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RUDOLPH PETERS

Al-Fiihhi‘iil-MiihJivyic iiklicites ihat one ot ihe grand inuiii's tasks was to serve as a mufti at the Grand Shari'a Court in Cairo (Makhamat al-Qahira al-Kubra), but in the nineteenth century he also had other functions. Al-Fatiāwā al-Mahdīyya indicates that one of the grand mufti's tasks was to attend the Khedival Council (al-Diwan al-'Alī) in order to give advice on complicated legal questions. Together with the chief muftis of the other law schools (madhhabs), the rector of the Azhar University (Shaykh al-Azhar), the dean of the descendants of the Prophet (naqib al-asbāf), and occasionally other ulama, the grand mufti was part of the Council of Scholars (al-Majlis al-lhrmi) of Cairo, which was consulted by the rulers in important religious matters (Lane 1966:121-122).

Occasionally he would be asked for an authoritative fatwa to settle controversies among jurists or to deal with complaints about the misapplication of the shari‘a by qadis. A decree of 1872 regulating the duties and competence of the official (and therefore Hanafi) muftis gave the grand mufti and the Alexandrian mufti unrestricted authority to issue fatwas to both the general public and government agencies, unlike other appointed muftis, who were allowed to give fatwas only in connection with the agency or court to which they were appointed.

The grand mufti's power was greatly increased by the Shari‘a Courts Ordinance (Fa‘ihat al-Mahakim al-Shar‘iyya) of 1880 (text in Jallad 1890-1895, 4:145-156), which granted him the authority under certain circumstances to give binding decisions. If there was a complaint about the misapplication of the shari‘a, the matter would be investigated and decided by the Grand Shari‘a Court in Cairo. However, if there were misgivings or complaints about the decision in appeal, the case would be submitted to the grand mufti, whose fatwa would be binding. The grand mufti could also give binding fatwas in appeal from judgments of the Grand Shari‘a Court in Cairo or the Shari‘a Court in Alexandria, acting as courts of first instance (Art. 3).

Another similar procedure, which apparently had already existed for some time, was formalized in Art. 22 of this ordinance: whenever a qadi was in doubt about a legal issue of a case brought before him, he first had to consult the mufti officially appointed to his court or to the district. If the qadi and the mufti could not agree on the issue, or if the mufti himself did not know the correct answer, the matter would be laid before the grand mufti, whose decision would be binding. This would also be the case if the Grand Shari‘a Court of Cairo was uncertain about a point of law in a lawsuit and consulted the grand mufti.

The result of these provisions and practices was that the function of grand mufti began to bear resemblance to the Courts of Cassation known, for example, in French or Dutch law, whose task it is to ensure the correct application of the law and who, just like the grand mufti, decide the purely

Al-Fatāwā al-Mahdīyya (‘il-Waqqā‘i‘ al-Miṣrīyya), a collection of some 13,500 fatwas issued by Grand Muftī Muhammad al-‘Abbāsi al-Mahdī of Egypt (d. 1897), contains only three fatwas whose political implications are more or less evident. Here I will present one of them. Although the fatwa seems to deal with a purely religious question—namely, the obligation to remove images of human beings and animals—the underlying issue was highly political. The fatwa was given on August 31, 1881, at the request of the ‘Urabi government, during the last turbulent weeks after the attempted deposition of the Khedive and before the government's surrender to the British.

The author of this text, Muhammad al-‘Abbāsi al-Mahdī, was born in the year 1827, a son of Muhammad Amin al-Mahdī (d. 1831-1832), for some time the Hanafi mufti during Mehmed 'Ali's reign. In October 1848 Ibrahim Pasha appointed al-‘Abbāsi the Hanafi chief mufti (mufti‘i‘is-sidā‘ al-Hanāfīyya), an office he was to hold for almost half a century, until his death in 1897. Because he was only twenty-one years old at the time of his nomination, his professor of Hanafi law, Khalīl al-Rashīdī, was appointed head of the fatwa department (amīn al-fatawā) to assist him in his new office.

