

**FATWAS FOR EUROPEAN MUSLIMS:
THE MINORITY FIQH PROJECT AND THE
INTEGRATION OF ISLAM IN EUROPE**

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Fatwas for European Muslims: The Minority Fiqh Project and the Integration of Islam in Europe

Fatwas voor Europese moslims: het project voor een fiqh voor
minderheden en de integratie van de islam in Europa
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Transliteration

This dissertation uses a simplified rendering of Arabic names without diacritics. There are occasional inconsistencies related to the fact that I have kept the renderings of Arabic names that are used by the authors themselves when writing in European languages.

INTRODUCTION

Introduction

On one shore lies a ship about to sail, or perhaps already on its way. It is heading towards a mountainous and inhospitable territory. Leaving behind a land of mosques and minarets – ostentatiously symbolizing the lands of Islam (dar al-islam) – the ship appears to be sailing in order to bring assistance to an outstretched hand on the other shore silently crying out for help. The only visible part of a sinking body, the hand stands metonymically for those immigrant Muslims forced for some reason to live in exile in non-Muslim territory (dar al-kufr or dar al-harb). They are called *al-mughtaribin* – the estranged, from the same Arabic root (gh r b) from which the West (al-gharb) is also constructed. According to the title of the book from which the picture described here is drawn, they are facing an emergency situation. Entitled *The Urgent Need of the Immigrants for the Fatwas of the Pious Scholars* (Is'af al-Mughtaribin bi-Fatawa al-'Ulama al-Rabbaniyyin), the book presents a selection of fatwas – the assistance which is required according to its author - by a panel of famous Saudi scholars on various topics relevant for Muslims living in Western lands (Qahtani 2007). The connections between Muslim lands and non-Muslim countries, and the increasing sense of urgency that underlies orthodox Muslim conversations on the plight of the minorities living in the West highlighted by the book, are the subject of this dissertation.

These connections may not be well known, much less well studied, but they certainly are proliferating. Consider the following:

- A Muslim scholar recently arrived in the USA sends in 1985 a number of questions to the fiqh councils in the Muslim world, including the International Fiqh Council in Jeddah, al-Azhar in Cairo and the imam Khomeini in Iran. He gets summary answers to complex problems, and decides to write a text outlining the need to pay particular attention to the questions of Muslim minorities. The text circulates widely – it is posted online, published in book format in Cairo and Beirut, translated into English, French, and Russian. A Kuwaiti scholar writes a refutation of the text and publishes it in the review of a transnational fiqh council

based in Europe, while a Syrian shaykh condemns the same text in a khutba widely relayed through the internet. The original text becomes the starting point for a global discussion about the rights and duties of Muslims in the West.

- A Muslim from the Netherlands asks the Mufti of Egypt for a fatwa on working in a Dutch supermarket that sells alcohol and pork. The mufti answers and posts the fatwa on the website of Dar al-Ifta' al-Misriyya on December 17, 2005. The fatwa reaches the United States, where an American-Egyptian Muslim scholar writes a refutation of the fatwa in Arabic and submits it to the Fiqh Council of North America. Approved by the Council, the response is made available in print and translated into English. Western students being trained in shari'a at Al-Azhar read both texts and debate the respective pros and cons.
- A Lebanese Sunni scholar who lived in France in the 1980s – Faysal Mawlawi - writes a book on the rights and duties of Muslims in Europe. He presents his views to an assembly of Muslim scholars in Europe – the European Council for Fatwa and Research. The International Union of Muslim Scholars subsequently publishes the book in Cairo in 2008. A critical reply by a Saudi intellectual who also lived in France in the 1980s – 'Adnan al-Nahwi - appears in print the same year.
- A recently-converted woman married to a non-Muslim man visits the imam of the Islamic Cultural Centre of Ireland to ask about the status of her marriage. The imam sends the question to Yusuf al-Qaradawi in Qatar. The question is intensively debated in international fiqh councils and the debates are relayed by the Arabic-language print and electronic media. Qaradawi changes his mind and publishes his revised opinion in a book which is read by a professor of Al-Azhar who – noting the international dimension of the discussion - publishes his response in Cairo.

- A team of French-Maghrebi Muslim intellectuals draw on the findings of a research project funded by the European Union on the exclusion and marginalisation of Muslims to argue that home ownership has become a collective need of European Muslims. They suggest that fiqh restrictions on high-street mortgages (because of interest) be eased in minority contexts. A collective fiqh council convenes first in Sarajevo, then in Köln and finally in Dublin, in order to discuss the matter. After heated discussion the majority accepts the opinion. Dissenting members publish their opposition in the London-based newspaper *Al-Sharq Al-Awsat*. Articles in the media and opinions in the cyberspace proliferate. An Egyptian-American scholar writes a “polite refutation” of the fatwa in Arabic and makes it available online. Muslim activists in the United Kingdom and Belgium then publish the refutation in the local languages. A less polite refutation is articulated in Damascus, and in the pages of magazines and periodicals.

These debates, and the networks and spaces that underlie them, lie at the heart of this dissertation. Unlike the transnational threats posed by terrorist organizations, they hardly ever elicit a line in Western mainstream media. They rarely implicate the state and its agencies.¹ These discussions nevertheless provide important insights into larger Muslim debates on what it means to be a believer in a Western context. In this dissertation I explore how a range of Muslim public intellectuals – traditional scholars, imams, social scientists, and others – debate the requirements for being a good Muslim in societies and states that do not claim to be in any sense Islamic (and even in many ways seek to define themselves today in opposition to Islam). What kind of space is the West – and Europe more specifically - for the global Islamic orthodoxy? What possibilities is it seen as affording Muslims intent on

¹ Sometimes these debates directly implicate states, of course, such as when French interior ministers (Jean-Pierre Chevènement in the 1990s, Nicolas Sarkozy the following decade) visit the Shaykh Al-Azhar – the official state voice of Islam in Egypt - and ask for his opinion (his fatwa?) on the headscarf issue in French public schools. See Zeghal 2006: 122-128 for an account of the latter. See also, for a description of a case involving a fatwa on the participation of American Muslim soldiers in Afghanistan, Nafi 2004.

practicing their religion, and what constraints it putatively places in their path? How are the differences between Muslim majority countries and Muslim minority settings understood, and what importance is given to these differences under globalized conditions? Underlying these questions lies also an interest in the contemporary forms of Islamic scholarly cosmopolitanism: How can one describe the spaces and networks of global normative (fiqh) debate where committed Muslim actors, scholars and intellectuals debate, exchange and often disagree about these and other issues? What are the centres and peripheries of these spaces? What do these spaces reveal in terms of the dynamics of religious authority, and the current attempts to maintain or re-establish the power of interpretation of the ulama? What are the logics and rationalities of the ulama's search for a new intelligibility for fiqh discourse?

In engaging these questions my starting point is the current proliferation of Islamic discourses on the minority condition.² Discussions about the necessity of creating a "European Islam" have become ubiquitous throughout the continent today. State actors and public intellectuals across the political spectrum frequently emphasize the need to adapt Islam to the West in order to counter the threat of terrorism, prevent the radicalization of young Muslims and facilitate the integration of immigrants. Although they rarely take part in these public discussions, orthodox Muslim scholars committed to the Islamic legal tradition (fiqh or shari'a) have over the past decades been debating similar issues in the global spaces of Islamic normative debate which they inhabit. A wide range of Muslim actors – in Europe but also across the Islamic world - currently voice calls in favour of the integration (indimaj) of Muslims in Europe and against tendencies towards assimilation (dhawaban) and segregation ('uzla). I seek to understand the specific grammar of this integration talk, and how it translates into fiqh discourse and fatwas. I do so mainly through a study of the discourse produced by the European Council for Fatwa and Research (ECFR). As a transnational institution committed both to

² By Islamic discourses I mean discourses articulated by Muslims referring directly to Islam. Muslim engagements with integration debates are of course wider than the Islamic discourses I study here. This study's focus is on Sunni discourses.

the theoretical elaboration of a new fiqh for minorities (fiqh al-aqalliyyat), and the production and dissemination of contextualized religious opinions (fatwas) for Muslims in Europe, the ECFR clearly plays a prominent role in these international conversations.

As the work of a social scientist with an interest in Islamic Law, this dissertation seeks to contribute to an emerging field of research that is interdisciplinary by nature. It draws upon, and hopes to complement, already existing works that approach questions related to fiqh al-aqalliyyat through the perspectives of political philosophy (Benhenda 2009; March 2009a, b, c), Islamic studies (Masud 1989; Shadid and van Koningsveld 1996, 2002), law (Malik 2009; Nielsen & Christofferson 2010; Rohe 2007; Yilmaz 2005), religious and cultural studies (Karman 2008; Larsen 2010), anthropology (Bowen 2010; Maurer 2006), and sociology (Césari 2004; Roy 1999).

The first part of the dissertation deals with what I have called Muslim theorizations. Chapter 1 provides an introduction to the fatwa as an instrument guided by specific assumptions about authority, knowledge, and piety. It explores how Muslim scholarly understandings of the fatwa have evolved over time by looking at four *adab al-mufti* manuals produced in very different contexts. The argument seeks to demonstrate the social responsiveness and the contemporaneity that animates a genre – the *adab al-fatwa* literature – often portrayed as a-historical. It also raises some questions about continuities and transformations of fatwas following migration and social change.

Chapter 2 discusses contemporary debates on the very idea of an Islamic jurisprudence for minorities (fiqh al-aqalliyyat). It seeks to understand what is precisely at stake in the discussion on whether Muslims in the West require – or not – a new system of Islamic normativity. It places the discussion in historical context, describes how the concept circulates, and examines the extent to which one can relate the positions taken by various Muslim public intellectuals on fiqh al-aqalliyyat to specific views about the Islamic legal tradition, on the one hand, and the West, on the other.

The second part of the dissertation focuses on the European Council for Fatwa and Research. Chapter 3 studies the request and the production of fatwas within the fiqh council. The questions sent to the ECFR provide important insights into the aspirations and concerns of European Muslim communities. The production of collective answers highlights the power dynamics and instable equilibria in a heterogeneous fiqh council simultaneously committed to a range of different projects.

Chapter 4 looks more closely at the texts of the fatwas issued by the ECFR. It presents an overview of the opinions expressed by the fatwa body in relation to politics, law and society. It studies how the muftis seek to render their fatwas authoritative by appealing to specific texts, disclosing the fatwa's underlying reasoning, and inscribing the opinion in a particular narrative structure. It explores in particular how the double impetus to facilitate the life of Muslims (*al-taysir*) and to contextualize Islamic Law (*fiqh al-waqi'*), often asserted by the members of the ECFR, plays out in the fatwas they produce collectively.

Chapter 5 suggests that the minority fiqh project may be best understood as the result of a performative conjunction between a particular tension – the tension between the cultivation of a pious subjectivity in tune with the temporalities of the Islamic Revival on the one hand, and a commitment to the homogeneous spaces implied by integration discourses, on the other - *and* a relation to public discourse. Approaching fatwas as modes of interpellation, the chapter conceptualizes the work of the ECFR in terms of the enactment of a public – a public of European Muslims that the ECFR brings about by virtue of addressing it as such. I argue that given its conceptual architecture such a public might also be called a counterpublic.

The wider relevance of the research project perhaps hardly needs to be stated in the current climate. Acrimonious debates on Islam have proliferated in European public spheres since 9/11. Within academia, “the Muslim question” – as these debates are increasingly referred to – has revitalized a number of

important debates about the relation between religion and politics, the limits or tensions of secularity, and the inclusions and exclusions of the public sphere. In most of these debates, Muslims committed to the Islamic legal tradition (shari'a or fiqh) appear as Europe's constitutive Other (Charnay 2001). The understandings of Islam that such Muslims put forward often fall outside the conventional spaces allocated to religion in European secular regimes. They are not always easily recognized within the logics of religious pluralism that dominate public discourse (Bender and Klassen 2011). Indeed, the actors and institutions that are the object of this dissertation are regularly dismissed as "fundamentalist" – despite the growing recognition amongst scholars that the category of fundamentalism is often less an analytical tool enabling a deeper understanding about the relevant people and movements, than a mark of moral condemnation (see inter alia Roald 2001b; Hirschkind 2006: 205-9, Schiffauer 2001). A key, underlying contention of this dissertation is that the term fundamentalism allows limited insights into what is really at stake, from the point of view of the practitioners, in processes of religious interpretation and adaptation.

In my engagement with debates on Islam in Europe I therefore bracket the fundamentalist label and take a cue from Bhikhu Parekh's work instead. In a provocative piece entitled "Europe, liberalism and the Muslim question", Parekh (2006a) asks three main questions:

why are liberals persuaded of the existence of a serious Muslim cultural and political threat to Europe – a threat which, Parekh notes in passing, is often implicit even in "serious works of political and social theory" (2006a: 200, ft 1);

are Muslims in Europe integrating or not – a question which prompts both an empirical assessment of realities on the ground (2006a: 181-185) and a conceptual engagement with the "totalist logic of integration" (2006a: 186-187);

and finally, pursuing a reflection initiated much earlier and central to Parekh's work, *how adequate are liberal responses to the challenges of Islam and religious diversity*.

I am interested in particular in Parekh's claim that the Muslim "theological style of reasoning"³ – which liberals perceive as dangerously "religioniz(ing) political life" (2006a: 188) – is deemed a threat because liberalism reposes on a particular assumption that is both *conceptually faulty* and *practically unrealistic*: "Contrary to what liberals imagine," Parekh categorically states, "our public life does not and cannot rest on a uniform view of public reason" (Parekh 2006a: 189). For Parekh, the citizens of multicultural nations actually communicate "rather well" across moral and political languages (2006a: 189).⁴ This dissertation can be read as an exploration of Parekh's concluding assertion that "what is troublesome about the Muslim political reasoning is not its religious character but its unfamiliarity" (Parekh 2006a: 190).

³ In his references to the Muslim "theological form of political reasoning" (pages 188, 189, 190, etc) Parekh clearly has in mind the sharia'tic modes of argumentation that I describe in this dissertation.

⁴ Given Parekh's critique of the liberal insistence upon a homogenous public reason, as well as his trademark concern with the liberal suppression of difference more broadly, it is unclear at best why he apparently goes on to suggest that Muslims should become "Europeanized Muslims", avoid defining themselves primarily in religious terms, and "hopefully" develop a reading of Islam shaped by the European "way of life and thought, values, attitudes, etc" (Parekh 2006a: 199-200). In an earlier book on *Rethinking Multiculturalism* Parekh sensitively criticized Rawls' contention that comprehensive doctrines should be reinterpreted according to public principles on grounds that "it can easily violate the integrity of the texts and the [religious] tradition, charter them in the service of political and ideological fashions, encourage the government directly or indirectly to influence scholarly inquiries, and create a climate of hostile to intellectual dissent" – part of the liberal covert ethos of suppressing difference (2006b: 88).

PART ONE
MUSLIM THEORIZATIONS

CHAPTER ONE

The Shifting Moral Universes of the Islamic Tradition of Ifta'

I- INTRODUCTION

The importance of Islamic non-binding opinions, or fatwas, for scholarly research is now well-established. Perceiving the fatwa as a meeting point between legal theory and social practice - an understanding which is shared by many contemporary muftis - historians, legal scholars, and anthropologists have dressed a rich catalogue of the functions of fatwas in Muslim societies. Although this literature is too extensive to be reviewed here, one can distinguish between four inter-related thematic levels: fatwas as legal tools; as social instruments; as political discourses; and as doctrinal-reform devices. As technical tools, fatwas were traditionally part of the litigation process, issued at the request of the *qadi* (judge) and impacting on court cases; fatwas however also provided cheaper and less conflictual alternatives to legal proceedings. They are thus not mere reflections of legal practice, but distinct contributions to the relationship between law and society. Fatwas routinely contributed to the social stability of Muslim communities by “providing formal administrative organization and informal networks for running the affairs of society” (Dallal 1995: 14). They imparted a sense of order and identity, circumscribing, in the elegant formulation of Skovgaard-Petersen (1997: 13), “the mental and moral universe of their day, always balancing around the boundaries of what is conceivable, legitimate and right.” Varying in time, place, and circumstance, as the stylised formula goes, fatwas were historically a privileged genre for the development of Islamic law, incorporating into the *furu'* (branches of fiqh) – or rejecting as *bid'a* (innovation) - new and old (i.e., customary) social, economic and technological practices (Hallaq 1994; Johansen 1999). As a form of knowledge central to Muslim societies, fatwas naturally generated power, and control, permeating social relations at many levels. They articulated doctrinal and political struggles between competing factions through the notorious “fatwa wars”, one opinion creating the space in which a counter-fatwa would contest the former’s legitimacy. Fatwas intervened variously in political processes. Their use for condemning heterodox Muslims as apostates, largely responsible for the negative connotations the term evokes today in some

circles, are contested practices which function in situations of social upheaval as formidable mechanisms of repression of specific groups such as intellectuals or women (Shehabuddin 1999).

In 1965, one of the greatest Western scholars of Islamic Law famously argued that the practice of fatwas was falling into “disuse” and becoming “obsolescent”⁵ While we can now say without doubt that this has not been the case, the reasons for the contemporary vitality of the genre do not seem to have received much attention from scholars. Drawing on the existing scholarship, a number of primary sources, and fieldwork with muftis based in Western Europe, this chapter tries to make sense of the historical permanency of fatwas by locating them within a specific tradition. It constitutes a preliminary exploration of the moral economy underlying the fatwa which seeks to introduce more anthropological concerns into a field largely dominated by legal and Islamic studies.⁶

II- THE PRACTICE OF IFTA’

In many recent accounts muftis are perceived as typical actors and their activity of *ifta’* (fatwa-giving) is depicted in a de-historicized manner, with little consideration given to the (shifting) moral universes in which they operate.⁷ In order to correct this misleading representation, I argue, one should perhaps conceptualise *ifta’* as part of an Islamic discursive tradition, which, in the words of anthropologist Talal Asad (1986: 9), consists of “discourses that seek to instruct practitioners regarding the correct form and purpose of a given

⁵ Emile Tyan, “Fatwā”, *EP*.

⁶ See also on this point Agrama 2010.

⁷ Jytte Klausen, to give just one example, provocatively titled one of the sub-chapters in her widely-acclaimed 2005 book on *The Islamic Challenge*, “Hermeneutics or Fatwas?”. In Klausen’s reading, fatwas are not only detached from both “hermeneutics” and “spirituality”, but also explicitly opposed to “historicity” and “contextual interpretation” (Klausen 2005: 156). This, as I will try to show, is an unfortunate claim given that “fatwas change according to time, place and situation” and function precisely as a mode of dealing with contingency in Islamic Law. In Klausen’s account, fatwas seem to have a place in Europe only in connection to the “traditionalist interpretations” emanating from Saudi Arabia and the Gulf countries. Her argument betrays an inadequate opposition between tradition and modernity which informs a much larger number of studies on European Islam.

practice that, precisely because it is established, has a history.” Asad borrows the concept from moral philosopher Alasdair MacIntyre, for whom a tradition is “an historical extended, socially embodied argument” sustained by “the exercise...of the relevant virtues” (MacIntyre 1981: 207). These discourses connect between temporalities; they are conceptually related to a past and a future *through* a present. *Ifta’* is central to an Islamic tradition conceived not only as a “cognitive framework”, but also as “a practical mode of living, (...) techniques for teaching body and mind to cultivate specific virtues and abilities that have been authorized, passed on, and reformulated down the generations” (Asad 2001: 141). Seen in this light, fatwas are - like sermons and other Muslim technologies - not only instruments for learning rules and procedures, but also tools for creating the appropriate emotional dispositions necessary to the formation of pious Muslim selves.

Although tensions inherent to the concept have yet to be fully theorised,⁸ tradition fundamentally shifts our attention from Weberian ideal-types of religious authority towards a study of modes of reasoning and their relation to embodied practices. It provides a link between forms of religiosity and the structures which (re)produce authority, conceived here following Asad as “a collaborative achievement between narrator and audience [where] the former cannot speak in total freedom: there are conceptual and institutional conditions that must be attended to if discourses are to be persuasive” (Asad 1993: 210).

The specific normative criteria - Asad’s “conceptual and institutional conditions” - which define the correct performance of *ifta’* provide a historically-situated context in which one can start to understand the particular understandings of religion and authority that underlie Muslim religiosities. In

⁸ In contrast to MacIntyre’s use of the term, an Islamic discursive tradition presupposes, for Asad, a concept of *religious orthodoxy*. This is a relationship of power which lies somewhat in tension with the tradition’s impetus to self-reform, an antagonism traceable to the conceptual opposition between MacIntyre’s notion of tradition and Foucault’s genealogy – see, on this point, David Scott 2006. A different critique of Asad is articulated in C. C. Brittain 2005. For an appropriation of the concept of tradition to the study of Europe’s Muslims, see Amir-Moazami and Salvatore 2003 and Salvatore 2004.

my attempt to describe these criteria, and the way they have shifted over time, I am indebted to Charles Hirschkind's gripping account of the interplay between sermons, media practices, and state formation in modern Egypt (Hirschkind 2001, 2004).

ADAB AL-FATWA TREATISES

The institutional conditions which regulate the practice of ifta' are spelt out in minute detail in the adab al-fatwa literature, suggesting a control and reflexivity of the fatwa genre greater than that of the *khutba* (sermon).⁹ This vigorous regulation is partly a counterpoint to the openness and permeable character of the activity, which has always to some extent eluded political attempts at institutionalisation and monopolisation, and stands as a testimony to its symbolic importance. Although the existing research is not silent on this,¹⁰ the relatively minor scholarly attention devoted to the adab al-fatwa seems related to the notion that, as an idealised account, the genre would have little to reveal about the history and dynamics of ifta'. Located historically in the *usul al-fiqh* (roots of Muslim law) literature, but now increasingly available as an independent genre, the adab al-fatwa literature is nevertheless an apposite place to search for developments in the representation of religious authority and agency. Although traditionally directed at the literate elite, it gives advice for all the stages of the *futya* (consultation), suggesting the process is conceived of as a type of (admittedly asymmetrical) dialogue.

The composition of an adab al-fatwa treatise is usually presented by its author as a mere reiteration of a well-established, though perhaps neglected, Islamic discipline. The need to write it suggests perhaps a perceived crisis of religious authority, hinting at possible transformations within Muslim societies and

⁹ Adab al-fatwa is my generic term for this particular genre, including the conditions for the muftishi p and the etiquette for petitioners. The similarities to other *adab* genres suggests that the opposition between literary *adab* and religious *'ilm* is not as pronounced as sometimes implied. On the scarcity of guidelines for delivering the *khutba*, see Hirschkind 2004: 139.

¹⁰ English-language scholarship which addresses the issue includes Masud 1984, Messick 1986, Jackson 1992; Reinhart 1993; Masud, Messick and Powers 1996 (especially chapters 1 and 6); Skovgaard-Petersen 1997. See also in German the work of Birgit Krawietz (1991) and in Arabic, Dur'an 2008.

institutions. While the nature and context of such crises can be expected to vary, the end-product of such efforts inevitably involves a selection, re-valorisation, and re-interpretation of the old discipline. The *adab al-fatwa* usually starts with a discussion of the social and religious relevance of fatwas, and often includes a section on the contemporary role of muftis at the time of its composition. The genre can thus be said to be animated by a distinctive sense of *contemporaneity*.¹¹

To describe some continuities and changes in *ifta'* I draw initially on three texts. The treatise of Abu 'Amr 'Uthman Ibn al-Salah al-Shahrazuri (1181-1245), known as Ibn al-Salah, constitutes an exposition of the *adab al-fatwa* which I treat as exemplary of the pre-modern modes of the genre.¹² As a founding text, Ibn al-Salah allows us to understand the early dynamics of fatwas. Written, like Ibn al-Salah's text, in Damascus, but in the late Ottoman Empire, is my second source: the 1911 treatise of Jamal al-Din al-Qasimi (1866-1914), *Al-fatwa fi l-islam*, represents an early attempt to respond to the challenges posed by modern conditions within the new temporality and ethos of the *salafiyya* movement.¹³ Jamal al-Din al-Qasimi explicitly seeks to correct misunderstandings common in his time and his text is therefore an apt place to investigate how the fatwa evolved, and the future directions intended by an important reformist Muslim scholar. My third text is Yusuf al-Qaradawi's (b. 1926) *Al-fatwa bayna al-indibat wa-l-tasayyub*, published in the late 20th century, first in a journal and then simultaneously in three capitals of the

¹¹ This is also partly the result of my own research bias: in my deliberate attempt to find contemporaneity I may have played down the extensive and explicit continuities in this literature, while amplifying its disagreements and developments.

¹² Ibn Ṣalāḥ al-Shahrazūrī, *Adab al fatwā wa shurūt al-muftī wa ṣifat al-mustaftī wa aḥkāmuhu wa kayfiyyat al-fatwā wa-l-istiftā'* (The Etiquette of the Fatwa, the Conditions of the Mufti, the Attributes and Rules of the Questioner, and the Procedure of Fatwa-issuing and Fatwa-petition), ed. Rufi'at Fawzī 'Abd al-Muṭalib (Cairo: Maktabat al-khānijī, 1992). This edition is not the only one available in Arabic bookstores. From the perspective of research on contemporary Islam, Rufi'at Fawzī 'Abd al-Muṭalib's edition has the advantage of including numerous explanatory notes where the editor explains and applies Ibn al-Salah's comments to the contemporary period – including a few instances where the editor explicitly disagrees with the Damascene scholar.

¹³ Jamāl al-Dīn al-Qasīmī, *Al-fatwā fi-l-islām* (The Fatwa in Islam) (Damascus: Majalat al-Muṭtabas, 1329/1911).

Middle-East in book format.¹⁴ Qaradawi's text reads as a reassertion of the role fatwas can, or perhaps should play, in an age when they are no longer self-evident. Despite the seemingly arbitrary nature of the selection, the aim here is to start an exploration of the contextual reformulations involved in the composition of *adab al-fatwa* manuals – and I hope to show in what follows how the three texts considered here fittingly serve this purpose.

Pre-Modern Period: Ibn al-Salah al-Shahrazuri

Ibn al-Salah al-Shahrazuri's work has been a central formulation of the *adab al-fatwa* of the Shafi'i school for many centuries. Presented by its late 20th century Egyptian publisher as a founding text,¹⁵ it provides the core of Al-Nawawi's (1233-1277) later discussion of the topic.¹⁶ Originally from Iraq, Ibn al-Salah studied in Khurasan before settling in Damascus, where he became a respected scholar with numerous students. Renowned for his fatwas and knowledge of hadith, his books are reported to have been "highly valued".¹⁷ Ibn al-Salah's text is conventionally divided in three main sections: the *shurut al-mufti* section sets out the qualifications for the practitioners; the *adab al-fatwa* is a discourse on the very technology of fatwas; and the *adab al-mustafti* instructs petitioners on the adequate manners and procedures. In medieval Damascus, manuals were written in order to be *performed*: the production of texts constituted a form of ritual practice, in which students memorised books for the sake of both knowledge and baraka (Chamberlain 1994). Ibn al-Salah's literary style reflects such functions in ways that modern authors do not.

