers to a legal code that is derived, or claimed to be derived, from the classical Sharia sources and texts. Thus, the mufti is seen to have direct access to and, therefore, knowledge of the Islamic tradition while the modern legal setting of the judge renders his relation to that tradition indirect, and his knowledge of it therefore questionable. Such differences in the setting, in the training of the judge and the mufti, and in the general features of their respective practices, one might argue, go a long way in explaining differences in authority between fatwa and judgment.

These commonplace explanations, although in some ways compelling, are nevertheless misleading. For the problem with them is not that they are necessarily wrong. It's rather that, even if they were right, we still would not know why they were right. In other words, they presume precisely what we need to explore. In so doing, they belie the complexity of the issues they touch on, and bespeak deeper confusions about authority. To illustrate this, let us begin with the argument about legal coercion and authority. Is it simply because law has a coercive character that people tend to question its authority? Or is there something about the law of the modern state that marks its coercive character as a potential source of illegitimacy?

Historical evidence shows how law can be both coercive and authoritative. One directly relevant example concerns the fatwa and the Sharia Courts of old in Egypt. Only a century and a half ago, they were part of the same space of action and sensibility, and although they were distinctly different activities, the fatwa played an important role in the judgments of the Sharia Courts. However, through modernizing state reforms, the fatwa was gradually divested from the space of the Sharia Courts, and the courts were increasingly invested with those elements of procedure typically identified with a modern rule of law, which included a pronounced ability to coerce obedience to its judgments. But this did not mean that they lost their authority. They retained a measure of it, even up to the mid–20th century, until they were absorbed into the National Court system and became known as the Personal Status courts. Sharia Court judgments in the 1930s could even change the content of fatwas and establish precedents for subsequent ones. Consider, for example, the land case of Khaled, and the question of inheritance it gave rise to. Sometime after I had gotten the fatwa about it, I was with another mufti who happened to be asked a very similar question, that is, about whether a child stands to inherit from her grandparents in the instance when they have outlived her own parents. Similar to the fatwa I had gotten, the mufti replied that the child indeed stands to inherit but added that this had not been so until the 1930s, when the Sharia Courts made a judgment to that effect, out of mercy to orphans (rahmatan lil aitaam). Since then, he said, fatwas have followed this judgment. Today, it is inconceivable that a Personal Status court judgment influence the content of a fatwa. But if so, it is not simply because the law is coercive while the fatwa is not. There are, as this historical example instances, more complex reasons for these differences having to do with the character of modern legal legitimacy.

After all, the question of legality and legitimacy within the modern state is one legal theorists and practitioners have long grappled with, and it remains a central riddle of contemporary legal thought and practice. On the one hand, the legacy of positivism within modern conceptions of law renders them seemingly unable to distinguish between norms and law except by defining the latter in terms of its coercive character. On the other hand, authority is defined as a form of willing obedience to another that is irreducible to either coercion or persuasion. But if law is distinguished mainly in terms of its coercive character and authority is defined as willing obedience irreducible to coercion, the concept of legal authority becomes something of a contradiction in terms. And if law and authority cannot be reconciled, then on what does law's legitimacy rest? It is this difficulty in reconciling law with authority that makes legal legitimacy such a puzzle in modern legal thought and practice, and that marks the coercive character of modern state law as a potential source of illegitimacy.

This puzzle of legal authority, however, may be but an instance of a more general problem, noted by political philosopher Hannah Arendt (2006a): a growing inability in modern times to distinguish coercion from authority, making the very idea of authority itself increasingly paradoxical. Underlying this more general problem, in turn, is a distinctive set of assumptions about the self that has come to prevail in contemporary liberal thought. Among them are the familiar ideal that the true self is the free self; an understanding of freedom as the pursuit and realization of one's interests and pleasures; and the belief that a free self is one that follows its own will only, and that wants to follow only its own will. Under such assumptions not only does the notion of willing obedience to another appear paradoxical (one can only either obey oneself, or else be coerced by another) but also coercion and free choice are positioned as irreconcilable opposites. Modern liberals therefore find it difficult to conceive how a self, by being forced to obey, can come eventually to truly want to obey (a difficulty compounded by their acknowledgment that some disciplining is necessary to cultivate selves desirous of liberal freedoms).

These assumptions about the self are accompanied by a distinctive stance, and a corresponding sensibility, that are characteristic of liberal thought. The stance can be described as an ongoing vigilance against abuses of power,
and the corresponding sensibility, a suspicion of claims to power. Within liberal thought it is felt that suspicion and authority are opposites: a claim that lacks authority is one that is naturally greeted with suspicion. Authority, as an expression of power, needs to be constructed, crafted, and molded. Suspicion of a claim to, or performance of, authority arises when that work of crafting and molding is not successfully completed. Implied in this understanding is that suspicion is a natural, default condition, the obverse of authority as a constructed one.

All of this creates intractable difficulties for liberal legal thinking on the question of legal legitimacy. For it tends to construe law as subsequent to an a priori free self and, therefore, a suspect mode of domination external to it. Rarely considered is the possibility that the vigilance and suspicion against power so characteristic of liberal thought and sensibility are actually shaped by, and through, law. In other words, such vigilance and suspicion are not natural, default conditions but are instead historically cultivated sensibilities whose cultivation depends integrally on modern legal processes. In this case, law would not be an external mode of domination, but intrinsic to the cultivation of a liberal sense of self, the dispositions and sensibilities associated with it. It may be that modern law’s power works through these historically cultivated modes of suspicion. As Richard Sennett (1993) has shown, one can be just as tightly bound to something through suspicion of it as by a conviction in its legitimacy. I cannot pursue this here, but the larger point is that the intimate relations between authority and the self’s constituted sensibilities cannot be simply assumed but must be explored conceptually, historically, and ethnographically. And that is why one cannot simply say that the fatwa is more authoritative than the judgment because the latter is involved in coercion while the former is not. For even if it is true that the law’s coercion weakens its authority vis-à-vis the fatwa, one would still have to investigate how this came to be and how it remains the case.

