

# Fatwa and Counter-Fatwa in Colonial Northern Nigeria: The Islamic Legality of Broadcasting Qurʾān Recitation on Radio

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Praise be to Allah, Lord of the worlds. Allah says: “Who is better in speech than one who calls to Allah?” [Qurʾān 41:33]. “He has created things of which you have no knowledge” [Qurʾān 16:8]. “There is not a thing but its treasures are with us. But we only send down thereof in due and ascertainable measure” [Qurʾān: 15:21]. “Nothing have we omitted from the Book” [Qurʾān 6:38]. May the peace and blessing of Allah be upon our master, Muhammad, the Messenger of Allah, who said: “Allah makes to shine he who heard a saying of mine, memorized it, and delivered it as he heard it.” “Transmit from me even one verse.” “Surely Allah supports this religion even through an immoral person.” I have received a question from the scholars of Kano, may Allah guide them and us. Briefly stated, the question asks: “Is it or is it not permissible to broadcast Qurʾān recitation and Islamic sciences over these modern instruments such as loudspeakers, tape-recorders and radio?” I responded: The ulama have classified *bidʿa* (innovation) into five categories comparable to the five categories of Sharʿa legality: obligation, recommendation, permission, disapproval, and prohibition. Whatever assists in attaining piety and serves as a means to felicity, to transmit the message of the Prophet, may the peace and blessing of Allah be upon him, and to uphold Islamic law, the ulama assimilate it to the legality of obligation. Whatever serves as means to good

deeds, they assimilate it to the legality of recommendation. Whatever contains no harm to religion, they assimilate it to the legality of permission. Whatever detracts from the prophetic practice (*sunna*), they assimilate it to the legality of disapproval. And whatever contains misguidance and mischief (*ʿaḥḥālah and fasād*), they assimilate it to prohibition. We should assimilate these modern inventions to the legality of obligation, or of recommendation at the very least. In fact, the ulama have already accepted the lawfulness of printing the texts of the Qurʾān, ḥadīth and the religious sciences by modern press, and the establishment of schools to transmit science. In contemporary times, the invention of tape-recorders, loudspeakers, and radio broadcast provides a means to support Islam. Do you not see that increasing numbers of pilgrims each year (praise be to Allah) are able through the means of loudspeakers to participate in congregational prayers in the Sacred Mosque led by a single *imām*? Therefore, a means to piety is itself pious. We have seen that ships, automobiles, airplanes, telephones and telecommunications are now assisting Muslims in the performance of their religion. Deeds are judged by intention. A believer should seek the best way out. Ulama are required to simplify things and give glad tidings. The Prophet (peace be upon him) said: “Simplify but do not create difficulties, attract but do not repel.” Islamic legality should be sought for whatever becomes inevitable. The Community of the Prophet will never agree on error. May Allah guide us and you toward what He loves and accepts. May He cure our sick hearts with his mercy. *Salām*.<sup>1</sup>

*(From the dictation of our Shaykh and Guide, Al-Shaykh Ibrahim b. Al-Hajj Abdallah al-Kawlakhī al-Tijānī—May Allah have mercy on him.)*

In the Name of Allah, the Merciful and the Beneficent. May Allah grant his blessing on the Noble Prophet. From Emir of Zazzau, Jaʿfar ibn Isūfīq—May Allah have mercy on him—peace and respect

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<sup>1</sup> *Majmūʿat al-ḥadīth al-ajwiba*, Cairo: Maʿbaʿat al-Mashhad al-ḥadīthiyya, n.d. pp.1-5.

to Emir of Kano, Alhaji Muhammad al-San`si. After that, we have received your letter in which you seek our opinion on broadcasting recitation of Qurʾān on the radio. We did our utmost searching (*ijtahadnā ghliyat al-ijtihād*) for authority in the Qurʾān, Sunna, consensus of opinion (*ʾijmāʿ*) and sound analogy (*al-qiyās al-ṣaūʿū*), but were unable to find a text (*naṣṣ*) with which we can support permission. But we have seen what contemporary ulama said: some ulama have given fatwa for prohibition (*taūʾīm*), in order to exalt the speech of the Lord and keep it away from disrespect. For to broadcast Qurʾān recitation on the radio will lead the masses to exalt it less, and exalting it less leads to disrespecting it, and disrespecting it leads to unbelief (*kufr*). For this reason, some ulama prohibited it on the basis of the principle of *sadd al-dharʾa* (blocking the means). But other ulama have given fatwa for permission on the authority of the following quotations from the Almighty’s Book: “Who is better in speech than one who calls to Allah?” [Qurʾān 41:33]; “He has created things of which you have no knowledge” [Qurʾān 16:8]; “There is not a thing but its treasures are with us. But we only send down thereof in due and ascertainable measure” [Qurʾān: 15:21]; and “Nothing have we omitted from the Book” [Qurʾān 6:38]. They also quoted authority of ʾi adīth: “Allah makes to shine he who heard a saying of mine, memorized it, and delivered it as he heard it;” “Transmit from me even one verse only;” and “Surely, Allah supports this religion even through an immoral person.” All of these quoted verses did not come in regard to recitation of Qurʾān in the forums of amusement (*lahw*): they came in regard to various matters that are not our concern here. Therefore, we do not see any authority (*ūjja*) for broadcasting Qurʾān recitation on radio. In his *Tafsīr al-Qurʾān*, Ahmad al-ʿaṣwī lists among the etiquette for Qurʾān recitation that the Qurʾān should not be recited along with musical instruments of depraved persons (*ahl al-fisq*), nor in markets, nor in places of entertainment where foolish persons assemble, because of the saying of the Prophet (peace be upon): “Do not put the Qurʾān except in its proper place.”

We have inquired exhaustively but found absolutely no necessity that calls for broadcasting recitation of Qurʾān by means of the radio. We do not see any spiritual reward for anyone who recites Qurʾān on radio; on the contrary, we find reward for not doing it, for that will be avoiding *bidʿa* and in conformity with the sayings of the Prophet (peace be upon him): “Every *bidʿa* is an error, and every error ends in hell-fire,” and “Whoever invents something that does not belong to our affair (i.e. Islam) should be rejected.” Therefore, we do not agree to radio broadcast of Qurʾān recitation in order to exalt Allah’s Book and keep it away from disrespect and whatever might lead to that end. Our intention is to exalt Allah’s Book, not to cause legal difficulty on people. Our Islamic legal authority (*úujjatuna al-sharʿyya*) is sticking to status quo (*al-akhdh bi-l-aṣl*). Since we do not find textual statement in the Qurʾān, Sunna, *ijmāʿ* (consensus), or *al-qiyās al-ṣaḥīḥ* (sound analogy), we should retain the status quo of not reciting the Qurʾān by means of instruments of entertainment such as the radio and the like. The truth is more deserving to be heard and followed. The learned should not be followed in what is wrong/The truth should be accepted even if it comes from the ignorant. Allah guides to what is right, and to Him Almighty is return.<sup>2</sup>

*(Text of Fatwa issued by Emir of Zazzau, Jaʿfar ibn Isúfīq.)*

These two fatwas were issued in Northern Nigeria in the early 1950s as Nigeria approached independence from British colonial rule in October of 1960. The Senegalese leader of the Tijaniyya, al-Shaykh Ibrahim Niass<sup>3</sup> (1902-1975), who had a mass following in Northern Nigeria, gave the first fatwa arguing for the lawfulness of broadcasting Qurʾān recitation on the radio. The ruler of Northern Nigerian emirate of Zazzau, Jaʿfar b. Isúfīq (1887-1959, r. 1937-1959), gave the opposing fatwa. Then al-Shaykh Niass

<sup>2</sup> Ibid, 6-7.