¹⁴ Yūsuf al-Qaradawī, *Al-fatwa bayna al-ʿindibāṭ wa-l-tasayyub* (The Fatwa Between Discipline and Neglect) (Beirut, Damascus and Amman: Al-maktabu al-islāmī, 1995).

¹⁵ Ruffī'at Fawzī 'Abd al-Muṭalib in Ibn al-Salah 1992: 8.

¹⁶ On Nawawī, see Calder 1996. Nawawī's work has been translated by a British Muslim publishing house: Al-Nawawī, *Adab al-Fatwa wal Mufti wal Mustafti – The Etiquette's and Qualifications of Issuing Islamic Judgement, Of a Mufti, and of the one seeking his opinion*, tr. Shaykh Muhammad Bashir (Birmingham: Al-Fardani, non-dated).

¹⁷ J. Robson, "Ibn al-Salah", EI².

Until the mid-13th century, *ifta'* implied the exercise of *ijtihad*; *mufti* and *mujtahid* were largely inter-changeable terms.¹⁸ The requirements then lowered in response to an increasing lack of self-confidence on the part of the practitioners - "no real *mujtahids* exist today" - and in an effort to sustain the social relevance of *ifta'*. Abu al-Husayn al-Basri (d. 1044) argued that allowing a *muqallid* (follower) to issue fatwas would logically, and dangerously, amount to permitting laymen to act as *muftis*. The insistence on *ijtihad* was thus implicated in a wider attempt at regulating religious authority and limiting *ifta'* to a restricted body of specialists. If the conditions required for the *muftiship* were eased in the following centuries, it was at least partly in order to prevent people unable to find a *mufti* fulfilling all the required conditions from "indulg[ing] themselves in their own pleasures".¹⁹

Ibn al-Salah represented an important link in this chain of reform, asserting the legitimacy of *muftis* below the rank of *mujtahid*.²⁰ If he discusses in his treatise the formal criteria for the *muftiship*, distinguishing between independent and school-bound *muftis*, Ibn al-Salah is also careful to point out that knowledge in the Islamic tradition of *ifta'* is socially-embodied: a corrupt scholar is thus not entitled to issue fatwas.²¹ In addition to the mastery of the relevant disciplines (including *fiqh*, *hadith*, *tafsir*, Arabic, 'urf, arithmetic), piety, both apparent and otherwise, is an essential criterion. The *mustafti* (questioner) must ideally base the choice of *mufti* according to the two requirements of formal scientific qualifications and piety.²²

¹⁸ My discussion here draws on Wael Hallaq 1996.

¹⁹ Ibn Daqiq al-'Id (d. 1302), quoted in Hallaq 1996: 38. It is because the capacity to perform *ijtihad* was dropped from the prerequisites of *ifta'* that a number of later authors argued the opinions issued as fatwas were actually no more than mere reports.

²⁰ Ibn al-Salah 1992: 37-8; Hallaq 1996: 36-7.

²¹ Ibn al-Salah 1992: 56.

²² On the importance of piety for *ifta'* see also Qasimi 1911: 14 and Qaradawi 1995: 38-44. Interestingly, Oubrou does not include any moral features as conditions for the *muftiship* in contemporary France. According to Messick, the insistence on piety for the *mufti* constitutes an important difference with the *qadi*, an office which even individuals lacking in moral standards were eligible to, though of course not ideal candidates (Messick 1986: 109). The importance of moral qualities for the exercise of the *muftiship* is underscored by Ibn Khaldun, who, on being nominated Supreme

Muslim writers varied greatly in the weight given to each set of qualities. Some authors provided lengthy enumerations of the different moral features required from the mufti, including intelligence, humility, serenity, softness of speech, emotional control, magnanimity, staidness, self-reliance, cheerfulness, manliness, pleasant face, and a sense of responsibility.²³ Most writers were more succinct, sometimes subduing moral qualities under the general condition of *'adala* (justice).

The etiquette of the fatwa, as exposed by Ibn al-Salah, categorically assumes the written form to be the norm for issuing fatwas. The rules imply a context where the social encounter between the mufti and the mustafti echoes a wider distinction between the literate and the illiterate classes (Masud, Messick and Powers 1996: 21). The difference in symbolic capital underlies a number of specifications, which are maintained in Qasimi's 1911 treatise, but virtually disappear in Qaradawi's text: the mufti is told to correct spelling mistakes in the sheet of paper (*ruq'a*) submitted by the petitioner, to be attentive to the dialectal meanings of words, to make sure the answer was properly understood. Ibn al-Salah carefully explains that the mustafti must not be seen as openly contesting the authority of the mufti, even if he is compelled to ask for the reasoning underlying the fatwa (Ibn al-Salah 1992: 152). The mufti should not however disclose the method through which the analogy (*qiyas*) or *ijtihad* was performed and, as a general rule, he must be concise: the fatwa directed at the commoner should not include its underlying logic, unless it is a very short textual proof.²⁴ Contextual considerations permeate Ibn al-Salah's

Judge (*qadi al-qudat*) in Cairo in the 9th H.C., forbade most of the existing muftis from practicing – see Tyan 1960: 224. The decline of muftis' morals echoes the more general loss of public morality (*ibid*, 226), completing a bleak picture of a religious establishment already incapable of *ijtihad*: themes that seem to go in crescendo until the Reformist movement of the *salafiyya*.

²³ See Masud 1984: 130-132. Interestingly, Masud suggests that the emphasis on moral qualities increases steadily from the 17th century onwards – unfortunately, he does not attempt to provide an explanation for this. My own findings are not conclusive.

²⁴ Ibn al-Salah 1992: 125. Interestingly, the two following pages (125-127) are consumed by a single footnote from Rofi'at Fawzi 'Abd al-Mutalib, the Egyptian editor of Ibn al-Salah, who disagrees with the mediaeval Shafi'i jurist and maintains, on the

discussion: the mufti for example should no longer sign the fatwa with a disclaimer against error, lest it further confuse the petitioner in this already troubled world (Ibn al-Salah 1992: 106-109).

Ibn al-Salah's account raises a number of questions regarding the uses of fatwas in pre-modern Muslim societies. Comprehensive explanation of the exact location in the piece of paper where the first mufti should write his answer reveal a seemingly common practice of asking different muftis for advice – a feature which seems to echo modern ideas about religious individualisation, and which obviously created a number of pitfalls for the mufti consulted.²⁵ There is also a tacit understanding that the petitioner's social practices may differ from the fiqh rules – for example, Ibn al-Salah advises the mufti not to write down the answer on the piece of paper submitted by the fatwa-seeker if he thinks his answer will be contrary to the latter's objectives.²⁶ Underlying the claim that this would spare the petitioner the effort of writing the question in another piece of paper is more than an economic concern: a certain idea of tolerance and individual responsibility is clearly at play here.²⁷ It suggests the use of fatwas for purposes other than transmitting formal rules and indicates that private fatwas may have differed significantly from the public expressions of Islamic normativity. The downside of this private-public tension of fatwas is the constant threat of misuse. The mufti is urged to be wary of ill-intentioned petitioners bringing leading questions to his attention.

authority of Ibn al-Qayyim al-Jawziyya (1292-1350), that it is best to explicitise the evidence at all times. On this point see my discussion below.

²⁵ See on this point Jackson 1992.

²⁶ Ibn al-Salah 1992: 119-121. Likewise, Qasimi 1911: 26.

²⁷ The flexibility of Islamic juristic discourses is underscored further by Ibn Hanbal: in a later footnote, the editor of Ibn al-Salah's manual quotes a passage from Ibn Hamdan. It reports an incident where Imam Ahmad informed a mustafti unhappy with his answer of the location of another mufti known for having a different - more sympathetic - view on the issue (Ibn al-Salah 1992: 148, ft. 3). It is perhaps not surprisingly that Tareq Oubrou refers to Ahmad Ibn Hanbal as the example to emulate in France (Oubrou 2004: 226-7).

He is thus well-advised to look very carefully at the piece of paper, cross any suspiciously empty spaces, and write his answer in a single sheet.²⁸

In Ibn al-Salah's discussion, the aptitude to issue fatwas (*ahlan li-l-fatwa*) is assumed to be generally known and non-partisan. This assumption is perhaps most vividly demonstrated in the situation where the mustafti faces conflicting advice. Ibn al-Salah starts by enumerating the answers given by the Islamic tradition: the petitioner could choose the strictest fatwa; or choose the easiest; or ascertain the relative knowledge and piety of the two muftis; or ask a third; or select the opinion he or she wishes. Of these five possibilities, the third is preferable for Ibn al-Salah (Ibn al-Salah 1992: 146-8). Later jurists, such as al-Nawawi, will disagree with him on this point, precisely because one should not expect a commoner to be capable of evaluating the respective competences of Muslim scholars.²⁹ Modern transformations will impact significantly upon this assessment.

Modern Period: Jamal al-Din al-Qasimi

At the heart of the discipline of ifta' lies a tension between two competing forces: the impetus for self-regulation and the drive towards state institutionalisation. Given the theological fluidity of Islamic authority, the power to effectively exclude is problematic. Practitioners and theoreticians share a continuing, if sometimes implicit, discussion about these competing tendencies and their respective limits, which seem predicated upon two kinds of legitimacy: the social legitimacy given by the community ensures that authentic scholars continue to issue fatwas even when they have fallen out of grace with the political regimes; but at the same time it offers little regulatory control over non-qualified muftis, allowing them to lead the gullible masses astray, a measure often seen as necessitating a corrective in the form of a political intervention. The political institutionalisation of the muftiship, however, is profoundly ambivalent, as it may serve to comfort the scholar's authority as

²⁸ One should not however overlook the fact that criticism of leading questions and petitioners can also be a kind of deontological practice allowing muftis to minimise overt conflict with respected or powerful colleagues.

²⁹ Al-Nawawi n/d: 41. See also Qasimi 1911: 31-32.

well as to discredit him. This Islamic tradition appears here vulnerable to irruptions of charismatic figures from outside its own normative standards - irruptions which must have been common enough to sustain a continuing discussion. The function of the *adab al-fatwa* genre can perhaps be understood as an attempt to uphold the tradition's integrity precisely by containing and controlling these irruptions.

The Damascene Reformist Jamal al-Din al-Qasimi was a scholar with a great concern for the question of the institutionalisation of *ifta'*. Born into a newly-established family of *ulama*, Qasimi followed a conventional education for children of Muslim scholars. He studied and received *ijazat* (teaching licenses) in various Islamic disciplines, joining the *Naqshbandi tariqa* for a brief period. He eventually broke with his family's traditional affiliations to become perhaps the leading exponent of the *salafiyya* in Damascus of his lifetime, forging friendship ties with Rashid Rida (1865-1935) in Egypt and publishing articles and fatwas in the leading Reformist journal *al-Manar*. Qasimi was critical of the religious and political establishment and its failure to reverse the fortunes of the *ummah*. His critique was socially-situated: as a member of middle *ulama*, with modest revenues and only a local post, Qasimi had at least two reasons to be discontent with the official religious clergy: the latter monopolised the important religious positions, barring him and others from the wealth and prestige associated with such offices. Furthermore, given their pre-eminence, these religious figures could be held responsible for the loss of *ulama* status and other contemporary shortcomings.³⁰ But Qasimi's critique was also motivated by a specifically religious commitment: his aim was to move the sacred texts from the margins of society, where they were used for ritual purposes, towards the centre of social and political life. His interiorisation of the idea of progress, which he incorporates into his description of the *shari'a* (Qasimi 1911: 2), is typical of the reformist movement in which he was situated.³¹ Qasimi's opposition to traditional *ulama* is also reflected in his

³⁰ David Commins 1990: 34-48. On Salafi reformism and Arab nationalism at the time of Qasimi, see also Commins 1986 and Joseph Escovitz 1986.

³¹ Qasimi starts his treatise with a description of God's Law (the *shari'a*) as fulfilling the needs of civilization and the ways of progress (Qasimi 1991: 2).

interest for the social sciences, which he does not fail to praise in his treatise. In his introduction to *Al-fatwa fi-l-islam*, Qasimi blames the scientific policies of the Muslim states for the crisis of science, including the neglect of ifta', and repeatedly compares the state of ifta' during his times and the time of the Salaf (Pious Predecessors) – a move which clearly sets out to differentiate the two in order to criticise the Ottoman bureaucratization of ifta' (Qasimi 1911: 2-3). The latter constituted a particularly hierarchical system of religious authority emanating from the SheikhuIslam in Istanbul, where the fatwa provided the binding interpretation of Islamic law, but which Qasimi seemingly perceived as failing to uphold the normative standards of the discipline. The impact of this bureaucratization in the provinces seems to have been mitigated. While the qadi was sent from Istanbul and barely spoke the local language, the muftiship fell to local notables and respected elderly figures of the community, but whose connection with actual ifta' seems to have been tenuous – another reason perhaps for Qasimi to set the record straight.³² Perhaps the most pervasive impact of this bureaucratisation in the Late Ottoman Empire concerns the mufti's "attachment to a single authority or book." It is precisely in the respective places accorded to madhhab and ijihad that the most obvious difference between Qasimi and Ibn al-Salah resides: while the latter was a member of the Shafi'i school, drawing on its methodologies and authorities even to evince change,³³ Qasimi is a Salafi reformist who preaches the use of independent reasoning and tries to break with the ulama's propensity to "exaggerate" the contemporary state of decadence.³⁴ In typical reformist fashion, Qasimi makes the important

³² J. R. Walsh, "FATWĀ ii) - Ottoman Empire", E.I.². The literature on Ottoman muftis, both in Istanbul and in the provinces, is extensive. For Istanbul, see Heyd 1969 and Repp1986. In the Arab provinces, see Tucker 1998; Gerber 1999. For the remnants of this Ottoman system in the contemporary Middle-East, see Skovgaard-Petersen 2005.

³³ See Hallaq 2001.

³⁴ Many of the adab al-fatwa texts I have consulted construct a particular history of the fatwa that starts with a golden age, during the time of the Prophet Muhammad (the first mufti in the history of Islam), and proceeds with a story of decline which is often related to the growing immorality of Muslim societies. Some classical authors also argued that muftis had the right to paint an exaggerated picture of the evils of their society if they thought this could lead people towards a more pious lifestyle. Qasimi here is arguing against this idea.

statement that “ijtihad has actually never been so easy, now that all the relevant books are available” (Qasimi 1911: 16, ft. 1), reversing in a single sentence a centuries-old tradition.

The main body of the text is a compilation of relevant passages from different authorities, spanning many centuries and including prominent jurists from the four Sunni schools. Their opinions are not always consistent, sometimes even contradictory, but al-Qasimi, as was common among the ulama, often does not seek to harmonise them. For Jamal al-Din al-Qasimi, the authority of the mufti is well-established. Keeping in line with the *adab al-fatwa* literature, the mufti is seen as acting in the place of the Prophet and speaking in God's name (Qasimi 1911: 11 and 42). Looming behind this idealised picture of the mufti is the threat posed by non-qualified arrivistes issuing fatwas - usurpers of the title, using false credentials, often supported by external forces, sometimes commanding large popular followings (Qasimi 1911: 27). When the scholar is asked to add his opinion to a question already answered by an illegitimate mufti, he should cross out the previous answer. Nevertheless, if he wants to avoid a confrontation with the false mufti he may refrain from doing it, unless the usurper commands such a following that unmasking him becomes more important than preventing the fitna that would arise from a confrontation (Qasimi 1911: 27-8). Petitioners, on the other hand, have diverse motivations. Their intention (*niyya*) is crucial in determining the response of the mufti. Instead of providing exceptional permissions (*rukhas*, pl. of *rukhsa*), the mufti should inquire about the petitioner's moral state in order to assess the required religious remedy: this, Qasimi argues in a footnote, is a lesson which should be meditated upon by the lawyers, muftis, and court secretaries who currently exchange advice for money without concern for the individual's spiritual needs.³⁵

The clearest sign that the moral universe in which Qasimi was writing differed significantly from that of the pre-modern authors he extensively quotes is

³⁵ Qasimi 1911: 26, ft. 1. The point is made in reference to the adoption of a legal system based exclusively on “rights”, precluding an engagement with the spiritual needs of litigants.

perhaps an unusual passage on the verbal abuse thrown at Islamic scholars (Qasimi 1911: 66-67). In a context of political and religious effervescence (Commins 1986, 1990), Qasimi enumerates the insults which must have been common enough to elicit a response in print from Qasimi himself. A mufti is accused of acting as a “mujtahid” if he attempts to perform his duty by searching for the textual proofs himself; he is charged of being a “naturalist / scientist” (*tabi’i*), should he show an interest in science (*‘ulum al-hikma*) and mathematics; a “socialist” when the scholar calls on the rich to spend - for the Grace of God - to help the miserable; and a “wahhabi”, when he condemns saint-worshipping practices and outlines the different types of idolatry occurring in visits to holy shrines.³⁶

Contemporary Period: Yusuf al-Qaradawi

Fatwas provided both religious guidance and legal expertise well into the 20th century, when they gradually lost juridical importance as the legal systems of Muslim countries were progressively codified and secularised. Since the two offices are relational, the transformation of the qadi’s role has had a distinctive impact on its complementary function of the mufti, shifting the burden of standing for Islam towards the latter. Abdulkader Tayob (2005: 56-57) has argued that the ulama of Al-Azhar compensated for the loss of power to secular institutions by becoming society’s “moral guardians”, embracing an idea of morality which was both “pervasive and limited” and investing symbolic issues with “an excessive religiosity”. Generalising his argument, one can maintain that fatwas found, in this new configuration, a place to flourish, becoming a privileged instrument for carving out new spaces and roles for the ulama and assuring their continuing relevance in Muslim societies (see also

³⁶ This list of insults must be placed in the context of their articulation. Although I have not had access to Arabic biographies of Qasimi, Commins’ work provides some important background. Given his open advocacy of *ijtihād*, Qasimi’s incorporation of “mujtahid” in the list of insults cannot be but an ironic acknowledgement of the word’s social connotation in late Ottoman Damascus. It is also probably related to a painful moment in his early carrier, which became known as the “mujtahids incident” – see Commins 1990: 50-55. For the derogatory meaning given to the *wahhabiyya* – which Qasimi describes in a footnote as a minor sect (*ta’ifa*) – see also Commins 1990: 21-24. A reference to Qasimi’s distaste of wealthy families who disregard the poor, and his even harsher criticism of those jurists who provided them with juridical fictions relieving them from the duty of charity, is found in Commins 1990: 45.

Zaman 2002). Central to these transformations were also the powers and ambitions of the modern state, which vested upon fatwas a new kind of authority, and the publicity made possible by the development of mass literacy (Skovgaard-Petersen 1997).

Modern transformations led to the emergence of new institutional spaces in the Muslim world, creating specific pressures on fatwas. While these modern transformations are not usually related to developments in the *adab al-fatwa* literature they— so I would like to argue - can also be traced there. Yusuf al-Qaradawi, arguably the most influential contemporary Sunni Islamic scholar, is exemplary in this respect.³⁷ Trained in the traditional Al-Azhar, he joined the Muslim Brotherhood briefly before opting out of the organisation and casting himself as a media sheikh instead. A prolific writer, author of numerous bestselling books, Qaradawi's oeuvre reads as an attempt to re-establish the authority of the ulama in the face of three major contemporary challenges: the secularisation of the Muslim world, the authoritarianism of Arab regimes, and the rise of Islamist movements outside the purview of the ulama. Posing as the theoretician of the Islamic Awakening, steering its course away from both "extremism" and "neglect",³⁸ Qaradawi has tried to accomplish a synthesis between political Islam (as represented by the Muslim Brotherhood) and the religious establishment (symbolized by the Azhar), incorporating the idea of an Islamic state into the discourse of the shari'a secured by the ulama alone. If Muslim scholars often wrote with a sense of contemporaneity, as I have suggested, Qaradawi has made this his personal trademark: his collections of rulings, already published in four volumes, are famously entitled *Fatawa Mu'asira* (Contemporary Fatwas), marketing its author as a modern scholar while subtly disqualifying as anachronistic the work of his (conservative)

³⁷ Qaradawi has been the object of a number of studies, including Roald 2001a; Mariani 2003; Skovgaard-Petersen 2004; Zaman 2004. A full collection which tries to understand the "phenomenon" of Qaradawi edited by Gräf and Skovgaard-Petersen came out in 2009.

³⁸ This is the title of arguably his most famous book, *Al-Sahwa al-islamiyya bayna al-juhud wa-l-tatarruf*, translated into English as *The Islamic Awakening between Rejection and Extremism* (Herndon, VA: IIIT, 1992).

opponents.³⁹

Al-fatwa bayna al-indibat wa-l-tasayyub could be said to be the natural outcome of Qaradawi's lifelong thought and practice as "the global mufti" (Skovgaard-Petersen 2004). It should be placed in the broader literary production of Qaradawi on the issue of authority and *ijtihad*. The text inaugurates a trilogy of books by the Egyptian-Qatari scholar on the fatwa and thus constitutes an early exposition of Qaradawi's views on the subject.⁴⁰ Conceived as an introduction to his collected fatwas, it was first published in the periodical *Al-Muslim al-Mu'asir* and subsequently expanded into book form in order to reach a wider readership (Qaradawi 1995: 3-4). Whereas Ibn al-Salah was engaging the methodology of the Shafi'i school, and Qasimi was trying to convince fellow ulama of the importance of *ijtihad*, Qaradawi is addressing not only the religious elite but the literate masses of the Arab and Islamic worlds. The book is, as Qaradawi acknowledges in the introduction, a response to the fragmentation of religious authority during the Islamic Awakening. Specifically targeted by the Egyptian-Qatari scholar are Islamist youngsters posing as muftis without proper credentials (Qaradawi 1995: 4.). The book thus participates in his struggle to reassert the monopoly of interpretation of the ulama and to re-establish their centrality in the Islamic Revival. It testifies to the perceived importance of regulating *ifta'* in the contemporary Arab world (and beyond) – an importance which may seem justified in light of the developments in the religious field, including the co-optation of the ulama by the nation-state, the rise of terrorist Islamist groups, etc.⁴¹ The book should also be seen in the context of the Islamic Revival,

³⁹ The emphasis on the contemporary period (*al-mu'asira*) has now become widespread. A more recent collection of fatwas by Wahba Zuhayli, a Syrian mufti who sits in many international fiqh councils (famous for his work on *usul al-fiqh*, and notably his book on the notion of necessity in Islamic Law), also bears the title "*Fatawa Mu'asira*" (Zuhayli 2003).

⁴⁰ In 2007 Qaradawi published *Mujibat taghayyur al-fatwa fi 'asrina* (Obligation of Changing the Fatwa in Our Time), followed in 2009 by *Fatawa Shadhdha* (Abnormal Fatwas). The materials in both of these books have been discussed in various forums, including the satellite TV programme on Al-Jazeera *al-shari'a wa-l-hayat*.

⁴¹ For an overview of Islamic authority in contemporary Egypt (arguably the most important context addressed by Qaradawi), see Zeghal 1996; Skovgaard-Petersen 1997; Arigita 2005.

which has given rise to an enthusiastic market for Islamic media and literature. The publication of such a treatise is nevertheless somewhat paradoxical in that, by disconnecting the discipline from the institutions of learning which traditionally sustain(ed) it, it ends up disseminating a ready-to-use manual for an expanded readership of would-be muftis not formally trained in the classical Islamic disciplines, further contributing to the fragmentation of religious authority which the author sought to counter in the first place.⁴²

Qaradawi's book is divided into four chapters: "introduction"; "the importance of the fatwa and its conditions"; "blunders by contemporary muftis"; and "contemporary method for the fatwa". His version of the *adab al-mufti* reflects the change in the status of the petitioner: the rules which made sense in societies dominated by orality have symptomatically given way to a discussion of the pitfalls involved in addressing a diversified audience of "listeners" and "viewers". Instead of detailed hierarchical advice, Qaradawi exhorts petitioners towards searching and acquiring knowledge: a fitting illustration of the *salafiyya*'s emphasis on individual conscience (Qaradawi 1995: 52-56).

Pre-modern fatwas were sometimes long, if the question was of special societal concern or controversial among the *ulama*. Short texts, however, represented the norm, prompting Max Weber to call fatwas "oracles".⁴³ The systematic inclusion of the reasoning and objective of the fatwa seems linked to developments in mass literacy and the rise of the Islamic reformist movement. Although Qaradawi traces this practice to Rashid Rida, and further to Ibn al-Qayyim, he clearly inscribes it in a deliberate attempt to tune in to the

⁴² A small book (12 X 8 cm) entitled *Adab al-Mufti* by Ali Gumu'a, the current Mufti of Egypt, would seem to be a more fitting contribution to the phenomenon of Islamic books for mass consumption. It was published by Dar al-Salam in 2006 and is readily as well as cheaply available in Egypt. According to the author's experience in Arabic bookstores, however, books specifically targeting the *mufti* are rather rare, and bear no comparison to the proliferation of texts on the *adab al-mufti*.

⁴³ Max Weber, *Economy and Society* (Berkeley: University of California Press, 1978), 797, quoted in Messick 1986: 115.

nature of the times.⁴⁴ Thus, in his exposition of a “contemporary fatwa methodology”, Qaradawi stresses that a mufti must speak in the “language of his times”:

“By the language of the times I do not mean merely the words employed by a group in order to achieve its objectives. Language is more broadly related to the characteristics of thought and communication. Our contemporary language demands that the mufti pay attention to a number of considerations:

The mufti must be rational and employ logic, rather than rhetorical exaggerations, in order to capture people’s attentions...The mufti should avoid speaking in sophisticated jargon, for among the viewers and listeners are people of highly differentiated intellect and culture: alongside the great professor lies the small student, the businessman and the worker, all of which must be able to understand the answer. To make oneself understood by people of different backgrounds is not an easy task, but it is one which I have always strived for...The mufti must accompany his fatwa by its wisdom (hikma) and evidence (‘illa), linking it to the general philosophy of Islam...This is because of two reasons: it is the way of the Qur’an and Sunna...and secondly, it is (necessary) because the sceptics and those who encourage scepticism are very numerous today. Most people no longer accept the judgement without knowing the source and finality, especially if it is not related to the field of *‘ibadat*.⁴⁵

This passage indicates the responsiveness of the mufti to the social conditions of his society. Facing a different kind of moral subject, Qaradawi’s answer to the postcolonial predicament seems to be to turn the mufti into an ideologue, embracing a conception of the fatwa larger than most of his

⁴⁴ Ibn Qayyim al-Jawziyya is one of the best known and most commonly cited authors in relation to the process of fatwa-giving. His classic book *I‘lam al-Muwaqqi‘in ‘an Rabb al-‘Alamin* is often the first reference cited by minority fiqh practitioners (see for example Ibram n/d). For a study of Ibn al-Qayyim’s contribution to the adab al-fatwa genre see Nurbain 1995.