What about the claim that the mufti is Azhari trained, while the judge is not, and that the mufti directly accesses the Islamic tradition, while the judge does so only indirectly through a state-enacted code? Even this is more complicated than it first seems. For one thing, a number of Personal Status judges might have been trained in Al-Azhar’s Faculty of Sharia and Law. For another, Al-Azhar has long been under state control and has a curriculum authorized by the state, and this is also a time when the state’s Islamic credentials are viewed with great suspicion. So it is no guarantee that training at Al-Azhar is going to confer authority. Indeed, that very training might render one’s authority questionable. Furthermore, the idea that muftis directly access the Islamic tradition, while judges do not because of a code, comes close to saying that the Sharia has a traditional essence to which legal codification—a mark of modern law—will always be alien. Yet this idea of a traditional essence fundamentally alien to modern innovation is hard to sustain, both conceptually and historically.

Neither does such an opposition between modern (legal) and traditional authority help to explain, in even a cursory way, the relative differences in authority under discussion here. The Personal Status law, for example, displays many of the crucial characteristics of what we call modern legal authority: it is codified, formally procedural with an appellate structure, and part of a court system possessed of a high level of judicial independence and a fair level of consistency in its judgments—all of which must be publicly accessible. Fatwas, however, show few of the characteristics that we would call traditional authority, such as doctrinal consistency. Given the wide diversity of contemporary fatwas, one could even say that the law shows greater doctrinal consistency, or at least predictability, than the fatwa. Yet suspicion of Personal Status judgments runs high relative to the fatwas of the council. Moreover, both the Personal Status courts and the Fatwa Council are institutions under the state and products of modernizing reforms. All of this confounds any simple distinctions or oppositions between modern and traditional authority and immeasurably complicates them both.

These, then, are some of the reasons why I find the commonplace explanations inadequate to the differences in authority between fatwas and Personal Status judgments. For even in those instances where they might be right, it remains to be explored why. They therefore presume precisely what we need to explore and belie the very complexity of the concepts and distinctions presupposed within them—regarding modernity and tradition, authority and coercion, as well as the self, its sensibilities, and how they have been historically constituted. And so we are left with the paradox we started with, and the question of the fatwa’s authority becomes all the more pronounced.

Authority, time, and creativity in (Islamic) tradition

The broader scholarly literature on the fatwa has not systematically addressed the question of its authority. The bulk of it construes fatwas as primarily instruments and expressions of doctrinal creativity and change. The emphasis, that is, is on how the fatwa adapts otherwise unchanging doctrines to constantly novel circumstances, rather than its capacity to secure authority in light of its circumstances—whether or not they happen to be novel.

This emphasis emerged as a critical response to an earlier, prevailing set of understandings about the nature of Islamic traditions. These understandings, represented in the foundational works of Islamicist Joseph Schacht (1964), held that Islamic tradition began to exhibit a growing gap between doctrine and practice very early on in its development. This gap is said to have begun with the
tenth-century Islamic doctrine of “the closing of the gates” of *ijtihad*—*ijtihad* being a form of doctrinal interpretation that was relatively unconstrained by previous doctrinal rulings. All that was left to muftis after this was *taqlid* (imitation), that is, the reproducing of previous rulings. Without the creativity intrinsic to *ijtihad*, the gap between doctrine and practice became an irremediable problem in Islamic tradition, one that has grown particularly acute with the rise of the modern state and rapid change it precipitates.

The literature on the fatwa, as I have said, is a critique of these older views. It was inspired by Islamic studies scholar Wael Hallaq (1984) who, in a seminal article argued that the doctrine of the closing of *ijtihad* was not as widely held amongst Muslims as Schacht had presumed. Since Hallaq’s article, scholars have sought to show how *ijtihad* continued on, especially in and through the work of muftis and their fatwas. 26 They have also argued that even without *ijtihad*, muftis have always been quietly, creatively adapting ostensibly rigid doctrine to everyday needs under the guise of *taqlid*, of simply reproducing previous rulings. 27 It is through fatwas, then, that the gap between the fixed past and a constantly changing present and future is bridged. One outcome of this response is that the fatwa comes to be seen as essentially, and necessarily, an instrument and expression of doctrinal change and adaptation. Fatwas were cast as mainly doctrinal pronouncements, formal expressions of judicial opinion. Out of this came an emphasis on the styles of reasoning and modes of justification involved in fatwas, and a consequent concern to study those that deal with controversial, modern change. 28

This literature has taught us much, especially about the variety and sophistication of the forms of reasoning used by muftis to justify their fatwas. However, this emphasis helps us little with the fatwa’s authority and the modes of engagement that structure it, which are not reducible to coercion or persuasion. 29 Moreover, in casting fatwas as doctrinal pronouncements, as formal judicial opinions and, thus, a species of law conventionally understood, 30 this view of the fatwa undercuts an integral ethical dimension of its practice—one that will emerge from the ethnography of the next section.

Fatwas, however, need not be construed as primarily expressions of traditional creativity in the face of constant change. The critical response that led to this framing shares deeper, questionable assumptions with the understandings that it critiques. These assumptions, moreover, are widely familiar beyond the specific literature on the fatwa. About temporality, imitation, creativity, and tradition, they facilitate particular confusions about the concept of authority and, hence, the authority of the fatwa more specifically. I would like to briefly address these assumptions, to show how they narrow and confuse our understandings of authority, and to open up different questions about the fatwa untethered from concerns over doctrinal creativity.

The first assumption is that tradition, rooted in imitation and emulation, is necessarily antithetical to creativity. But is it right to suppose that creativity and imitation are necessarily opposed? Might it not take great creativity just to do a good imitation, as in the case of a comedian who mimics a president or famous political figure, or an actor, for whom it may take creative skill just to follow a script well, to surrender himself to it? Here the line between creativity and imitation blurs into more complex criteria for the assessment of apt performance. Such blurring, however, is not restricted to the stage: it is also endemic to our more general criteria for deciding what is essentially creative and what is imitative, as the continual debates in copyright and patent law show (see Cohen 2006). If the line between creativity and imitation can blur so easily, if the criteria for them can be so thoroughly contested, can it be so easy to suppose that they are necessarily opposed? And, by extension, to suppose that the fatwa creatively (or even strategically) changes old doctrine under the guise of maintaining it?