<sup>3</sup> Also spelt Niasse, Niyas.

issued a second fatwa defending his earlier argument and challenging the grounds on which Emir Jaʿfar b. Isúʿq based his fatwa.<sup>4</sup> Interest in the fatwas was not confined to Northern Nigeria, principally because al-Shaykh Niass disciples were widely spread all over West Africa. Disciples from Kumasi, Ghana, sponsored the publication of a third and more extended fatwa by Shaykh Niass titled *Al-î ujja al-BĒlīgha fī Kawn <ldhĒ>at al-QurĒn SĒlīgha* that was printed in Cairo by MuṣāfĒ al-BĒbĀ al-î alabĀ in 1375/1956, together with appendices of *taqĒrĒ* poems by three disciples eulogizing the superior learning of their master. Al-Shaykh Ibrahim Niass explained that he wrote the first fatwa as a quick response to the question he was asked while he was travelling and could not consult reference books. He followed up with a more detailed explanation in the second and third fatwa in light of the continuing controversy on the issue.<sup>5</sup>

At the moment, no evidence indicates that Emir Jaʿfar b. Isúʿq followed up with rejoinder fatwas. Similarly, available evidence does not identify which radio station sparked off need for the fatwas, nor the reasons for seeking more than one fatwa. It is also not yet clear when QurĒn recitation was first broadcast, and whether or not the fatwas led to suspension of broadcasting QurĒn recitation. Given our incomplete knowledge of the immediate circumstances surrounding the conflicting fatwas, the present essay can only be provisional. It also hopes to stimulate further research on the longstanding importance of Islamic law in Northern Nigeria that has been recently manifesting itself in renewed demands for the comprehensive application of *sharĒ*. Additionally, the contribution of this essay can also be appreciated in light of the long series of fatwas on modern communication technologies that among others include Abdallah Effendi’s fatwa of 1728 authorizing

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<sup>4</sup> Ibrahim Babale, a Kano follower of al-Shaykh Niass, paid for printing the three fatwas under the title cited in footnote 1 above.

<sup>5</sup> Niass, *Al-î ujja al-BĒlīgha*, 4-6.

publication of the Qurʾān by a modern printing press when it was introduced in the Ottoman Empire;<sup>6</sup> the 1927 fatwa that allowed King Abd al-Aziz to establish a radio station in Saudi Arabia;<sup>7</sup> and the more recent fatwas against cable and satellite television issued in Iran in 1994.<sup>8</sup>

This essay contends that on the surface, the conflicting fatwas on the Islamic legality of broadcasting Qurʾān recitation reveal different attitudes among Northern Nigerian Muslims toward modernity, and their uncertainties about the prospect of preserving Islamic identity in an independent Nigeria as a modern secular republic. But lurking beneath the surface of the conflicting fatwas is a schism that divided Muslims into antagonistic factions of Sufi orders, hence an understanding of that schism is indispensable for comprehending the conflicting perspectives on broadcasting Qurʾān recitation on the radio. Therefore the essay contributes to our understanding of how fatwa is instrumentalized in diverse contexts of legal contests, sectarian disputes and struggles for power, status, prestige and material interests.

To support these contentions the essay starts by first describing the context within which the issue in dispute arose, and follows with identification of *al-muftāʾ* (the party seeking the fatwas), and the *muftāʾ*, the scholar(s) who responded. The essay then analyzes the texts of the fatwas both internally in terms of discursive strategies and externally in terms of the social and political issues at stake in the conflicting fatwas. The concluding section highlights the need for a broader understanding of the nature and role of fatwa in the application of Islamic law in Islamic societies in general, and in Nigeria in particular.

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<sup>6</sup> Maqsood Ahmad, "The Arabic Printing Press in Turkey and the Arab East," *Islamic Culture*, 61:1 (1987), pp. 79-86.

<sup>7</sup> Douglas A. Boyd, *Broadcasting in the Arab World: A Survey of Radio and Television in the Middle East*, (Philadelphia, PA: Temple University Press, 1982), pp. 121-29. See also C. S. Hurgronje, "Islam und Phonograph," in *Verspreide Geschriften*, (Bonn 1923), vol. ii, pp. 419-47.

<sup>8</sup> See *Wall Street Journal*, August 8, 1994, p. A 6.

## Islamic Law in the Context of Colonial Northern Nigeria

The conflicting fatwas reflect a prominent feature of Muslims' encounter with colonialism in Northern Nigeria, namely: the pervasive search for Islamic legal bases to ground Muslims' diverse responses to colonialism. Throughout British colonial rule, *fiqh* (jurisprudence) remained the predominant mode of Islamic discourses on colonialism. When the British conquered the forces of Sultan Attahiru I at the battle of Burmi in 1903, the *Wazir* of Sokoto, Muhammadu Buhari, signed the surrender of Sokoto. He then sought fatwa from the chief Qaḍī of Gwandu, Ahmad b. Saʿīd, who argued on the basis of Qurʾānic doctrine of dissimulation (*taqiya*) (Qurʾān 3:28) that failure to surrender would have led the British to exterminate the Muslim community. This argument won the day over two rival arguments: one for evacuation of Sokoto articulated in terms of *hijra*; and the other for continued armed resistance supported by appealing to *jihad* traditions.<sup>9</sup>

*Wazir Buhari's* argument for surrender remained throughout the colonial period as the Islamic legal basis for the subordinate position of Muslim rulers of Northern Nigerian emirates who served British colonial authorities under indirect rule, on the ground that Muslims were legally bound by their treaties. As British colonialism evolved, however, concerns with Islamic legality became more and more complicated, especially in the areas of criminal law,

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<sup>9</sup> For Arabic texts, English translations and analysis of this debate on the Islamic legality of surrender to the British, see: R.A. Adeleye, "The Dilemma of the Wazir: The Place of the *Risālat al-Wazir ilī ahl al-ilm wa al-tadabbur* in the History of the Conquest of the Sokoto Caliphate," *Journal of the Historical Society of Nigeria*, 4 (June 1968), pp. 285-312; al-Amin Abu-Manga, "*al-Usus al-Fiqhiyya li-Hijrat Amīr al-Muḥimmīn al-Ḥāhir al-Awwal min Sakkwato*," *Dirāsāt Iḥqāqiyya*, (1987), pp. 21-49; Omar Bello, ed. and trans., *Ulama and Colonialism in Nigeria: Risālat ilī al-Muḥimmīn* by Al-Qaḍī ʿAbd Allah, (Sokoto: Islamic Academy, n.d.); and Abdallah H. Quick, "The Concept of al-Muwālāt in the Sokoto Caliphate and the Resulting Dilemma at the Time of British Conquest," *Islam et Sociétés au Sud du Sahara*, 7 (1993), pp. 17-33. For a more extended and contextualized discussion of this debate, see: Muhammad S. Umar, *Muslims' Intellectual Responses to British Colonialism in Northern Nigeria, 1903-1945*, Ph.D. diss., Northwestern University, 1997, chapter three.

rules of evidence and procedure, and conflict between British common law and Islamic law.<sup>10</sup> Colonial supremacy of common law over Islamic law was seriously challenged in the 1950s, the period of decolonization that led to independence in 1960. The 1950s and 1960s are known in the modern political history of Northern Nigeria as *zamanin siyasa*,<sup>11</sup> the era of party politics, when great changes occurred in political, social, economic, religious, cultural and intellectual spheres. These changes generated different and often conflicting expectations on the future of both colonial and Islamic legacies among different sets of Muslims: emirs, ulama, traditional aristocrats, and modern elite. The debate on Islamic legality of broadcasting Qurʾān recitation is one example that illustrates the many spirited public debates over these changes, particularly on whether or not Islamic legal bases could be articulated to support all the changes taking place at the time. Thus as British colonialism began in Northern Nigeria, so it ended with public debates on its Islamic legality.

### **Islamic Legitimacy and the Politics of Decolonization**

The end of World War II saw the beginning of significant steps toward independence from colonial rule that forced the colonial

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<sup>10</sup> For example, see: “Exemption of Moslem Law under Native Court Ordinance 1933.” Arewa House, Kaduna, File No 19245, and “Rights of Non-Mohammedans Before Mohammedan Courts.” Arewa House, Kaduna, File No 16032. See also J. N. Brooke, “Report of the Native Courts (Northern Provinces) Commission of Inquiry”, (Lagos: Government Printer, 1952); Joseph Schacht, “Report on the Position of Muhammadan Law in Northern Nigeria,” 1952, Colonial Office Library Pamphlet No 36913 KF 2172; Frank A. Salamone, “Clash between Indigenous, Islamic, Colonial, and Post-Colonial Laws in Nigeria.” *Journal of Legal Pluralism*, 21 (1983), pp. 15-60; and Awwalu H. Yadudu, “Colonialism and the Transformation of the Substance and Form of Islamic Law in the Northern States of Nigeria,” *The Journal of Law and Religion*, 9 (1991), pp. 12-47.