⁴⁵ Qaradawi 1995: 108-112.

predecessors. Whilst Ibn al-Salah broadly concurred with al-Mawardi (974-1058) that the mufti should not act “like a teacher”, explaining the reasons and objectives of the fatwa to the mustafti,⁴⁶ Qaradawi argues that he is simultaneously “a mufti, teacher, advisor, doctor, and guide” – a move which often requires extending his textual arguments, “so that the ignorant may learn, the neglectful may be informed, the doubter may gain confidence, the rejecter may be convinced, the arrogant may be defeated, the apprentice scholar may increase his knowledge, and the believer his faith” (Qaradawi 1999: 27). Modern ifta’ thus incorporates the functions of *tarbiyya*, *da’wa*, and *irshad* (Karčić 2001: 210; Masud, Messick and Powers 1996: 27) and presupposes a public sphere. Geared to mass consumption, fatwas seem to be no longer a form of expert religious guidance given to a specific individual, but rather a tool for the dissemination of a specific missionary zeal – and, in the case of Qaradawi, the spread of *taysir*: a minimalist conception of Islamic normativity based on pragmatism.⁴⁷ Based on these insights, one could tentatively suggest that modern transformations have induced not so much a crisis of authority as a shift in the authority arrangements. The classical mufti, invested with the institutional authority of the madhhab, issued straight-to-the-point fatwas to the mustafti who - as an uneducated individual - had a moral obligation to comply with them.⁴⁸ Under the new regime, the mufti issues long and well-argued fatwas in order to persuade a wider public, which is then free to adopt or reject the advice. The change then seems to be from the institutional authority of the madhhab-affiliated mufti to the textual authority of

⁴⁶ Ibn al-Salah 1992: 109. This is the case in spite of the fact that the *mudarris* was almost always a mufti too (Tyan 1960: 222).

⁴⁷ The literal meaning is “leniency”, a term which evokes largely positive connotations in the fiqh tradition, and should be contrasted to *al-tasahul*, “facility”, an attitude which muftis are severely warned against in the adab al-fatwa literature – for example, Qasimi 1911: 19-20. Qaradawi describes *taysir* as being “more urgently needed at this time than ever before. We live in an age which is immersed in materialism, lost in distractions, full of evils so overwhelming that the person who sticks to his religious principles faces a great deal of difficulty and stricture” - Qaradawi 1992: 157 and 1995: 103-8. On *taysir* see also chapter three and four.

⁴⁸ This also means that one should not take at face value the conventional definition of the fatwa as a non-morally binding religious opinion. Although this may have been the scholarly definition of the fatwa proposed by the ulama (especially in modern times), it is by no means clear whether the Muslim masses perceived the fatwa as non-binding and felt free to pick and choose the fatwa that suited them most.

the independent scholar's arguments. As a consequence of these discursive shifts, the boundaries between fatwas and other Islamic discourses have become increasingly blurred, upsetting the normative standards developed in the *adab al-fatwa* literature. This may help to explain partly why the diversity of opinion often valorised in the past as a *mercy* ("al-ikhtilaf rahmah li-l-ummah") is now giving rise to a more pessimistic assessment of the multiplicity of fatwas as *chaos* (*fawda al-ifta'*).⁴⁹

III- IFTA' IN THE WEST

The contemporary presence of Muslims in Western Europe provides an opportunity to explore how specific Islamic traditions fare when displaced and re-settled in new contexts (and to think about the meaning of "tradition" in the face of migration and social change). Migration and Islam's encounter with a rival tradition in the shape of Western liberalism may lead to renewed internal argument, even to an "epistemological crisis".⁵⁰ How can one think of the continuity of traditions in the face of large scale migration and social change? How do the latter displace the social knowledges which ground Islamic traditions? How have the institutions of European nation-states, intergenerational change, and gender dynamics, among others, impacted upon *ifta'*? If understandings of the fatwa have shown levels of regional variation across Muslim societies (Masud, Messick and Powers 1996: 8-15), to what extent can one speak of an emerging European perception of the

⁴⁹ "Fawda al-Ifta'" (The Chaos of Fatwa-Giving) is the title of a book by the well-known Muslim scholar Usama 'Umar al-Ashqar (Ashqar 2009). The assumptions that underlie this shifting assessment of the diversity of opinions in contemporary Islam do not seem to have been properly researched yet. It is usually assumed that the "chaos" is simply a result of the proliferation of voices speaking in the name of Islam (and facilitated by new media). Although I cannot fully develop here, I find that explanation unsatisfying. After all, the rising levels of literacy also facilitate the identification by the "masses" of certain fatwas as abnormal, therefore reducing the possibility of chaos that seems inherent in new media. In order to understand why exactly the diversity of fatwas has become seen today primarily as a plight, rather than a blessing, one would probably have to study the way fatwas have become embedded in the logics of nation-building and in the rationalities of anti-terrorism.

⁵⁰ See MacIntyre 1988: 355, 364. I assume here that liberalism is the dominant tradition in the "West", although the differences between national traditions should not be underestimated. In at least one European country – France – liberalism is often openly rejected in favour of a Jacobin Republican vision. I subsume the latter under liberalism in so far as the two share many of the conceptual presuppositions.

genre? While these questions cannot be fully answered in this introductory chapter, a number of transformations and range of Muslim responses will be suggested.

The role played by fatwas in the articulation of versions of public Islam in postcolonial Muslim societies is well documented (Skovgaard-Petersen 1997). The institutional arrangements specific to European nation-states – in particular the powerful myth of separation of religion and politics⁵¹ – would suggest a decrease in the (public) relevance of such technologies. Excluded from the legal systems and from the self-definition of European societies, fatwas would appear to be reduced to the private sphere of Muslim transactions. The public relevance of the fatwa however is not restricted to the sphere of Muslim transactions. In reality, the religious freedom guaranteed by European laws involves a complex legal process of defining (legitimate) religious practices which is more complicated than sometimes assumed. Expert statements on Islamic law, whether called fatwas or simply legal advice, are often solicited by European judges in their attempt to evaluate the religious claims of plaintiffs.⁵² As a fatwa on organ donation printed by Britain's National Health Service (NHS) suggests, state institutions in a

⁵¹ By "myth" I do not intend to deny the translation of this principle into effective policies, but just to emphasise how secularism provides a quasi-cosmological explanation of European societies today, irrespective of the varieties of the arrangements and the open-endedness of the outcomes. This may be seen as a myth in so far as it structures European self-understandings.

⁵² Thus, in an interesting case, the German Administrative Court of Darmstadt upheld a decision based on a fatwa from the Islamic Religious Community of Hessen related to the ritual slaughter of meat - see Mathias Rohe 2003: 46. In 2005, a French court of appeal in Paris drew upon a fatwa by a local Muslim scholar to prevent the cremation of the late Amar Bergham. Despite the insistence of Bergham's children that cremation was indeed the will of the deceased, a disagreement between the children and the widow concerning Bergham's final wishes led the court to defer back to the Islamic orthodox burial practice as articulated in the fatwa. According to media reports, the fatwa issued by the Ligue islamique du Nord (close to the Union des organisations islamiques de France) equated cremation with apostasy and stated that "only a Muslim judicial authority in a Muslim country can define and verify the causes of apostasy" (Agence France Presse, "Bataille juridique autour de la cremation d'un defunt suppose musulman, 25/5/2005). On the absence of a conclusive proof that Bergham had apostasized, the court ruled that the appropriate religious ceremony should take place. Three weeks after his death Amar Bergham was finally buried, according to Muslim practice, but much later than the delay stipulated under Islamic Law.

secular polity that is respectful of religious freedoms often seek to understand and engage religious norms, rather than dissociate themselves from them.⁵³ Furthermore, the increasing tendency, from at least the 1990s onwards, to view “immigrants” as “Muslims” and to attribute integration failures to religious causes has made fatwas significantly more attractive – not only in the fight against potential terrorist groups,⁵⁴ but more generally to ensure that European Muslims assimilate smoothly and become docile citizens. State actors may seek religious legitimacy for policies or laws from muftis at home or abroad (Nicolas Sarkozy’s trip to al-Azhar springs to mind). Many European states have placed the structures of Muslim religious authority at the centre of their incorporation policies and various initiatives have explicitly considered centralising (in order to better control?) ifta’, even if none appear so far to have succeeded.

These developments result in a social ambivalence towards the genre of fatwas. They create specific *constraints of publicity*, leading to contrasting Muslim responses. This wide range of attitudes towards fatwas raises doubts about the extent to which the genre can still be said to circumscribe the moral universes of Muslim communities. The fatwa continues to be used interchangeably with a death threat in Western popular discourse, such that Muslim and non-Muslim intellectuals seeking to capture public attention may claim that they have been the object of a “media fatwa”. More importantly, the legalistic character of the fatwa seems to many Europeans rather obscure and

⁵³ In April 2003 the NHS’s UK Transplant unit printed a fatwa of the Muslim Law Sharia Council on a leaflet on “Islam and Organ Donation”. The English version leaflet is included in the appendix.

⁵⁴ The war on terror has elicited many a fatwa from European Muslim scholars. These are some examples: ‘Abd Allah al-Juday’ (a member of the ECFR based in Leeds) issued a fatwa in November 2001 against British Muslims fighting in Afghanistan against British forces (Hussein 2004: 111-112). Over 40 Muslim scholars associated with the Muslim Council of Britain issued a joint declaration condemning the July 7th bombings. In the wake of the murder of Theo van Gogh, an imam from The Hague issued a fatwa urging Muslims to testify against members of the Hofstadgroep. The Islamic Conference of Spain (Comisión Islámica de España) headed by Mansur Escudero issued a fatwa condemning Osama bin Laden as an apostate on the first anniversary of the Madrid bombings (<http://www.webislam.com/?idn=399#>). These fatwas are responses to the widespread perception in Europe that Muslims must collectively dissociate themselves from the terrorist acts of a few individuals acting in the name of Islam.

“undemocratic”.⁵⁵ In a recent novel by Leïla Marouane that tackles the problem of fundamentalism and civility in France, entitled *La vie sexuelle d’un islamiste à Paris* (Marouane 2007), the main character Mohamed Ben Moukhtar – a first generation immigrant who came to France after completing a religious education in Algeria - is described as a “spécialiste des fatwas sans appel” (Marouane 2007: 118) who does not shy away from telling others how to conform to religious injunctions. The willingness to give advice (“un donneur de conseils») and to preach (« prêcheur de leçons et de conseils, de la bonne parole») define Islamism in the novel as a deviant religiosity that falls outside the proper boundaries of religion. Muslim piety is plotted linearly, in a continuum where religious “perfection” is squarely associated with “rigidity” and explicitly opposed to “integration” and to “France”. The novel reproduces a widely shared representation of Islam that shapes the discursive terrains where Muslims construct their lives in the secular Republic (and perhaps elsewhere in Europe).⁵⁶

At the same time, however, the recurrent calls for an Islamic *aggiornamento* in Europe prefigure the use of fatwas in their traditional function of adapting Islamic norms to new social realities (and even mainstream media are increasingly recognizing this). Public intellectuals ask Muslim scholars to issue fatwas condemning traditional Islamic norms that fall short of human rights standards – as when sociologist Leïla Babès demands a fatwa from Tareq Oubrou condemning the death sentence for apostasy.⁵⁷ Some Muslim intellectuals are timidly starting

⁵⁵ The statement which perhaps best captures this perception comes from Marcel Gauchet, a philosopher recently taken by John Bowen as a guide to “more widely distributed ways of thinking about religion and society in France” (2007: 3). According to Gauchet, “il est devenu incongru ou grotesque de mêler l’idée de Dieu à la norme de la société des hommes” (Gauchet 1998 : 86). The empirical fact and the normative claim seem to be intertwined in this statement.

⁵⁶ Mohamed Luizi, a Muslim activist based in Lille who has splintered from the UOIF, has put it even more sharply. Luizi has depicted fatwas as the un-reflected production of a brainless mind - by drawing, in the cover page of a book criticizing a fatwa issued by the ECFR, a red sign of prohibition in front of a representation of the human brain *amidst an ocean of fatwas* – suggesting thereby that thinking is, in this moral universe, strictly forbidden. A scan of the cover page can be found in the Appendices.

⁵⁷ In their series of discussions on freedom and the status of woman in Islam at one point Leïla Babès asked Oubrou: “Si, comme j’ai cru le percevoir dans vos propos, la

to contest the ulama's monopoly by issuing (liberal) fatwas of their own - a move requiring, and invariably attracting, a good deal of publicity in the media. Ziauddin Sardar's "fatwa on the fanatics", published in *The Observer* in the wake of 9/11, condemned terrorism and spoke of an Islam "beset with the fatwa culture."⁵⁸ The potentially negative impact of fatwas on Muslim religiosity has been the object of critiques voiced across the Muslim spectrum. French youth calling far away sheikhs on the telephone to request fatwas have come in for some sarcastic comments for failing to follow their own consciences instead.⁵⁹ Some of the Parisian muftis I worked with in the mid-2000s would often argue that certain questions should not be asked. They would tell Muslims calling in to get a fatwa over the telephone that in some issues they would be better advised to follow their own instincts. Similarly, muftis in the Muslim world have often rebuked for offering religious advice too easily to Muslims living in Western contexts.⁶⁰ The late Zaki Badawi (1922-2006), chairman of the Muslim Law (Shari'ah) Council in the UK, often presented as the "unofficial mufti of Britain", criticised in the media "the fatwa-happy sections of the [British Muslim] community".⁶¹ Yet, clearly, fatwas were important to him: as one particularly laudatory obituary ran, Badawi was known as "a high calibre well-rounded scholar who never allowed circumstances to colour his edicts".⁶² In France, when the Haut Conseil des Musulmans de France issued a fatwa in 1996 condemning the kidnapping by Islamist radicals of Catholic monks in Tibéhirine, the Grande Mosquée de Paris questioned in the media the legitimacy of fatwas in a "secular

peine de mort pour apostasie doit être condamné, ne pensez-vous pas qu'une fatwa s'impose? ». In his response Oubrou stated that "Je suis avec vous ici dans une démarche réflexive, pas celle de la fatwa. Mais si vous tenez à ce qu'elle soit une fatwa, prenez-la alors comme telle (Babès and Oubrou 2002: 49).

⁵⁸ Ziauddin Sardar, "My fatwa on the fanatics", *The Observer*, 23/9/2001.

⁵⁹ See Abdelkrim (n/d: 84-86). Farid Abdelkrim, a prominent Muslim intellectual in France who turned comic writer, used to make fun in his shows of what he perceived to be a Muslim obsession with fatwas.

⁶⁰ See Yusuf Talal DeLorenzo 1998: 193 and chapter two for details.

⁶¹ "Profile: Dr Zaki", *Emel*, November/December 2003, p. 32-6. See also Jack O'Sullivan, "Defender of his faith – Jack O'Sullivan meets Zaki Badawi", *The Guardian*, 15/1/ 2003.

⁶² Statement by the Founding Editor of Q-News Fuad Nahdi.

Republic”.⁶³ Significantly, the largest federation of imams in France, the Conseil des imams, reacted to the ban of the Muslim headscarf from public schools in 2004 by issuing a press statement which “follows the method of a fatwa” but is not called so “in regard to the sensitivities of the French public sphere”.⁶⁴

Fatwa councils at the local and national levels have nevertheless been set up in France, Britain and elsewhere since at least the 1980s. Most of them operate informally and have remained largely under-researched. One such council – the Dar al Fatwa attached to the Union des organisations islamiques de France, formally established in 1988 - created a stir in November 2005 by issuing a fatwa at the height of the riots in the French suburbs “concerning the troubles affecting France”.⁶⁵ Drawing on Qur’anic verses condemning destruction and disorder, Dar al-Fatwa ruled the following: “Every Muslim living in France, whether citizen or guest, has the right to demand the scrupulous respect of his being, dignity and belief, as well as to act for greater equality and social justice. But this action...must never take place against the Islamic teachings and the law which regulates common life”. The fatwa was delivered in response to demands from the grassroots, particularly the Muslim families most affected by the destruction of their property. The UOIF’s fatwa commission – which operates mainly via the telephone - reported a high number of telephone requests to publicly condemn the violence. The “preventive” text, as the fatwa was described to me by the president of the UOIF, was an attempt to dismiss the insinuations of a religious manipulation

⁶³ *Le Monde*, 26/05/1996. The declaration from the Recteur of the Mosquée de Paris, who had proposed just one year earlier to establish a system of provincial muftis, does not make sense unless one takes into consideration the competing strategies pursued by rival Muslim actors throughout the 1990s in their search for State recognition. More recently, the Franco-Algerian intellectual Malek Chebel wrote that “one would have ideally to simply abolish the notion of fatwa, in any case that which consists...in putting to death a thinker or other critic of Islam”, and called for accepting the view that fatwas be “just an Enlightened opinion, like the expertise of a doctor, a psychologist or a policeman in charge of an investigation” (Chebel 2004: 45-6).

⁶⁴ Chairman of the Conseil des imams, interview with author, Paris 2004.

⁶⁵ I draw here on Caeiro 2006a. On the French riots of 2005 see also Bowen 2006. A poster advertising Dar al-Fatwa is included in the Appendices.

behind the riots. Under normal circumstances Islam represents for mainstream French society all the alterity of the banlieues. Many of the problems of these areas had been in recent debates explained through references to the spread of Islamism / Islamic fundamentalism. Although the riots themselves were mainly described in the media as the product of social and urban exclusion, some politicians did (wrongly) suggest the implication of Islamist groups. By issuing a religious statement against the violence, the UOIF was countering such claims - and acknowledging its perception in the French public sphere as an Islamist movement. The fatwa fell logically within the expectations of large sections of the political establishment, particularly the Interior Ministry which plays a key role in both maintaining order and managing religious diversity in France. The then Interior Minister Nicolas Sarkozy included the controversial Islamic organisation in the official Muslim representative body set up in 2003 – a decision which greatly improved the UOIF's access to political and civil opportunity structures. The successful establishment of the representative body has in turn been used by Sarkozy to further his political ambitions. When political actors on the Left and other Muslim leaders criticised the fatwa, accusing the UOIF of “tainting social problems with a religious colour” or of “bestowing upon religion an illegitimate public role”, Sarkozy's party promptly issued a press statement in defence of the use of fatwas in France. The religious statement issued by the UOIF formalized the mediating function of Islam in the French suburbs. Although they did not generate as much publicity, religious volunteers had from the beginning attempted to dialogue with the young rioters in order to appease the situation. Coherent with the UOIF's imagined role for religion in the public space, the fatwa's wider resonance was made possible by the emergence of new discursive spaces in France: subverting the dominant conception of laïcité, which implies a separation of religion and state, French authorities have for two decades now been performing a semantic shift between "immigrant" and "Muslim." Against the backdrop of international terrorism and the perceived crisis of the French model of integration, political leaders have not hesitated to draw the debate back to the theological plane, discoursing time and again about the "authentic" Islam of “peace” and "social cohesion." The consequent distinction between “good” and “bad” Islams drives the call

for a French and “Enlightened” Islam – and provides the latest version perhaps of what Olivier Roy has called the recurrent “theological temptation” of French laïcité (Roy 2005; see also Bowen 2007). The UOIF occupies an ambivalent place in this project of Gallicanization. Although suspected of Islamist affiliations and accused of “fundamentalism”, its contextualized reading of the Islamic sources and its vision of a “civic Islam” fall logically within the French debate (Peter 2006b). They respond directly to the expectations of the society and reproduce the idea of a necessary aggiornamento as a prerequisite to the integration of the Muslims – setting the conditions not for a privatization of faith, but for a public Islam.

The beginning of an intra-Muslim debate on the uses, tendencies, and prospects of fatwas in Europe testifies to the increasing level of self-reflexivity among Muslim practitioners.⁶⁶ These intellectual debates typically draw a large spectrum of Muslim scholars, transgressing the boundaries that otherwise appear to divide Muslim communities into competing factions.⁶⁷ Muslim scholars are often asked by larger audiences in Europe to explain the mechanisms of production of the fatwa, thus participating in the dissemination

⁶⁶ In the last few years at least two conference-debates have taken place in Paris only, organised respectively by the Institut européen de sciences humaines (an imam-training institute close to the UOIF) and the Institut international de la pensée islamique. For a report of the latter, see <http://www.islamonline.net/Arabic/news/2006-01/07/article12.shtml>. Furthermore, on 26-27 May 2007, the UOIF’s Dar al-Fatwa organized the second National Conference of Imams (Colloque national des imams) on the topic of “divergence of opinions in fiqh and its effects on the fatwa”. The French case is the one I am most familiar with, but it does not seem to be unique: in the U.S., for example, Khaled Abou El Fadl reacted to a controversial fatwa by publishing *The Authoritative and the Authoritarian in Islamic Discourses* (Abou El Fadl 1997), while Taha Jaber al-Alwani’s attempts to develop a methodology for issuing contextual fatwas have yielded, in English, *Towards a Fiqh for Minorities – Some Basic Reflections* (Alwani 2003), followed by Sultan 2008. For a contribution to the debate from Britain see the Lybian scholar Salim al-Shaykhi’s paper on “Al-Aqalliyat al-Muslimiyya wa Taghayyur al-Fatwa” (Muslim Minorities and the Change of Fatwas) at http://alsheikhi.com/islamic/index.php?option=com_content&view=article&id=68:2010-12-09-07-37-47&catid=21:2010-11-21-08-26-22&Itemid=39 (accessed 9 January 2011). Salim al-Shaykhi is a Manchester-based member of the European Council for Fatwa and Research and the current head of ECFR’s fatwa commission in Britain.

⁶⁷ I have been struck at how the specialised seminars on fatwas organized by the UOIF in France would attract scholars from the Mosque de Paris, for example, despite the often fierce rivalry that has characterized relations between the leaders of the two organisations.

of Islamic legal techniques that were previously the purview of a narrow elite of specialists.⁶⁸ Muftis based in Europe are also increasingly participating in a global discussion about the need to regulate fatwas and to prevent the fragmentation of religious authority.

The French-Moroccan imam of Bordeaux's al-Huda Mosque, Tareq Oubrou (b. 1959) has devised a theory of Islamic normativity adapted to French laïcité, the "sharī'a de minorité", first published in 1998 and expanded in two subsequent essays (Oubrou 2004; 2005), which he has described as a contribution to the training of muftis – self-declared or "implicit". Since his is a construct predicated on the use of fatwas, it will be considered here as my fourth case-study of the adab al-fatwa genre.⁶⁹

France: Tareq Oubrou

Having already outlined above some of the features of the French context, I start here with Oubrou's biography. Born in Agadir in a not particularly religious family, Oubrou discovered "the intensity of faith" at 18 and soon afterwards he came to France to study medicine and biology. The charismatic young man started officiating as an imam at an early age, becoming in 1991 full-time imam of Bordeaux's El-Huda Mosque. Increasingly solicited by journalists, social scientists and politicians, Oubrou regularly delivers the Friday sermon, organises imam-training seminars, and engages in interfaith dialogue. Often presented as the leading thinker of the Union des organisations islamiques de France, an important player in French Islam, Oubrou's lack of formal religious training, iconoclast writings, and use of the

⁶⁸ A conference entitled "La fatwa et le Mufti dans la religion musulmane" given by Larabi Becheri (al-'Arabi al-Bishri, a member of the European Council for Fatwa and Research) at the main mosque in Luxembourg on 22/12/2007 was available on youtube. Over the years many such public conferences have taken place across Europe. I attach the advertisement of some of these events in the appendix.

⁶⁹ All unreferenced quotations from Oubrou are from a series of interviews with the author carried out in Paris and Bordeaux in 2004 and 2005. For more information see Oubrou 2009.

French language nevertheless make him an unorthodox figure among the UOIF's religious leadership.⁷⁰

Oubrou clearly engages in his work both the Islamic *fiqh* tradition and wider non-Muslim debates. If his emphasis on the dialectics of text and context belongs to a history and tension of the Reformist movement, Oubrou also speaks directly to French societal debates and fears, often employing the categories of social scientists researching Islam in France. The starting point of his "sharī'a de minorité" is similar to that of most French observers: since Islam is not meaningful without the norms which sustain belief,⁷¹ how should Muslims be "integrated" in France? Is Islam compatible with French laïcité? Oubrou's answer seems to be a conditional yes: as long as Islamic normativity is relativized. The "sharī'a de minorité" could thus also be called "sharī'a relative". The shari'a is subordinated to theology, and then reduced to its ethical dimensions, thus ridding Islam of its claims to legality and justifying recourse to French legal institutions.⁷²

Given the wide French expectation of an Islamic aggiornamento, it is interesting to note that "reform" is a word virtually absent from Oubrou's writings. As a mufti, he seems to reflect within political and sociological limits imposed by his tradition: he is concerned with adapting Islam to the French context as much as with maintaining the boundaries of legitimate religious authority - a problem he has recognized as intractable, partly perhaps because he no longer appeals to the state for supervising Islamic discourses.

It is the disconnection of Islam from the State, along with the minority condition, which place the fatwa at the centre of Muslim practice, as "the only

⁷⁰ The use of French is remarkable and suggests that, beyond the producers of Islamic discourses, Oubrou is targeting also the wider non-Muslim strata of French society, particularly academics, interfaith activists, and perhaps even politicians.

⁷¹ For Oubrou's vision of Islam as faith *and* practice, see Oubrou and Babès 2002: 86-93 as well as Oubrou 2009.

⁷² Oubrou 2004 : 210-220. Oubrou's proposition to incorporate French law into the metabolism and the economy of the shari'a has been formulated theoretically: the full applications of such a move have yet to be spelt out.

useful mechanism in dealing with Islamic normativity in Europe”. If Islam and the Republic are sometimes thought of as two abstract universals in competition, Oubrou, it would seem, sets about *constructing the borders* of a distinctive French Islam.⁷³ The sharī‘a de minorité is part of the larger project of rooting Islam in the nation-state: fatwas must tie the individual to his (French) culture, however that is defined, rather than act as a “homogenising factor” under global conditions.