Let me push this point further, to question a second familiar assumption: that creativity is necessary for a tradition to adapt through time. Is this so obviously true? The issue here is not whether or not creativity might be needed in particular cases or situations. Rather, my question is about the idea that creativity is a general requirement for traditions to survive and remain relevant over time. I submit that this idea arises out of crucial assumptions about time itself, that is, about the nature of the past, the future, how they are connected, and how they orient the present and its senses of stability and flux. Thus, there is the assumption of a fundamental rift between the past and the future, in that the future generally brings on fundamentally new situations and circumstances, not just different from past ones but always potentially containing elements that are irreducibly different. And, thus, to fully comprehend and properly adapt to such situations, one cannot rely fully on the settled past. To rely only on past ways of thinking, to use only analogies or exemplars from the past, is to risk missing what is irreducibly different in the present and the future. And that, in turn, is to risk becoming increasingly irrelevant as irreducible differences accumulate over time. We are all familiar with these assumptions, associated as they are with a modern historicity. 31 They are the ones that have shaped our dominant conception of tradition’s central dilemma: that its piety to the past has stifled its creativity, which thus renders it increasingly irrelevant in the face of the future’s incessant novelty. But for our analyses, we should be wary of replacing a piety to the past with a piety to the new and, instead, look more carefully at the temporal assumptions expressed in different traditions and the temporal experiences of those who adhere to them.

To take just one example: Islamic scholars debated for several centuries (up until the 18th) the question of how, and whether, acts enacted before the arrival of Qur’anic
revelation could be categorized under the rubrics provided by it. Questions about retroactive application would certainly make sense after the initial founding and early expansion of Islam. Under the temporal assumptions commonly associated with a modern historicity, however, it is hard to see why such a debate would continue on for so many centuries afterward. It seems quite the reverse of today’s Islamic debates, which arose only after the 18th century, about how and whether the revelation and its categories apply to acts, especially modern ones, enacted after it. Kevin Reinhart (1995), who discusses the ancient debate extensively, argues that it was a means for taking positions on controversial issues within Islamic tradition that could not be approached directly. But that this was done with reference to acts enacted before revelation and not after it shows that different temporal assumptions were at work. One well-established position in this longstanding debate was that past acts could not be categorized under any of the revelation’s categories and so had a fundamentally indeterminate status. This reverses the temporal assumptions of modern historicity, for here it is the past that is potentially indeterminate, while the present and the future are essentially settled. Under such assumptions, other skills and capacities might be prized over and above creativity.

Notably, amongst the muftis I talked with, creativity was never a qualification for the Fatwa Council. Rather, advanced age and experience was. Could not the reason for this be that age and experience give one an ability to discern, through obfuscating details, the fundamental similarity of present situations to past ones? Indeed, I frequently encountered the argument that human beings, in their relationships—as friends, lovers, enemies, kin, merchants, and so on—have never really changed, and so the Sharia contains all that is needed to properly guide these relationships. Different temporal assumptions might therefore lead one to highlight and value the skill of discernment, and the capacity for memory, over and above creativity. At issue here is not their truth but, rather, how they constitute and relate the past to the future, the skills, and the capacities of the self they elicit, and the ways they orient people’s temporal experiences and interpretations of events.

It may surprise readers to learn that the word creativity was coined only in the 19th century, first in English, from which it passed on to French and German. While certainly many of the conceptual associations referenced by the newly coined term existed beforehand, its coinage marks its rise as an independent, general value, abstracted from the specific practices that previously shaped its particular uses and values. As John Hope Mason (2003) shows in his genealogy of its emergence, it was connected to modernist conceptions of time and identified with a particular notion of freedom—of a primarily aesthetic kind—now widely considered integral to the self and its true expression.

In other words, the idea that creativity is requisite to a tradition’s success is a product of specifically modern assumptions about time as well as the self and its essential freedoms. They are, however, neither as self-evident as is often surmised nor the only ones to which people adhere. As noted above, contemporary Islamic debates that presuppose a future of continual novelty coexist with understandings of the present and future as essentially settled. We should therefore be alert to the different temporalities expressed within a tradition, the ways they coexist and are mediated, the range of skills and kinds of selves they valorize, how they orient people’s temporal experience of events and criteria for change, and be careful not to analyze other traditions from the grounds of so narrow a set of assumptions about time and self, as this emphasis on traditional creativity seems to express.

These assumptions, moreover, tend to obscure our understandings of authority, lending themselves to a ready conflation between authority that is rooted in the past and the repression associated with authoritarianism. For time’s incessant novelty ensures that any authority rooted in the past will eventually become out of joint with the circumstances that gave rise to it, and to which it may have been at first appropriate. To keep authority appropriate to its circumstances requires that it always be subject to the questioning and creative freedom needed to adjust it. Any authority that remains rooted to the past in the face of changing circumstances is therefore one that inappropriately represses the creativity and freedom needed to adjust or entirely change it. In this line of thinking, modernist assumptions about time and creativity combine to collapse past authority, with its emphasis on emulation and repetition, into repression of the self’s essential creative freedom.

Letting go of these assumptions will help us ask very different questions, both of the fatwa and its authority. For, if it is not that the future necessarily brings on radical novelty; if creativity is not necessary to supplement the accumulated wisdom of a tradition, then the fatwa cannot be so self-evidently cast as the crucial creative agent of Islamic tradition’s survival and success, especially if the very criteria for what counts as an innovation and what an imitation are not fully clear and can be thoroughly contested. But what, then, are the criteria for apt performance in the practice of the fatwa, and how are they variably related to the aims and goals constituted through and within Islamic tradition? Also, if we no longer see the fatwa as essentially an instrument of doctrinal change, then in what ways is doctrine involved in the practice of the fatwa? And how might this practice help constitute and shape the interests, desires, and fears of the mufti, as well as of the fatwa seeker? If not the temporalities assumed of a modern historicity, then what are the temporalities involved in the practice of the fatwa, and how do they relate to the mufti of the fatwa seeker, and
both to the broader tradition they inhabit? In other words, what are the modes and structures of the fatwa’s authority?