<sup>11</sup> Jonathan T. Reynolds, *The Time of Politics (Zamanin Siyasa): Islam and the Politics of Legitimacy in Northern Nigeria, 1950-1966*, (Lanham, NY: University Press of America, 1999).

state to change its identity and basis of legitimacy. In his comparative study of the African colonial state, Crawford Young charts its evolution from a *conquest state* in the late nineteenth and early twentieth centuries to a *welfare state* when decolonization became internationally accepted at the end of World War II.<sup>12</sup> As its end drew near, the colonial state found a new basis of legitimacy by embarking on welfare projects authorized by the Colonial Development and Welfare Act passed by the British Parliament in 1949. To provide propaganda machinery to publicize the colonial state's newfound basis of legitimacy, British colonial authorities appointed L.W. Turner and F.A.W. Byron to direct a survey team from the British Broadcasting Corporation (BBC) that was commissioned "to advise on the whole question of broadcasting services in the British West African territories." British colonial authorities accepted the survey team's recommendation that "Nigeria should have its own central, or 'national', short-wave transmitter, together with regional short-wave transmitters at Kaduna and Enugu and medium-wave transmitters at Ibadan, Kano, and Lagos."<sup>13</sup> In January 1951, the BBC seconded Mr. Tom Chalmers to serve as Director of the newly established Nigeria Broadcasting Service (NBS), which took off with headquarters in Lagos, and short-wave stations at Enugu and Kaduna. The NBS broadcast local (Nigerian) programs that reduced the dominance of the Radio Distribution Service (RDS) that used to rebroadcast BBC programs for British personnel,

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<sup>12</sup> Crawford Young, *The African Colonial State in Comparative Perspectives*, (New Haven, CT: Yale University Press, 1994), pp. 97 ff.

<sup>13</sup> Nigeria, *Annual Report on the Public Relations Department for the period January, 1949 to 31st March 1950: Sessional Paper No 14 of 1951*, (Lagos: Government Printer 1951), p. 3.

with nothing that could attract audience from Muslims.<sup>14</sup> As a novel development that brought radio broadcasting with local programs for Nigerian audiences, the NBS Kaduna short-wave radio station must have triggered the controversy that led to our conflicting fatwas.

It is important to point out that the Kaduna short-wave radio station was established amidst the transformation of Northern Nigeria during the *zamanin siyasa*. Since the inception of colonial rule in 1903, the British system of indirect rule had created a façade of continuity of Islamic political traditions of Northern Nigerian emirates. By repeatedly extolling the virtues of gradualism, career colonial officers with long tours of duty in the region stalled all efforts to reform indirect rule. In 1947, however, adoption of the Richard's Constitution introduced one federal legislative body for Nigeria and regional legislative bodies to be composed of elected members. This marked the advent of electoral politics in Northern Nigeria, a clear turning point toward independence that will soon unravel the indirect rule's façade of continuity and stability. Formation of political parties, election campaigns, voting, and constitutional conferences soon followed, with various

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<sup>14</sup> Ibid, p. 3-6. Also see: Ian K. Mackay, *Broadcasting In Nigeria*, (Ibadan: University Press, 1964); pp. 2-19; Jonathan A. Adejunmobi, *The Development of Radio Broadcasting in Nigeria*, M.A. thesis, North Texas State University, 1974, pp. 40-61; Ikechukwu S. Ndolo, *Radio Broadcasting and the Language Problems of Socio-political Integration in Nigeria*, Ph.D. diss., Howard University, 1987, pp. 151-65.

consequences that have been well documented.<sup>15</sup> The Kaduna short-wave radio station played a critical role in broadcasting news and commentaries about these momentous changes, thereby bringing a greater political awareness throughout the diverse communities and provinces of Northern Nigeria. By examining the debate on Islamic legality of broadcasting Qurʾān recitation within the context of these changes, this essay contributes to our understanding of preoccupation with finding Islamic legal doctrines to legitimate all the changes that transformed Northern Nigeria from colonial rule to independence.

### **Contextual Analysis: The Parties Involved in the Conflicting Fatwas**

Four different parties are involved in the conflicting fatwas, although not all of them are explicitly mentioned in the texts of the fatwas. The seekers of the fatwa constitute one party that comprises “group of ulama from Kano, Northern Nigeria, headed by Emir of Kano, supporter of religion, His Highness, Alhaji [Muhammad] al-Sanusi [r. 1953-1963, d. 1991] may Allah protect him... Alhaji Alhasan Dantata, ... Alhaji Abubakar Atiq ibn Khièr... Alhaji Abdallah Salga ... , Alhaji Ahmad al-Tijani ibn Usman ..., Alhaji Muhammad Sani [Kafanga] ibn al-ī asan ...,

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<sup>15</sup> For example, see: Billy J. Dudley, *Parties and Politics in Northern Nigeria*, (London: Frank Cass, 1968); Richard Sklar, *Nigerian Political Parties: Power in an Emergent African Nation*, (Princeton, NJ: Princeton University Press, 1963); C. S. Whitaker, *The Politics of Tradition: Continuity and Change in Northern Nigeria, 1946-66*, (Princeton, NJ: Princeton University Press, 1970); John N. Paden, *Religion and Political Culture in Kano*, (Berkeley, CA: University of California Press, 1973); A.D. Yahaya, *The Native Authority system in Northern Nigeria, 1950-70: a Study in Political Relations with Particular Reference to Zaria Native Authority*, (Zaria: Ahmadu Bello University Press, 1980); Haruna A Birniwa, *Conservatism and Dissent: A Comparative Study of NPC/NPN and NEPU/PRP Political Verse from c. 1946-1983*; Ph.D. diss., University of Sokoto, 1987; and A.M. Yakubu, *An Aristocracy in Crisis: The End of Indirect Rule and the Emergence of Party Politics in the Emirates of Northern Nigeria*, (Aldershot, England: Avebury, 1996).

Alhaji Usman al-Qalansawi [Maihula]... notable ulama and pride of Islamic religion ...”<sup>16</sup> With exception of Alhaji Alhasan Dantata, who was the wealthiest Kano merchant at the time, these names are the leading ulama of Kano in the twentieth century.<sup>17</sup> Even Emir Muhammadu Sanusi is reputed to be a learned scholar of Islam, who used to give Arabic sermon and lead *ṣalāt al-jumuʿa* (the Friday noon congregational prayer).<sup>18</sup> Collectively, these Kano notables represent a larger universe of al-Shaykh Ibrahim Niass’ millions of followers. Niass’ influence in Northern Nigeria began from an earlier contact with the Emir of Kano Abdullah Bayero (r. 1920-1953), and reached its peak under the reign of his son and successor, Emir Muhammadu Sanusi, who is credited with making Kano the “geographical center” for the dynamic expansion of al-Shaykh Niass’ influence, and appointing Niass’s followers to replace the representatives of other Sufi orders that served as advisors to Emir Bayero.<sup>19</sup> Al-Shaykh Niass also attracted millions of mass following not only in Nigeria, but all over West Africa as well.

A strong sense of sectarian identity pervades the mass followers of al-Shaykh Niass, who are popularly known by various names: *yan faida*, *yan qabalu*, *yan tarbiya*, Tijaniyya-Niassiyya, Niassenes, and *jamaʿat al-fayèa*, which Hiskett translated as “Community of Grace.”<sup>20</sup> Paden characterized al-

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<sup>16</sup> al-Shaykh Ibrahim Niass, *Al-î ujja al-BEliḡha*, pp. 3-4.

<sup>17</sup> For biographical sketches and bibliographies of these ulama, see: John O. Hunwick, et al, *Arabic Literature of Africa, Volume II: The Writings of the Central Sudan*, (Leiden: E.J. Brill, 1995), pp. 260-316.

<sup>18</sup> Alhaji Abubakar Dokaji, *Kano Ta Dabo Cigari*, (Zaria: Northern Nigerian Publishing Company, 1958,) p. 75. For biography of Emir Sanusi, see: Sadi S. Zawiya and Tijjani A. Saduaki, *Jigatau Dan Bayero: Alhaji Sir Muhammadu Sanusi, C.M.G. K.B.E.*, (Kano: Zawiya Enterprises, 1991).

<sup>19</sup> Christopher Gray, “The Rise of Niassene Tijaniyya, 1875 to the Present,” in Ousmane Kane et Jean-Louis Triaud, eds. *Islam et Islamismes au sud du Sahara*, (Paris: Karthala, 1998), pp. 71.