In principle, for Oubrou, the fatwa is *auto-biodégradable*, in that “it contains in its very formulation the ingredients and time-space criteria of its validity and life-length” (Oubrou 2004: 221). This normative mobility is rendered necessary by the fragility of Muslim religiosities. Oubrou acknowledges a movement, within Muslim youth raised in France, from *living* Islam (as their parents supposedly did) to *constructing* it. This intergenerational shift often leads to a self-reflexive attempt to differentiate between cultural and religious forms which, despite its roots in the Reformist critique of ‘urf,⁷⁴ is exacerbated in Europe by a number of factors, including the heterogeneity of Muslim populations and the encounter with the hegemonic Western traditions. Fatwas are sustained by these politics of authenticity. The sharī‘a de minorité constitutes an attempt by Oubrou to respond to the fluidity of Muslim youth identities and religiosities.

The fatwa adapts Islamic normativity to the legal, social, and cultural foundations of the French society. In contrast to some earlier descriptions of the muftiship, which emphasized retreat from the mundane world, the mufti according to Oubrou needs to be geographically and sociologically implicated in his environment, in order to mobilize the appropriate “normative subjectivity” – an idea which resonates with Tariq Ramadan’s notion of a “fatwa psychology”, which Ramadan opposes to its “spirit” (i.e., its methodology) in

⁷³ The pun is a reference to Bowen 2004a: 43-55.

⁷⁴ For a gender(ed) discussion of this aspect, see Amir-Moazami and Salvatore 2003.

that it can only be acquired from experiencing life within a given society.⁷⁵ Among the additional criteria a mufti must fulfil beyond Islamic scholarship, Oubrou cites an accurate perception of the psychological reality of Muslim individuals, a strong grasp of French laws, and an awareness of European legal integration. Intriguingly, he has nothing to say about piety or moral qualities.

Muftis have always taken into consideration the media impact of their work, choosing between targeting a specific individual and aiming at wider consumption. Oubrou partly echoes this distinction between private/individual and public/collective fatwas, but goes a step further, establishing an original typology of Muslim normative opinions. *Oubrian* fatwas are of two types: “positive by articulation” or “negative by omission.” Positive fatwas may be directed at a community, in which case they relate to an average level of religiosity – a community which Oubrou defines nationally: French Muslims, and the French [Muslim] national average religious practice (preferably, according to Oubrou, based on a scientific survey!). Or, alternatively, positive fatwas may be “situational,” enunciating a norm that takes into consideration not only legal but also social constraints, and is individual in scope. Oubrou elaborates this distinction between legal and social constraints in relation to the problems caused by the visibility of Islam when discussing the building of minarets (*legally* allowed but sometimes *socially* rejected). He must also have had in mind the question of Muslim headscarves in public schools.

Negative fatwas, on the other hand, should be seen as Oubrou’s attempt to counter the proliferation of conflicting fatwas in the European market. Driven by fierce competition between domestic and transnational producers, and enabled by mass media, this market has created the conditions for product diversification, with muftis marketing their - and each other’s - work as “authentic,” “moderate,” “easy,” “European.” Tareq Oubrou is worried the resulting fatwa wars may lead to a normative saturation and erode all forms of

⁷⁵ Ramadan in Conseil européen des fatwas et de la recherche, *Recueil de fatwas: Avis juridiques concernant les musulmans d’Europe* (Lyon : Editions Tawhid, 2002), 17.

religious authority, including “sincere and benign ones.” Negative fatwas seek to break the spiral by refusing to materialize under the pressure of demand, or by articulating “anti-fatwas,” suspending norms in order to avoid burdening a community of believers already rendered fragile by its socio-economic condition. This is Oubrou’s final degree of relativity of shari’a.

Fatwas are thus Oubrou’s theoretical tools for the elaboration of a minimalist orthodoxy (a “spiritual minimum wage,” as Oubrou puts it) that is sensitive to “the moral state of the local Muslim communities.” Hence to a non-practising Muslim Oubrou recommends one prayer a day, while to a youngster who spends the day in worship at the mosque, Oubrou advises he find a job. The “shari’a de minorité” allows the imam of Bordeaux to provide an Islamic cover for new and unorthodox Muslim practices, forging a “legal Islam” adapted to the current situation. This *reordering of knowledge* inevitably constructs a relation of *normative dominance*: here, as in other religious discourses, the aim is not only to reconcile Islamic Law to the secular context, but also – and quite explicitly - to counter the secularization of Islam in Europe. Seemingly, underlying Oubrou’s work, is a widely-shared distrust of the personalized – and therefore unmonitored and uncontrolled – religious practices of the Muslim individual.

IV- CONCLUSION

Social scientists working on Muslim societies and communities have often refrained from engaging with Islamic texts. Positioning themselves against the logo-centrism of Islamic studies, they have searched instead for the ways in which Muslims in practice and in diverse contexts live and understand religion. Even when providing sophisticated accounts of social structure and legal dynamics in Muslim societies, social scientists thus often seem to have interiorised an idea of Islamic doctrine as rigid and unchangeable. This is also true, I would argue, in the study of Muslims in Europe which, while increasingly varied and multidisciplinary in approach, is only beginning to consider the sites of production of Islamic knowledge.⁷⁶

⁷⁶ See most notably Bruinessen and Allievi 2010.

This chapter has suggested, on the contrary, that doctrinal texts are articulated in, and responsive to, particular social conditions. The manuals of *adab al-fatwa*, as idealised accounts of a crucial practice in Muslim societies, are not mere reflections of the timeless concerns of religious interpreters, but rather, studied diachronically, speak of transformations in conceptualisations of religious authority, subjectivity, and agency. They inform us of the shifting normative criteria which have defined the correct performance of a specific religious act and, in so doing, tell a history of changes in the moral economy of Muslim societies. If the study of Ibn al-Salah, Jamal al-Din al-Qasimi and Yusuf al-Qaradawi, taken as three paradigmatic cases, highlights evolutions in the moral universes which sustain fatwas, a comparison between the latter and Tareq Oubrou, two contemporaries, reveals some of the tensions arising from different conceptions of Islamic technologies, media practices, and nation-state projects. Qaradawi is a global mufti who, from his adopted base in Qatar, disseminates a disembodied *taysir* (lenience – see the following chapters) to audiences worldwide. Although Oubrou has found inspiration in his work, he is in many ways Qaradawi's opposite: a local scholar invested in a very specific national process of integration of a minority religious community. Uncomfortable with the media practices associated with fatwas, Oubrou seeks to recuperate a tradition of *ifta'* which is sensitive to the contingent moral state of the petitioner and is geared towards the development of contextual Islamic virtues.

The important question of the relationship between the representation and the practice of *ifta'* has not been directly dealt with here.⁷⁷ The extent to which *adab al-fatwa* manuals have informed the daily activity of muftis is presumably quite varied, not to mention the responses fatwas elicit in petitioners. Clearly muftis have not always followed all the instructions scrupulously: they have not consistently been beautiful, moved slowly, read the question aloud, paused, meditated, and trembled in fear of God, before offering an answer.

⁷⁷ For an author who does just this, demonstrating how the *adab al-fatwa* manuals impact on a mufti's actual practice in the Mamluk period, see Nissreen Haram 1996: 72-86.

Likewise, petitioners have not been invariably acquiescent and polite towards the scholar, as al-Qasimi (and others) instructed them, otherwise he would not have commented on the abuse commonly thrown at him. Nevertheless, these bodily dispositions and states of mind corresponded to the standards of excellence which were transmitted and studied by generations of Muslim scholars and thus defined the discipline.

The concept of discursive tradition, as formulated by Talal Asad, has been useful in directing our attention towards the levels of subjectivity and reflexivity which are inherent in Islamic practices. It allowed us to focus on the impetus towards self-reform inherent in traditional modes of reasoning. A reading of the *adab al-fatwa* manuals suggests that fatwas provide more than *information* on religious and legal matters. Ibn al-Salah's discussion of oral versus written advice hints at the use of fatwas for purposes other than transmitting formal rules. Qaradawi's fatwa methodology is inseparable from his *taysir*, which is less a hermeneutical tool than an assessment of the contemporary requirements for the formation of pious Muslim selves. Oubrou's "negative fatwas" are theoretical constructs which epitomise his own misgivings towards the production of fatwas: circulated via the mass media, fatwas have seemingly become "badges of piety",⁷⁸ rather than tools for its *cultivation*.

A study of the shifting moral universes of *ifta'* is, to be sure, an exercise which deserves to be undertaken with greater depth and more systematic contextualisation than I have been able to provide here. The *adab al-fatwa* manuals need to be crossed with other sources to fully reveal their intertextuality. The main aim of this chapter has been to open this field of research to the sensibilities of social scientists and to provide the adequate context for the study of European fatwas below.

⁷⁸ The expression is taken from Geertz 1971: 62.

CHAPTER TWO

Theorizing Islam without the State: Debates on Minority Fiqh

I - INTRODUCTION

The contemporary vitality of the *adab al-fatwa* genre discussed in chapter one is attested by the current proliferation of calls for regulating fatwas in both Muslim majority and Muslim minority societies. In this chapter I consider how, in relation to the situation of Muslims in the West, the instructions on how to issue appropriate fatwas contained in the *adab al-fatwa* literature often turn into a wider discussion on the appropriate understanding of the rights and duties – under Islamic and secular Law - of Muslim minorities living in non-Muslim polities. Known as *fiqh al-aqalliyyat*, or minority *fiqh*, this is a relatively recent field that can be distinguished from historical understandings of minority jurisprudence by its particular normative impetus. Historically one might contend that instances of *fiqh al-aqalliyyat* have occurred whenever Muslim minorities have sought guidance under the *shari'a*. The problems they have faced, and the juristic opinions these problems have elicited, constitute *fiqh al-aqalliyyat* in a *descriptive sense*.⁷⁹ Here I am particularly concerned with the *normative usages* of *fiqh al-aqalliyyat*, which refer to the calls voiced by a range of Muslim actors to devise a new system of Islamic normativity (*fiqh*) that suits the specificities of Muslim minorities. As I show below, this call is thoroughly a modern one, engaging a wide number of contemporary Muslim scholars and activists. The extent to which this discourse draws on, selects, and ignores the opinions found in the Islamic *fiqh* heritage is left here an open question.

I approach *fiqh al-aqalliyyat* in this chapter through a particular angle: as the object of specific theoretical reflection by Muslim scholars and public intellectuals. A significant number of books and articles arguing for and against minority *fiqh* have been published – mostly in Arabic - since the late 1990s. These texts have so far received little attention from social scientists,

⁷⁹ An excellent discussion of classical Muslim discourses on the minority status can be found in Abou El Fadl 1994.

perhaps because of a tendency to view this kind of writings as apologetic texts seeking - in the best tradition of Islamic legal theory (*usul al-fiqh*) - to provide theoretical bases for already existing social practices (and therefore of limited theoretical interest in and of themselves).⁸⁰ In contrast to these views, I treat the elaborations on *fiqh al-aqalliyat* here as discursive interventions into larger debates on Muslim identity and the integration of Islam in Europe - debates which in turn connect variously with discussions in the Muslim majority world about the application of the *shari'a*, the role of the nation-state, and the dynamics of religious authority. I first provide elements for a history of the minority *fiqh* idea, then analyze the debate on whether European Muslims require a *fiqh* for minorities specifically designed for them, and the particular conceptions of Islam and of Europe that underlie it. I seek to understand what precisely motivates the vivid discussion about the legitimacy of a 'minority *fiqh*' - a dispute which has blurred the conventional dichotomies between 'traditionalist' versus 'reformist' actors⁸¹ - and I ask what is at stake in discussions of minority *fiqh* as 'just another branch' (Qaradawi 2001) or a 'special kind' (Alwani 2003) of Islamic normativity.

Many of the texts arguing for or against minority *fiqh* constitute responses to particular *fiqh* positions (the permissibility of political participation in non-Muslim countries, the status of the marriage of a married woman who converts to Islam while the husband does not, or the uses of interest-bearing mortgages to buy property). The hypothesis I pursue here, however, is that the debates on minority *fiqh*, even when they take as their starting point particular *fiqh* issues such as those mentioned above, are actually debates about how to understand the viability of the Islamic legal tradition (what continuities and changes are necessary for it to remain a living and coherent

⁸⁰ See on this point al-Azmeh 1998. Some orthodox Muslim scholars have reached similar conclusions. As 'Abd al-Majid al-Najjar (2003: 45-48) notes, *usul al-fiqh* emerges counter-intuitively not before but after *fiqh* has dealt with real cases. For a different attempt to make sense of Muslim theoretical writings on *fiqh al-aqalliyat* see the works of Andrew March listed in the bibliography.

⁸¹ To put it differently: what may unite Hizb ut-Tahrir members, the traditionalist Syrian Shaykh Sa'id Ramadan al-Buti, and eclectic European intellectual Tariq Ramadan, other than their critique of the minority *fiqh* construct as unable to capture the universality of Islam?

tradition in a diasporic context?), and how to conceptualize the political space that constitutes the West (what kinds of freedoms and constraints are placed upon Muslims in European secular regimes?).⁸²

II – THE EMERGENCE OF FIQH AL-AQALLIYYAT

It seems appropriate to start by providing a sense of the contexts in which the discussion on minority fiqh arises and develops. Currently the transnational circulation of the discourse is in this regard quite striking. The most famous articulations of the concept originated in locations as different as the United States (Muhammad Fathi ‘Uthman, Taha Jabir al-‘Alwani and Salah Sultan), France (‘Abd al-Majid al-Najjar, Al-‘Arabi al-Bishri and Ahmad Jaballah) and the Gulf countries (‘Abd Allah Bin Bayyah in Saudi Arabia and Yusuf al-Qaradawi in Qatar).⁸³ Some of the better known contestations of the construct have been produced in Switzerland (Tariq Ramadan), the United Kingdom (Asif Khan), Egypt (Salah al-Sawi), Syria (Sa‘id Ramadan al-Buti) and Saudi Arabia (the International Islamic Fiqh Council of the Organization of the Islamic Conference). Fiqh al-aqalliyat has thus given rise to a global - and often impassioned - debate. While the global nature of the fiqh al-aqalliyat debate confirms the existence of a specifically Muslim public space (Mandaville 2001; Eickelman and Salvatore 2004), it also reminds us that

⁸² Part of the debate is about the terminology itself. As ‘Abd Allah Bin Bayyah (n/d) and Nadia Mustafa (2000) among others have pointed out, “aqalliyat” is a neologism in the Arabic language. Given the attachment of the ulama to etymology, and given a widely shared belief that the true meaning of concepts resides in their original linguistic sense, it is perhaps not surprisingly that the conjunction of fiqh to a neologism should give rise to controversy. See for example Buti’s categorical rejection of the term in Buti 2007: 134-136 and 181-185.

⁸³ Interestingly, all of these advocates of minority fiqh are themselves migrants: ‘Alwani was born in Iraq, studied at Al-Azhar and moved to the US in the early 1980s; Qaradawi is Egyptian by birth and education but has lived in Qatar since the 1960s; Sultan was trained in Egypt and migrated to the USA; Bin Bayyah was a Minister in his home country Mauritania before moving to Saudi Arabia to teach; al-Najjar is Tunisian, lived in the Gulf before settling in France around the turn of the century. The Algerian-born al-Bishri has been based in France for two decades. Muhammad Fathi ‘Uthman - or Fathi Osman (1928-2010) was an Egyptian intellectual who moved to the United States in the 1970s. He joined the Muslim Brotherhood as a teenager, taught at the Azhar, and received a PhD from Princeton University on land ownership and taxation in Islam. A number of obituaries claim that Fathi Osman invented the expression “fiqh al-aqalliyat” in the 1980s, although I have not been able to confirm this. For a journalistic description of his life and works see William Grimes, “Fathi Osman, Scholar of Islam, Dies at 82”, *The New York Times*, 19/09/2010.

globalization leads not only to the collapse of old frontiers but also to the establishment of new boundaries. Advocates of minority fiqh have to work through the disjuncture arising out of their various geographical locations (in other words, their operation in a global field), on the one hand, and their own commitment to setting symbolic boundaries (designing a fiqh for minorities), on the other.⁸⁴

Although my account below focuses primarily on articulations of the rights and duties of Muslims in Europe that explicitly invoke the idea of fiqh al-aqalliyat, I also discuss a range of other discourses that address similar concerns by drawing on the Islamic legal tradition, even when they do not directly appeal to minority fiqh as such. It is noteworthy that in the writings of contemporary Muslim scholars the very use of the expression '*fiqh al-aqalliyat*' has become fraught with implications. Muslim scholars who write today on '*fiqh al-aqalliyat*' are often assumed to be in favour of the political participation of Muslims in the West, the use of interest-bearing mortgages to buy a house, and the permissibility of staying in a marital relationship with a non-Muslim husband for the married woman who converts to Islam – in other words, they are assumed to agree with the fatwas issued by the ECFR under the guidance of Qaradawi (see chapter four for details on these fatwas). Those scholars who write on Muslims in the West from a fiqh perspective but who nevertheless do not wish to be associated with the particular approaches of the ECFR use terms such as '*fiqh al-darura*' (the fiqh of necessity), '*fiqh al-nawazil*' (the fiqh of new incidents), or more simply '*qadaya al-jaliyat al muslima fi-l-gharb*' (the questions of Muslim communities in the West).

The historical and chronological account that I provide here is one of emerging connections and networks sustaining an increasingly vibrant space

⁸⁴ Minority fiqh advocates based in the Islamic world - such as Qaradawi or Bin Bayyah - face of course a more specific predicament: if their call for devising a new fiqh for minorities by integrating first-hand knowledge of the reality of Muslim communities in the West works to disqualify competing Muslim voices in the Muslim world, it also seems to undermine their own authority to speak on these issues, not least in the eyes of Muslims in the West. As far as I am aware they have not yet openly addressed this seeming paradox in their writings.

of Islamic normative reference and debate in relation to European Islam. Islam, as a universalistic religious tradition, “creates and implies the existence and legitimacy of a global public space of normative reference and debate” – a space that, as Bowen points out, cannot be reduced to a mere dimension of migration or transnational religious movements (Bowen 2004: 880). This space is based both on “Islam's history of movement, communication and institutional innovation”, and on the “idea that it is to the most learned, wherever they may reside, that the Muslim ought to listen” (Bowen 2004b: 882-883). While such a space is by definition diffuse, I try to render it more sociologically concrete by pointing to some of the specific networks and ideas that have made it both possible and intelligible in the European context.⁸⁵

In describing below the contexts in which *fiqh al-aqalliyyat* arises and how it circulates, I distinguish between the “West” and the “Muslim World”.⁸⁶ The discussion hopes to make clear, however, the innumerable connections that make a strict separation impossible. The minority *fiqh* construct has also given rise to debates and appropriations in India, South East Asia, and South Africa (where the concept's origin is sometimes located).⁸⁷ The ways in which these

⁸⁵ In my attempt to capture the dynamics of the *fiqh al-aqalliyyat* debate I do not focus primarily on its class origins and ideological orientations (for example, the importance of the Muslim Brotherhood and its constituencies). Calling for the development of a new *fiqh* for minorities may entail in some cases an element of “distinction”. It allows Muslim scholars based in the West to stage a claim for authority in a competitive religious field (to say that Muslims need a new *fiqh* can be part of a project that seeks to disqualify other voices). For scholars based in the Muslim World (often operating in the precarious socio-economic conditions that characterize university professors in Egypt, Algeria or Morocco), to write on the issues of Muslims in the West provides the opportunity to connect to more prestigious global discussions, with the possibility of associated rewards (travel, conferences, international collaborations, etc).

⁸⁶ By the West I mean mostly Europe, and by Muslim World the Arab countries. My account focuses on often-neglected Arabic sources and is based mostly on research undertaken in France, Britain and Egypt. It concentrates on the post-World War II period. Despite my best efforts to include materials from other countries, this account will overlook many other contributions to the institutionalisation of a *fiqh* discourse on Muslims in Europe. One might think that the exercise itself is overly ambitious given the sheer amount of information it would need to cover. I do not claim to be exhaustive, of course; rather I hope to highlight sources and directions for future studies of these under-researched connections.

⁸⁷ See inter alia Yoginder Sikand's review of Taha Jabir al-Alwani's *Towards a Fiqh for Minorities* published in two parts in the Indian Muslim magazine *The Milli Gazette*, 16-30 April 2004 and 1-15 May 2004; Noor Aisha Binte Abdul Rahman (Assistant

local debates inter-relate with those I study here are unfortunately outside the scope of this dissertation.

The West

The history of Islam in Europe is too old, complex and multifaceted to be fully rehearsed here. In terms of Islamic normativity, the first seeds for the development of a *fiqh* discourse on Muslim minorities in the West seem to have been laid in the early 1960s. Newly formed Muslim student associations in the West invited Muslim scholars (often sympathetic to the Muslim Brotherhood) such as Muhammad Ghazali, ‘Abd al-Fattah Abu Ghudda, Mustafa al-Zarqa and Yusuf al-Qaradawi, to participate in their annual conferences and summer camps.⁸⁸ The audio or video recordings of the talks were kept and studied by a generation of Muslim students conversant in

Professor at National University of Singapore), “Muslim Resurgence and the Case for Minority *Fiqh* in Singapore”, paper presented at The Sacred in a Global City: Symposium on Religion in Singapore (10 March 2007), National Museum of Singapore, 10 March 2007; Shaykh Moegamat Igshaan Taliep (Vice-Rector of the International Peace University South Africa), “Muslim Participation in South African liberal democracy: an *usul al-fiqh* approach”, online at (accessed 23 January 2009); and Na’eem Jeenah, “Political Islam in South Africa and its contribution to a discourse of a *fiqh* of minorities”, paper presented at Islamic Civilisation in Southern Africa conference, organised by University of Johannesburg, Awqaf South Africa and OIC Research Centre for Islamic History, Art and Culture (IRCICA), University of Johannesburg, 1-3 September 2006. In recent years, Indian engagements with minority *fiqh* have increased, notably through the activities of Badrulhasan Qasimi, a prominent member of the Indian Islamic *Fiqh* Academy and author of a book in Arabic on Muslim Family Law in non-Muslim lands (2008). Members of the ECFR such as Salah Sultan and ‘Ali al-Quradaghi have been invited to give lectures on *fiqh al-aqalliyyat* to audiences of Indian Muslim scholars.

⁸⁸ A collection of talks given by Muslim scholars and Islamist intellectuals at the events organized by the Muslim Students Society in the United Kingdom and Ireland – MSS, later named FOSIS - since 1961 has been published in Jordan by Abu Shamala (1999). It includes contributions by ‘Abd Allah al-Juday’, Ahmad al-Rawi, Ahmad Jaballah, Rashid Ghannushi, ‘Issam al-Bashir, Faysal Mawlawi and Yusuf al-Qaradawi. All of these scholars later became members of the European Council for Fatwa and Research. Another collection of speeches pronounced in Europe and America by Indian scholar Abu al-Hasan ‘Ali Nadwi (also referred to as Syed Abul Hasan Ali Nadwi) from the 1960s to the 1980s was published by the Islamic Foundation under the title “Muslims in the West. The Message and Mission” (Nadwi 1983). The volume includes transcripts of a talk given in Arabic at the University of London in 1963 (“East and West”), a speech given at the Engineering University of Berlin in 1964 (“Message to Germany”), and a conference to South Asian students at Leeds University in 1969 (“Cultural Serfdom and the Role of Muslim Students”).

Arabic, many of whom later became community leaders. The International Islamic Federation of Student Organizations (IIFSO) was formally established in Aachen, Germany, in 1969.⁸⁹ Its wide distribution of subsidized Islamic books (in translation) by Muhammad Ghazali, Qaradawi and Mawdudi (amongst others) shaped the sensibilities of native European Muslims across the continent (Roald 2001b: 55-56). Following the migration of intellectuals and Islamists from the Muslim world, several religious and scientific institutions were established in Europe – many of which have disappeared almost without trace. Publishing houses⁹⁰ and periodicals⁹¹ were founded, shaping a transnational Arabic public which is still too little known. Judging from the contributors and the subscription prices listed in the back cover, many of the journals' readers were also based in Europe.⁹² The most famous of these early publications was perhaps *Al-Muslimun*, a Muslim Brotherhood periodical published from Geneva by Sa'id Ramadan (Tariq Ramadan's father, and Hassan al-Banna's son-in-law) in the 1960s.⁹³ In addition to texts

⁸⁹ See <http://12th-generalassembly-iifso.org/> (accessed 21/12/2010).

⁹⁰ In 1963 and 1964 there was a discussion in the pages of the magazine *Al-Muslimun* (see below) concerning a project to create a publishing house in Geneva, "al-dar al-islamiyya li-l-tiba'a wa-l-nashr". It is also known that an Arabic publishing house called *Dar al Karawan* existed in Paris in the 1980s (Rashid Ghannushi published a collection of articles in book form there in 1984).

⁹¹ A periodical named (Sawt) *Al-Ghuraba* was issued from London in the late 1970s and early 1980s. *Al-'Alam* ran at least up to the 1990s. The monthly majalla *al-Bayan al-Islamiyya* started in the late 1980s and ran at least until the 1990s. It was published by al-Muntada al-Islami in London and circulated internationally. *Al-Mutawassit* was published in the 1990s. *France-Islam* – advertised in the pages of the Egyptian periodical *Al-Muslim Al-Mu'asir* as "the multilingual monthly of Muslims in Europe" ("Revue mensuelle multilangue des Musulmans en Europe"), was published in the 1970s from Paris under the editorship of Mokhtar Hajry. Nielsen (1992: 82, 87) refers to a journal called *Al-Islam* published by German-speaking Muslims in Munich in the early 1980s. The majalla *Faysal* was apparently published from the Islamic Centre in Brussels in the 1980s and 1990s.

⁹² *Al Hiwar* (later renamed *Minbar al-Hiwar*), published since 1986, listed journal prices in local currency for Austria, France, Germany, Britain, US and Canada, and the rest of Europe (as well as for the most important Arab countries). The editor himself, Fadil Rasoul, was based in Vienna, and the journal was initially printed in France. *Al-Muslim Al-Mu'asir* was issued from Luxembourg when its editor, Jamal Al-Din 'Atiyya Muhammad, worked in an Islamic bank there.