These are some of the questions that I would now like to address, in an admittedly tentative and cursory way, by turning to the Fatwa Council of Al-Azhar. The Fatwa Council provides an opportunity to observe the construction of authoritative relations. I think that the ethnography here will show that the vitality and authority of the fatwa lies not in its reforming of doctrine to fit novel circumstances but, instead, in the ways that it connects and advances the self to and within the practices and goals that constitute Islamic tradition more broadly. So let me now turn to some of my observations on the Fatwa Council.

Dimensions of the everyday practice of the fatwa in the Azhari council

One thing that became immediately apparent during my fieldwork in the Fatwa Council was that different answers were often given to people with seemingly similar questions and problems; more interestingly, the same mufti often reacted differently to people with the same question even if in the end he gave the same answers. Sometimes he would scold, sometimes he would joke, sometimes he would counsel, and sometimes he would hesitate. I was perplexed by this. I asked muftis how they came up with their answers. They said that a thorough knowledge of the Sharia was necessary; that even those concepts within the Islamic Sharia that were considered marginal and generally not recommended had to be known. The reason for this, I was often told, was that the Fatwa Council, and the giving of fatwas in general, existed to facilitate people’s affairs (t’mashi umurohom). Sometimes, they said, it was necessary to use a marginal concept or ruling from the Sharia to do just that. It was reiterated to me several times by different muftis that the purpose of the fatwa and the council was to facilitate people’s affairs or to help them get on with their affairs. Sometimes this was cast in terms of finding a solution.

When a person came with a question, the mufti would very often ask more general questions about the person’s situation before he came up with an answer. Many times, I would see the mufti listening carefully, allowing the fatwa seeker to talk at length. There is a sense that he was fashioning his answer to the specific situation of the fatwa seeker. This may have partly explained why sometimes different answers were given to similar questions.

During my fieldwork on the council, I met an Azhari graduate and scholar of the Sharia who had spent some time in the United States. I told him about my fieldwork. He noted to me that how the muftis interacted with the fatwa seekers was an important dimension of the fatwa and began to talk about how differences in such interaction involved what he called a pedagogic element. Tarbawiyah is the word he used, and it usually means education, cultivation, up-bringing, and refinement. He said that the shifting use of fear, laughter, and rebuke was part of a pedagogic process to make them better Muslims.

That seemed consistent with much of what I saw in the council. Once a couple entered the council and sat before the mufti. The husband had pronounced divorce on his wife several times; they had talked to a mufti about it before, but he had sent them here to ask. The mufti began to ask the details of each pronouncement; when, where, the state of the woman and the man at these times, and other details. During the discussion of one of the past pronouncements, the wife noted that the mufti who reconciled them at the time stated that this was the last reconciliation that could be done, and that any subsequent pronouncement would mean an irreconcilable divorce. The mufti did not answer her at first, asking more about the details. A few minutes later, she repeated this statement. Then he responded: “understand that what the mufti said may have just been threats so that your husband won’t do it again.” After discussing more of the particulars, the mufti came to the conclusion that none of the pronouncements were valid. “She is your wife,” he concluded.

I discussed the question of divorce with the muftis because it came up so often in the council. One told me the story of how some of the practices of reconciliation came about. He said that once, during the Prophet’s time, a man swore divorce on his wife. Thus divorced, the woman went to the Prophet to know if there was anything that could be done to reconcile them. He said no, that there was nothing that could be done. But the next day she came back, asking him to find them a solution. He replied that he had none. She returned yet again on the third day but, again, nothing. On that day, however, after she left, a verse of the Qur’an referring to the incident was revealed, saying that God had heard the complaints of the woman to the Prophet and had provided the following solution: that for the husband to reconcile her to himself he must free a number of slaves, and if that is not possible, then to fast for a period of 60 days, and if that is not possible, then to feed 60 poor people. That was the least one could do.

This was revealed, the mufti said, to “discipline their tongues (addib lisanahom), and this was amongst the hudud Allah (limits of God).” The word hudud within Islamic Sharia usually refers to punishments—but here the mufti associated it not with punishment but, rather, with disciplining. That hudud was not here associated with punishment is indicated by the rest of the story: the man in question had no slaves, was not in a position to fast for such a long time, and had no money to feed anyone. So the Prophet gave him a bag of dates and told him to spread them amongst the poorest. The man replied that there was no one poorer than himself and his children. So the Prophet told him to spread the dates amongst his children. That was considered sufficient to reconcile his wife to him.

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It is noteworthy that divorce, although permitted in Islam, is considered amongst the most reprehensible of permitted acts (makruh). As such, muftis were interested in preventing people from pronouncing it again. But more, they were always finding ways to encourage people to perform the better of actions. Thus, in another case, again a matter of divorce, a mufti counseled the couple for a long time, discussing the virtues of patience and forbearance, even and especially in the difficult times that they had claimed were an excuse for their marital conflicts. The husband was finally made to utter the words of reconciliation, repeating the words told him by the mufti. In this case, the mufti had him place his hand on the Qur'an, and repeat an oath never to pronounce divorce again. As the man began to repeat, the mufti suddenly withdrew the Qur'an: “now don’t swear if you can’t be sure that you won’t do this again.” The man became anxious and insisted on repeating the oath; the mufti relented, and they continued, but the mufti added words to the effect that the man would perform all five daily prayers. The husband, after repeating these words—a promise to pray—began to cry silently; his voice shook as he finished, lips trembling, repeating the mufti’s words. The mufti in this instance was using the event of reconciliation to extract a promise from the husband to perform his prayers.

Questioners themselves are concerned with the performance of better actions over worse ones. Once, a young woman sat before the mufti. She told him she was 25 years old, but that her husband was much older than she. She was unhappy with him and more and more was starting to see him like a father or older uncle. But more than this, he wanted to do something that would make their marriage forbidden.

“What?” asked the mufti.

“He wants to marry my aunt.” She used the term aamity, which signifies that it was her aunt on her father’s side. Such dual marriages are indeed forbidden in the Sharia.