From the time of the Ottoman conquest of Egypt (1517), Hanafi law was applied exclusively in the law courts, and the Hanafi chief mufti was the highest ranking mufti in the country. During al-‘Abbāsi’s tenure in office, this Hanafi supremacy over the other chief muftis was emphasized by the use of the new title, mufti al-diyār al-Miṣrīyya (mufti of the Egyptian lands), or simply headmufti (bāšīmufti). The primary task of the Hanafi chief mufti was to serve as a mufti at the Grand Shari‘a Court in Cairo (Makhamat al-Qahira al-Kubra), but in the nineteenth century he also had other functions. Al-Fatāwā al-Mahdīyya indicates that one of the grand mufti’s tasks was to attend the Khedival Council (al-Diwan al-‘Alī) in order to give advice on complicated legal questions. Together with the chief muftis of the other law schools (madhhabs), the rector of the Azhar University (Shaykh al-Azhar), the dean of the descendants of the Prophet (naqib al-asbāf), and occasionally other ulama, the grand mufti was part of the Council of Scholars (al-Majlis al-‘Ilmi) of Cairo, which was consulted by the rulers in important religious matters (Lane 1966:121-122).

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legal issues and do not examine the facts as established by the lower courts. That the grand mufti did not deal with issues of fact is clear from the formula frequently to be found in his fatwas: "If the situation is as mentioned [in the question]."

Al-'Abbasi's biographers mention that he twice fell foul of the Khedive: once when Abbas wanted to confiscate all the properties of the descendants of Mehmed 'Ali (r. 1805-1848), and another time when Isma'il appointed him shaykh al-Azhar, acting as prince-regent for Sa'id (r. 1854-1863), wanted to assimilate the family endowments (waqf 'abl) to public endowments (waqf khayri), to gain control over them. Due to al-'Abbasi's opposition, nothing came of these plans. However, these must have been exceptional incidents, for his relationship with the ruling house was generally very close. This is borne out by the fact that in January 1871 Isma'il appointed him shaykh al-Azhar, a post usually occupied by a Shafi'i. The reason seems to have been that Isma'il wanted to introduce reforms and regarded al-'Abbasi as the most suitable person for carrying out this task. He was not disappointed: six months later (16 Rabi' I 1288 I July 15, 1871) he issued a decree, prepared by al-'Abbasi, introducing, among other things, the requirement that students must pass a final examination before being admitted to the ranks of the 'ulama'. At the same time, al-'Abbasi succeeded in improving the allowances and pensions of the 'ulama' at al-Azhar, no doubt in exchange for the acceptance of his reforms.

The test of al-'Abbasi's loyalty to the ruling house came with the 'Urabi revolt in 1881, when he was attacked by 'ulama' and Azhar students who supported the 'Urabi movement. These people suspected him of preparing a fatwa advising that the 'Urabi revolt was a rebellion against a legitimate government and that the rebels deserved to be put to death. The students and 'ulama' of al-Azhar campaigned for his dismissal as shaykh al-Azhar, primarily on the ground that he was too outspoken in his support for the Khedive. They also wanted a candidate who was not a Hanafi, the madhhab usually occupied by a Shafi'i. The reason seems to have been that Isma'il wanted to introduce reforms and regarded al-'Abbasi as the most suitable person for carrying out this task. He was not disappointed: six months later (16 Rabi' I 1288 I July 15, 1871) he issued a decree, prepared by al-'Abbasi, introducing, among other things, the requirement that students must pass a final examination before being admitted to the ranks of the 'ulama'. At the same time, al-'Abbasi succeeded in improving the allowances and pensions of the 'ulama' at al-Azhar, no doubt in exchange for the acceptance of his reforms.

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We hope that you can give this information promptly, because at the same date we also received a request to expedite the matter."

*Answer:* God be praised. Our scholars have clearly stated that the acquisition of a large image of a being with a soul, which is visible to a spectator without having to look attentively, and which is in possession of all parts of the body that are indispensable for it to live, is reprehensible to the degree that it is almost forbidden [nazarrib tahirin]. Therefore, it is legally obligatory to remove such images. The *Radd al-Muhitār* al-Durr al-Muhitār*] says: "In the Supercommentary [Hāshiyā] by Abu al-Su`ud it is related on the authority of the Khānqāh* that its author held it permissible to remove [such] an image for whomever sees it in somebody else's house. [In fact,] it ought to be his obligation. If one hires a person who produces [such] images, the latter is not entitled to wages, since his work is sinful. This has been related on the authority of Muhammad al-Shaybāni. If someone destroys a house that contains [such] pictures, he is liable for the value of the house but not for the value of the pictures." From this one learns the rule regarding the removal of the aforementioned idol and the decapitation of the images [usur] located at both ends of the Qasr al-Nil Bridge. The Exalted God knows best.

