DIVERSITY AND DOMINANCE: ISLAMIC LAW AND OTTOMAN RULE

Ebu’s-Su’ud was the Mufti of Istanbul from 1545-1574, serving under the sultans, Suleiman the Magnificent (1520-1566) and his son, Selim II (1566-1574). Originally one of many city-based religious scholars giving opinions on matters of law, the mufti of Istanbul by Ebu’s-Su’ud’s time had become the top religious official in the empire and the personal adviser to the sultan on religious and legal matters. The position would later acquire the title Shaikh al-Islam.

Historians debate the degree of independence these muftis had. Since the ruler, as a Muslim, was subject to the Shari’a, the mufti could theoretically veto his policies. On important matters, however, the mufti more often seemed to come up with the answer that best suited the sultan who appointed him. This bias is not apparent in more mundane areas of the law.

The collection of Ebu’s-Su’ud’s fatwas, or legal opinions, from which the examples below are drawn, shows the range of matters that came to his attention. They are also an excellent source for understanding the problems of his time, the relationship between Islamic law and imperial governance, and the means by which the state asserted its dominance over the common people. Some opinions respond directly to questions posed by the sultan. Others are hypothetical, suing the names Zeyd, Amr, and Hind, the way police today use John Doe and Jane Doe. While qadis, or Islamic judges, made findings of fact in specific cases on trial, muftis issued only opinions on matters of law. A qadi as well as a plaintiff or defendant might ask a questions of a mufti. Later jurists consulted collections of fatwas for precedents, but the fatwas had no permanent binding power.

On the plan of Selim II to attack the Venetians in Crete in 1570

A land was previously in the realm of Islam. After a while, the abject infidels overran it, destroyed the colleges and mosques, and left them vacant. They filled the pulpits and the galleries with the tokens of infidelity and error, intending to insult the religion of Islam with all kinds of vile deeds, and by spreading their ugly acts to all corners of the earth.

His Excellency, the Sultan, the Refuge of Religion, has, as zeal for Islam requires, determined to take the aforementioned land from the possession of the shameful infidels and to annex it to the realm of Islam.

When peace was previously concluded with the other lands in the possession of the said infidels, the aforementioned land was included. An explanation is sought as to whether, in accordance with the pure shari’a, this is an impediment to the Sultan’s determining to break the treaty.

Answer: There is not possibility that I could ever be an impediment. For the Sultan of the People of Islam (may God glorify his victories) to make peace with the infidels is legal only when there is a benefit to all Muslims. When there is no benefit, peace is never legal. When a benefit has been seen and it is then observed to be more beneficial to break it, then to break it becomes absolutely obligatory and binding.

His Excellency [Muhammad] the Apostle of God (may God bless him and give him peace) made a ten-year truce with the Meccan infidels in the sixth year of the Hegira. His Excellency Ali [may God ennable his face] wrote a document that was corroborated and confirmed. Then, in the following year, it was considered more beneficial to break it and in the eighth year of the Hegira, [the Prophet] attacked [the Meccans], and conquered Mecca the Mighty.

On war against the Shi’ite Muslim Safavids of Iran

Is it licit according to the shari’a to fight the followers of the Safavids? Is the person who kills them a holy warrior, and the person who dies at their hands a martyr?

Answer: Yes, it is a great holy war and a glorious martyrdom.

Assuming that it is licit to fight them, is this simply because of their rebellion and enmity against the [Ottoman] Sultan of the People of Islam, because they drew the sword against the troops of Islam, or what?

Answer: They are both rebels and, from many points of view, infidels.

Can the children of Safavid subjects captured in the Nakhichevan campaign be enslaved?

Answer: No.

The followers of the Safavids are killed by order of the Sultan. If it turns out that some of the prisoners, young and old, are [Christian] Armenian[s], are they set free?

Answer: Yes. So long as the Armenians have not joined the Safavid troops in attacking and fighting against the troops of Islam, it is illegal to take them prisoner.

On the Holy Land

Are all the Arab realms Holy Land, or does it have specific boundaries, and what is the difference between the Holy Land and other lands?

Answer: Syria is certainly called the Holy Land. Jerusalem, Aleppo and its surroundings, and Damascus belong to it.
On land-grants

What lands are private property, and what lands are held by feudal tenure [i.e., assignment in exchange for military service]?

Answer: Plots of land within towns are private property. Their owners may sell them, donate them, or convert them to trust. When [the owner] dies, [the land] passes to all heirs. Lands held by feudal tenure are cultivated lands around villages, whose occupants bear the burden of their services and pay a portion of their [produce in tax]. They cannot sell the land, donate it or convert it to trust. When they die, if they have sons, these have the use [of the land]. Otherwise, the cavalry man gives [it to someone else] by tapu [title deed].

On the consumption of coffee

Zeyd drinks coffee to aid concentration or digestion. Is this licit?

Answer: How can anyone consume this reprehensible [substance], which dissolute men drink when engaged in games and debauchery?

The Sultan, the Refuge of Religion, has on many occasions banned coffee-houses. However, a group of ruffians take no notice, but keep coffee-houses for a living. In order to draw the crowds, they take on unbearded apprentices, and have ready instruments of entertainment and play, such as chess and backgammon. The city’s rakes, rogues, and vagabond boys gather there to consume opium and hashish. On top of this, they drink coffee, and, when they are high, engage in games and false sciences, and neglect the prescribed prayers. In law, what should happen to a judge who is able to prevent the said coffee-sellers and drinkers, but does not do so?

Answer: Those who perpetrate these ugly deeds should be prevented and deterred by severe chastisement and long imprisonment. Judges who neglect to deter them should be dismissed.

On matters of theft

How are thieves to be “carefully examined”?

Answer: His Excellency ‘Ali (may God ennoble his face) appointed Imam Shuraih as judge. It so happened that, at that time, several people took a Muslims son to another district. The boy disappeared and, when the people came back, the missing boy’s father brought them before Judge Shuraih. [When he brought] a claim [against them on account of the loss of his son], they denied it, saying: “No harm came to him from us.” Judge Shuraih thought deeply and was perplexed.

When the man told his tale to His Excellency ‘Ali, [the latter] summoned Judge Shuraih and questioned him. When Shuraih said: “Nothing came to light by the shari’a,” [‘Ali] summoned all the people who had taken the man’s son, separated them from one another, and questioned them separately. For each of their stopping places, he asked: “What was the boy wearing in that place? What did you eat? And where did he disappear?” In short, he made each of them give a detailed account, and when their words contradicted each other, each of their statements was written down separately. Then, he brought them all together, and when the contradictions became apparent, they were no longer able to deny [their guilt] and confessed to what had happened.

This kind of ingenuity is a requirement of the case. [This fatwa appears to justify investigation of crimes by the state instead of by the qadi. Judging from court records, which contain very few criminal cases, it seems likely that in practice, many criminal cases were dealt with outside the jurisdiction of the qadi’s court.]

Zeyd takes ‘Amr’s donkey without his knowledge and sells it. Is he a thief?

Answer: His hand is not cut off.

Zeyd mounts ‘Amr’s horse as a courier and loses it. Is compensation necessary?

Answer: Yes.

In which case: What if Zeyd has a Sultanic decree [authorizing him] to take horses for courier service?

Answer: Compensation is required in any case. He was not commanded to lose [the horse]. Even if he were commanded, it is the person who loses it who is liable.

On homicides

Zeyd enters Hind’s house and tries to have intercourse forcibly. Since Hind can repel him by no other means, she strikes and wounds him with an axe. If Zeyd dies of the wound, is Hind liable for anything?

Answer: She has performed an act of Holy War [jihad].