She continued, “I don’t know if this is something that has come from God, but I got to know my cousin (this was the said aunt’s son), and he has made me feel my youth [khalani ahiss bi shababi].” She did not know what to do and wanted to do things right by God. Thus, she wanted to know whether she should divorce her husband and marry her cousin, or whether it was better for her to persevere with her current husband.

The mufti replied that she should divorce her husband and marry her cousin.

“But shouldn’t I persevere?” she asked again, with emphasis.

No, he replied, it was better for her to go and marry the cousin. With this she thanked the mufti and left the council.

Interestingly, there were cases in which muftis counseled people to do reprehensible (makruh) acts to prevent them from forbidden (haram) acts. Or even sometimes forbidden acts to prevent worse ones. There was the instance of the young unmarried man, the student, who had committed adultery with the same woman for the second time. He had come in before, after the first time, to learn how he could be forgiven for his act. Now he said he wanted to be whipped, in accordance with the Sharia. He sat face down, glum as the mufti rebuked him. “Why do you go and see her? Why do you even go to the area where she lives? You should never go there.” He replied that she lives near the university. The mufti shook his head, thought a while, said, “then you have to marry her. There’s no other solution.” He replied that she was already married. “Ho!” the mufti exclaimed, “you’ve put yourself in a mess!” The mufti sighed loudly, covered his head with his hands, and sat silently thinking. The student repeated that he wanted to be whipped. The mufti then told him that he could do one of two things: first, he could send him to the local police where they would rough him up. The student looked up, his eyes widened. Or, he could have him sign a statement promising not to commit this again, and that if he did he would submit himself to the local police. The student seemed to like this second option. The mufti told him to perform ablutions, and they prayed the noon prayer together. Afterward, the student signed the statement and got up to leave. As he reached the entrance, he turned around. “The thing is,” he said, “I don’t have wet dreams.”

The mufti replied: “Look, if you see that woman again, or any other woman that excites you, go home to the bathroom and do the secret thing [al-amalaya al-sirraya].” The young man was surprised, “I thought that put you in hellfire!”

“It’s not good, but it’s not as bad as committing adultery, so when you see a woman that excites you, go and masturbate, that’s better for you.”

“But only if you can’t hold it!” commented an official of the council who had been listening in, and the mufti concurred. In this case, the mufti did not counsel a person to do the right thing, but to do a bad thing to prevent a worse one.

This takes on particular significance in light of the fact that the mufti in the Fatwa Council is understood to share a measure of responsibility for the fatwas he dispenses with the fatwa seekers who then enact his decisions. If a mufti issues an incorrect fatwa then he will bear the responsibility for the enactments of the people to whom he issues it, a responsibility he will face not in this life, but in the hereafter. Such responsibility is considered so great that some sheikhs I spoke to preferred not to work in the Fatwa Council or give fatwas generally, even though the latter was considered a general requirement of their profession.

The issue of responsibility and its allocation arises often in the Fatwa Council. I saw the case of a couple who
had been married for four years and had children when they learned they had been breastfed by the same woman. Such children are considered like siblings and cannot marry each other. They wanted to know if their marriage was legitimate. The wet nurse, who was with them in the council, was very old and claimed a failing memory, so she could not remember how many times she had done so. The mufti said that she had to go back and try to remember if it was more than five times, and that the responsibility was on her. The couple asked how they should conduct their lives until she remembered for sure; he told them to live as they had been because they still did not know. The sister of the old woman was also with them; a minute after they left she came running back in. She told the mufti that she wanted to make sure there was no responsibility on herself. She said she remembered that her sister breastfed them a lot, but still was not sure how many times. The mufti then told her that there indeed was responsibility on her, and that she and her sister had to sit down and decide the issue amongst themselves.

It is worth noting here that the couple was counseled not to change their married conduct until it was known whether or not the wet nurse had fed them both. That is, neither they nor their marriage were put under suspicion with all the attendant behavioral changes that typically pertain to suspects. Indeed, I often found such suspicion lacking in the council, and that was one of the ways it was different from the law courts. Furthermore, there seemed to be no urgency on the part of the mufti to find out the truth of what had happened, even though he later expressed frustration at what he saw as the ignorance and forgetfulness that might bring down this couple’s marriage.

That the council was not much concerned with uncovering wrongdoing and bringing it to justice was also an aspect that crucially distinguished it from the law courts and its practices. Thus, once a distraught man entered the council. He leaned in toward the mufti and said that he had learned something about his sister that had destroyed his life. For their father had raped her some 14 years ago, and only his mother and brother had known about this, until now. He wanted to know what to do, if he should turn his father in. He looked angry and lost.

The mufti leaned in closer, and asked about the sister’s current situation. He replied that she was married. The mufti then replied that it would not make sense to report his father, as the ensuing scandal would not only provoke her husband to divorce her but also make it nearly impossible for her to ever marry again. The mufti said that God had “covered” (satar) on her, and that this seemed better for all. (And, maybe, the mufti said as an afterthought, the husband had come home drunk and mistaken his daughter for his wife.) The man remained unsatisfied; notably, he was not asking what to do on behalf of his sister—he was asking what to do because he could not live as before knowing what had happened. The mufti, when he understood this, advised that he move away from his family.

The incidents I have recounted so far make clear that the fatwa, as practiced in the Fatwa Council, is not mainly about dispensing points of correct doctrine. Rather, it is more about what the mufti is able to say to the fatwa seekers based on the information he has been given by them, and within the range and limits of doctrine as well as overall conceptions of an ideal Muslim self. In a sense, just as the fatwa seeker does not initially know what to do, which is why he or she goes to the mufti in the first place, the mufti also, initially, does not know what to say, which is why he typically inquires into the facts of the situation. One could say that what reigns in the Fatwa Council is a condition of perplexity and uncertainty, perplexity of the fatwa seeker about what to do, and the uncertainty of the mufti about what to say about what to do. The mufti conducts his inquiry to find the facts of the situation, but not mainly to ascertain their truth. Responsibility for their truth is typically borne by the fatwa seekers themselves. The mufti takes the information supplied by his questioners on good faith, knowing that they bear final responsibility for it.

