Judgments and Opinions

Judicial proceedings were concluded by a verdict on a regular basis. As has been mentioned before, there were no stages of appeal.

Expert legal opinions (Ar. fatāwā or fatāwī, sg. fatwa)\(^1\) were delivered in response to concrete inquiries. They are by no means among the sources of the law, they are not legally binding but effective only through the expert’s (al-muftī) authority. It is true that muftis were often part of the resolution of lawsuits.\(^2\) The expert was not required to have been formally trained, but much was written on the subject of his qualifications. In keeping with their high rank, one classical text calls them ‘the prophet’s representatives’.\(^3\) In addition al-Shāṭibī remarks on the orientation required when delivering opinions: that a medium course (wasaṭīyya) between indulgence (tarakhkhuṣ) and excessive severity (tashaddud) must be chosen, as indeed all of the sharia is characterised by moderation (the search for the middle course).\(^4\)

Expert opinions were an important aid in finding the law, especially since they mainly dealt with very concrete issues. Characteristically, the great medieval jurist al-Nawāwī names as one prerequisite for someone to be able to deliver legal opinions as a mufti that he must know the habits and situation of the people inquiring and be familiar with them, their way of speaking and their point of view.\(^5\) This illustrates clearly that the results were also dependent on these factors to a significant degree.

Only few expert opinions survive from the time of origin of the Islamic law until modern times.\(^6\) During the late classical period, important collections of opinions of great practical value were composed.\(^7\) Worth mentioning are the Fatāwā Hindiyya or ʿĀlamgīriyya collated by a commission under the Mughal emperor Aurangzeb Alamgir in the seventeenth century, which fol-

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1 Cf. Benzing, Rechtsgutachten, 4 ff.; Masud/Messick/Powers, Muftis, Fatwas, and Islamic Legal Interpretation, 4 ff. with further references.
2 Regarding the Maghreb under the Marinid dynasty cf. Powers, Law, 229 ff.
5 Imam Nawawi, Adab al-Fatwa, 31.
6 Cf. Diem, Ein arabisches Rechtsgutachten, 7 ff. with further references.
7 Cf. Masud/Messick/Powers, Muftis, 10 ff. with further references.
low al-Marghīnānī’s standard work *Al-hidayā*.⁸ There are also the Ottoman registers and collections of the şeyh ül-İslām’s fatwas⁹ as well as the voluminous collection of individual scholars’ fatwas such as e.g. the Hanbalite Ibn Taymiyya’s 37 volumes,¹⁰ the Malikite al-Burzuli’s (d. 841/1438) seven volumes¹¹ and the Malikite al-Wansharīsī’s (d. 914/1508) thirteen-volume collection¹².

Among the Sunnis the system of expert legal opinions would later be institutionalised in such a way that a chief expert (*muftī*) was appointed for a particular area, such as e.g. the şeyh ül-İslām in Istanbul.¹³ Some countries continue this custom to the present day. It is not, however, uncontroversial, as it links finding the law closely to the exercise of political power.¹⁴ The possible practical effectiveness of fatwas may be illustrated by an example from nineteenth-century Iran¹⁵: the Iranian Shah had assigned the monopoly of marketing the Iranian tobacco production to a British company at the expense of the native wholesale trade and banking system. The result were protests by merchants and clerics together, followed by a fatwa, allegedly issued by the highest Shi’ite authority at the time, *Marjā’-e taqīlīd* Shirāzī, judging the consumption of tobacco to be hostile to the occulted imam. This resulted in pipes being removed from coffee houses and all of Iran giving up smoking. Once the now worthless monopoly had been rescinded, a further fatwa by the same scholar immediately appeared, declaring smoking tobacco to be permissible.

In the present day, the culture of expert legal opinions is spreading all over the world. Originating in Saudi-Arabia in particular we see serious initiatives aimed at influencing Muslims all over the world following the Wahhabi ideology. To further this cause fatwa texts are translated into English and circulated.

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⁹ Cf. Krüger, Fetwa und Siyar, 72 ff. with further references.
¹⁵ In Halm, Der schiitische Islam, 139 f.