⁹³ *Al-Muslimun* was published in Cairo in the early 1950s under Sa'id Ramadan, then moved to Damascus where Mustafa al-Siba'i acted as editor until 1960, when it was transferred to the Islamic Centre of Geneva where Sa'id Ramadan was exiled. It ran until 1965. It is famous among other things for an epistolary exchange between the

from the founder of the Muslim Brotherhood, Hassan al-Banna, the magazine frequently ran articles by prominent Muslim scholars and activists such as Abi al-A'la al-Mawdudi (the late Pakistani Islamist leader), Abu al-Hasan al-Nadwi (a prominent Indian scholar, and an inspiration to no less a figure than Yusuf al-Qaradawi, who wrote a book on him – see Zaman 2005: 90-96), Mustafa al-Zarqa, the Syrian 'Ali al-Tantawi, the Austrian-convert-turned-Pakistani-diplomat Muhammad Asad, and Muhammad Hamidullah (1908-2002, a prolific and eclectic Indian scholar who lived for many decades in France and is still considered a reference for French Muslims). Articles in *al-Muslimun* in the 1960s covered a very broad range of topics, from broad religious questions (the message of the prophets; the question of art in Islam; the philosophy of Ibn Sina) and fiqh issues (ijtihad; marriage to non-Muslims; the wisdom of the prohibition of eating pork; women leading prayer; the necessity of conforming to Islamic Law) to studies of Islam in the West (the image of Islam in the European press; the works of French Orientalist Lamartine; the place of Muslim minorities) and reflections on world politics (including an article from 1963 speculating on the end of the Cold War).⁹⁴ While the periodical covered events in the main European countries, the international circulation of *Al-Muslimun* is attested by texts sent from correspondents in the United States and Uganda, India and Indonesia, Peru and Chad, as well as by its feature stories on issues on Islamic centres from Kenya to Toronto. As a publication of the Muslim Brothers operating from Switzerland, *Al-Muslimun* charted new territory and underscored the growing importance of Europe for the international projects of a 20th century Islamist movement.⁹⁵ Its European base would eventually enable a deeper reflection on the status of Islam in Europe, redrawing the borders of Islam in the religious imagination of contemporary Islamism.

editor (Sa'id Ramadan) and Malcolm X which traces the latter's journey from heterodox into orthodox Islam.

⁹⁴ Some issues of the periodical also included a series of "questions and answers" in Arabic by Shaykh Muhammad al-Khatib and in English by Sir Ahmady Bello. No one has studied these materials, as far as I am aware.

⁹⁵ On the Muslim Brotherhood in Europe see Amghar 2006 and Marechal 2008.

The longest still running Islamic magazine in Europe is probably the monthly *Al-Ra'id*, issued without interruption since 1972 under the editorship of 'Issam al-'Attar in Aachen's Bilal Mosque, which reaches an international audience in Europe and the Arab world.⁹⁶ Although many of these journals circulated widely in Europe, the local situation of Muslim communities was not always a matter of serious concern – perhaps because the cosmopolitan intellectuals who read and wrote for them harboured hopes of returning to their homelands, or perhaps because their very cosmopolitanism collapsed differences between “home” and “away”, making them less sensitive to the specificities of local communities and more attuned to global projects of Islamic revival and reform. It is one of the journals of the Muslim Diaspora, *Islamiyya al-Ma'rifa* (The Islamization of Knowledge), published in the USA by the International Institute for Islamic Thought (IIIT) and well distributed across the Muslim world, which would provide the venue for the first articulations in print of minority fiqh in the West (Alwani 1999; Hasani 2002).⁹⁷ By that period there were of course concerted efforts to develop Islamic media in Europe, as well as a proliferation of Muslim journals and periodicals in many languages.⁹⁸

⁹⁶ Isma'il al-Khatib, a Moroccan scholar who teaches philosophy in the Faculty of Religion (Usul al-Din) at the University of Tetouan, quotes from *Al-Ra'id* in his writings (al-Khatib 2007). There is no study or reference to *Al-Ra'id* in the academic literature as far as I am aware. Issam al-'Attar, while not a member of the European Council for Fatwa and Research, has attended some of its sessions.

⁹⁷ The founding meeting of the IIIT itself took place in Lugano, Switzerland, in July 1977. It was organized by the Muslim Student Association of the United States and Canada and attended by Taha Jabir al-'Alwani, Muhammad Fathi 'Uthman, Jamal al-Din 'Atiyya and Yusuf al-Qaradawi, among others. Qaradawi recalls the meeting as a forum where both the Islamization of Knowledge and the integration of Muslims in the West were discussed, marking the beginning of his engagement with the question of integration of Muslims in Europe (Qaradawi 2006a: 414-416). Since the issues of Muslim minorities were not listed in the conference program (at least in the program published in a recent volume assessing the Islamization of Knowledge project – see Atiyya 2009: 327-331), these discussions must have been informal.

⁹⁸ See for more information the special folder in *Al-Urubbiyya* on Islamic media in Europe (issue 15: 18-31). One learns for example that there has been an Arabic journal – *Majallat al-Hadara* - in Poland since 1991 which covers mainly the activities of the local Muslim student associations. There is some literature on European Islamic journals. For a study of Muslim media in France and the UK see Rigoni 2005; for a study of the Turkish Press in Germany, Schumann 2009; for a German Islamic newspaper see Kuppinger 2011.

Although ethnic, linguistic and national identities remained important, Muslims in Europe started to organize under a common European identity in the 1970s, notably with the formation of the Islamic Council of Europe in 1973.⁹⁹ Efforts to institutionalize shari'a councils started as early as 1978, first in the United Kingdom, then throughout Europe (Badawi 1995: 77, 80). These informal councils were prompted by the transformations of Islam in Europe around the 1970s, from a religion of mostly male labourers, to that of full families – a change that resulted less from explicit family reunification policies than from the unintended effects of changing labour agreements. In due time the fiqh questions of Muslims in Europe would be transformed accordingly – from the questions of residence, naturalisation, prayer timetables and halal meat that were previously dominant to new emphases on issues of family law, cultural adaptation, financial institutions, and political participation.¹⁰⁰ By the 1980s “Europe” had become the explicit frame of reference for several Muslim attempts to institutionalize Islam, as well as the subject of reflection by local Islamic scholars. The Egyptian imam of Regent’s Park Mosque Syed Mutawalli ad-Darsh (1930-1997), who made perhaps the first public call for the state recognition of Islamic Family Law in the West in 1975 (Nielsen 1992: 79), published in 1980 a short booklet in English on “Muslims in Europe” (Darsh 1980). The Muslim Student Association of Europe was established in Madrid in 1984, laying the ground for the establishment, five years later, of the Federation of Islamic Organizations in Europe (FIOE) - a constellation of local bodies in Western and Eastern Europe inspired by the Muslim Brotherhood.¹⁰¹ Al-Azhar and the Muslim World League (as well as the official religious institutions in Morocco, Algeria, Turkey) were sending preachers and scholars

⁹⁹ The ICE published the proceedings of a conference in a book titled *Muslim Communities in Non-Muslim States* in 1980. Part of the initial impetus for this “European consciousness” came from the Arab world itself: the external gaze of the MWL – which was involved in the formation of the ICE - facilitated the lumping together of Muslims in different European countries under a single European umbrella. Funding from the Gulf has also provided an important stimulus for building Muslim institutions at various levels.

¹⁰⁰ This is of course schematic. I do not mean to suggest that the former questions became irrelevant once Muslim families became settled in Europe. The fiqh questions of European Muslims are discussed in greater depth in chapter three.

¹⁰¹ Ahmad al-Rawi, then president of the FIOE, personal communication, Leicester, March 2002.

to Europe since the 1960s and 1970s.¹⁰² However, ulama permanently based in the West were rare. Islamic scholars such as 'Issam al-'Attar, Zaki Badawi, Syed Darsh and Faysal Mawlawi (b. 1941 in Tripoli, Lebanon) became pioneering figures in the institutionalization of a fiqh discourse in Europe. Darsh's answers to questions from British Muslims were published in a local periodical, Q-News, and collected in a single volume by Ta-Ha Publishers (Darsh 1997). They constitute perhaps the first collection of fatwas originally published in a Western European language. Faysal Mawlawi, secretary-general of the Lebanese Muslim Brothers (al-jama'at al-islamiyya) and a judge in the Lebanese shari'a court, moved to France in 1980 to flee from the civil war. During his five-year stay he became a respected scholar amongst the activists who later formed the Union des organisations islamiques en France (UOIF).¹⁰³ Mawlawi authored two influential books on Muslim/non-Muslim relations (Mawlawi 1987) and da'wa (Mawlawi 2000) which circulated widely through European Ikhwani networks and continued to be read until recently by students at the Institut européen des sciences humaines (IESH). The first international fiqh conferences in Europe were also held in the 1980s.¹⁰⁴ Local

¹⁰² Two founding members of the ECFR, Mahmoud Mujahid Hasan from Egypt and Suhaib Hasan from South Asia, claim to be among the first contingent of preachers sent to the West by Egypt and Saudi Arabia respectively. Mujahid Hasan was sent to France in 1966 by Egypt's Ministry of Awqaf (personal communication, Brussels 2002). The Indo-Pakistani Suhaib Hasan was in the first contingent of scholars sent to Britain in 1976 by the Saudi Da'wa Ministry (personal communication, Paris, July 2002). According to Malika Zeghal, the number of preachers sent by Al-Azhar to Europe were negligible up until the 1980s. In 1982 there were precisely 11 Azhari scholars in Europe and the United States (Zeghal 1996: 189). I have not been able to confirm these figures. Syed Darsh worked personally with Shaykh 'Abd al-Halim Mahmoud of al-Azhar on a new program for Islamic missionary work in 1970, before being sent to London in 1971 ("An Imam who guided his people", Obituary from Fuad Nahdi, editor of Q-News, <http://www.iol.ie/~afifi/Ad-Darsh/obituary.htm>).

¹⁰³ These intellectuals first established the Groupement Islamique en France, which became the Union des organisations islamiques en France (later renamed Union des organisations islamiques de France). For a study of a sermon by Mawlawi in France in the early 1980s see Kepel 1985.

¹⁰⁴ Faysal Mawlawi (2004: 324) refers to the "First European Islamic Conference" (Al-nadwa al-islamiyya al-urubbiyya al-'ula) organized by the Muslim World League in Brussels in 1980. At this time one of the most pressing fiqh issues relate to the establishment of a reliable prayer calendar in European countries and to the appropriate astronomical methods that this requires. Yusuf Ibram (n/d) recalls another conference in Belgrade where the issue of naturalization was discussed. In the 1980s and 1990s Arabic booklets containing fatwas for and against naturalization were circulating between Europe and the Arab world.

fatwa bodies such as Darul-Iftaa wal-Irshad, founded in 1988 by Mufti Ismail Kachholvi in Bradford and still active, began to be established.¹⁰⁵ In 1992 and 1994 Faysal Mawlawi participated, alongside Qaradawi, Syed ad-Darsh, Mustafa al-Zarqa, Ahmad Jaballah, Unis Qurqah and others, in two fiqh seminars held at the IESH's premises near Chateau-Chinon, France. Mawlawi's 1987 book and a text by the Saudi scholar Manna' al-Qattan¹⁰⁶ on the settlement of Muslims in non-Muslim lands and the question of naturalization¹⁰⁷ served as the starting points for a three-day discussion in

¹⁰⁵ Mufti Kachholvi, a member of the ECFR, gave me copy of a 2000 fatwa issued in English by Darul-Iftaa wal-Irshaad when I visited him in Bradford. As far as I could ascertain he was part of a well-structured network of Gujarati Muslims in the UK. The fatwa concerns the practice of sending the bodies of the deceased to be buried in the home country. The UOIF's Dar al-Fatwa, discussed in the previous chapter, was also set up in 1988 but only became a full-fledged fatwa body in 2000/2001 (« Entretien avec Cheikh Ounis Guergah, président de Dar Al Fatwa de l'UOIF, professeur à l'IESH-Paris », Le Journal de la Rencontre, n° 2, Sunday 27 March 2005 (published by Gédis and distributed during the Annual Gathering at the Bourget).). Dar al-Fatwa operates mostly via a telephone line connecting to teachers working at the IESH in Paris and Chateau-Chinon. Some fatwas dealing with issues with high stakes (the permissibility of participating in the French state's process of institutionalisation of Islam, the necessity of voting, and the lawful use of *zakat* to finance the activities of French Muslim associations) have also been printed and distributed.

¹⁰⁶ Manna' al-Qattan (1925-1999) was the head of the High Institute for Judges and the Institute of Da'wa (Saudi Arabia) and a professor at the Imam Muhammad ibn Sa'ud Islamic University. He was also a regular participant in the meetings organized by the Muslim World League in Europe. He published articles in *Al-Muslimun* in the 1960s. Al-Qattan is perhaps best known as a scholar for his history of Islamic legislation (*tarikh al-tashri' al-islami*) originally published in 1989 (Qattan 2009). The book focuses on the early and formative periods of Islamic Law, from the time of the Prophet to the Four Imams, with only some 30 pages (out of more than 350) dealing with modern developments.

¹⁰⁷ I have not been able to find this text but Tariq Ramadan refers to it in *To Be a European Muslim* (p. 151) under the title "Iqamat al-Muslim fi Balad Ghayr Islami" (Islamic Foundation for Information, Paris, 1993). These issues were controversial. Shadid and van Koningsveld (1996) discuss both a conciliatory text by a Moroccan scholar – 'Abd al-'Aziz ibn Muhammad ibn al-Siddiq – published in Tangiers in 1985, and a critique of naturalization as apostasy published in Paris in 1989 by Muhammad ibn 'Abd al-Karim al-Jaza'iri. In 1986, Ahmad Hamad Ahmad, a professor at the University of Qatar, published a work on "Fiqh al-Jinsiyyat" (The Fiqh of Nationalities), a comparative study of the relevant shari'a and legal dispositions in a wide range of countries (France, England, America, Soviet Union, Indonesia, the lands of the Maghreb and the Mashrek). Informed by an Islamic ethos, the book discusses understandings of nationality in Islamic Law, the status of Muslims and non-Muslims in both dar al-islam and dar al-harb, double nationality, national and ummatic belonging, etc. It contrasts the international law of nationality with both the Islamic tradition and the reality of globalization (Ahmad 1986). The existence of this book was first pointed out to me by the ECFR's research commission, which

1992 that dealt also with ritual, funeral, food, dress, and gender relations.¹⁰⁸ Written summaries of these discussions circulated informally, alongside the audio and video tapes of these and other conferences, within Muslim Brotherhood circles in Europe. The ongoing institutionalization of Islam and the opportunities created by growing European integration strengthened a distinctive European awareness amongst Muslim activists who established research centres on “Islam in Europe” (Islamic Foundation, UK) and published journals such as *Al-Urubbiyya* (“The European”, irregularly issued by the FIOE from the mid-1990s until 2006). In September 1992, the Islamic Foundation organized a high-profile conference on “Islam in Europe” attended by prominent ulama from the Muslim world (Nadwi 1993: 6). This European awareness made possible, and was consolidated by, the foundation of the European Council for Fatwa and Research in March 1997 in London by the FIOE (see the following chapters). Based initially in Manchester, then in Leeds, and finally in Dublin, the ECFR attempts to provide an institutional framework for disseminating the decisions reached in seminars such as those held in the 1990s. It has since its foundation served as the privileged European venue for the articulation of various (and sometimes competing) visions of minority fiqh. Its first collection of fatwas was published in Arabic in 1999. The periodicals *Al-Urubbiyya* and *al-Ra'id*, as well as a range of websites such as www.islamonline.net, would carry the fatwas to a larger Arabic-speaking audience in Europe. In 2002 appeared the first printed translations into English and French.¹⁰⁹

compiled a list of references on fiqh al-aqalliyyat under the guidance of ‘Abd al-Majid al-Najjar, editor of the ECFR’s scholarly magazine (*majalla ‘ilmiyya*).

¹⁰⁸ A summary of the 1992 discussions was written by Syed Darsh. I thank Lena Larsen for providing me a copy. A 52-page summary in Arabic of the discussions of another seminar, “The Cultural Identity of Muslims in Europe: The Papers of the Meeting of Leaders of Islamic Cultural Centers in Europe”, held in Chateau-Chinon on 7-9 May 1993, was published in Rabat in 1995 by the Islamic Society for Education, Science and Culture (ISESCO).

¹⁰⁹ Before 2002 the fatwas were available in English only on the internet, at the websites of the FIOE and the World Association of Muslim Youth (WAMY). I bought a printed copy of the ECFR’s Collection of fatwas in English at the WAMY’s London offices – the only place I have found that actually sold it.

By the early 2000s fiqh al-aqalliyat had become a topic of study and research in several Islamic institutions of higher education across Europe and North America. The institutions which have offered courses on the subject include the Institut Européen des Sciences Humaines (IESH) in France; the ALIM (American Learning Institute for Muslims), the Zaytuna Institute, the International Institute for Islamic Thought (IIIT) and the Graduate School of Islamic and Social Sciences (now Cordoba University) in the United States; the European Academy of Islamic Studies (East London) and the Abu Zahra Foundation in the UK, and the Islamic European University in Rotterdam. Taha Jabir Al-Alwani's text on the fiqh for minorities – which has a broad circulation in Arabic¹¹⁰ - was published in English by the IIIT's London Office in 2003, followed by translations into French (2007) and Russian.¹¹¹ Qaradawi 2001 book on the subject, widely available in Europe in its Arabic original, was rendered into English and French by a Muslim Brotherhood press in Cairo (Al-Falah).¹¹² In 2001, 'Abd Allah Bin Bayyah gave a series of lectures on fiqh al-aqalliyat (known as the rihla class) at the Zaytuna Institute in the United States. These lectures, available in 18 CDs at Alhambra Productions, became the basis for Bin Bayyah's 2007 book published by the Global Centre for Renewal and Guidance (al-markaz al-'alami li-l-tajdid wa-l-irshad) which Bin Bayyah founded in London.¹¹³ In 2007, Bin Bayyah also participated in a five

¹¹⁰ In addition to the journals where it was published (Islamiyya al-Ma'rifa,), variants of Alwani's text on the fiqh for minorities have been published in book format in Cairo and Beirut. It is also available at www.islamonline.net.

¹¹¹ At one point the IIIT announced that there are plans to translate Alwani's text into Chinese (see IIIT, "Chinese Scholars, IIIT Look into Possibilities of Joint Research", at www.iiit.org). The prefaces to the French and English translations by Mohamed Mestiri and Zaki Badawi, respectively, provide insights into the resonance of Alwani's ideas in France and Britain.

¹¹² These translations do not contain the first part of Qaradawi's book, where Qaradawi outlines in detail his understanding of fiqh al-aqalliyat, because they are judged by the editors to be too technical and of little interest to the readers. Another translation by Awakening Publications in the United States was announced as forthcoming for many years, but the project seems to have been finally abandoned, perhaps because of the travails of Qaradawi and his supporters in the wake of 9/11. A full translation into Dutch sponsored by Millî Görüş Netherlands is expected to appear soon. The book was also translated into Bosnian in 2004.

¹¹³ Bin Bayyah is a widely-respected Muslim scholar with followings in the United States, Britain and France. He is regular speaker in Europe, lecturing on Islamic finance in Paris one day and on fighting extremism in the United Kingdom the following week. Since Qaradawi has become a controversial figure in Europe (see

day conference held in Cardiff on “The Art of Crafting the Fatwa and Minority Fiqh” (a reference to the title of Bin Bayyah’s book) attended by more than 60 local Muslim intellectuals.¹¹⁴ Muslim thinkers based at the Union des organisations islamiques de France (UOIF) pursued their own engagement with fiqh al-aqalliyat in the context of French laïcité, notably through the work of ‘Abd al-Majid al-Najjar (2003; 2004; 2005; 2009), Ahmad Jaballah (2005) and al-‘Arabi al-Bishri (2003; 2004).¹¹⁵ Most of these texts are published by the periodical magazine of the ECFR, edited by al-Najjar in Paris, and circulate through the European and international networks of the FIOE.

Although the discussion on fiqh al-aqalliyat is framed in the language of the fiqh tradition, the participants who have actively engaged in this debate in the West are not limited to the traditional interpreters of that tradition, the ulama. Muslim social scientists, media professionals and activists have also made significant contributions to the discourse. In 2000 a series of seemingly uncoordinated conferences devoted to developing a fiqh-based understanding of Muslim political participation were held in the Netherlands, Austria and Britain.¹¹⁶ In 2002, members of the ECFR based in France invited social

Caeiro and Saify 2009 for details), Bin Bayyah seems to have filled the void. He speaks regularly in conferences organized by the Radical Middle Way in the UK and is a regular guest of the UOIF’s annual gathering at the Bourget. He has published in English a piece on “Muslims Living in Non-Muslim Lands” (<http://www.themodernreligion.com/world/muslims-living.html>). Bin Bayyah ran for many years a live fatwa show in French at the satellite channel Iqra. He is now the guest of the fatwa show *al-Jusur* (Bridges) in the same channel. For some of Bin Bayyah’s views on Muslims in the West see Shagufta Yaqub, “Shaykh Abdallah Bin Bayyah: The broad cloak of Islam”, Q-News, Dec 2001: 22-24, and “wujud al-muslimin fi urubba rafid minhum li-l-islam”, *Al-Urubbiyya*, 41, October-November 2004: 14-19.

¹¹⁴ A brief report is available at www.binbayyah.net.

¹¹⁵ Ahmed Jaballah, the Francophone director of the IESH in Paris, has also been involved in disseminating the idea of a minority fiqh for a larger, non-Muslim audience (especially in interfaith circles). Jaballah has notably published a number of articles in French that present fiqh al-aqalliyat and the work of the ECFR (for example Jaballah 2002). See also the articles by Tahar Mahdi, founding member of the ECFR, in www.oumma.com and <http://taharmahdi.free.fr>.

¹¹⁶ See respectively *Al-Urubbiyya* 21: 15; *Al-Urubbiyya* 23: 24-5; and *Al-Urubbiyya* 23: 26.

scientists to discuss modes of religiosity in Europe.¹¹⁷ A conference entitled “Fiqh Today: Muslims as Minorities” was organized in 2004 by the Association of Muslim Social Scientists (AMSS) in association with the International Institute of Islamic Thought (IIIT), the London-based Muslim College (of the late Zaki Badawi), and the British Muslim monthly magazine Q-News, precisely as an attempt to widen the scope of voices in the fiqh al-aqalliyat debate.¹¹⁸

In the aftermath of 9/11 and its sequels, European Muslims are now enjoined with increasing urgency to provide Islamic affirmations of secularism and liberal citizenship, further widening the voices compelled to engage in the debate. Fiqh-based discourses and initiatives have accordingly proliferated. Examples such as a conference of imams and leaders of Islamic centres convening in Graz, Austria, in June 2003, where the dar al-islam / dar al-harb division was dismissed as baseless and outdated (Rohe 2005: 182), have become too numerous to mention. Countless meetings have also explored over the years the role of Muslim women in Europe within a traditional fiqh framework. A number of seminars exploring the role of the fatwa in solving the fiqh problems of Muslims in Europe have also taken place across Europe (see chapter one for details). The Islamic European University of Rotterdam

¹¹⁷ “Religiosity in Europe” (Al-Tadayyun fi Urubba) was a conference jointly organized by the ECFR and the IIIT in Paris on 11-12 July 2002. The conference program is included in the Appendices.

¹¹⁸ At the “Fiqh Today: Muslims as Minorities” conference Anas S. Al-Sheikh Ali used his Opening Remarks to criticize the “knowledge by remote control” of many of the scholars issuing fatwas for Muslims in the West, calling for the “full participation” of social scientists in the construction of a fiqh al-aqalliyat. The call for the inclusion of social scientists is ironic given that the discourse on fiqh al-aqalliyat emerged from the hybrid intellectuals associated with the IIIT, only later becoming incorporated by (some) ulama, and even then not without hesitations, as the case of Qaradawi discussed later illustrates. Proceedings of the AMSS are forthcoming from AMSSUK Publications (see <http://www.amssuk.com/docs/pdf/Fiqh%20for%20Minorities%20Conference%20Review.pdf>). The conference found wide echoes both in the media. See “Jam’iyyat ulama al-ijtima’iyyat al-muslimina fi Britania tundhdhimu mu’tamaran hawla fiqh al-aqalliyat”, *Al-Sharq Al-Awsat*, 17/2/2004 and the conference report in IslamOnLine by Adul-Rehman Malik, “Fiqh Today: Muslims as Minorities”, http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1162385854362&page_ame=Zone-English-Euro_Muslims%2FEMELayout. I include the conference outline in the Appendices.

organized a lecture on fiqh al-aqalliyat with Shaykh Sa'id Ramadan al-Buti in the mid-2000s (on Buti see below). The rector of the University, the Turkish scholar Ahmet Akgündüz, reiterated his own criticism of the minority fiqh construct in print in an account of Islamic law recently published in English (Akgündüz 2010). Neo-traditionalist groups based in Europe – such as the New Muslims of Nottingham (<http://www.nottsnewmuslims.com>) - translated Sa'id Ramadan al-Buti's critiques of minority fiqh into English, making it readily available to Western audiences online. Against the inter-madhhab eclecticism (*talfiq*) that characterizes the discourse of minority fiqh advocates, neo-traditionalists frame their engagement with the fiqh al-aqalliyat construct as a defence of the madhhab's relevance in a diasporic context (see for example Abdal-Hakim Murad 1999).¹¹⁹ On a four-day long visit to the United Kingdom in August 2007, the American Sufi (Shadhili) scholar Nuh Ha Mim Keller spoke at some length about the perils of minority fiqh. Nuh Keller's 1995 article in the British Muslim periodical Q-News on fiqh al-aqalliyat simply outlined some traditional resources within the four Sunni juridical schools for thinking about the issues of contemporary Muslims in the West.¹²⁰ In 2007, however, in a summary of a lecture provocatively entitled "Islam is not a cereal", Keller argued that fiqh al-aqalliyat was "incompatible with taqwa" (piety).¹²¹

¹¹⁹ A clear statement of the neo-traditionalist position can be found in the fatwa of the Mauritanian scholar Murabit al-Hajj recently translated into English by Hamza Yusuf of the Zaytuna Institute (Hajj 2001).

¹²⁰ Nuh Ha Mim Keller (1995) "Which of the Four Orthodox Madhhabs has the most developed Fiqh for Muslims living as Minorities", *Q-News* (<http://www.masud.co.uk/ISLAM/nuh/fiqh.htm>). The article is basically an account of Keller's discussion with Taha Jabir al-'Alwani and it emphasizes the importance of *darura* (necessity) for providing exceptions to powerless Muslims.

¹²¹ "So the Fiqh al Aqaliat, fiqh of minorities this is something that none of the shaykhs in Damascus who are fuqaha and who are the shaykhs agree with its countenance all of them think its a big batil, there are some of the shaykhs from Egypt who have popularised it in books and some of the westerners who have adopted it who are Western Islamic spokesmen this its baatil fil baatil, and the way of taqwa is far from it...So Be proud of who you are and people will respect you, proud of who you are for Allah swt" (<http://al-miftah.blogspot.com/2007/09/islam-not-cereal-shaykh-nuh-keller-uk.html>). The reference to the "shaykhs from Egypt" appears to refer to Qaradawi.