Shaykh Niass' movement as "Reformed Tijaniyya" in contrast to the "Traditional/Umarian Tijaniyya" on account of the reforms that Niass introduced into the Tijaniyya traditions associated with al-Hajj Umar al-Futi who was the first to introduce the order into Kano in the early nineteenth century.<sup>21</sup> By whatever name, followers of al-Shaykh Niass can be defined as a distinct subsect of Tijaniyya on account of their acceptance of al-Shaykh Niass' claim to supreme spiritual authority and their adherence to his doctrines that will be examined below. The more relevant point here, however, is to understand how rituals defined and expressed the sectarian identity of Niass' followers. Their enthusiasm and loyalty manifested in congregational observance of Niass' version of Tijaniyya litany. Wearing turbans and long beards that imitate Niass' physical appearance, as well as public display of posters bearing his images, are also important ways of proclaiming the differences between al-Shaykh Niass' supporters and opponents, including Tijanis who declined to acknowledge his claims to spiritual leadership and authority.

Equally divisive are the changes that al-Shaykh Niass introduced in ritual postures while observing the five daily prayers: crossing the arms over the chest while standing (*qabè*) instead of holding them straight down (*sadl*); sitting on the feet folded backward rather than on the buttocks; raising the two arms while going to and emerging from bowing posture to that of standing; and audibly pronouncing *Ēmñ* in congregational prayers after the

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<sup>20</sup> Mervyn Hiskett, "The Community of Grace and its Opponents, the Rejecters: A Debate about Theology and Mysticism in Muslim West Africa with Special Reference to its Hausa Expression," *African Language Studies* (School of Oriental and African Studies), XVII (1980), pp. 99-140.

<sup>21</sup> Paden. *Religion and Political Culture*, pp. 73 ff. Cf. Rudiger Seesemann, "The *Takfir* Debate: Sources for the Study of a Contemporary Dispute among African Sufis Part I: The Nigerian Arena," *Sudanic Africa*, 9 (1998): 39-70; and Rudiger Seesemann, "The *Takfir* Debate Part II: The Sudanese Arena," *Sudanic Africa*, 10 (1999): 65-110.

*ḥimlīm* completes recitation of *ṣ̣rat al-fḥḥiūa*. Perhaps the most important ritual that defined Niass' followers was the Tijani ritual of *tarbiya* that involves (more than the literal meaning of education) "an intricate and tedious enterprise, consisting of constant fasting or staying in complete seclusion (*khalwa*) for days or weeks, and undertaken only by a few privileged experts."<sup>22</sup> In contrast to this traditional Tijani conception, al-Shaykh Niass simplified the ritual and made it more readily accessible to his mass followers, who began to feel the same sense of spiritual superiority that was hitherto monopolized by a select minority of Tijaniyya leaders. Consequently, Niass' version of *tarbiya* "provoked vehement protest from other Tijanis."<sup>23</sup> Writing in the specific context of Darfur in the Sudan, Seesemann's observation that "from its outset to the present, the history of the *tarbiya* movement is a story of controversy and conflict"<sup>24</sup> is equally true in Nigeria.<sup>25</sup> These ritual practices proved supremely important not only because they touched on the ritual validity of the five daily prayers that constitute the most important religious practice in Islam, but also because they marked ritually the differences between followers and opponents of al-Shaykh Niass. The two groups had to maintain separate mosques because one group would not agree to the other leading congregational prayers.

Another important pointer to the relevance of the schism between followers and opponents of al-Shaykh Niass for

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<sup>22</sup> Rudiger Seesemann, "The History of the Tijaniyya and the Issue of *Tarbiyya* in Darfur (Sudan)," in Jean-Louis Triaud et David Robinson, eds., *La Tijaniyya: Une Confrerie Musulmane a la Conquere de l'Afrique*, (Paris: Karthala, 2000), p. 405. Cf. Hiskett, "Community of Grace," pp. 118-21.

<sup>23</sup> Seesemann, "The History of the Tijaniyya," p. 406

<sup>24</sup> Ibid.

<sup>25</sup> For the controversies that surrounded these issues, see Muhammad al-Tahir Maigari, *al-Shaykh Ibrahim Niass al-Singhali*, and Shaykh Hassan Cisse, *Shaykh Ibrahim Niass: Revivalist of the Sunnah*, (New York: Tariqa Tijaniyya of New York Publications, 1984), pp. 10-11.

understanding our conflicting fatwas appears in his repeated charge that the author of the opposing fatwa was not learned and did not know that he was not learned. This counter-attack was magnified by Niass' disciples who composed *taqḍīr* poems proclaiming their master's victory over his intellectual adversaries. They speak about al-Shaykh Niass' vast learning in the metaphor of the sun whose brightness banishes ignorance, and celebrate his ability to give fatwas in his capacity as *imām al-manhajayn*, master of the two paths of *sharḥ* and *arḥāq*. His fatwa is grounded in the *Qurʾān*, *uḍḥ*, and *ijmāʿ*, hence cannot be assailed by the criticism of the ignorant. The following lines give very good examples of the poetic celebration of al-Shaykh Niass' immense learning:

You have gathered all knowledge in a notebook,  
 Its principles and branches, its abbreviations and details.  
 You have clarified its hidden and apparent meanings,  
 And resolved its problematics, hence no more disputation.  
 ....  
 O Shaykh, whose answer overwhelms and achieves victory,  
 In its call to guidance.  
 If the ignorant pretending to be learned does not reconcile  
 with you,  
 Then arrogance has affected his heart with rust.  
 Excuse him since he has become afflicted  
 With the two diseases, how horrible his insolence!  
 Hypocrisy, a crippling disease,  
 And ignorance, a worse disease,  
 But especially a compound ignorance.<sup>26</sup>

Such a barbed language points to the strong sentiments that characterized the schism between followers and opponents of al-Shaykh Niass. These strong sentiments also explain in part the offensive language that typically characterized any discursive

<sup>26</sup> al-Shaykh Ibrahim Niass, *Al-ī ujja al-Bḥiḡha*, pp. 40-46.

encounter between the two. Al-Shaykh Ibrahim Niass' possession of al-Shaykh Ahmad al-Tijani's *fayèa* (discussed in more detail below) guaranteed for his followers not only an afterlife in paradise but also tremendous material prosperity right here on earth. Given these high stakes, it is natural for them to employ every possible means to repulse threats to the firm assurances for their spiritual salvation and material well being. The more pertinent conclusion here, however, is that once the schism between followers and opponents of al-Shaykh Niass was sealed theologically, ritually and communally, it became virtually impossible for the two groups to agree on any issue; indeed the expectation was for one group to automatically disagree with any position that the other group held. Hence, once al-Shaykh Niass gave a fatwa, his opponents would feel that a counter-fatwa is imperative.

Although not explicitly mentioned, opponents of al-Shaykh Niass constitute the second party to the conflicting fatwas, as can be clearly discerned from the spirited attack against them. Supporters of al-Shaykh Niass pejoratively called their opponents *munkir ʿn* (“rejecters”) on account of their rejection of al-Shaykh Niass' extensive claims to spiritual supremacy, and in allusion to Qurʾānic usage of the term to chastise unbelievers (Q 21:50; 23:69). One segment of al-Shaykh Niass' opponents can be traced to a faction of Kano ulama that emerged out of a controversy on funeral rites that was raging at the time of al-Shaykh Niass' first appearance in Kano.<sup>27</sup> The Madabawa faction, even though adhering to the older traditions of Umarian Tijaniyya, rejected al-

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<sup>27</sup> Muhammad S. Umar, “Sufism and its Opponents in Nigeria: The Doctrinal and Intellectual Aspects,” in *Islamic Mysticism Contested: Thirteen Centuries of Controversies and Polemics*, edited by Frederick de Jong and Bernd Radtke, (Leiden: Brill, 1999): 357-85; Awwalu Anwar, *Tasirin Siyasa a Addini*, (Zaria: Gaskiya Corporation, 1992); M. Nalado, *Kano State Jiya da Yau*, (Zaria: Gaskiya Corporation, 1969), pp. 26-34; J. W. Chamberlain, *The Development of Islamic Education in Kano City, Nigeria, With Emphasis on Legal Education in 19th and 20th centuries*. Ph.D. diss., Columbia University, 1975, pp. 93 ff.