This raises another important point. It matters how the mufti conducts his inquiries. The inquiries themselves are not, for the most part, routinized, and their direction often depends on the information supplied by the fatwa seekers. Nevertheless, there are certain qualities or virtues he is expected to display in the process, consonant with his position as a mufti. His manner must reflect his experience with the affairs of life, his virtues, and his knowledge. He is supposed to be patient, humble, and to display compassion or a merciful attitude. He is not to be rude, loud, or insulting even if he scolds someone for certain actions (although righteous anger seems to be acceptable). When a mufti did not display the expected decorum, he could be rebuked by the fatwa seekers or by people around him. I saw this happen in a couple of instances, when muftis exploded in frustration at the frequency of the questions and the kinds of problems that they had to address.

We could therefore say that one important condition affecting what the mufti can assert to the fatwa seeker is a condition of good faith. The mufti takes the information supplied by the fatwa seekers on good faith; and that he takes it in good faith is demonstrated in the decorum he displays in the process of conducting his inquiries and finally dispensing his fatwa. What the mufti can say and how he gets to saying it cannot be seen as separate, particularly from the standpoint of the fatwa’s authority.

Thus, rather than saying that the fatwa is mainly about finding points of correct doctrine, as does much of the scholarly literature on the fatwa (see Note 30), it is more appropriate to say that the fatwa is about what the mufti is able to say, in good faith, to fatwa seekers about what they
should do, within the range and limits of doctrine as well as overall conceptions of an ideal Muslim self.

The care of the self

I have described the incidents above to highlight several aspects or dimensions of the practice of the fatwa: its pedagogical dimension; its broad ranging discussions of proper conduct; its understood point as the facilitation of people's affairs; its conditions of good faith, and its sense of shared responsibility between muftis and fatwa seekers, especially the fact that the muftis bear a level of responsibility for the fatwas they dispense. These elements, taken together, suggest an approach to understanding the fatwa's authority. Certainly, fatwas are heterogeneous things, and it would be mistaken to reduce them to one. But I would like to suggest that it would be useful to think about what goes on in the Fatwa Council in Al-Azhar by adapting the notion of "the care of the self."

As we know, the notion of "care of the self" has been elaborated by Foucault, whose various practices he described in great historical detail. His concern over such practices arose out of a set of problems within liberal thought and practice that he identified and tried to find a way out of. While liberals pride themselves for their incessant vigilance against power and its abuse, what Foucault (1990, 1995) showed—in one of those remarkable ideological inversions that characterize his work—is how that vigilance against power has itself become a mode of power, one that is far more efficacious, subtle, and wide-ranging than any before it, one that entrenches itself precisely through its form of individuation. Consequently, Foucault tries to find different forms of individuation—through alternative practices of the self—in an attempt to refuse the kind that is brought on by, and is a vehicle for, the historical mode of power he analyzed so acutely. Because power, as Foucault saw it, is intrinsic to the plurality of our relations—with each other and our own selves—it is also inseparable from our ethical relations. To practice alternative forms of the care of the self is both a way of refusing power and acting ethically. For Foucault, then, ethics is necessarily bound up with the problem of finding freedom.

I propose to recruit this ethical notion of the care of the self to another problem that, although not necessarily incompatible with Foucault's, nevertheless remains unspoken within it. It is the problem not of freedom but of authority, of how selves are maintained and advanced within the traditions to which they bear a sense of obligation, or, put alternately, how a tradition is inherited by its adherents. This is a question, I think, that has rarely been explicitly asked or explored in the literature on the fatwa, or as a general question for the anthropological exploration of Islamic authority. I suggest that the practice of the fatwa be understood as a mode of the care of the self, as a practice by which selves, in the multiplicity of their affairs, are maintained and advanced as part of Islamic tradition. In this, the authority of the mufti is that of a guide. We can put it this way: a typical question in the fatwa has the form: "I don't know my way about." Muftis are ones who have the skills to find their way about. Although the relationship between mufti and questioner is an asymmetrical one, muftis, as guides, share responsibility with the questioners they guide. It is a shared responsibility rooted in reciprocal conditions of perplexity and uncertainty—perplexity of the fatwa seeker about what to do, and uncertainty of the mufti about what to say. In navigating these perplexities and uncertainties, it could be said that mufti and questioner find their way together.

As the ethnography here shows, the fatwa is involved in a process of tarbawiyah—ethical cultivation, that is highly attentive not just to questioners' particular situations, but also their weaknesses, drives, desires, hopes, and sufferings—as in the young woman who desired her equally young cousin over her aged husband, the student who could not have wet dreams, the man who felt betrayed by the knowledge of sexual violence his family had long withheld from him. A well-known story has it that a mufti was once asked if a killer might repent and receive forgiveness. He replied that it was not possible. Asked the same question by another man, he replied in the affirmative. When confronted by the contradiction, the mufti said that, "As for the first—I saw in his eyes a desire to kill [someone] and prevented him from it; as for the second—he came in surrender, having already killed [someone] and I did not cause him to despair" (Reinhart 1993:13).

The story shows how attentiveness to the range of emotion and desire is necessary to the correct practice of the fatwa. Moreover, the idea of the fatwa as a form of the care of the self emerges clearly from it.

Aply performed, the fatwa is not just scrupulous to past doctrinal texts, but also attentive to one's place in the life cycle, attuned to the immediacy of one's present circumstances, and oriented by a future defined by the exemplary character and life of the Prophet of Islam. The mediation of these temporalities is crucial to the promise of guidance intrinsic to the fatwa and, thus, part of the structure of its authority. They tend to be obscured, however, by modernist temporal assumptions.

Involves in a process of tarbawiyah, concerned with "facilitating people's affairs" with the mufti as guide, the fatwa is a practice that puts the questioner on a journey of ethical cultivation. Speaking on issues of tarbawiyah, one mufti related to me a famous hadith about a man, who, having killed 99 men, asked a sheikh if there was any forgiveness possible for him. When the sheikh replied that there was not, the man killed the sheikh, too, making him the hundredth. Later, he asked another sheikh the same question, whereupon the sheikh responded that it was possible only if he left his community and went to live in a
particular town of rightly guided people (salihin). Following the sheikh’s words, he set out toward the town but died along the way. At his death, both the angel of mercy and the angel of punishment tried to claim him. To resolve their dispute, they agreed to measure the distance he had traveled; if he was closer to the town, the angel of mercy would claim him; if closer to the community he left, the angel of punishment would take him. As they measured, however, God stretched the earth so that he would end up just closer to the town to benefit the angel of mercy.