Online, a North American Muslim posted a message in 2009 that echoes many of the neo-traditionalist concerns, but also appears to go beyond them. Entitled “Sick and Tired” (<http://muslimmatters.org/2009/02/24/sick-and-tired/>), the post deserves to be quoted extensively for its acuity:

I have a problem. I know where I came from, I know who I am, and I have a pretty good idea of where I want to go. But I am tired. Tired of the Muslim Identity Crisis Conferences. Tired of Muslims in America conferences. You're a human being that was created for the sole purpose of worshipping the One who created you. Get over it and move on. Tired of confused pseudo-intellectuals who keep trying to legitimize their deepest, darkest insecurities under the cover of academic acceptance (...) Tired of the explicit condemnation of Muslim terrorists that comes without the explicit condemnation of all terrorism, particularly against Muslims (...) Tired of victim-culture fatwas that turn every situation into a necessity, and that coddles our ummah into weakness for the sake of ease and some overarching goal of dawah that never seems to be properly articulated in simple, coherent language. Tired of Islamic teachers of any calibre who complain about the adab and khuluq of people and are badly in need of it themselves, in all forms of communication. Tired of all the acronymed organizations and their leadership, and their inability to establish an agreed upon method for moonsighting (...) Tired of you telling me we need fiqh of minorities, and that we should combine prayers in the work place. This isn't Muslim Spain, we have rights that can be exercised – please stop cowering in the corner, or at least stop trying to get us to join you there (...) I'm so, so very tired of it all (...) But you know what? I'm tired of you too. Tired of you sitting behind your computer, writing in a style that makes you sound like ranting and raving lunatic. Tired of you complaining about everything and doing absolutely nothing (...) Tired of people who call for Hijrah and never go (...) Tired of your open hatred of all nonMuslims / kafirs in the name of al wala w'al bara. Yes, I said kafirs. Does that make you feel better? Then I'm also tired of your pettiness. Tired of your delusions of mind and intention reading (...) Tired of your PDF refutations. I have absolutely no idea who the author of the document is, or his credentials to say and interpret as he has. Please tell me what you understand, or don't bother. Tired of you taking every fiqh issue and making it an aqeedah issue such that if it's not in accordance with what the scholar du jour spoonfed you yesterday, that person must most certainly either be off the manhaj, a sell-out, or both. And I'm tired of you not knowing anything about the fundamentals of Islam (...) Tired, tired, tired. Did you like the list above? Really? I'm tired of you too. Tired of you expecting everyone

to follow you blindly and stupidly (...) Tired of you expecting me to disconnect my mind on fiqh, believe the most ridiculously esoteric ideas about God, and then strive for spiritual ecstasy (...) Tired of you prioritizing your career, your family, and all your weaknesses over the worship of Allah. Tired of you complaining to scholars about what a victim you are. Tired of you saying you need to live in a house. You liar. You can rent a house – you just don't want to lose money. Admit it. Tired of you looking for easy fatwas rather than picking yourselves up by the bootstraps and working at being a Muslim, and struggling with the challenges (...) Tired, tired, tired, so very tired. The ironic thing of all this is that despite all that, I still love you for the sake of Allah. (...) I have my flaws, I have my weaknesses, and I am by no means perfect. At any point in my life, I could have fit into multiple categories in that complaint list. But do you know why I'm tired? I'm tired because we have so many issues, and I feel obligated to do something about all of it. I want to fix it. I want to make it right. You probably do too.

Although the author of the post is clearly grounded in the North American context, many of the concerns he voices are shared by many of his co-religionists in Europe. Some of the online responses to the post have questioned its representation of the Islamic scholarly debates. One cyber-user by the name of Abu Hayyan responded in this manner: “Really, some of these issues are more complex and deeper than this, and Muslim scholarship has devoted more to it than you give them credit for”. In any case, the author of “Sick and Tired” directly addresses many of the questions that have been at the heart of the scholarly debate on the legitimacy of a fiqh for minorities. The author displays substantive knowledge of the fiqh debates that have animated the minority fiqh discussion, as well as a certain impatience with their irresolute treatment by Muslim scholars and non-scholars alike. He raises concerns about the distribution of religious authority that are highly topical in contemporary Europe. Other online discussions suggest that some European Muslims inhabit multiple spaces and temporalities quite comfortably. In a 2006 French Muslim internet forum dedicated to the fiqh of minorities (“Vous avez dit La jurisprudence fiqh des minorités”), a cyber user by the name of “itinerant” points out that “fiqh is an ambivalent and paradoxical situation: at the same time guardian of prophetic and divine prerogatives and adapting to the constantly changing needs of Muslims in their new surrounding context”.¹²²

¹²² The French original reads like this: “je pense que (fiqh al-aqalliyat) n'est pas mauvais en soi, pour la simple et bonne raison que le droit religieux suit les musulmans là où ils sont et non en vertu d'une sacralisation a-historique qui perd tout

Many Muslims that I have encountered during this research project seem aware of – and perfectly comfortable with – the idea that fiqh articulates the universal and the contingent in a way that expresses both divine will and human agency.¹²³

Publications such as *Al-Urubbīyya* (The European) contributed to disseminate and vulgarize the technicalities of fiqh discourse amongst a transnational Arabic-speaking audience. For almost a decade contributors and readers in their letters to the editor – spread all across the European continent¹²⁴ – expounded on the merits of fiqh al-waqi' / the fiqh of reality (for ex. *Al-Urubbīyya* issue 11: 33 and issue 33: 28-30), called for a proper application of fiqh al-awlawiyyat / the fiqh of priorities, and developed their understandings of individual and collective interest or maslaha (for ex. *Al-Urubbīyya* issue 24: 28). Unis Qurqah, a member of the ECFR affiliated to the Union des organisations islamiques de France, published a two-part essay here on regulating fatwas in 1999 (issues 11 and 12). The periodical – as the official organ of the Federation of Islamic Organizations in Europe – sought primarily to justify the positions and goals of the Federation (and by extension those of the ECFR). Ahmad al-Rawi, then chairman of the Federation (and still a member of the ECFR), frequently wrote on the role of Islamic organizations in the West in steering Muslims away from negligence and exaggeration, highlighting the achievements of the FIOE (see for example Ahmad al-Rawi,

son sens dans la naturelle trajectoire avançante de l'homme. Le fiqh est dans une situation ambivalente et paradoxale : à la fois gardienne des prérogatives prophétiques et divines et adaptée aux besoins continuellement changeants des musulmans dans leur nouveau contexte environnemental.” The full debate is still available online at <http://sabyf.forumactif.com/les-sciences-du-fiqh-f17/vous-avez-dit-la-jurisprudence-fiqh-des-minorites-t67.htm> (accessed 30/03/2011).

¹²³ In the mid-2000s I conducted a survey at the annual meeting of Muslims of France at the Bourget. I targeted those people who were queuing to ask for a ruling from the muftis of the UOIF's Dar al-Fatwa. Among other questions I asked respondents to specify their understanding of the fatwa as either a divine ruling, a human construction, or both. Many respondents said “both”.

¹²⁴ One of the distinguishing features of *Al-Urubbīyya*'s coverage of Islam in Europe was its broad basis in Eastern Europe. In addition to the major Western European countries *Al-Urubbīyya* in its heyday had correspondents in Albania, Bulgaria, the Czech Republic, Greece, Hungary, Moldavia, Poland, Romania and the Ukraine. Readers were as likely to find reports in the pages of *Al-Urubbīyya* covering the annual conference of French Muslims at the Bourget as they were to read about the yearly meeting of Muslims in Hungary.

“Dawr al-mu’asasat al-islamiyya fi-l-gharb”, *Al Urubbiyya* 32: 16-19). The periodical also occasionally included contradictory debate on specific fiqh questions. Issue 23 published in January 2001 carried a series of articles on political participation of Muslims in Europe. The characteristically broad coverage included the text of the fatwa issued by Taha Jabir al-Alwani as chairman of the Fiqh Council of North America (“hukm musharaka al-muslimin fi-l-hayat al-siyasiyya al-amrikiyya, *Al-Urubbiyya* 23: 18-20); a speech of the director of the Islamic Centre in Aachen (where the journal *Al-Ra’id* is published) Salah al-Din al-Nakdali delivered at a conference in the Dutch border town of Kerkrade on “The Development of Islamic Political Thought for Muslims in the West”; a translation of a document from a mainstream Swedish party on Muslim political participation; a summary of a conference organized by *Al-Urubbiyya* in Vienna; an interview with the president of the League of Swiss Muslims Muhammad Karmus on the political experiences of local Muslims; and a report of a conference on social and political participation by the Association of Muslim Social Scientists in Britain (AMSS-UK). *Al-Urubbiyya* also carried in its pages a debate about the permissibility of interest-bearing mortgages for Muslims in Europe (see also on this issue chapter four). Unis Qurqah’s fatwa on the permissibility of the transaction on grounds of necessity was published by *Al-Urubbiyya* in its 10th issue (1999). In August of the same year (issue 13), *Al-Urubbiyya* carried a detailed response by the imam of the Islamic Centre of Reims in France Bin Da’ud ‘Umar, refuting Abu Hanifa’s claim that unlawful contracts are lawful in non-Muslim lands and contesting the invocation of *maslaha* in an issue where there are clear texts. The controversial fatwa of the ECFR on the subject (which broadly echoed Qurqah’s opinion) was issued in October 1999 and published in the 17th issue of *Al-Urubbiyya* in April 2000. The question of the woman who converts to Islam – the subject of another fatwa by the ECFR printed in *Al-Urubbiyya* - also elicited a response in the pages of the periodical (*Al-Urubbiyya* 29: 43-44). On occasion, questions from readers would be transferred to the European Council for Fatwa and Research.¹²⁵ *Al-Urubbiyya*

¹²⁵ A letter from a reader published in *Al-Urubbiyya*’s 31st issue (November 2002) asks whether Muslims raising children in the West could adopt the Christian example of presenting images of revered figures like Jesus to their children in order to foster a

also regularly ran interviews with Islamic scholars in the margins of the ECFR meetings. An interview of Qaradawi refuting those who claim that the shari'a cannot be applied today appeared in January 2006 (Al-Urubbiiyya 43: 44). Generally speaking, however, the question of the applicability of the shari'a was not always tackled directly in Al-Urubbiiyya. The concern with exemplary behaviour and spreading the message of Islam, rather than discovering and conforming to the rulings of Islamic Law, often appeared to be more important. While religious discourse was a significant issue in the pages of Al-Urubbiiyya (see the article on the qualifications of Friday preachers in issue 15: 49), non fiqh-based styles of argumentation were also present, for example in Kamal al-Helbawi's chronicles combining traditional Islamic tropes (the work upon the self) with themes seemingly drawn from the literature on effective management skills (the emphasis on creativity, etc).

In the wake of the post 9/11 proliferation of minority fiqh discourses, study groups convening in London, Cardiff, Paris, Rotterdam, or San Francisco have debated the pros and cons of the construct.¹²⁶ Larger Muslim audiences attending the festive meetings of the Islamic Diaspora became increasingly familiar with its principles and techniques.¹²⁷ Yusuf Ibram, a Swiss-based

Christian identity in secularized societies. The editors respond by saying that they will transfer the question to the experts at the ECFR (Al-Urubbiiyya 31: 10).

¹²⁶ In June 2005, a talk on "The Jurisprudence (Fiqh) of Muslim Minorities" by the imam of al-Muntada al-Islami Mosque (West London) Haitham al-Haddad was held in London. At the time of writing the speaker was completing a PhD on minority fiqh at the School of Oriental and African Studies (SOAS). In Spring 2008, a study group met at London's Regent Park Mosque around Kamal Hussein (also known as Abu Zahrah) to critically engage reformist approaches to Islam, including those related to fiqh al-aqalliyyat. Email discussion groups and internet forums announced both events widely. A five-part lecture entitled "The Need For A Minority Fiqh" by US scholar Ali at-Tamimi was available on youtube in the late 2000s but has disappeared since. In the mid-2000s the Islamic University of Rotterdam invited Sa'id Ramadan al-Buti to discuss the idea of minority fiqh. In Paris, the conferences organized by Larbi Kechat at the Mosquée Eddawa included roundtables around the same issues. In one of these conferences in 2003 I had the opportunity to present my research on minority fiqh alongside Shaykh al-Buti.

¹²⁷ Minority fiqh has become a regular topic in events such as the Annual Convention of the Islamic Society of North America (ISNA) since the 1990s, typically through panels involving scholars affiliated to the Fiqh Council of North America (Ihsan Bagby, Zulfikar Ali Shah, Jamal Badawi, Yusuf Ziya Kavakci, etc). Likewise, the "Rencontre Annuelle des Musulmans de France" organized by the Union des organisations islamiques de France (UOIF) at the Bourget has included discussions

member of the ECFR, travelled to Lyons to give a public lecture on the European Council for Fatwa and Research which would be turned into a commercial audio product widely distributed by Editions Tawhid – perhaps the most prominent Islamic publishing company in France (Ibrahim n/d). Articles in European languages have also occasionally appeared in Muslim presses.¹²⁸ A member of Hizb ut-Tahrir in Britain published a book which sought to demolish the *fiqh al-aqalliyat* construct as an attempt to “subvert Islam” (Khan 2004). Tariq Ramadan’s vision of a European Muslim identity predicated on a scriptural understanding of Islam (Ramadan 1999) helped initially to popularize the scholarly discussion on minority *fiqh* far beyond the narrow confines of the specialists. The French translation of the ECFR fatwas (which Ramadan prefaced) made the work of the ECFR available to a much larger Francophone Muslim public (Conseil européen des fatwas et de la recherche 2002). Ramadan’s subsequent critique of the minority *fiqh* construct, more fully articulated in Ramadan 2003, has led to a widespread perception of minority *fiqh* as an immigrant discourse still rooted in (a somewhat imaginary) Arab world. Responding in part to Ramadan’s critiques, minority *fiqh* advocates in Europe have started to move away from the emphasis on minority towards a focus on citizenship (*muwatana*). Paris-based Tunisian intellectual ‘Abd al-Majid al-Najjar published a book appropriately entitled *Fiqh al-Muwatana* in 2009. Even at the IESH in Paris, the course offered by Ahmad Jaballah on “*fiqh al-aqalliyat*” has been recently renamed “*fiqh al-hudur al-islami fi urubba*” (The *Fiqh* of the Muslim Presence in Europe) to account for

on *fiqh al-aqalliyat* since the late 1990s (involving initially Yusuf al-Qaradawi and now mostly ‘Abd Allah Bin Bayyah, ‘Issam al-Bashir from Sudan and local members of the ECFR (Ahmed Jaballah, Ounis Qurqah, al-‘Arabi al-Bishri and sometimes Tahar Mahdi).

¹²⁸ An interview with Shaykh Bin Bayyah on *fiqh al-aqalliyat* came out in Q-News in December 2001. Hisham Hellyer (then a PhD candidate at Warwick University working on Islam in Europe), published an opinion article in *The Muslim News* in Britain (May 2003 issue) discussing the minority *fiqh* project. In an editorial in *Islam* (a short-lived publication by the team that produced *La Médina*) Hakim Elghissassi criticized the *fiqh al-aqalliyat* approach and calls instead for introducing into the metabolism of the *shari’a* the *amal al-fransi* (French culture), by analogy to the *amal al-fasi* (the practice of Fez) widely recognized as a legal source in the Maliki tradition predominant in North Africa (Elghissassi comes from Morocco). These articles, however, seem to be exceptional. In so far as the discussion on *fiqh al-aqalliyat* takes place in European languages, it resides in informal and academic circles.

such critiques. The 2010 syllabus no longer includes Qaradawi's 2001 book on *fiqh al-aqalliyat* but focuses instead on the understandings of citizenship put forward in Mawlawi 2008 and Najjar 2009, a number of collective books on Islam in/and the West (including Abu Shamala 1999), and the fatwas of the ECFR and other international *fiqh* councils.¹²⁹ Jaballah's course starts with a discussion of the appropriate terminology for naming Muslims in Europe (*jaliya*, *aqalliyya*, *al-wujud al-islami*, *al-hudur al-islami*), moves to a discussion of Muslim / non-Muslim relations, the *dar al islam* / *dar al harb* binary, religious affiliation versus national belongings, and secularism and religious freedom in France. It continues with a detailed discussion on the process of issuing fatwas, with examples drawn from matters of worship, family, political participation, and it ends with a discussion of recent controversies over minarets in Switzerland and female attire in France.

Western policy-makers, inter-faith Christian groups, and academics are also paying attention to (and sometimes actively encouraging) these inter-Muslim debates.¹³⁰ Western universities are actively funding research on the topic, and young scholars in the Netherlands (Leiden, Nijmegen, Utrecht), Britain (Manchester, Oxford, SOAS, Warwick), Denmark (Aarhus), Hungary (Pázmány Péter Catholic University), Ireland (Irish School of Ecumenics – Trinity College Dublin), Norway (Oslo University), Germany (Free University of Berlin, Friedrich-Alexander University in Nürnberg-Erlangen), Spain, the United States (San Diego) and Australia are currently completing (or have just completed) postgraduate/doctoral/postdoctoral research on the topic.¹³¹

¹²⁹ I thank Jaballah for providing me a copy of the course outline.

¹³⁰ See for example how Abdulkader Sinno, in his *Muslims in Western Politics*, urges Western Muslim organizations and leaders" to "rethink the *fiqh* of minorities" (2009: 284-5).

¹³¹ The omission of France from this list may appear to be remarkable. Despite harbouring the largest Muslim population of Western Europe, hosting some of the prominent voices in the *fiqh al-aqalliyat* debate, and being in some ways at the forefront of the study of Islam in Europe (scholars such as Olivier Roy, Gilles Kepel and Jocelyne Césari have shaped the terms of the academic debate on Islam in Europe), there is - to my knowledge - no funded research project on minority *fiqh* in French academia. This cannot be simply attributed to the secular nature of the University in (most of) France. It also seems to be the consequence of a particular dislike, amongst important sections of French academia, with subjects closely associated with Islamic fundamentalism. By way of anecdote, I remember applying

The involvement of interfaith Christian groups in *fiqh al-aqalliyat* can be traced to the early 1980s. Nielsen (1992: 81-87) has summarized the proceedings of two seminars on Islamic Law in Europe convened by the Brussels-based Churches' Committee for Migrants in Europe (CCME) in the 1980s. Interest in questions of Islam and Islamic Law has since then increased rapidly. Today Christian groups occasionally invite Muslim scholars involved in the minority *fiqh* project to present their views, study their fatwas, and judge their integration and pluralistic outlooks and potentials.¹³² Western states have also played major roles in the debate. In addition to fostering the well-known processes of state institutionalization of Islam, which have reconfigured the Islamic religious field in specific ways (see Peter 2006 for France and below for a fuller treatment), state agencies have also been involved in the minority *fiqh* debate in more indirect ways. The definition of policy aims and the distribution of resources among publicly funded NGOs and consultancy groups operating in a transnational Europe-Middle East field have led to a proliferation of conferences and publications dealing with "Islam and the West" and Muslims in Europe and North America.¹³³ These agencies not only provide a venue for the articulation of existing discourses but very often also contribute to creating them, by providing a space – and sometimes material benefits – for voices capable of articulating them.

for a (non-funded) position in a Master's programme on Migration Studies at a Parisian University in the early 2000s. I presented a brief research project on the European Council for Fatwa and Research as part of my application. When I visited the university I met a professor who – upon hearing my proposed research topic - told me quite bluntly that in that university they were working "for the opposite". Seeing my confusion, the professor clarified as a matter of course: "here we are working for the secularisation of Islam". My application was eventually rejected for "falling outside the scope of the masters' programme". Beyond the anecdotal, the episode is perhaps instructive of the influence of a certain republican(ist) ideology on French social sciences, and particularly the weight of the French integration model in the framing of legitimate research questions, as highlighted by Amiraux and Simon in an important 2006 article.

¹³² While I am personally familiar with two such initiatives based in Lyons, France and in Freiburg, Switzerland, many others exist in all likelihood.

¹³³ These Western state agencies and NGOs look for and find partners in the Muslim world to engage in such "dialogue". A recent example was a April 2010 conference on "The Rights and Duties of Muslims Living in the West" organized by the Swedish Institute Alexandria in cooperation with the League of Islamic Universities, the Bibliotheca Alexandrina, and Alexandria University.

The Muslim World

Unsurprisingly, perhaps, for a concept which deliberately attempts to construct borders in a global religious field, minority fiqh has also attracted considerable attention in the Muslim majority countries of the Arab world.¹³⁴

Interest in the challenges facing Muslim minorities in the West seems to have started as early as the 1960s, in a context shaped by the Saudi-Egyptian rivalry that characterized the “Arab Cold War” (Schulze 2009). This interest followed a trajectory that mirrors broadly that of the Islamic Revival (al-sahwa al-islamiyya).¹³⁵ Al-Azhar, the Saudi Muslim World League (founded in 1962), and the networks of Muslim Brothers were major players in the field - although the importance of informal ties (kinship and other interpersonal connections) and national linkages should not to be underestimated.¹³⁶ In response to a request from a group of Muslims in the West, Al-Azhar published in 1960 a modern textbook outlining in accessible Arabic language the religious obligations of contemporary Muslims under the title “Al-Halal wa-l-Haram fi-l-Islam” (The Lawful and the Prohibited in Islam). The author, then a promising Azhar graduate, was Yusuf al-Qaradawi, and the bestselling book would be

¹³⁴ The account that I provide below of Muslim world engagements with minorities in the West focuses on the Arab world. Although this is an important limitation, it also fits well with the Arab dominance in the current debate on minority fiqh. The interesting question of how to explain this dominance (in comparison to the relative lack of engagement by South Asian or Turkish scholars despite the importance of their respective Diasporas) cannot be dealt with here.

¹³⁵ Muslim communities in the West and transnational connections between the Muslim world and Europe long predate the 1960s of course. For some examples of these connections see the various contributions to Clayer and Germain’s *Islam in inter-war Europe* (2008). Reinhard Schulze has noted that the issues of Muslim minorities in Western Europe were discussed at a “Congress of the Muslims of Europe” held in Geneva in... 1935 (Schulze 2009: 2-3 and Schulze 1990: 102-103).

¹³⁶ Many of the most prominent religious scholars (including Bin Bayyah and Qaradawi) have sent their children to the West for university study. By “national linkages” I wish to refer to the relations between those who emigrated to Europe and those who stayed at home (for example Algerians in France and in Algeria, or Turks at home and in the Diaspora, etc). I do not explore sufficiently here the South Asian connections. The aforementioned Syed Abul Hasan Ali Nadwi (Abu al-Hasan ‘Ali Nadwi) is a case in point. He has lectured on Islam in the West since the early 1960s (Nadwi 1983, 1992, 1993).

subsequently translated into many European languages.¹³⁷ In addition to the sending of preachers and imams from the Muslim world to Europe, muftis at the Azhar, the Saudi Permanent Commission for Research and Ifta', and national fatwa bodies elsewhere were occasionally asked by European Muslims to provide fatwas.¹³⁸ Intellectuals and diplomats from the Arab world frequently travelled to the West. Many acquired PhDs from American, British, French and German Universities. Drawing both on the expertise of professors who had received doctorates from Europe and (to a minor extent) on the impetus of European Muslim students who had come to study in the Islamic Universities of the Arab world, Arab universities started producing academic research on the issues of Muslim minorities in the late 1970s. Drawing upon his own experiences as a young PhD student in Paris in the 1930s, Shaykh 'Abd al-Halim Mahmud (1910-1978) - Shaykh Al-Azhar from 1973 until his death - published one of the first books on Islam in Europe in 1978 (Mahmud

¹³⁷ The work was commissioned to Qaradawi by Muhammad al-Bahi (an Azhari scholar who had received a PhD from Germany, and the author of a number of books on Islamic Reform) on behalf of Shaykh Al-Azhar Mahmud Shaltut. Qaradawi mentions this story on a number of occasions (for ex. 2001: 7), although no further information about the Muslims in the West who sent the request to the Azhar is provided.

¹³⁸ Research on these connections is difficult because not all fatwas have been recorded and because the relevant scholarly literature is scattered. Hasani (2002) mentions a request sent from Europe to the Moroccan scholar Muhammad ibn Hasan al-Hajawi (1874-1956) on the question of compulsory "Western" dress in public schools. Benkheira (1999) discusses a collection of fatwas issued from 1967 to 1992 by Shaykh Ahmad Hammani, former president of the Algeria High Islamic Council. The collection includes a number of fatwas concerning Algerians in Europe, such as adopting the nationality of a non-Muslim state (which he equates with apostasy when performed without constraints) or praying behind a French imam (allowed only if he is a convert). The official publications of the Islamic Research Academy (Majma' al-Buhuth al-Islamiyya) of the Azhar record a request from the Muslim community in Austria in 1972 and advises the delivery of a fatwa after study (no details are given concerning the question itself) in the proceedings of its seventh conference (Al-'Usayli and al-Haddad 2008: 109). A recent book also mentions a fatwa from the Azhar on halal slaughtering in Europe from 1982 (Moore 2010: 176, ft 9). The official monthly of al-Azhar published in 1987 a number of fatwas relating to Muslims living in non-Muslim lands ("Fatawa fi ba'd ahkam tata'allaqu bi-l-aqalliyat al-islamiyya fi ghayr diyar al-muslimin", *Majallat al-Azhar*, 1987/6). More generally, for a brief panorama of Azhari scholars' views on fiqh al-aqalliyat, see Karman 2008. For a useful if somewhat dated study of a Turkish Millî Görüş periodical that includes a study of fatwas for Turkish Muslims in Europe see Debus 1984.

1978).¹³⁹ The Pakistani-based World Muslim Congress (Motamar al-Alam al-Islami) published a country by country survey of Muslim minorities in the world in 1977. The Institute for Muslim Minority Affairs, founded in this period at the King ‘Abd al-‘Aziz University in Jeddah, also published a series of studies on Muslim minorities. In 1979 the Institute established an Arabic journal that would later become the celebrated Journal of Muslim Minority Affairs (subsequently transferred to London and published in English).¹⁴⁰ The Institute’s first director, the late Moroccan scholar Ali Kettani (born in 1941), published in 1976/1977 in Beirut what is probably the first major work of its kind entitled “Muslims in Europe and the Americas”. Academic conferences in the Arab world started to include papers on “Muslim minorities” in the late 1970s.¹⁴¹ As Reinhardt Schulze (2009: 3) points out, the Arabic neologism “al-aqalliyat al-muslima” started gaining currency in this period.

Saudi Arabia has also been a major player in the development of fiqh al-aqalliyat discourse. There are a number of accounts written in Arabic by sympathetic authors detailing the activities of Saudi Arabia in the West.¹⁴² According to one of these accounts, the Saudi Muslim World League has

¹³⁹ As the author states in the introduction to *Urubba wa-l-Islam*, his encounters with converts from different nationalities in Paris in the 1930s and his reading of a book written by an early 20th century convert to Islam (“A Western Awakening to Islam” by Rowland George Allanson Allanson-Winn, 5th Baron Headley, also known as Shaikh Rahmatullah al-Farooq) pushed him to think deeply about the Westernization of Islam (tagharrub al-islam) in Europe (1978: 7). ‘Abd al-Halim Mahmud notes that while there were many studies that focused on political and economic issues, there was no literature on Islam and the West that dealt specifically with the religious questions. As the title given to his work suggests, however, the two worlds of “Europe” and “Islam” are mostly treated separately in the remainder of the book.