Shaykh Ibrahim Niass when their opponents, the Salgawa faction, accepted him and constituted themselves into a sub-branch of the Tijaniyya. Following this development, the earlier controversy on funeral rites between Madabawa and Salgawa spilled over into serious disputations regarding the doctrines, spiritual authority and leadership of al-Shaykh Niass and the validity of the ritual changes he introduced, producing a substantial polemical literature that deserves study in its own right.<sup>28</sup> It should also be noted that Zaria, the capital city of Zazzau emirate, had Umarian Tijaniyya adherents even before Niassiyya-Tijaniyya attracted followers in the city.<sup>29</sup> Thus by issuing a fatwa that contradicts al-Shaykh Niass' ruling, Emir of Zazzau Jaʿfar b. Isúʿq seemed to have asserted his spiritual authority over the Tijaniyya community in his domain, and minimized threat from al-Shaykh Ibrahim Niass. Opponents of al-Shaykh Niass were not confined to Kano and Zaria, for everywhere his followers spread, they constituted a breakaway faction that had to contend with entrenched opposition of established ulama, including adherents of older Tijaniyya traditions.<sup>30</sup> But the most vociferous opponents of al-Shaykh Niass have been the Wahhabi-orientated movements famous for their opposition to Sufism in general.<sup>31</sup> The opponents of al-Shaykh Ibrahim Niass must have found an unlikely hero in Emir Jaʿfar b. Isúʿq, given the wide schism between the opponents and supporters of Al-Shaykh Niass. Al-Shaykh Niass' second and third

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<sup>28</sup> Hunwick, *Arabic Literature of Africa*, ii, pp. 263 ff.

<sup>29</sup> Muhammad S. Umar, "The Tijaniyya and British Colonial Authorities in Northern Nigeria," in Triaud et Robinson, eds., *La Tijaniyya*, pp. 339-47..

<sup>30</sup> For example, see: Gray, "The Rise of Niassene Tijaniyya," pp. 64 ff.

<sup>31</sup> Lansine Kaba, *The Wahhabiyya: Islamic Reform and Politics in French West Africa*, (Evanston, IL: Northwestern University, 1974). See also Robert Launay, *Traders without Trade: Responses to Change in Two Dyula Communities*, (New York: Cambridge University Press, 1982); Muhammad S. Umar, *Sufism and Anti-Sufism in Nigeria*, M.A. thesis, Bayero University, Kano, 1989; and Hiskett, "Community of Grace," pp. 126-35.

fatwas reiterate his earlier argument in detailed but scathingly dismissive responses to his opponents' continuing skepticism. A closer look at al-Shaykh Niass' extensive claims to spiritual authority and leadership helps us to appreciate that the schism between his opponents and followers is the sub-text in our conflicting fatwas.

The third party to the conflicting fatwas is of course Shaykh Ibrahim Niass himself. Space does not permit detailed examination of his fascinating biography; only points relevant to understanding the conflicting fatwas can be highlighted here.<sup>32</sup> Born in 1902, al-Shaykh Ibrahim Niass received his early Islamic education from his father, Abdallah Niass, who was a famous scholar and leader of the Tijaniyya in Senegal. Ibrahim Niass gained fame for intelligence and exceptional learning in his twenties. At about the age of thirty he had a vision that led him to claim the title of *gawth al-zamĕn*, one of the highest ranks in Sufi hierarchy of sainthood implying divine election as Savior of the Age. He also claimed to have received *al-fayĕa* (superabundance of blessing), *al-khilĕfa* (successorship), and *al-sirr al-akbar* (the greatest secret) of Shaykh Ahmad al-Tijani.<sup>33</sup> From the Arabic root *f.y.ĕ.*, literally signifying superabundance, overflow, and emanation, Shaykh Ahmad al-Tijani (1737-1815) propounded his doctrine of *al-fayĕah al-Tijĕniyya* by which Allah grants divine favors to flow from "the oceans of His bounty and protection" to al-Shaykh al-Tijani for his followers' exclusive benefits. Claiming to have obtained a divine guarantee for this special privilege in a face-to-

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<sup>32</sup> For details, see Hiskett, "Community of Grace," pp. 101 ff.; Gray, "The Rise of Niassene Tijaniyya," pp. 59 ff., 76; Cisse, *Shaykh Ibrahim Niass*, pp. 6-14.

<sup>33</sup> Al-Shaykh Ibrahim ibn Abdallah ibn Muhammad [Niass] al-Tijani, *Kĕshif al-Ālbĕs an fayĕat al-khatm Abĕ l-Ābbĕs*, (Cairo, 1971), pp. 56-61. For the roles of these doctrines in the Tijaniyya order as a whole, see: Ali Harĕzim ibn al-Ārabĕ Barrad al-Maghrib al-Fĕsĕ, *Kitĕb jawĕhir al-maĕĕnĕ wa bulĕgh al-Āmĕnĕ fĕ fayĕ al-Sayyid Abĕ l-Ābbĕs, al-Tijĕnĕ*, (Cairo, 1908); Jamil Abu-Nasr, *The Tijaniyya: A Sufi Order in the Modern World*, (London: Oxford University Press, 1965), pp. 27-57.

face encounter with Prophet Muhammad, Al-Shaykh al-Tijani announced that:

No one among humans can admit his followers into paradise without judgment (*úisÉb*) and punishment (*siqÉb*) even if they had sinned, and no matter the extent of their disobedience except I alone. And beyond all these favours, the Prophet, may the peace and blessing of Allah be upon him, mentioned and guaranteed to me concerning them [i.e. followers of al-Tijani] a certain thing for them which is not permissible for me to mention; it can not be narrated and it cannot be known until in the Hereafter.<sup>34</sup>

Al-Shaykh Ibrahim Niass proclaimed to possess *khilÉfa* and *fayèa* of al-Shaykh al-Tijani, as well as his *al-sirr al-akbar*, the unnarratable and unknowable “thing” that al-Shaykh al-Tijani claimed to have received from the Prophet. Speaking from such a privileged status, al-Shaykh Niass did not expect any scholar could be qualified enough to contradict his fatwa. In fact he states as much in one of his poems:

My wanderings into the wilderness of gnosis have not been attained,  
and so the Axes (*al-aqÉb*) have been unable to reach my status.  
With the bounty of God, the Exalted,  
and the love of the Messenger of Allah, Taha my Prophet,  
I swear that verily no one loves me  
except the most felicitous, but the opposite hates me.  
People do know that I am His [i.e. Prophet Muhammad’s] servant;  
hence, contact with Allah’s Beloved could only be attained through my links.  
I do not say this as an involuntary utterance (*shaÉha*), nor out of arrogance,  
nor have I taken an intoxicant that takes away my senses.  
My lines are a felicity [*saÉda*] for humanity  
and he who sees me and my lines shall never be wretched,

<sup>34</sup> Ali HarÉzim, *JawÉhir al-MaÉnÉ*, vol. ii, p. 162.

not even for a day.

And I do not say all this without a permission, for verily,  
I conceal a secret not permitted to others.<sup>35</sup>

Thus al-Shaykh Niass declared his supreme spiritual authority. He emphasized that it has been continuously related from al-Shaykh al-Tijani that the *fayèa* would appear among Tijanis to bring tremendous material prosperity at a time when people were hit by the hardest conditions—and that is in addition to the guaranteed admission into paradise.<sup>36</sup> With such firm assurances of exclusive privileges in this world and the hereafter, it is not surprising that al-Shaykh Niass attracted followers in several millions from all over West Africa. On the other hand, given the boldness of his claims, it should not also be surprising that as many millions flatly rejected al-Shaykh Niass' extensive claims to spiritual supremacy. This dispute between al-Shaykh Niass' followers and opponents lurks beneath the surface of our opposing fatwas. Viewed from this angle, a number of issues surrounding the conflicting fatwas become easier to understand.

First, al-Shaykh Niass' point-by-point rebuttal in his second and third fatwas should be understood as a spirited attack to annihilate the position of those who opposed his claims to sainthood, and who had the temerity to not only express a contrary opinion, but also to persist in that opinion even after he had exposed their errors in his second fatwa. Otherwise, it is not easy to understand why al-Shaykh Niass went for the overkill in his third fatwa especially since a fatwa expresses no more than an advisory opinion that is not legally binding.<sup>37</sup> Second, to the extent that

<sup>35</sup> Al-Shaykh Ibrahim Niass *al-SinghÈlÈ, Al-DawÈwin al-Sitt*, (Beirut-Lebanon: Maḅaḅat al-Mashhad al-î usaynÈ, n.d.), p. 99.