This image of the fatwa as facilitating a journey takes us far from the conventional view of it as primarily a doctrinal pronouncement and an instrument of doctrinal reform. It also helps see beyond the idea of Islamic tradition (and its authority) as stuck between its past and a future of inescapable novelty because it shows how the tradition moves toward a future, in the way that it puts a self on a path toward a final destination. One’s place on that path, however, is always rendered uncertain, but this is not because endlessly, irreducibly “new” circumstances bring on unforeseeable change. Rather, it is because the familiar friction that arises from the heterogeneity of life’s affairs, of being young and growing old and sick, of dying along the way, nevertheless renders obscure whether one has ever fully arrived at a given place on the path, or whether one is even still on it. Here it is not the creativity of the fatwa that matters but, rather, its capacity to enable a self to stay and advance on an already defined path toward an ideal Muslim self. And that capacity is found not in the pronouncement of doctrinal principles and rules for how to act nor in reforming them to fit modern times but, instead, in the skill of using them discerningly to “say the right words at the right time.”38 for the person who seeks guidance. It is the promise intrinsic to this capacity to guide, the mutual uncertainties and responsibilities involved in it, the range of emotion and the temporalities it mediates, and the future(s) that it aims to facilitate and secure, that structures the fatwa’s authority.

Conclusion

With the ethical turn in anthropology, it may seem unremarkable, even uninspired, to cast the fatwa as an ethical practice, as a form of the care of the self. What is surprising, however, is how so evidently an ethical practice could have gone unacknowledged as such for so long. I have argued here that deeply familiar assumptions about time, creativity, and imitation that underwrite prevailing conceptions of tradition are the same ones that overdetermine our contemporary approaches to the fatwa and obscure its ethical dimensions and attenuate our understandings of its authority. These assumptions have facilitated an image of the fatwa as creatively straddling a constant divide between a settled doctrinal past and a future of incessant novelty, as the primary agent of doctrinal change, of adapting and reforming Islamic tradition to fit modern times. This, in turn, has led to an emphasis on fatwas as doctrinal imperatives, disembodied from the specific modes of engagement that structure their living authority.

In highlighting and questioning these assumptions, I have tried to open up different ways of thinking about time, creativity, and imitation and, thus, about (Islamic) tradition, the fatwa, and its authority. In casting the fatwa as a form of the ethical care of the self, then, I have been concerned with what is entailed in making this claim, about tradition, temporality, and the self, but also about the question I asked at the beginning of this article, on the relation of ethical agency to authority. The view of the fatwa offered here may help us think beyond the conventional understandings that typically see the susceptibility to authority as principally opposed to ethical agency. Rooted in an asymmetrical, but reciprocal, relationship of guidance between mufti and questioner, the fatwa, as a practice of discerning and of saying the right words at the right time, mediates multiple temporalities in which a self is embedded in order to keep and advance it on an ethical path that has become obscured from it. In this case, one’s susceptibility to a rightly guided word of guidance, one’s being moved despite oneself by the fatwa, can be indication that one has not veered hopelessly off that ethical path. That susceptibility to the fatwa itself might therefore be an expression of one’s ethical agency, a demonstration of one’s continued ethical potential. Ethical agency, in this case, would not be opposed to authority but, rather, an expression of it.

In casting the fatwa as I have, I know I have left many questions unanswered. One could, for example, ask about the effects of modernizing reforms on the council. That is, if the fatwa is part of a process of ethical cultivation, and the council a space of that cultivation, what do we say about the fact that it is now enacted primarily through the comedies and tragedies of marriage, sex, divorce, and reconciliation? Moreover, how have the electronic media transformed the fatwa’s modes of ethical engagement? But my point here has been to effect a shift of emphasis, so that these sorts of questions can be asked. I have tried to shift an emphasis from the reforming of doctrines, to the shaping of persons and putting them on an ethical path; from the pronouncement of doctrinal imperatives, to the forging of a bond by finding a way to go forward together; from the creativity of the multi to his discerning and ability to find the right words at the right time; and instead of the endlessly, irreducibly new, the unavoidable but familiar friction of daily life, its embodied temporalities, and of all that is involved in living it. These are crucial dimensions of the fatwa, but not enough systematic investigation has been done on them. Here, I hope to have made one contribution in that direction.
Islamic Sharia, and even though they personally knew a number of
lawyers with whom they could have easily consulted. But they re-
lied instead on a sheikh whom they did not know.
14. Thus, in calling these explanations "commonplace," I do not
thereby mean to disparage them. I call them commonplace be-
cause they draw on a set of deeply held presuppositions that work
to conventionally define the phenomena they aim to explain. But
in so doing, they do not tell us how these presuppositions became
definitive of these phenomena. That is why I argue that even if these
explanations were right, we still would not, in invoking them, know
why they were right. For a discussion of presuppositions and the
work they do, see Collingwood 1960, 2002.
15. See as an example Marianne Constable’s (1994) discussion of
medieval mixed juries and how they changed.
16. The wide-ranging legislative reforms of the Sharia courts in
1897, which limited their jurisdiction to those matters now catego-
ized as personal status, also incorporated a provision in its section 93
that authorized the use of coercion in these domains. A copy of
the text of the law can be found in Majma’at al-asmamir al-’ubya wa
al-dikritat al-sadira fi sanat 1897 (Government of Egypt 1898:153–
175).
17. The mufti’s comment is especially interesting because inher-
itance provisions for orphaned grandchildren were made by Egyp-
tian law only in 1946, law no. 71, whose articles 76–79 mandate
obligatory bequests for them. (I thank Arskal Salem for alerting me
to this; see also Anderson 1965, Coulson 1970.) The mufti’s com-
ment thus indicates the possibility that the Sharia courts were al-
ready judging in favor of orphaned grandchildren, even if there
was no law for requiring this—a possibility that remains to be
investigated.
18. A succinct formulation of this problem can be found in
Bobbio 1965.
19. See Hannah Arendt’s fascinating discussion of authority in
Arendt 2006a.
20. One famous statement of this problem is by Cover 1992.
21. These points have been discussed in part by Hannah Arendt
in Arendt 2006b.
22. Such a view finds classic expression in the work of John
Locke, who eventually came to the conclusion that belief (and,
therefore, belief in someone’s or something’s legitimacy) could not be
coerced by the state. For a contemporary defense of Locke’s view,
see Susan Mendus (1989), who distinguishes between sincere and
authentic belief. For a critique of Mendus’ s distinction, see Asad
1995.
23. This difficulty expresses itself most poignantly in cases that
pit religious freedoms against the rights to compulsory education.
See, for example, Langlaude 2006.
24. I do, however, address this in greater detail in Agrama 2005,
in which I discuss how modern legal power works through historically
cultivated modes of suspicion, as a kind of looping effect whereby
suspicion of legal process and judgment brings on calls for greater
regulation, which in turn expands law and its modes of suspicion
into broader and more intimate domains of social life.
25. Much of this literature is found in the fields of history and
Islamic studies. Yet the assumptions within them are displayed
more widely.
26. Thus, Messick (1992) writes,
According to the disputed view that the “gate of Ijtihad”
had closed, however, the successes of the advocates of ac-
tive interpretation eventually came to naught. This supposed
watershed (c. A.D. 900) in the development of the sharia
corpus is characterized by Weber as marking both a ‘crystal-
lization’ of the four great Sunni schools of law, and, simul-
taneously, an end to further interpretive additions to the set
corpus…. There were jurists in subsequent centuries, however, including such formidable minds as Ibn Taymiyya (d. 1328) and al-Shawkani in early-nineteenth-century Yemen, who rejected this doctrine and brushed aside the boundaries and ossified dogmas of the schools to advocate *ijtihad* and re-think their positions from first principles, that is, the Quran and Sunna. Aside from such prominent figures, however, it was the ordinary mufass of Islam, continuously and unobtrusively, across region and time, who provided the sharia with an interpretive dynamism through the exercise of *ijtihad* in their *fatwas*. [pp. 148–149]