¹⁴⁰ For other references on early works in Arabic on Muslims in the West see Schulze 2009.

¹⁴¹ The earliest example I have come across was a research paper entitled “al-buldan al-islamiyya wa-l-aqalliyat al-muslima fi-l-‘alam al-mu‘asir”, presented at the First Islamic Geography Conference held at the Imam Muhammad bin Sa‘ud Islamic University in Safar 1399 H (January 1979).

¹⁴² The Muslim World League has produced its own account of the role played by the Saudi Kingdom “in the service of Muslims in the West” (Turki 1416 H). Al-Turki – Saudi’s Minister of Islamic Affairs - stresses the special place of Saudi Arabia, the importance of Saudi help towards Muslim minorities, and the need for the latter to maintain their loyalty to Islam over their specific national belongings. Al-Turki does not however provide detailed factual information about Saudi missionary activities in the West.

been engaged with the issues of Muslim minorities since 1384 H / 1965 CE (Dawud 1992: 361).

In the first half of the 1980s scholars returning to their home countries after postgraduate study in European universities published the first Arabic-language monographs of Muslims in specific European countries.¹⁴³ The Muslim World League published a series of studies on Muslim minorities across the world prepared by Sayyid ‘Abd al-Majid Bakr.¹⁴⁴ Widely distributed and regularly quoted, Bakr’s empirical studies would become – alongside Kettani’s works, which were regularly updated (Kettani 1986) - the starting points for future research in the topic in the Arab world. Interest in the performance of da’wa in the West started to accelerate.¹⁴⁵ From the 1980s onwards, magazines such as *Al-Wa’i al-Islami* (Islamic Awareness), a widely read monthly published by Kuwait’s Awqaf Ministry since 1965, carried reports of conferences organized by Muslims in the West, wrote articles about their condition, and published reviews of relevant books in European languages with increasing regularity. A significant number of Islamic periodicals started to publish more or less extensive reports on Muslims in the West in the mid-1980s.¹⁴⁶ The influential Egyptian scholar Muhammad al-Ghazali (1917-1996)

¹⁴³ Mahmud Nagdi Zaquq, future Minister of Awqaf in Mubarak’s Egypt, published a booklet entitled *Al-Islam wa Mushkilat al-Muslimin fi Almaniya* (Islam and the Problems of Muslims in Germany) in 1981.

¹⁴⁴ The four volumes were published between 1983 and 1985 in the collection “*Da’wat al-Haqq*” (a widely distributed book series of the Rabita that is still running today). The first volume deals with Muslim minorities in Asia and Australia, the second looks at Africa, the third is dedicated to Europe, and the fourth focuses on the Americas and the Caribbean. They are available online on the Rabita’s website. The bibliographical references in the third volume are scarce, a reflection of the lack of studies on Muslims in Europe at the time.

¹⁴⁵ An article by Ahmad Sakr alerting to the problems of da’wa appeared in the *Majalla Al-Rabita* in 1979 (issue 8). Anwar al-Jindi published in 1984 a book entitled *Afaq Jadida li-l-da ‘wa al-islamiyya fi ‘alam al-gharb* (Beirut: Mu’assasa al-Risala). In this early period, Muslim communities in the West are not paid any attention in a PhD thesis defended in 1986 at the Muhammad ibn Sa’ud Islamic University that deals with the the impact of dar al-islam / dar al-harb on fiqh rulings (Fattani 1998).

¹⁴⁶ The bi-annual journal of the Faculty of Shari’a of Kuwait – *Majalla al-Shari’a wa-l-Dirasat al-Islamiyya*, established in 1984 - included from its inception reports of conferences organized by Muslims in the West (and often attended by faculty members), including such events as the fifth conference of Muslim youth in North America (issue 1, 1984), the first international conference of Islamic fiqh in America

published his classic book on “The Future of Islam outside its Land” in 1984 – a premonitory signal of the emerging centrality of Muslim minorities for the religious imagination of contemporary Islam.¹⁴⁷

Amongst the Muslim states actively involved in the religious affairs of Muslims in Europe, Libya under the leadership of Muamar Gaddafi took a pioneering (and often overlooked) role. With the support of the revolutionary leader, Libya founded a World Islamic Da’wa Association (“jam’iyat al-da’wa al-islamiyya al-‘alamiyya”) which held a number of conferences for Muslim preachers (du’at) in Europe and the Americas in the 1980s. The first conference, held in 1982 in Malta, attracted some 35 preachers involved in Islamic Work in the West. This was followed by a larger event in Utrecht in 1985 that drew 150 participants over a four-day discussion on Islam and World Peace, Da’wa, Islam and Christianity, the status of women, and the future of the Islamic Revolution. The final statement included a call for establishing a council of imams in Europe and the Americas. The third conference – the last that I am aware of – took place in Madrid in February 1988. The discussions, centred on the role of the mosque in the Diaspora (“risalat al-masjid”), drew representatives from Muslim communities in Portugal, Spain, France, the Netherlands, Denmark and the United States. The proceedings of the third conference – on which this brief account of the organization is based - have been published by the organisers (Al-Multaqa li-Du’at Jam’iyat al-Da’wa al-Islamiyya al-‘alamiyya bi-Urubba wa-l-Amrikatayn 1988). In 1990 the World Islamic Da’wa Organization published in Tripoli a multi-volume work entitled “al-Muslimun fi-l ‘alam. Qadaya wa tahadiyyat” (The Muslims in the World. Issues and Challenges) which dealt with Muslim minorities in the West as well.

on family issues (issue 10, 1988), the first session (dawra) of Islamic legal sciences held at the international centre for Islamic sciences in Augsburg, Bavaria (issue 16, 1990). The Majallat al-Umma, issued from Qatar, wrote a lengthy report on Muslim minorities on the occasion of the WAMY’s 1986 conference on Muslim minorities (“Mu’tamar al’Aqalliyyat al-Muslima: Ru’iya min al-dakhil”, issue 68: 72-79). Such occurrences were apparently still sufficiently rare in the 1980s to warrant inclusion in later bibliographies of works dealing with Muslim minorities.

¹⁴⁷ On Ghazali’s views see Abu Rabi’ 2004 and Scott 2007.

Attempts by the Muslim World League to establish a European fiqh council in Mecca under the auspices of the World Higher Council of Mosques floundered in the early 1980s.¹⁴⁸ The World Association of Muslim Youth (al-nadwa al-'alamiyya li-l-shabab al-islami - WAMY) held an important international conference in Riyadh on Muslim minorities in 1986, publishing the proceedings in English and Arabic (WAMY 1986). Most of the studies in WAMY 1986 consisted of descriptive analyses of the demographic, sociological and economic profiles of Muslim minority communities across the five continents. Although the studies were rarely framed in terms of fiqh, a collection of answers given by Ibn Baz and Ibn 'Uthaymin during the conference was later published under the title "Muslim Minorities. Fatawa Regarding Muslims Living as Minorities" (Ibn Baz and Ibn 'Uthaymeen 1998). The collection consists of 15 fatwas by Ibn Baz and 25 fatwas by 'Uthaymin. They deal with topics such as the obligation of jihad (a collective duty), imitating Western dress (forbidden), marrying a Muslim who does not speak Arabic (allowed), collecting zakat in the West (not required, unless there are people in need in the community), choosing a Muslim leader to act as a qadi in non-Muslim lands (obligatory), pronouncing the divorce of a woman against the wishes of her husband (allowed), registering a divorce in the civil authorities (allowed on condition that it be done according to Islamic Law), work in a gender-mixed environment (forbidden, even if there's a need, in which case one should emigrate), settling the lunar calendar for fasting (Muslims must follow the sighting of the new moon in the country where they live, not in Saudi Arabia).

Although the OIC's International Islamic Fiqh Academy in Jeddah established a commission to investigate issues of Muslims in the West, the latter's concerns remained - throughout the 1980s and 1990s - marginal to the work of the Fiqh Academy, which repeatedly postponed debate on a set of minority

¹⁴⁸ A member of the European Council for Fatwa and Research kindly gave me a copy of the proceedings of the inaugural conference for a so-called "al-majlis al-fiqhi al-islami al-urubbi" held in Mecca in 1983. Out of the 10 chosen members, only one became part of the future ECFR, and he was not a traditional religious scholar: Dr. Muhammad Hawari, a Syrian Muslim Brother exiled in Germany, and an expert in scientific and medical issues.

questions sent by a scholar based in the USA.¹⁴⁹ Overall, the interest of the Organization of the Islamic Conference on the issues of Muslim minorities remained largely symbolic up until the third millennium.

The Islamic Research Academy of Al-Azhar (al-Majma' al-Buhuth al-Islamiyya) engaged the issues of Muslim minorities in the West in detail for the first time in its 1988 conference in Cairo.¹⁵⁰ Al-Azhar's High Commission for Islamic Da'wa (al-lajna al-'uliya li-l-da'wa al-islamiyya, affiliated to the Islamic Research Academy) issued the first major Egyptian publication on Muslim minorities around the same time, provocatively entitled "The Crisis of Muslim minorities in the world" (Samman 1987). The author of the book regretted the inaction of Muslim states, the poor media coverage in the Arab world of the plight of Muslim minorities, the lack of precise statistics, and the absence of unity within the ranks of minority communities. Samman identified the origin of the specific problems of Muslims in the West in three forces: communism (al-shuyu'iyya), the ethos of the Crusades (al-salibiyya), and Zionism (al-suhuniyya) (Samman 1987: 172). The problems that these

¹⁴⁹ The member in question is Taha Jabir Al-'Alwani. In a research paper presented to the European Council for Fatwa and Research 'Alwani provides an account of the history of his interest in minority fiqh. When he was teaching at the Imam Muhammad ibn Sa'ud University in Jedda in the mid-1970s he met members of the Muslim Student Association in the USA and started thinking and writing about the religious worship of Muslim minorities. In 1984 he moved to the USA and the following year he sent a number of questions specific to Muslims in the West to the fiqh councils in the Muslim world, including the International Fiqh Council in Jedda, Sheikh al-Azhar in Cairo, and imam Khomeini in Iran. The International Fiqh Academy, ill-prepared to answer, established a commission to deal with issues of Muslim minorities. In the end Alwani only got summary answers to complex problems, and decided to write a text outlining the need to pay particular attention to the fiqh for minorities (Alwani 2004; see also Alwani 2003).

¹⁵⁰ The publications of the Majma' al-Buhuth al-Islamiyya (founded as a result of the Azhar reforms of 1961) mention that Muslim scholars from Europe participated in its 1970 conference discussing the present and future state of the ummah. The Majma' al-Buhuth al-Islamiyya called for the establishment of a permanent commission for minority issues in its 7th (1972), 8th (1977) and 9th (1983) conferences. As the relevant resolutions make clear, the main concern back then was the situation of Muslims in the Philippines, Thailand, Bulgaria and Cyprus. The focus changes at the 11th conference in 1988 when the issues of Muslim minorities feature more prominently in the discussions. Muslims in Western Europe are for the first time interpellated directly by the Majma', which advises immigrant Muslims to leave the divisions of their home countries behind, speak Arabic to their children at home, and provide a good image of Islam to their host societies (see Al-'Usayli and al-Haddad 2008: 180-4).

Muslim communities faced included racism, extremism in the host society, lack of official recognition of Islam as a minority religion, the absence of Islamic education in state schools, mixed marriages, Christian missionary activities in France, and Jewish as well as Ahmadiyya activities in the UK (Samman 1987: 174-176). The idea that Muslim minorities required specific fiqh solutions to their problems had not yet made any inroads.

Throughout the Cold War, the plight of Muslim minorities in Europe – present in numbers both in the West and in the East – seemed to fit uneasily with the dominant geopolitical categories. The collapse of Cold War politics in the late 1980s – and what many have called the subsequent framing of Islam as the new enemy of the West – reshaped the context in which discussions on Muslim minorities in Europe took place in the Arab world. The decade of the 1990s marked the beginning of a period in which “Islam” is related and opposed to the “West” with a new intensity. High-profile conferences on “Islam and the West” became common in the Muslim World, superseding the Cold War discourse on “Islam between capitalism and communism”.¹⁵¹ Intellectuals, scholars and politicians engaged Huntington’s thesis on the clash of civilizations, usually in order to emphasize the importance of “civilizational dialogue”.¹⁵² A new literary genre emerged where intellectuals debate relations between the two poles of “Islam” and the “West” (Turabi 1994; Yasin 1994; Samak 1995; Milad and Al-Rabi’u 1998; Zaquq 2005;

¹⁵¹ In 1997, the Supreme Council of Islamic Affairs attached to the Egyptian Awqaf Ministry chose this as the theme of its Ninth annual conference. Prince Charles of Wales, Murad Hofman and Swedish Ambassador Lars Lonnback were amongst the most prominent speakers.

¹⁵² Samuel Huntington’s original *Foreign Affairs* article on “the clash of civilizations” – with a question mark - appeared in 1993; the very same year, the Egyptian intellectual Fahmi Huwaydi wrote a response in the journal *Al-Muslim Al-Mu’asir*. Within a few years academics in Egypt and elsewhere were organizing conferences and engaging the debate. In 1996, a conference was held on Islam and the Future Dialogue between Civilizations” was organized by the Egyptian Supreme Council of Islamic Affairs. In March of the following year another international conference was held in Cairo on “Clash of Civilizations or Dialogue of Cultures”. For a systematic engagement with the clash of civilizations from a Muslim perspective see inter alia Yasin 1994; Sa’id 1996; al-Samak 1995 and al-Sa’dun 2002.

Hofmann and Sharfi 2008).¹⁵³ The works of Muhammad ‘Imara, an ex-communist who has become an influential “Islamic Thinker” (al-mufakkir al-islami) close to Qaradawi and the Muslim Brothers, appear to epitomize this transformation.¹⁵⁴ Discussions on Muslims in the West had become tributary of the larger discussion as geopolitics impacted upon the contexts of production of Islamic knowledge. Dialogue initiatives, research projects, and NGOs committed to improving relations were multiplied, creating new opportunities and fostering new networks.

Research centres on (Islam in) the West were established and expanded in this period. Studies on the state of Arabic and Islamic Studies in the West were published in the Muslim world. These studies followed the translation of Edward Said’s *Orientalism*, which first appeared in Arabic in 1981 and elicited considerable commentary ever since.¹⁵⁵ They have helped shape a common sensical perception in the Arab world that knowledge *is* power, and that (Western) research on Arabs/Muslims is never innocent. The perceived vitality of Christian proselytizing efforts – notably through a 1978 conference in Colorado¹⁵⁶ widely publicized in the Arab world through the works of

¹⁵³ Earlier books opposing Islam and the West existed before the 1990s of course, but they were by no means as common as after 1990. For a detailed description of some of the perceptions of the West by some modern Egyptian intellectuals see Woltering 2011.

¹⁵⁴ The topics of ‘Imara’s books – and they are numerous - have moved from engagements with Arab nationalism in the age of American Imperialism to discussions of Islam and the West. Although not quite as committed to the Islamic Revival as ‘Imara, Galal Amin – Professor of Economics at Cairo University, now retired - is arguably another case in point.

¹⁵⁵ Muslim responses to Said’s theses in *Orientalism* seem to be an under-researched topic. Many books on Orientalism have of course been published in Arabic. Edward Said himself famously regretted what he perceived to be misunderstandings and misappropriations of his work for identity politics in the Arab world. For Muslim writers committed to Islam, their appropriation of Said’s work could only be strategic, since Said’s deconstruction of the Orient and Islam as Western inventions appeared to leave little space for the articulation of any Islamic project and identity.

¹⁵⁶ This was the 1978 North American Conference on Muslim Evangelization that took place at the Glen Eyrie Conference Center in Colorado Springs, Colorado, leading to the establishment of a training institute for missionary activity in the Muslim world (see for more details Kidd 2008: 123-4). ‘Imara and Qaradawi often refer to this as an example of the threats looming upon the ummah – and one that should be emulated by Muslims in performing da’wa.

Muhammad ‘Imara – contributed furthermore to give the “West” in this period a distinctive missionary identity in the eyes of Muslims (an aspect of the “confrontation” between Islam and the West that seems to be often neglected by secular European elites). Fahmi Huwaydi, an Egyptian intellectual who has set the tone for debates amongst Islamic legal scholars through his pioneering books on citizenship and interfaith relations,¹⁵⁷ published an early book on Muslim minorities in 1991. Although the West tends to be discussed in monolithic terms, Islamist thinkers writing in Arabic in this period - such as Rachid al-Ghannouchi (1999) – started to break down the “West” into its constitutive elements.

The academic scenes in Europe and the Arab world became more integrated in the mid-1990s as Western academics were invited to speak in the Arab world about Muslim communities in the West and see their works are translated into Arabic – and vice-versa.¹⁵⁸ Given their exposure to French debates, intellectuals in the Maghreb have provided some of the earliest sociological studies in Arabic of Islam in Europe. Their studies remain nevertheless virtually unknown in the Mashrek. Sa’di Buziyan’s 1993 book, suggestively entitled “Islam in Western Europe: The Search for a European Islam”, seems a fitting illustration. The University of Ahl al-Bayt in Jordan co-organized with the Swedish Ministry of Foreign Affairs a conference on

¹⁵⁷ Huwaydi’s most famous book, entitled “Muwatinun, la Dhimmiyun” (Citizens, not Dhimmi) articulates a forceful call for considering non-Muslims living in Muslim countries (especially Copts in Egypt) as equal citizens. The theses presented in this book seem to have been incorporated into more recent discussions on citizenship by Yusuf al-Qaradawi, Faysal Mawlawi, and others. Despite being a journalist, Huwaydi co-signed with Qaradawi a fatwa allowing the participation of Muslim soldiers in the American army in the war against Afghanistan (see Nafi 2004 for details).

¹⁵⁸ Jorgen Nielsen speaks about a seminar he gave to young Islamists in Jordan in 1995 on Muslims in Western Europe (Nielsen, preface to Ramadan 1999: xii), and there are probably many more such examples from the 1990s onwards. Many of the academic works on Islam in Europe are also of course directly available to audiences in the Muslim world conversant in European languages. In addition to Nielsen, Felice Dassetto and Gilles Kepel are amongst the most commonly cited works in the Arabic books on Islam in Europe that I have consulted. An early example of the involvement of Muslim scholars in Western research institutes is provided by the Oxford Centre for Islamic Studies, established in 1985. Its board of trustees included Yusuf al-Qaradawi and Abu al-Hasan ‘Ali al-Nadwi. Members of the board travelled yearly to Oxford to attend the board annual meetings (Nadwi 1992: 6).

“Europe and Islam” in Amman in June 1996, providing an early example of a type of Arab-European collaboration that would be replicated numerous times afterwards. The 1996 Amman conference followed an earlier conference on European Islam held in Stockholm the previous year. It drew participants from all over the world, including well-known scholars of Islam in Europe such as Jørgen Nielsen and Bassam Tibi (see Arnaut, Safi al-Din and ‘Abd al-Rahman 1998). In March 1997, an official conference on “Islam and Muslims in Europe” was organized in Morocco by the University of the Islamic Revival (Jami‘at al-Sahwa al-Islamiyya) in Casablanca’s Hassan II Mosque. This University was created in 1994 under Morocco’s Minister of Awqaf Abdelkebir Alaoui M’daghri (Minister from 1984 to 2002) in order to provide a space for dialogue between Islamic scholars and Islamist intellectuals (Belhaj 2009: 117). The debate on general topics (extremism and moderation, intergenerational changes of European Islam) and specific case-studies (Muslims in the Netherlands, Italy, etc) drew a wide range of speakers, including many of the voices which would – a few years later – be involved in the minority fiqh debate, such as Ahmad al-Rawi (then president of the FIOE and future founding member of the ECFR), Shaykh Sa‘id Ramadan al-Buti, ‘Abd Allah Busuf (president of the Strasbourg Mosque), and Muhammad al-Kadi al-‘Amrani. While Moroccans in Europe were primarily seen by the Moroccan state as “Moroccans” in the 1980s, they seemed to have increasingly become “Muslims” in the 1990s (although in the Moroccan case the two identities are clearly intertwined). The same year, in November 1997, the annual training session for Moroccan Friday preachers (khutaba al-jumu‘a) held in the same mosque was dedicated to the situation in France. The proceedings were published by the Moroccan Ministry of Awqaf and Islamic Affairs the following year (Al-Dawra al-Tadribiyya li-Khutuba al-Jumu‘a bi-Faransa 1998). As a glance at the publication shows, the papers presented at the training session covered a wide range of topics, including a mixture of general Islamic topics (the virtues of the Qur’an; the place of the Sunna in Islamic legislation; the realism of the Maliki school in achieving the common interest / al-maslaha al-mursala; the art of Friday preaching) and more specific “French” topics (the Muslim family in the West; how to be a Muslim preacher in the Western society; the importance of the Maliki school in the preservation

of an Islamic identity). As several of these examples suggest, the engagements of Muslim states with the issues of Muslim minorities in the West often reproduced national understandings of religion – the emphasis on the Maliki school in Morocco, the importance of Al-Azhar as a moderate institution in Egypt, Libya's commitment to spreading its Revolutionary ideals, and the Salafi/Wahhabi ethos of Saudi Arabia.

Relations between Muslim organizations in Europe and in the Middle East were also strengthened in the mid-1990s.¹⁵⁹ Muslims in Europe had acquired greater media visibility in the Arab world following the publication of Salman Rushdie's *Satanic Verses* in Britain, the start of a protracted headscarf affair in France, and the genocide against the Bosnians which marked the imagination in the Muslim World.¹⁶⁰ By the mid-1990s it had become usual for prominent religious scholars from all over the world to visit Muslim communities in Europe and North America.¹⁶¹ After having seemingly settling the discussion of migration and residence in the West,¹⁶² books on the

¹⁵⁹ Much in demand, Western converts (such as Murad Hoffmann, a German ex-Ambassador who revealed his conversion in 1980, and Cat Stevens / Yusuf Islam) became prominent at this time, travelling regularly to the Arab world and acting consciously as bridges.

¹⁶⁰ Alija Ali Izetbegovic's book on Islam between East and West became a best-seller in Muslim-majority countries. It continues to be widely available in Egypt. In one of the various editions, the influential Egyptian intellectual Abd al Wahhab al-Masiri writes the preface.

¹⁶¹ A sympathetic eye-witness account of Muhammad Sayyid Tantawi's (1909-2009) travels to the United States, Germany and Britain in the mid-1990s as Mufti of Egypt has been published in Arabic by a journalist at Al-Ahram (Rajab Al-Banna 1997). The following year, another account of Shaykh Sha-rawi's travels to Europe and America was published in Cairo by Sa'id Abu al-Aynayn (Rihalat al-Sha'rawi fi Urubba wa-Amrika). The Pakistani Mufti Muhammad Taqi Uthmani also published an Arabic collection of his fatwas issued in response to questions from the Islamic Center of Washington DC in 1998 – another sign of the increasing interaction between Muslims in the West and religious authorities in the Muslim World (as well as proof of the 'translatability' of fiqh discourse across ethnic boundaries in the diaspora). Transcripts of two talks given in Urdu by prominent South Asian scholar Abul Hasan Ali Nadwi in Leicester in 1991 and 1992 on the topics of "Da'wa in the West" and "The Role and Responsibilities of Muslims in the West" have been translated and published in English by the Islamic Foundation (Nadwi 1992, 1993).

¹⁶² The questions of migration (hijra) and residence (iqama) have only been relatively settled. Yusuf al-Qaradawi, in a book written in 2010, still feels the need to respond to some (unnamed) scholars "doubting" the permissibility of residence in non-Muslim lands (Qaradawi 2010: 77-79).

question of naturalization (al-tajannus) of Muslims in Europe were published in the 1990s in Morocco, Tunisia, Egypt and Syria¹⁶³ - a sign perhaps of the growing maturity of orthodox engagements with Islam in the West. Muslim scholars wrote full treatises in answer to questions from Europe – such as the apologetic response of the Saudi (?) scholar Mahmud Muhammad Bablali to a question from Geneva about the “wisdom” of forbidding the marriage of a Muslim woman to a non-Muslim man (Bablali 1995). Mirroring similar developments in the European academy, studies of Muslim minorities in the West became increasingly common in the late 1990s in the Arab world. The first treatise dealing specifically with fiqh al-aqalliyat appeared in this period. It was the result of a MA thesis defended in 1994 at the Faculty al-Imam al-Awza’i in Beirut, published in book format first by Qatar’s Ministry of Awqaf in its famous “kitab al-umma” collection three years later (‘Abd al-Qadir 1997), then in a major publishing house in Lebanon (Dar al-Iman, Tripoli, 1998), and finally translated into English by the Egyptian Ministry of Religious Endowments (2003). ‘Abd al-Qadir’s book is introduced by the kitab al-umma series editor ‘Umar ‘Ubayd Hasanah as proof of the precedence - in Islam - of faith over colour, race, homeland, class and geographical location (Hasanah in ‘Abd al-Qadir 2003: 7). The book nevertheless appears to signal the emergence of a new consciousness in the Arab world of Muslims in the West as facing specific challenges, and requiring particular solutions. Another MA thesis on the political fiqh of Muslim minorities was defended in 1996 at the Faculty of Shari‘a of the University of Jordan by a Bosnian student (Tubuliyak 1997).¹⁶⁴ An Egyptian professor of political science associated with the IIIT – Nadia Mahmud Mustafa – developed a course on the political fiqh of Muslim

¹⁶³ Shadid and van Koningsveld (1996) mention a MA dissertation on the issue of naturalisation (al-tajannus) submitted to the University ‘Abd al-Malik al-Sa’di, Tetouan, in 1992-1993, written by Benomar al-Hasani. A book on the topic was also published in Tunis by Muhammad Al-Shadhli al-Nayfar in 1995. Sa’id Ramadan al-Buti published in 1994 a text on the residence and naturalisation in the realm of unbelief (“al-Iqama wa-l-Tajannus fi Dar al-Kufr”) at Damascus’ Maktabat al-Farabi (reprinted in Buti 2006). Muhammad bn ‘Abd Allah Ibn Subayyil included his opinion (hukm) on naturalisation in non-Muslim states in a 1996 book entitled “Thalath rasa’il fiqhiyya” published by Matabi’ Ibn Taymiya in Cairo.