**Supplement to the Aforementioned Answer:** The rulers of the Muslims must remove everything in their countries that is objectionable [nunkar], such as practicing usury [rikāl], the opening of places known as brothels [ka‘dā‘], and bars [hasūr al-ra‘ās], and other offences [nalqā‘]. [They also must] prevent God's servants from suffering wrongs contrary to the sharī‘a and forbid injustice and [the application of] rules other than those revealed by God. This is more urgent.19

In 'Urabi's formulation of the question, he underlines the religious aspect by referring to the equestrian statue as an idol [qanār], a term associated with the Jahiliyya period, and by mentioning the removal of idols by Muhammad's Companions after the conquest of Mecca in 620. Further, he attributes the "misfortunes" that had befallen Egypt to the erection of these statues. Although he does not specify these misfortunes, he was in all likelihood referring to the increasing foreign control over Egypt's government and finance, especially after Egypt's bankruptcy and the institution of the Anglo-French dual control in 1876. He seems to imply that this state of affairs should be regarded as God's punishment for religious neglect in tolerating these statues (and other manifestations of Western behavior).

The classical law books give two grounds for the prohibition of images: that their makers try to copy God's creation [muṣāba‘at al-bālāq] and that they thereby imitate the unbelievers [al-tashhabh bi‘l-kuffār] (Snouck Hurgronje 1923, 2:453). The latter ground, which provides the link between religion and politics, is highly relevant in the present context, because the erection of these statues had been part of Cairo's Western-inspired modernization.

The attack on the statues also had political implications, perhaps less obvious, but nonetheless present. The call for demolition of the statues was a political stance, first and foremost against European influence in Egypt, and second, against the ruling house, which, among other things, was responsible for the increasing foreign presence in, and control over, Egypt. It is no coincidence that the statues in question were located in the "European" parts of Cairo: the equestrian statue in the Azhakiyya quarter, which, during the second half of the nineteenth century, was the location of consulates, foreign commercial establishments, hotels, and bars; and the lions of the Qasr al-Nil Bridge at the fringe of Isma‘iliyya, a Western-style quarter designed and partly constructed by Isma‘il on the model of Hannsmann's Paris.20 Because these statues were erected by Isma‘il, 'Urabi's action also implied criticism of the Khedival dynasty. This was obvious, because one of the statues under attack represented Ibrahim Pasha, the son of the founder of the dynasty, Mehmed 'Ali, and the father and grandfather, respectively, of 'Urabi's adversaries, the Khedives Isma‘il and Tawfiq (r. 1879-1892).

The grand mufti's response to the question is rather brief. It consists of the general rule with regard to images, a quotation from the *Radd al-Muhitār* by Ibn `Abdīn, a standard nineteenth-century Hanafi text, and a final sentence, connecting the first part of the answer to the actual issue. Although the wording of the fatwa is clear, the last sentence is not a very articulate and forceful statement, leaving the reader to draw his own conclusions. This suggests that the grand mufti may have been reluctant to issue this fatwa. He must have been in a quandary. From the legal point of view, he could not but endorse the actions envisaged in 'Urabi's question, but politically he was loyal to the Khedive and 'Urabi's adversary. Therefore, he did not want to lend him any ideological support.

It is significant that the fatwa is signed only by the grand mufti. In the *Fatāwa Mahāliyya*, we find several fatwas endorsed by other religious scholars: apart from the grand mufti, usually the shaykh al-Azhār (during the period that al-'Abbāsi did not hold this position), the head of the fatwa department (amin al-fatwā), and other high ranking ‘ulama’, not necessarily all Hanafis. These fatwas usually deal with such important matters as controversies between religious scholars or political issues, as in the aforementioned fatwa against the Sudanese Mahdī. Some were issued at the request of the highest consultative body of state, al-Maṣūṣ al-Khunusi. The topic of the fatwa under discussion here, the provenance of the question, and the circumstances under which the fatwa was requested, would certainly call for such special treatment. That the grand mufti chose to issue this fatwa separately is, I believe, indicative of his isolated political position. At the
same time, it gave him the opportunity to add the supplement, which makes the fatwa unique. As a rule, a fatwa deals only with the issue expounded in the question addressed to the mufti, without digressions to other related topics. None of the fatwas contained in the Fatā‘īli Muhdīrī is followed by such a supplement. In this case, however, the grand mufti must have felt that he could not confine himself to the legal aspects of the issue and that he had to make it known where he stood politically. The grand mufti did not want 'Urabi to increase his legitimacy by posing as a Muslim ruler faithfully carrying out the commands of Islam. He therefore pointed to a number of political and social phenomena connected with the foreign presence in Egypt that were contrary to the prescriptions of Islam, implying that 'Urabi had in fact been slack in enforcing the religious commands and did not deserve to be regarded as a defender of Islam, his attack on the statues notwithstanding.
Notes to Pages 212–216

1. A fatwa against the Sudanese Mahdi issued at the request of the Khedival government (al-Mahdi 1304/1887, 2:28–32; 18 Dhu al-Qa‘da 1300 [September 20, 1883]). For an analysis of this fatwa, see Peters 1983. Of another one issued in 1876, we do not know the precise political context. The Khedive asked about a person claiming to have knowledge of the divine secrets (al-mughayyahāt), as a result of which people were busying themselves zealously with his words and committing actions that disturb public order. The grand mufti responded that such a person must be punished with ta‘zir, if his words do not amount to apostasy. (al-Mahdi 1304/1887, 2:7; 20 Shawwal, 1293 [November 8, 1876]).