It is interesting, however, that Messick’s ethnographic observations on the *fatwa* led him to focus not on its doctrinal aspects but, instead how it is written, and how the styles in which it was written indicated an authoritative habitus.

27. An entire issue of *Islamic Law and Society* (Powers 1996) was devoted to a discussion of this point, as well as taqlid and *ijtihad*. See especially Sherman Jackson’s 1996b contribution. See also his later (2001) discussion.

28. See, for example, Masud et al. 1996. As I mentioned in an earlier note, the only partial exception to the characterization of the *fatwa* literature I am describing here is the work of Messick 1992, 1996.

29. For a more detailed elaboration of the differences between and within taqlid and *ijtihad*, which also focuses on questions of authority, see the learned discussion of Jackson 1996a:73–112.

30. The idea that the *fatwa* is primarily a formal judicial opinion and a doctrinal pronouncement has long standing. Thus, E. J. Brill’s *First Encyclopedia of Islam*: 1913–1936 (Houtsma et al. 1993) defines the *fatwa* as “a formal legal opinion given by a mufti or a canon lawyer of standing, in answer to a question submitted to him either by a judge or a private individual” (v. 7, pp. 92–93). The *New Encyclopedia of Islam* (Glasse 2003) defines *fatwa* similarly: “a published opinion or decision regarding religious doctrine or law made by a religious authority, often called a *mufti*” (p. 140). And the *Encyclopedia of Women and Islamic Cultures* (Joseph and Najmabadi) writes: “In Islamic legal parlance, fatwa (fatwa pl. *fatuwat*) refers to a clarification of an ambiguous judicial point or an opinion by a *mufti*, a jurist trained in Islamic law, in response to a query posed by a judge (*qadi*) or private inquirer (*mustafti*)” (2003:171–174). This is precisely the understanding taken up by the most extensive works on the *fatwa*, such as Skovgaard-Petersen 1997 and Hooker 2003. My point, of course, is not to disparage these important works; it is only to show how overwhelming this view of the *fatwa* is. Neither is this to say that this view is entirely mistaken; as I note later in the article, *fatwas* are heterogeneous things and should not be reduced to just one. My aim instead is to highlight the assumptions that sustain this overwhelming view, some confusions they potentially obscure, and the other possibilities they potentially obscure.

31. A detailed elaboration of these points can be found in Koselleck 1983, 1985.

32. See Mary Carruthers’s (1992) interesting discussion of how memory was prized in medieval European Christian thought and practice in ways similar to how creativity is prized today.

33. This is especially under modern liberal legal systems, where it is linked to freedom of expression and the development of “personality.” See Eberle 2001, Whitman 2004.

34. Just to be clear: my point is not that change does not happen. That things change is something no one doubts or denies. But whether any change is a radical innovation and whether the future must continually bring that on are other questions all together, in which more complex and contestable criteria are inevitably involved. If it seems all too obvious that the future brings on radical novelty, then that may simply be because we all too readily presuppose it, and so it is already part of our descriptions, our experiences, our expectations, and our commitments.

35. Richard Sennett (1993) has done a splendid rethinking of the connections between authority, temporality, and the self. It has, unfortunately, been largely neglected. See also the discussion between Steve Caton (2006) and Talal Asad (2006).

36. There is a fivefold categorization of the acts within Islam: *wajib* (required), *mandub* (recommended), *mubah* (permitted), *makruh* (reprehensible and discouraged, but permitted), and, finally, *haram* (forbidden).

37. I thank Veena Das for bringing this question to my attention.

38. This is Kirstie McClure’s (1997) rendition of the role of medieval exempla as employed by Machiavelli and as reworked by Hannah Arendt in her distinctive notion of (political and ethical) judgment. On historical transformations of the conceptions and uses of exempla, see Timothy Hampton 1990.

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