<sup>36</sup> Al-Shaykh Ibrahim Niass, *KÈshif al-IlbÈs*, pp. 56-61.

ranking among ulama depend on degree of learning, al-Shaykh Niass seemed anxious to buttress his claims to spiritual supremacy by displaying the breadth and depth of his learning in copious quotations from diverse classical texts, and also by the sophistication of his argumentation and interpretation of concepts of *uṣūl al-fiqh*. By this strategy, he gave *sharḥa* reinforcement to the scholastic basis of his sainthood in addition to the Sufi bases he had already expounded in his books and poems.<sup>38</sup>

The fourth party involved in the conflicting fatwas is Emir of Zazzau, Jaʿfar b. Isūfīq who authored the fatwa opposing radio broadcasting of Qurʾān recitation. The text of his fatwa indicates that he became involved when Emir Sanusi of Kano requested his opinion. As already noted, it is not clear why Emir Sanusi requested fatwas from both al-Shaykh Ibrahim Niass and Emir Jaʿfar b. Isūfīq. Perhaps he asked a second time because he found the first answer unsatisfactory. But a political consideration might have informed Sanusi’s decision to seek for more than one fatwa. As Gray observes, even after appointing Niass’ followers as his advisors, Emir Sanusi’s authority was not complete “due to the fact that there were a number of people who identified with the ‘Reformed Tijaniyya’ who also supported the opposition Northern Elements Progressive Union (NEPU); the latter were highly critical of the emirate system.”<sup>39</sup> Although Emir Sanusi belonged to Niass’ sub-branch of the Tijaniyya, in which he rose to the important rank of al-Shaykh Niass’ *khalīfa* in Nigeria after his deposition in

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<sup>37</sup> Muhammad K. Masud, Brinkley Messick and David S. Powers, “Muftis, Fatwas, and Islamic Legal Interpretation,” in Muhammad K. Masud, Brinkley Messick and David S. Powers, eds., *Islamic Legal Interpretation: Muftis and their Fatwas*, (Cambridge, MA: Harvard University Press, 1996), pp. 18-19.

<sup>38</sup> For a bibliography of al-Shaykh Ibrahim Niass’ prolific writings, see: John O. Hunwick, et al., *Arabic Literature of Africa, Volume IV*, (Leiden: Brill, forthcoming), chapter six.

<sup>39</sup> Gray, “*The Rise of Niassene Tijaniyya*,” p. 71.

1963,<sup>40</sup> it is conceivable that by seeking a fatwa that contradicted his spiritual mentor, Emir Sanusi was trying to placate all his subjects, both opponents and followers of al-Shaykh Ibrahim al-Niass.

Both Emirs Sanusi and Jaʿfar b. Isúʿq possessed advanced Islamic learning that distinguished them from their peers among rulers of Northern Nigeria. Both belonged to the generation of emirs who ruled during the turbulent changes of *zamanin siyasa*. Their common background in Islamic learning must have contributed to their interest in seeking Islamic legitimacy to support the changes that took place under their reign. The two emirs' involvement in the conflicting fatwas reveal that while they did endorse many changes and even mobilized their subjects to accept inevitable changes, they also sought to ensure that Islamic legacy of Northern Nigeria was not swept away by the tidal waves of inevitable changes.

The thrust of Emir Isúʿq's fatwa seeks to erect a wall of separation that will protect the sacred elements of Islamic legacy, as embodied in the Qurʾān, from the profane changes resulting from British colonial rule. His handling of the difficult task of embracing colonial changes while retaining Islamic legacy can be seen in his implementation of significant changes in his domain. He supported provision of western education for Muslim females, and tolerated the Northern Elements Progressive Union (NEPU), the radical political party that was dedicated to curtailing the power of the emirate aristocracy to which he belonged. In one interesting instance, Emir Jaʿfar b. Isúʿq gave a speech over the radio denying rumours that he had called for his subjects to vote for the Northern Peoples Congress (NPC), the ruling conservative party that was

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<sup>40</sup> Zawiya, *Jigatau Dan Bayero*, pp. 110-115.

closely allied with the emirate ruling class.<sup>41</sup> In light of this fact, it seems safe to assume that Emir Jaʿfar b. Isúʿq supported his vizier’s refusal to help British colonial authorities to formulate rules of Islamic law that can be utilized to suppress NEPU’s “subversive activities.”<sup>42</sup> Before ascending the throne of Zazzau, Emir Isúʿq’s career as district head of largely non-Muslim communities of Zongon Kataf earned him high praise from British colonial authorities for his tolerant and accommodating attitude toward the ethnic and religious diversity in his district.<sup>43</sup> Similarly, Joseph Schacht described Jaʿfar b. Isúʿq as an “enlightened ruler” who was not bound by the superstitions of his subjects.<sup>44</sup>

Emir Jaʿfar b. Isúʿq’s “tolerant and enlightened” attitude toward changes and major reforms in the era of decolonization was not unlimited, however. The firm opposition he expressed in his fatwa against radio broadcast of Qurʾān recitation is a clear case in point. His arguments indicate that he was not opposed to the establishment of radio stations as such— recall his radio broadcast discussed earlier— but against what he thought would amount to profaning the sacred word of God. Thus contrary to the common view of emirs as conservatives irreconcilably opposed to modernization, Emir Jaʿfar b. Isúʿq demonstrates their common strategy of modernizing within the framework of preserving the most important aspects of Islamic heritage. He also shows the extent of his knowledge of Islamic law, as can be seen from the following textual analysis of his fatwa.

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<sup>41</sup> Abdulkarim A. Garba Makarfi, *Sarkin Zazzau Mallam Jaʿafaru dan Ishak*, (Zaria: Gaskiya Corporation, 1990), pp. 41-42.

<sup>42</sup> Reynolds, *The Time of Politics (Zamanin Siyasa)*, pp. 80-82.

<sup>43</sup> Garba Markarfi, *Sarkin Zazzau*, pp. 20-23.

<sup>44</sup> Joseph Schacht, “Islam in Northern Nigeria,” *Studia Islamica*, 8 (1957), pp. 123-46. *The present enlightened ruler* in footnote no 2 on p. 125 must be to Jaʿfar b. Isúʿq who reigned from 1937 to 1959.

### Textual Analysis: Discursive Strategies in the Conflicting Fatwas

Al-Shaykh Niass' doxology follows a convention of Islamic discourse by implicitly hinting at the point he would later argue explicitly, namely: modern technological know-how comes from Allah, who has omitted *nothing* from His holy book, the Qurʾān. It is also his contention that even if the radio originated from non-Muslims, it can and should be used to transmit Islamic teachings since Allah supports Islam through all kinds of ways, including ones that are not Islamic. He cites the example of automobiles, ships, and airplanes that facilitate pilgrimage to Makkah in larger and larger numbers and, to that extent, he argues that utilizing these modern means of transportation should be deemed to enjoy Islamic legality of obligation, or of recommendation at the very least. He applies the same argument to using the radio and loudspeakers for broadcasting Qurʾān recitation because these communication technologies can be, and indeed are, utilized to accomplish the obligations of reciting the Qurʾān and calling Muslims to prayer (*adhān*). The implicit utilitarianism and optimism about technology in this line of argument points to the modernist thrust of Shaykh Niass' thought that becomes even clearer in the main body of his fatwas, as will be discussed presently.

In his opposing fatwa, Jaʿfar b. Isūfīq states that he had in vain tried his best effort (*ghāyat al-ijtihād*) to find legal support for radio broadcast of Qurʾān recitation in the primary sources of Islamic law: Qurʾān, Sunna, *al-ijmāʿ* (consensus), and *al-qiyās* (analogy). He adopts the view of some contemporary ulama who argue for prohibition on the basis of *sadd al-dharʿa* (blocking the means), a principle of Islamic law that prohibits whatever serves as a means to transgress a prohibition even if that means is itself otherwise lawful. Applying *sadd al-dharʿa* argument to the case at hand, Jaʿfar b. Isūfīq holds that radio broadcast of Qurʾān

recitation reduces the sacred words of God to the profane level of common broadcasts of entertainment and mundane issues, and since such profanation amounts to the prohibited renunciation of Islam (*kufr*), it follows that radio broadcast of Qurʾān recitation as a means to that end stands prohibited as well. In his rebuttal, Jaʿfar b. Isūfīq argues that Qurʾānic verses, prophetic sayings, and textual sources that al-Shaykh Niass quoted are not concerned with recitation of Qurʾān in the mundane forums of entertainment. He quotes the two famous ḥadīths against *bidʿa* (innovation), and then invokes *al-barʿa al-aṣliyya*—the principle of Islamic law that presumes *ab initio* lawfulness in the absence of categorical prohibition—to argue that in the absence of a compelling necessity, the status quo should prevail, namely: Qurʾān recitation should not be broadcast on the radio (al-Shaykh Niass faults this application of *al-barʿa al-aṣliyya* as will be discussed presently). For Emir Jaʿfar b. Isūfīq, his position does not create legal difficulty (*tashdīd*) but maintains the exalted status of Allah’s Speech—a counter-argument to al-Shaykh Niass’ invocation of the principle that the simple way out of legal difficulty should be preferred.