3. On Muhammad Amin al-Mahdi, see Lane (1966:118–121).

4. See, for example, al-Mahdi 1304/1887, 2:449 (30 Rabi‘ II 1265 [March 25, 1849]): “We attended the Khedival Council in Cairo and the substance of the case of . . . was read to us as well as the conflicting fatwas concerning the issue . . . We considered their words and it appeared [to us] that the fatwa to the effect that . . . was the one in agreement with the stipulations of the founder of the waqf.” The sources do not allow us to establish whether the grand mufti attended these council meetings on a regular basis, or only when his legal advice was required.

5. See, for example, al-Mahdi 1304/1887, 4:588 (4 Jumada I 1271 [February 3, 1855]): The Majlis al-Ahkam (one of the higher legislative and judicial councils) wants a fatwa concerning a controversy among the ‘ulama’ of Upper Egypt regarding the law of gift.

6. See, for example, al-Mahdi 1304/1887, 3:276–281 (10 Jumada II 1289 [August 15, 1872]), where the grand mufti is consulted by the Majlis al-Ahkam about incorrect judgments of the qadi of Giza.

7. Decree of 5 Rabi‘ II 1290 (July 2, 1873); text in Jallad (1890–1895, 4:136).

8. See, for example, al-Mahdi 1304/1887, 1:222–226 (23 Jumada II 1285 [November 2, 1866]), where the grand mufti is called on to settle a dispute between the qadi and the mufti of Dumyat.


11. This was Ya'qub Sami (d. 1300/1881-1883), a professional soldier in the Egyptian Army, descended from a Greek family in Istanbul. During the 'Urabi revolt he chose the side of the 'Urabis and acted as undersecretary of state for war and president of the emergency government (al-majlis al-'irfi). See Schöch (1973:336, n. 337).

12. This was the equestrian statue of Ibrahim Pasha, the son of Mehmed 'Ali, who ruled Egypt for about nine months in 1848. It was created by Charles Cordier in 1872 and placed at al-‘Ataba al-Khadra’ Square, opposite the ruins of the Azbakiyya Mosque, which had been partially demolished in 1869 to create a large square, part of the new layout of Cairo. The statue currently is situated at Opera Square. See Baedeker (1929:54); Behrens-Abouseif (1985:92, 111, and plate xxii, a photograph of the statue in front of the remains of the Azbakiyya Mosque).

13. These are the four bronze lion statues that can still be seen at both ends of the bridge, which was built in 1871. See Baedeker (1929:86).

14. “Makrūḥ tahrim” is an intermediate category between makrūh (reprehensible) and ḥarām (forbidden).

15. This is the supercommentary by Muhammad Amin Ibn ‘Abidin (d. 1836) on al-Durr al-Mukhtār by al-Haskafi (d. 1677), itself a commentary on the Tanwīr al-Aḥsār by al-Timurtashi (d. 1595). See Brockelmann (suppl., 2:427-428). The Radd al-Muhātār was an authoritative and widely used Hanafi text in nineteenth-century Egypt.


17. Probably the Khuḍānat al-Fathāwī by Tahir al-Bukhari (d. 1147). See Brockelmann (suppl., 1:641).

18. Muhammad al-Shaybani (d. 805), a “companion” of Abu Hanifa, was one of the founders of the Hanafi madhhab.

19. Al-Mahdi 1304/1887, 5:299-300 (16 Shawwal 1299 [August 31, 1882]). The episode is discussed in Schöch (1973:244) and Delanoue (1982:140). The statues were removed at the instigation of the Maliki mufti ‘Ilaysh in early September. They were preserved in the Egyptian Museum and reerected after the revolt.

20. For the development of Cairo under Isma‘il, see Abu-Lughod (1971:103-113).

19. An Argument about How to Argue

1. A detailed account of the controversy may be found in Roff (1983). The primary source of textual materials is ‘Abbas (1937). A related publication by Pejabat Kuliah al-Attas (1937) has the same starting point but does not directly discuss