In his second fatwa, al-Shaykh Ibrahim Niass laments that some people pretending to be learned have given fatwa, quoting texts out of context to prohibit radio-broadcasting of Qurʾān recitation, and even went to the extent of excommunicating those who held a favorable view. This is a pointer to the schism between followers and opponents of al-Shaykh Ibrahim Niass that is crucial for understanding our conflicting fatwas. He notes that radio is simply a modern means of amplifying and transmitting sound far beyond what humans could project naturally. Furthermore, he states that observing the etiquette for Qurʾān recitation is an obligation on the reciter, not on the means of recitation. Use of radio and loudspeakers by Muslims everywhere in the world constitutes a practical *ijmāʿ* of the global community of Muslims (*umma*). Thus

the argument for prohibition runs counter to this practical *ijmāʿ* with the grave implication that the entire umma has been united on an error, an impossibility according to a famous saying of the Prophet. Al-Shaykh Ibrahim Niass also faults Emir Jaʿfar b. Isūʿq's employment of *al-barʿa al-aʿliyya* since this principle of Islamic law confers *ab initio* lawfulness in the absence of any categorical injunction, which Emir Jaʿfar b. Isūʿq stated he could not find. The correct application of the principle in this case should presume lawfulness. *Istiṣūb al-ūlī*, the principle of presumption of the legal status quo until the contrary is proven, would have been the appropriate principle to support Jaʿfar ibn Isūʿq's contention. By exposing his opponent's faulty argument, al-Shaykh Niass seems to have expected an end to the debate, but as it raged on, he wrote his third and more extended fatwa emphasizing that his intellectual opponent was not learned at all, and worse, did not know that he was not learned.

In his third fatwa, Al-Shaykh Niass adopts a rhetorical strategy of quoting a point from Emir Jaʿfar b. Isūʿq's fatwa and then juxtaposing that point against extensive quotations from classical texts in diverse fields of Islamic learning. This strategy seems to aim at exposing his opponent's limited scholarship while at the same time demonstrating the vastness of his own Islamic learning that forms a crucial basis of his claim to supreme spiritual authority. The following excerpt from al-Shaykh Niass' third fatwa illustrates the point clearly:

The writer [of the opposing fatwa] said 'the ratio legis' (*>illa*) for prohibition is to exalt Allah's speech away from disrespect because broadcasting its recitation on radio leads the masses to exalt the Qurʾān less, and exalting the Qurʾān less leads to disrespecting it, and disrespecting it leads to *kufr*.' This argument is contrary to reality because people, even the masses, do not speak on the radio except to say something that is most important to them, and they do not hear a speech on the radio without being



not an easy way to convey his message? The person who does not know the proper method of Qurʾān recitation can now listen to the proper method over the radio. Also, the person who makes mistakes in his recitation can now listen to an expert reciter and correct his mistakes. If it occurs to the writer of the opposing fatwa that there is a harm (*mafsadah*) in broadcasting Qurʾān recitation on the radio, there is also a good (*maṣlaʿah*) greater than the harm. The author of *Sunnan al-Muhtadīn* says: ‘the jurists said that if the *maṣlaʿah* is greater than the *mafsadah*, then benefit is realized despite the attendant *mafsadah*.... Thus in two evils, protection is sought through the lesser evil.’<sup>45</sup>

Once again, we see the utilitarianism that is very typical of a modernist attitude toward technology, namely: inventions should be judged not according to received traditions, but according to what they have to offer. Here al-Shaykh Niass mobilizes classical Islamic texts to support an enthusiastic orientation toward modern technology that simplifies observance of Islamic tenets. To support his contention that the radio is a device invented only metaphorically (*majʿlzan*) by non-Muslims, he quotes extensively from the exegetical literature to support his assertion that “all things realized in the past or to be realized in the future have been covered by Qurʾān 6:38: ‘We have omitted nothing in the Book’.” He also quotes prophetic traditions on eschatological signs of end of the world:

“The hour will not come until time is shortened such that a year becomes like a month, a month becomes like a week, a week becomes like a day, and a day becomes like an hour.

The hour will not come until after a fire comes from the land of Hijaz lighting the neck of a camel in Basra; the hour will not come until beasts speak to humans, and the thong of a whip and a sandal strap speak to their owner, and tell him what his people will do after him.”

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<sup>45</sup> al-Shaykh Ibrahim Niass, *Al-î ujja al-BEliġha*, 12-14.

The Prophet, peace and blessing of Allah be upon him, stood among us and informed us from the beginning of creation up to the point when people of paradise will enter their dwellings and people of hell will enter their abode; some memorized all that and some forgot.

By the time the Prophet died, there was not a bird flying with its wings on which he did not give us some knowledge.<sup>46</sup>

Al-Shaykh Ibrahim Niass' commentary on these *úaḍ*ths clearly indicates his modernism:

To you I give these hints, opening the door for you if Allah enlightens your intelligence. [On] the beasts speaking to humans, you do see that radio-sets come in all types, some of which are in the form of beasts—Allah knows best. The thong of a whip, which informs man what his people will do after him, is the way the telephone works... Allah knows best. Shortening of time occurred by air travel that cuts distance. The fire, which brings electricity to people, has most of its sources in Aden. Allah knows best. [Regarding] the sandal strap that speak to its owner, you can see that some cars, which do the job of the sandals, move you while its radio set gives news. The fire coming from Hijaz to light the neck of a camel in Basra is a hint to television. Are these signs of the prophethood of our Prophet since he has informed us about them centuries before they materialized? Did he hint that using anyone of these inventions is prohibited or disapproved.<sup>47</sup>

The refrain *Allēhu a>lam* (Allah knows best) is a seemingly minor point but one worth emphasizing nonetheless. In his compilation of conventions for writing of fatwa, al-Nawawī, the famous Sh̄fiī jurist, observes that there are different rulings on the desirability of concluding a fatwa with expressions such as *Allēhu a>lam*,

<sup>46</sup> Ibid, pp. 32-33.

<sup>47</sup> Ibid., pp. 33-34.

*Wa billāhi al-tawfīq* or *Allāhu al-Muwaffiq* (May Allah guide us) because a fatwa expresses a conjectural understanding of an individual jurist.<sup>48</sup> In particular, *Allāhu a>lam* is often used in Islamic discourses on contentious issues to emphasize the conjectural and partial nature of human knowledge in contrast to Allah's omniscience. While al-Shaykh Niass' repeated invocation of the refrain gives the appearance of humility, one can also discern his tacit acknowledgement that his contentious interpretation of eschatological signs to mean modern technological inventions is rather far-fetched. Given the polemical nature of his fatwa, al-Shaykh Niass employs *Allāhu a>lam* as a rhetorical strategy to forestall criticism on the vulnerable flank of his position, but where he is able to fortify his arguments with clear references to textual authority, he does not resort to the refrain.

Al-Shaykh Ibrahim Niass' conception of modern technological innovations in terms of Islamic eschatology departs in its optimism from older traditions of comprehending momentous social, historical and political changes as "signs of the hour" that herald the imminent end of the world. I have elsewhere argued that imbalance in the overwhelming power of the colonizer against the colonized is the key to understanding Muslims' eschatological discourses on colonialism and modernity in Northern Nigeria, and West Africa in general.<sup>49</sup> It is a remarkable testimony to al-Shaykh Niass'

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<sup>48</sup> Al-Imam al-Nawawī, *Ad'ab al-ʿAlim wa al-Muta'allim wa al-Muftī wa al-Mustafī wa Fa'el 'Ulūm al-ʿIlm*, (Šanā, Egypt: Maktabat al-ʿaūlāba: 1987), p. 70.

<sup>49</sup> Muhammad S. Umar, "Muslim Eschatological Discourses on Colonialism," *Journal of the American Academy of Religion*, 67/1 (1999): 59-84. Fear and uncertainty are the same emotions that informed appeals to eschatological discourses from different intellectual traditions to account for epochal changes that sweep away the comforting familiarity of established *weltanschauung*, including contemporary western eschatological discourses on the end of the cold-war era articulated in terms of the so-called "clash of civilizations," "the coming anarchy," and "the end of history" etc.

modernist orientation that rather than exhibiting fear, uncertainty and alienation in the face of epochal changes, he applies Islamic eschatology to appropriate modern technological innovations and domesticates them into the comfort zone of received Islamic traditions.

An interesting feature of the texts of these fatwas is the extensive reliance by both al-Shaykh Niass and Emir Jaʿfar b. Isúf̣q on *Uṣūl al-Fiqh* (Principles of Islamic Law) rather than *Fiqh*, the specific rules of Islamic law. As a discipline in Islamic intellectual traditions, *Uṣūl al-Fiqh* is defined in terms of its subject-matter and methodology: investigation of the sources and rationale of Islamic law, and proper scholastic methods of deriving the rules of Islamic law (i.e. *Fiqh*) from those sources. In contrast, *Fiqh* expounds categorical rules for practical compliance, without necessarily delving into either the sources or the rationale behind those rules. Thus the specific rules of *Fiqh* that make-up substantive Islamic law are the by-products of *Uṣūl al-Fiqh*. Muhammad Kamali compares the relationship between the two disciplines to the relationship between grammar and language or logic and philosophy in the sense that “*Uṣūl al-Fiqh* ... provides standard criteria for the correct deduction of the rules of *Fiqh* from the sources of *Sharʿa*.”<sup>50</sup> A significant part of the subject-matter of *Uṣūl al-Fiqh* is articulation of the general guidelines for understanding fundamental intent and basic spirit of Islamic law, often stated in legal maxims distilled from Islamic scriptures. Such principles are crucial for determining rules of Islamic law applicable to novel problems not covered by the established rules of *Fiqh*, or with ambiguous issues arising from the established

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<sup>50</sup> Muhammad H. Kamali, *Principles of Islamic Jurisprudence*, (Cambridge: Cambridge University Press, 2nd revised edition, 1991), 2.

rules, both of which are typically addressed in fatwas.<sup>51</sup> In contrast to received rules of *Fiqh*, *Uṣṭ al-Fiqh* provides a legal methodology with versatile instruments for articulating different and even conflicting viewpoints as our fatwas demonstrate clearly.

For example, while Emir Jaʿfar b. Isūʿq invokes the principle of *sadd al-dharaʿa* to prohibit broadcasting Qurʿān recitation on the radio, al-Shaykh Niass applies the same principle to argue for its lawfulness. Similarly, al-Shaykh Niass points out that the principle of *al-barʿa al-aṣliyya* actually confers permission contrary to his opponent’s employment of that principle to support prohibition. To further support their opposite viewpoints, Jaʿfar b. Isūʿq and al-Shaykh Niass applied the same principle of *tashdīd/takhfīf* that calls for preferring the lesser of two legal burdens, but reached opposite conclusions. With the possible exception of Jaʿfar b. Isūʿq’s employment of *al-barʿa al-aṣliyya*, these different conclusions from appeals to the same principles of Islamic law are valid within the framework of *Uṣṭ al-Fiqh*. Significantly, appealing to the same principles but arriving validly at opposite conclusions is by no means rare in Islamic legal thought. It is the recognition and acceptance of *Uṣṭ al-Fiqh*’s capacity to lead to different conclusions that in part account for numerous differences in articulations and interpretations of Islamic law, including the four Sunni schools of Islamic law.

In addition to its capacity to support conflicting viewpoints, *Uṣṭ al-Fiqh* also serves as a handy instrument for effecting and legitimating change within Islamic law. A paradox arises from the comprehensive jurisdiction of Islamic law in that its finite sources

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<sup>51</sup> Classical jurists up to the time of al-Ghazali insisted that a jurist is not qualified to give *fatwa* without first mastering *Uṣṭ al-Fiqh*. In subsequent centuries, however, this requirement was relaxed, and various levels of legal competence was used to classify different ranks of *mufti*. See Wael. B. Hallaq, “Iftāʿ and Ijtihād in Sunni Legal Theory: A Developmental Account,” in Masud, Messick, and Powers, eds. *Islamic Legal Interpretation*, pp. 33-43.

are believed to provide eternal guidance for rules to govern the infinite variations of human affairs in every time and place. The paradox here is: how can finite texts govern infinite variations of human affairs? One of the many legal instruments scholars of *Uṣūl al-Fiqh* developed to solve this paradox is to assimilate innovations (*bidʿa*) into one of the five categories of Islamic legality: obligation, recommendation, permission, disapproval and prohibition. Al-Shaykh Ibrahim Niass employs this instrument to confer lawfulness on modern inventions in communication technologies. Yet true to inherent diversity in Islamic legal thought, Emir Jaʿfar b. Isūfīq finds a valid legal warrant against *bidʿa* that can justify an opposite conclusion. Clearly, the richness of Islamic legal thought provides ample resources for legitimating both the traditionalism of Jaʿfar b. Isūfīq and the modernism of al-Shaykh Ibrahim Niass. In Muslims' encounter with modernity globally, fatwa seems to be the legal instrument of choice for articulating legal bases for accepting or rejecting changes brought by modernity.

## Conclusion

The opposing fatwas examined here provide additional empirical support to an emerging literature on the employment of fatwa in diverse historical and social contexts of struggles for power and contestation of legal rights and material interests.<sup>52</sup> The architecture of fatwa as designed in the canons of *Uṣūl al-Fiqh* made it possible to employ fatwa as a negotiating instrument. Despite variations in classical stipulations on the practice of issuing fatwa (*al-iftāʿ*), the consensus holds that a fatwa expresses a conjectural opinion (*ẓanniyy*) that is not legally binding. Still, some jurists magnify the gravity of *al-iftāʿ* as heir to prophetic office.

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<sup>52</sup> See the extensive bibliography in Masud, Messick, and Powers, eds. *Islamic Legal Interpretation*, pp. 373-401.

Al-Shāfiʿī even argues that a *mufti*'s opinion is either lifted directly from Allah's law or is derived therefrom: in the former the *mufti* is a mere transmitter of divine command, and in the latter the *mufti* is in effect a law-maker (*shāriʿ*).<sup>53</sup> Even though a fatwa expresses no more than a conjecture, this elevation of the status of *mufti* enhances significantly the legal force of a fatwa, making it a potent instrument in intellectual controversy and legal contest.

As an ad-hoc but legally potent instrument for dealing with ambiguous cases and novel problems, fatwa can be a very handy instrument for articulating self-interest. Realizing potential for abuse, jurists stipulate stringent conditions for the practice of *al-iftāʿ*. The etiquette for giving fatwa (*ʿādab al-fatwa*) requires that a *mufti* should possess the qualities of advanced learning, righteousness, piety, and many other moral attributes. Some jurists also recommend that rulers should ensure that a morally unfit *mufti* is prohibited from giving fatwa, and the ruler should punish such an unfit *mufti* if he persists. The convention that no particular person should be named in a fatwa is one of the mechanisms for minimizing the potential for abuse; also serving the same purpose is the elaborate formulary for writing a fatwa to safeguard against alterations after the fatwa is written.<sup>54</sup> Despite these safeguards, the conflicting fatwas examined here show that fatwa can still be

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<sup>53</sup> Ibn ʿArabī b. Mʿīn al-Shāfiʿī, *al-Muwāfaqāt fī Uṣūl al-Sharʿah*, (edited by Abdallah Darrāz. Beirut: Dār al-Kutub al-ʿIlmiyya, 1991), vol. iv, pp. 178-79.

<sup>54</sup> Al-Nawawī, *ʿAdab al-ʿAlim wa al-Mutaʿallim*. Also see the various fatwas discussed in Masud, Messick, and Powers, eds. *Islamic Legal Interpretation*, passim; Muhammad K. Masud, "Adab al-Mufti: The Muslim Understanding of Values, Characteristics, and Roles of Mufti," in Barbara D. Metcalf, ed., *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, (Berkeley, LA: University of California Press, 1984), pp. 124-51; and Sherman A. Jackson, "From Prophetic Authority to Constitutional Theory: a Novel Chapter in Medieval Muslim Jurisprudence," *International Journal of Middle East Studies*, 25 (1993): pp. 71-90.

instrumentalized to support competing claims to authority, position, prestige, and material self-interests. While the controversies leading to conflicting fatwas point to the longstanding importance of Islamic law in public affairs in Northern Nigeria, they also point to the need for caution against the potential of camouflaging partisan agenda and machiavellian strategy to gain power in the politics of applying “the full sharīʿa” in contemporary Nigeria.