¹⁶⁴ Tubuliyak is currently teaching at the Faculty of Islamic Education in Bihac (Western Bosnia) and Faculty of Islamic Studies in Novi Pazar (Serbia). I thank Ahmet Alibasic for providing this information.

minorities (al-fiqh al-siyasi li-l-aqalliyat al-muslima) at the United Arab Emirates University.

By the late 1990s the growing impact of regional Arabic newspapers based in the West (and therefore more exposed and attuned to the issues of local Muslim minorities, such as *Al-Sharq Al-Awsat* and *Al-Hayat*), the proliferation of satellite TV (Al-Jazeera was founded in 1996, followed by hundreds of Arabic satellite channels), and the beginning of the internet revolution had immensely intensified contacts between Europe and the Arab world. In the new millennium – especially in the aftermath of 9/11 - discourses on Muslims in the West have rapidly expanded, becoming almost ubiquitous in the Arab public spheres. The major organizations and centres of Islamic learning have contributed in various ways to this proliferation, usually by calling upon Muslims in the West to actively “integrate” into the host society and to sideline the “extremists” in their midst. Minority fiqh at this stage becomes part of an anti-terrorism agenda, but is not exhausted by it. A number of studies on the family fiqh of Muslim in the West were published in the Arab world in this period, usually by scholars who lived for long periods in Europe (‘Amrani 2001; Rafi’i 2002; Barzanji 2008).¹⁶⁵ Conferences organized by the Ministries of Religious Endowments and state-funded foundations were regularly held

¹⁶⁵ Al-‘Amrani appears to have lived in the Netherlands, or at least to be very familiar with the Dutch context, which is the privileged case study through which he tackles the fiqh of immigrant Muslim families (al-‘Amrani 2001). Salim ‘Abd al-Ghani Al-Rafi’i lived in Germany for 13 years and founded an Islamic Centre in Berlin which – he claims in the introduction to his book – become an authority in Islamic Law for local Muslims (2002: 7). The book appears to be the result of a PhD dissertation completed upon his return to Saudi Arabia. Al-Barzanji’s book is the result of MA dissertation completed at the American Open University (al-jami’a al-amrikiyya al-maftuha), a Washington-based Islamic institution popular in Egypt. Unlike the Azhar or Dar al’Ulum, the AOU offers easily accessible MA and PhD programs in Islamic Studies (not recognized by the Egyptian Ministry of Education). Al-Barzanji appears to have worked as an imam in Oslo (unless it’s another ‘Abd al-Rahman al-Barzanji). The only reasons given in the book for writing about Muslims in the West are related to the threats looming against the Muslim family. There is no mention of any visit or stay in the West. Already in 1995 Jamila Wuhayda submitted an MA dissertation to the Muhammad V University entitled *Nizham al-Ahwal al-Shakhsiyya li-l-jaliya al-maghribiyya bi-l-aradi al-munkhafida*. The earliest conference on the subject seems to have been organized by al-Mujamma’ al-Islami al-Thaqafi, a Shi’i body which held a meeting on the problems of the Muslim family in the West in Dearborn, Michigan, in 1992.

from the (Atlantic) Ocean to the (Persian) Gulf.¹⁶⁶ In May 2000, the League of Islamic Universities (rabita al-jami'at al-islamiyya) based in Cairo co-organized a conference entitled "Muslims in Europe" with the Islamic Academy of Vienna, the Egyptian Awqaf Ministry and the Muslim World League. Held in the Austrian capital and introduced by the Austrian President, the presenters at the conference consisted mostly of Egyptian academics working at the Azhar (faculties of sociology, journalism & media, and Islamic studies), 'Ayn Shams (faculties of literature and law) and Zaqaziq Universities (Asian Studies). The conference proceedings, published in Cairo in 2002, were able to draw on their accumulated expertise in the fields of European civilization (three papers), legal, social, economic and political realities of Muslims in the West (four papers), media and the image of Islam in Europe (three papers), and the dealings of Muslims minorities in the West (five papers). The volume stands as a tribute to the increasing sophistication of the Arabic discourse on European Muslims articulated by cosmopolitan Egyptian academics working in an interdisciplinary research field.

In Morocco, the Ministry of Awqaf under Ahmad Tawfiq's leadership has paid particular attention to Moroccans in Europe, notably through its efforts to institutionalize a Council of Religious Scholars for Moroccan imams working in Europe, and through Tawfiq's advice given to European scholars and policymakers on how to regulate the Islamic religion in diaspora. Ahmad Tawfiq (Minister since 2002) has been seen as a minister who has reinforced the stress on the Maliki school and sought to reconcile religious commitment with democratic politics (Belhaj 2009: 120). Morocco's Ministry of Religious Endowments is only one of several state bodies seeking to promote the integration of Moroccans abroad while maintaining their distinctive Muslim / Moroccan identity.¹⁶⁷ The role of Moroccan consulates in the process of

¹⁶⁶ In the second half of the 2000s decade the Global Wasatiyya Center organized a number of conferences that dealt with fiqh al-aqalliyat in London (26-28 May 2006) and in the United States. A paper on "Fiqh al-aqalliyat al-Islamiyya fi-l-Gharb" by Isma'il al-Khatib was presented at another conference, organized by the Moroccan Ministry of Endowments and Islamic Affairs (Khatib 2007: 193-206).

¹⁶⁷ The two identities are intertwined in a country where the King is also Commanders of the Believers (amir al-mu'minin). The other relevant state bodies include a

institutionalization of Islam in France is well-documented, notably through the Fédération nationale des musulmans de France (FNMF), which won the 2005 elections to the Conseil français du culte musulman. In addition to providing “support” to Islamic centres and mosques in Europe, the Hassan II Foundation (attached to the Foreign Ministry) has also organized training sessions for Moroccan preachers to be sent to Europe during Ramadan. The numbers have risen quickly – from 60 preachers in 1998 to 206 just eight years later.¹⁶⁸ The preachers are specifically urged to “refrain from issuing fatwas easily” and to promote the true Islamic vision.¹⁶⁹ Another Moroccan body, the Council of the Moroccan Community Abroad, established by royal decree in December - 2007, has been involved in the organization of several high-profile conferences on Islam in Europe in the last few years.¹⁷⁰ As its president Driss

“ministre delegue aux Affaires etrangeres et a la Cooperation charge des Marocains residant a l’etranger” created in 1990, the Hassan II Foundation, and the World Council of Moroccans abroad established in 2001 (Belhaj 2009: 130-132). The prominence of Moroccans amongst imams in France is well known. The Moroccan state intervenes in linguistic as well as religious matters, by providing Arabic as well as Islamic instruction to its citizens living abroad.

¹⁶⁸ Figures provided by <http://www.alwatan.ma/html/FHII/presentation.html> (accessed 30 March 2011).

¹⁶⁹ According to Moroccan media sources, the Hassan II Foundation organized in 2006 a training session for 173 preachers to be sent to Moroccan communities in Europe Africa and America during Ramadan. In 2005, 73 preachers went to France, 22 to Spain, 19 to Belgium, 16 to the Netherlands, 14 to Italy for that purpose. They were briefed on the conditions of integration of the host society and encouraged not to issue fatwas “without rhyme or reason” (Belhaj 2009: 132-3).

¹⁷⁰ Three such conferences were organized by the Council of the Moroccan Community Abroad in a single year between March 2009 and March 2010 - a testimony of the political desire in Morocco to engage broader European discussions on Islam in the West. In March 2009 the first conference of this series took place in Fez on “The Legal Status of Islam in Europe”, gathering many recognized experts in the field (Catherine Wihtol de Wenden, Mathias Rohe, Felice Dassetto, P. S. van Koningsveld). As the conference summary clarifies, the aim of the meeting was to address the concerns of Muslim communities, state actors and academia alike (<http://www.ccme.org.ma/fr/Ev%C3%A9nements-du-CCME/Colloque-internationalStatut-juridique-de-l-Islam/Rapport-de-synth%C3%A8se.html>). In June, the Council held a second international conference in Casablanca on “Islam in Europe: What Model?”. The conference outline argued that Islam had shifted from “a religion of migrants” to a “religion of European citizens”. The European context was deemed “both a challenge and an opportunity”. It required a reflection about jurisprudence and its adaptation to the reality of European Muslims, notably in the face of the current “confusion of jurisprudential discourse in the West”. Such a reflexion was furthermore deemed by the organisers as not only “necessary” but “essential” in the current climate (Mohamed Kadimi, “Colloque international du CCME à Casablanca: Débat sur la problématique du référentiel chez les musulmans en

El Yazami has spelled out, the Council perceives an urgent need to develop a fiqh designed for Muslims living in Europe. This fiqh should draw on the Maliki school known for its flexibility.¹⁷¹ While El Yazami may differ from minority fiqh advocates in his emphasis on the resources of the Maliki school, he seems to share with them many of the underlying assumptions concerning the special case of Europe, the challenge of conflicting Islamic discourses and the lack of capable religious authorities. As in the case of other Arab states with large migrant populations, the religious policies of the Moroccan state are embedded in a complex web of national interests that include – in addition to religious claims - important political and economic stakes.

Even the official religious establishment in Saudi Arabia started to respond to the new configuration by adopting more conciliatory stances. Although some continue to call for Muslims in the West to migrate, the official institutions around the Muslim World League have engaged more pragmatically with the Muslims in the West. Meetings of Muslim scholars organized under the Rabita regularly included the presentation and discussion of papers establishing the contours of a distinctive “minority fiqh”.¹⁷² The 1980s and 1990s discourse of the Rabita on “building bridges” between Muslim minorities and Muslim majorities, prominently articulated in the recommendations of WAMY’s 1986 conference (WAMY 1986: 1005), started to give place to a discourse on

Europe”, *Liberation* (Maroc), 18/6/2009). In late March 2010, the same Council co-organised a conference on “Islam in Europe” with the Great Mosque of Strasbourg under the auspices of the Council of Europe, this time with a particular focus on imam training and religious education. Other state bodies in Morocco have also been engaged in conference exchanges. In April 2010, the Moroccan organisation Ibn Batouta helped co-organise a conference on “Religious Freedom and Muslim Citizenship” at Barcelona’s Autonomous University – a conference in which Abdallah Boussouf, the secretary-general of the CMCA, was also present. In the Autumn of 2010, another conference on Muslims in Europe - co-organized this time by the Ministry of Awqaf and the British Council - was held in Rabat.

¹⁷¹ See “Musulmans d’Europe. Nécessité de développer une jurisprudence spécifique”, *Le Matin*, 22/6/2009.

¹⁷² See, for a recent illustration, “Al-mu’tamar al-‘alami li-l-fatawa: hadith ‘an al-zaman wa-l-makan wa haya’ li-riqaba ‘al-fatwa’ wa fiqh ‘al-aqalliyyat’”, *Al-Sharq Al-Awsat*, 19/01/2009. Qaradawi’s work on fiqh al-aqalliyyat was itself commissioned by the MWL (Qaradawi 2001: 5) and presented at the Muslim World League’s 4th General Islamic Conference in Saudi Arabia (April 2002).

building bridges between “Islam” and the “West”.¹⁷³ In the aftermath of the terrorist attacks of 9/11, the general secretary of the Muslim World League ‘Abd Allah al-Turki made a rare appearance in the program *Al-Shari‘a wa-l-Hayat* to discuss the future of Muslims in the West. Al-Turki expressed a cautious optimism in relation to the tribulations that Muslims in the West faced in the wake of 9/11, and dismissed talk of a clash of civilizations (*Al-Shari‘a wa-l-Hayat*, “*mustaqbal al-aqalliyat al-muslima fi-l-gharb*”, 25/11/2001). In 2005 al-Turki used his position as the editor of the periodical of the Islamic Fiqh Academy (attached to the MWL) to discuss *fiqh al-aqalliyat*. For ‘Abd Allah al-Turki, the call to establish a separate *fiqh* for Muslim minorities is an example of the devalorization of the *fiqh* heritage undertaken by advocates of *ijtihad* and *tajdid*. Although al-Turki recognizes both the legitimacy of *ijtihad* and the specificities of Muslim minorities, he criticizes the excessive use of *taysir* (facility, making easy) when it disregards the Qur’an, Sunna and the opinions of the scholars, in what was clearly an implicit reference to the ECFR.¹⁷⁴

Issues of Muslim in the West also started to feature prominently in the discussions of the OIC’s International Islamic Fiqh Academy (IIFA) in the 2000s. In April 2005, during its 16th session held in the United Arab Emirates, a debate within the IIFA on Muslim minorities engaged more than twenty five scholars from across the Muslim majority world.¹⁷⁵ Research papers on

¹⁷³ For a recent account of how Saudi Arabia shifted its religious discourse after 9/11 that largely supports my own account see Al-Atawneh 2011.

¹⁷⁴ See *Majalla al-Majma‘ al-Fiqh al-Islami* 20 (2005): 17.

¹⁷⁵ My discussion below draws on the proceedings of the *Majma‘ al-Fiqh al-Islami* published in their periodical *Majalla al-Majma‘ al-Fiqh al-Islami* 16 (4). Five of the research papers were published in the *Majalla* (the exceptions were the papers by Ahmad ibn Dhi al-Nurayn, Qutb Sano, and Mahmud Ahmad Abu Layl, although I have not been able to ascertain the reasons for their exclusion). The *Majalla* of the IIFA includes a summary of the discussions leading to the resolution. In addition to the paper presenters, the *ulama* who participated in the general discussion included Shaykh Muhammad al Habib ibn al Khuja (then IIFA’s secretary general), two members of the ECFR (‘Abd Allah Bin Bayyah and ‘Abd al Sattar Abu Ghudda), Muhammad ‘Abd al-Ghaffar al-Sharif (Professor of *Fiqh* at the Faculty of *Shari‘a wa-l-Dirasat al-Islamiyya* at Kuwait University) ‘Abd al-Wahhab Ziyad (based in North America), Ibrahim Ahmad ‘Uthman (Judge and chairperson of Muslim Personal Status Law at the Supreme Court in Sudan and member of the Sudanese Commission of *Ulama*), Ibrahim Fadil Al-Dabu, Shaykh Muhammad Ali Al-Sabuni, Dr

Muslim minorities were presented by Muhammad al-Mukhtar al-Sulami (ex-Mufti of Tunisia), Muhammad ‘Ali al-Taskhiri (the IIFA’s Iranian representative), Muhammad Fath Allah al-Ziyadi (Professor in the Faculty of Da‘wa in Tripoli, Libya), Sano Koutoub Moustapha (a Guinean scholar who works at the International Islamic University of Malaysia),¹⁷⁶ Ahmad ibn Dhi al-Nurayn, Mahmud Ahmad Abu Layl (Professor at the Faculty of Shari‘a and Law in the United Arab Emirates) and Hasan Safar (Professor of “Systems of Islamic Rule” at the King ‘Abd al-‘Aziz in Jeddah). Interestingly, no member of the ECFR was asked to contribute a paper, despite the fact that some of them are also members of the IIFA. As the research papers made clear, the discussion on Muslim minorities appeared inherently connected not only to the traditional fiqh division between *dar al-islam* and *dar al-harb* but also to the question of non-Muslim minorities in Islamic countries (Taskhiri & Najaf 2005; Safar 2005; Sulami 2005; Ziyadi 2005), the problematics of relations between Muslim and non-Muslim states in a postcolonial world (Safar 2005; Sulami 2005; Ziyadi 2005), and the question of the contemporary relevance of Islamic Law (which all papers sought to assert). The session of IIFA started with a summary of the research papers by Muhammad Bishari (a French-Moroccan intellectual who heads the European Islamic Conference). The ensuing discussion – led by rapporteur ‘Abd al-Sattar Abu Ghudda, a member of the ECFR based in Saudi Arabia, and summarized in the majalla of the IIFA - revolved around the definition of minority and the duties of Muslim states (through fiqh councils, visiting preachers, and Muslim embassies stationed in the West) towards Muslims living outside the Islamic world. Muslim minorities were depicted as

Abd Al Rahman Shayban, Umar Jah (Gambia’s IIFA representative), Mahmud Muhammad al-‘Iraqi, Muhammad al-Nujaymi (Dean of the Faculty of Dirasat al Madaniyya at the King Fahd Security Faculty in Ryad and a mufti that has called for the execution of those who say that mixing between the sexes - ikhtilat – is allowed), Shaykh Khalil Muhy al Din al Mays (the Lebanese representative at the IIFA, mufti of Zuhla and al-Biqā’ al-Gharbi), Ahmad Khalid (Sudan), ‘Abd al-Nasir Abu al-Basal (Dean of the Shari‘a Faculty of University of Shariqa in the UAE), Dr Ali al-Salus (Professor of fFiqh and Usul at the Faculty of Shari‘a – Qatar University), Ustadh ‘Abd al-Latif al-Janahi (Director of the Bahrein Islamic Bank) and Ahmad ‘Abd al-‘Aziz al-Haddad (Mufti in Chief in the Admnistration of Ifta’ and Research - Department of Awqaf and Religious Affairs of Dubai).

¹⁷⁶ The scholar has a personal and well-developed website (<http://www.drsono.net/>). He is the author of a number of books on collective ijtiḥad, maslaha, and the fatwa.

weak and poor (Safar), divided (Hasan ibn Muhammad Safar), unrecognized (Muhammad Fath Allah al-Ziyadi), struggling to strike a balance between assimilation and self-segregation (Bin Bayyah, Ahmad ‘Abd al-‘Aziz al-Haddad, Muhammad ‘Abd al-Ghaffar al-Sharif), facing an identity crisis (Hasan ibn Muhammad Safar), lacking legal autonomy (Safar), confronted with European double standards in the treatment of minorities (Ziyadi), facing family disintegration (Bin Bayyah) and difficulties in conforming to fiqh rules in terms of economic transactions, investment, foods, gender relations, marriage, divorce, custody and inheritance. Led by scholars from the Muslim world, the discussion thus focused overwhelmingly on the negative challenges facing Muslim minorities in the West, with little acknowledgement of their positive achievements. Muslim minorities appeared to be treated sometimes as mere objects to be managed: Muslim scholars at the IIFA repeatedly called for the establishment of research centres specialized in the study of Muslim minorities in order to “organize” their future (“li-tandhim awda‘ al-aqalliyyat al-mustaqbaliyya”) (Safar 2005: 661; see also Taskhiri 2005). Despite occasional references to the responsibilities of Muslim minorities to move from an immigrant mindset into a European Muslim identity, to borrow the words of one participant,¹⁷⁷ the burden of integration seemed to be placed mainly within non-Muslim states and host societies. Muhammad Fath Allah al-Ziyadi pointed to the influence of “ten centuries of Orientalism”, Christian and Zionist influences, Islamophobic media and school textbooks that shape a common perception of a radical Muslim difference (Ziyadi 2005: 598). The poor situation of Muslim minorities was sometimes contrasted with the distinguished place of non-Muslim minorities in the Muslim World (Muhammad Fath Allah al-Ziyadi, Ahmad Khalid, and Ibrahim Ahmad ‘Uthman). Scholars kept sliding from a general discussion of Muslim minorities throughout the world towards an engagement with the particular conditions of Muslims in the West – especially in Europe. The discussions about European Muslims were framed by the possibility of eliminating altogether the Muslim presence from the continent as witnessed in Bosnia-Herzegovina (al-Ziyadi). ‘Abd Al-Wahhab

¹⁷⁷ In the Arabic original: “an ya‘isha hayatahu ka-urubbi muslim wa laysa ka muslim mughtarib” (al-Ziyadi 2005: 603).

Ziyad lamented the absence of a “fiqh al-ghurba” or “fiqh al-mahjar”, asking the IIFA to help create a fiqh specifically designed for Muslim minorities. ‘Abd al-Nasir Abu al-Basal echoed Ziyad’s call, urging members to provide further research to establish a “fiqh al-aqalliyyat” that deals with the unprecedented problems facing the new minority condition of Muslims. Muhammad Bishari even contrasted the negative connotations of the term “minority” as used in general with the Qur’anic valorization of the “few” against the “many” (Bishari 2005: 540). The resulting resolution, however, drew heavily on the study presented by the Libyan scholar Muhammad Fath Allah al-Ziyadi on “Minorities in the Logic of Islamic Thought” (Ziyadi 2005). Drawing on the definitions provided by American, British and French encyclopaedias, Ziyadi argued in his paper that “minority” is a term borrowed from the West which presupposes particular power relations between human groups (“weak” minority versus “strong” majority) and contains in itself the possibility of discrimination (“al-tamyiz wa-l-‘unsuriyya”), division (“inqisam”) and antagonism (“al-tadad”). Ziyadi contrasted the negative connotations of “minority” with the authentic Islamic concept of “ahl al-dhimma” which incorporates the notion of “citizenship” (muwatana) – although he stopped short of endorsing the status of dhimma to refer to non-Muslim minorities today because of the negative feelings that it causes in non-Muslims (Ziyadi 2005: 582-86). The final resolution of the IIFA seems to have been inspired by Ziyadi’s study. It unequivocally rejects the use of the term “minority” to refer to Muslims in the West because of the minority-majority antagonism that seems to underlie it – an antagonism that is deemed incompatible with the Islamic vision of pluralism and coexistence – and because of its apparent denial of Muslim agency. For the IIFA, “minority” is a “legal term” (mustalahat qanuniyya) which does not reflect the “comprehensiveness” (shumuliyya), “authenticity” (asala), “stability” (istiqrar) and “coexistence with the Other” (ta’ayush ma’ al-mujtama’at al-ukhra) of the true Islamic vision.¹⁷⁸ During the same session of the IIFA another resolution on “We and the Other” (Nahnu w-

¹⁷⁸ See Resolution No. 151 (9 / 16) entitled “bi-sha’n mu’amalat al-aqalliyyat al-muslima” (on the treatment of Muslim minorities), available at the IIFA’s website (<http://www.fiqhacademy.org.sa/>). Another critic of fiqh al-aqalliyyat, Sa’id Ramadan al-Buti, rejects the term “aqalliyya” to refer to Muslims in the West as well as to non-Muslims in Islamic countries (Buti 2007: 134-136 and 181-185).

I-Akhar) was produced. In the following session of the IIFA, held the following year in Jordan, citizenship and belonging were again placed high on the agenda.

In their declaration against terrorism in the name of Islam, the drafters of *The Amman Message* included two injunctions towards Muslims in the West to display “good citizenship” (The Amman Message 2008: VIII, 90). In interviews to the media, international conferences, and meetings with Western delegations, the state mufti of Egypt Ali Gumu’a joined the call for Muslims in the West to integrate.¹⁷⁹ Sociological and legal studies of Muslims in the West became easily available, either in translation or through original research.¹⁸⁰ A cluster of sociological topoi about Muslim communities in the West - such as the intergenerational transformations of European Islam or the distinctions between “isolation” (‘uzla), “integration” (indimaj) and “assimilation” (dhawaban) - became commonplaces in the intellectual debate in the Arab world.¹⁸¹ Even orthodox Islamic scholars started to respond in real time to articles and debates in the European press.¹⁸² New media and academic

¹⁷⁹ See IslamOnLine, “Egypt’s Mufti Urges Integration Protocol for Muslims in the West”, <http://www.islamonline.net/English/News/2004-01/13/article08.shtml> (accessed 1/1/2010). See also the responses of Ali Gumu’a to questions from American Muslims published in six parts in Al-Ahram in Spring 2006 (an English translation is available at http://www.commongroundnews.org/lib/pihmufti_en.pdf, accessed 8/4/2011).

¹⁸⁰ In 2003, the Faculty of Imam al-Awza’i for Islamic Studies in Beirut published a volume entitled “Al-Jaliyyat al-Islamiyya fi Urubba al-Gharbiyya. Mushkilat al-Ta’aqlum wa-l-indimaj (Islamic Communities in Western Europe: Problems of Acclimatisation and Integration). Written by a group of Western and Arab scholars, the contributions deal with gender questions, the role of mosques and Islamic centres in Diaspora, and include case-studies of Britain, France, Germany and Italy. The proceeding of a 2004 Conference at Cairo University entitled “Al-Huwiyya al-Islamiyya fi Urubba...Ishkaliyyat al-Indimaj” (The Islamic Identity in Europe: The Problematics of Integration) are published the following year (Mustafa 2005). Another high-profile international conference hosted by Cairo University’s Centre for European Studies in 2007 under the title “Muslim Minorities and the Issues of Citizenship” confirms the integration of European and Arab academic fields.

¹⁸¹ See inter alia Mustafa 2005 and 2007, Bishari 2006; Lawindi 2008, and the various contributors to the Faculty of Imam al-Awza’i for Islamic Studies’s Al-Jaliyyat al-Islamiyya fi Urubba al-Gharbiyya.

¹⁸² In the 1980s and 1990s only scholars who lived in the West seemed to quote from Western newspapers (for example Zaquq’s 1981 account of Islam in Germany, which relied mostly upon reports from the Frankfurter Allgemeine Zeitung, the Sueddeutsche, Die Welt and other regional German newspapers). This would

production have thus delineated a new discursive field where the issues of Muslim minorities in the West become easily accessible even to non-English speaking audiences (including many ulama). Muslim scholars and social scientists increasingly borrow the categories of European public debate in their own engagements with Muslim minorities. By the end of the first decade of the 21st century (2009) a conference organized in Malaysia by the International Islamic University and the Muslim World League on *fiqh al-aqalliyat* in light of the *maqasid al-shari'a* draws scholars from Britain, Canada, Fiji, France, Lebanon, Saudi Arabia and Syria. Minority *fiqh* has seemingly become a concept that circulates widely without its original context.

The role of the ECFR in the development of minority *fiqh* discourse

The institutional framework of the European Council for Fatwa and Research and the transnational connections of its members have contributed greatly to disseminating the minority *fiqh* discourse in the Arab world after 1997. These ECFR-affiliated networks include Al-Jazeera's *al-shari'a wa-l-hayat*, www.IslamOnLine.net, the International Union of Muslim Scholars, and the interpersonal connections of many of its members. I discuss briefly some of these in turn.

The leadership of the ECFR deliberately sought from the very beginning to establish connections with existing *fiqh* councils and religious authorities. It extended invitations to attend its sessions to prominent Muslim scholars from

change in the following decade. Around 2002 Shaykh Sa'id Ramadan al-Buti responded in his website to an article in *Le Figaro* about domestic violence in Islam, and made that response available in print (Buti 2004: 36-42). The French centre-right newspaper appears to be widely read by Islamic scholars in the Muslim World (or, to be more precise, by their research assistants). In September 2006 Qaradawi criticized an op-ed on Islam and violence by Robert Redeker in the pages of *Le Figaro* just a few days after it was published. Qaradawi found himself in trouble in the French media when Redeker became the object of death threats in the cyberspace and careless French commentators construed his critique as a death fatwa (see Caeiro and Saify 2009 for details). For details on Qaradawi's views on *The Guardian* or the BBC see Qaradawi 2006b. Qaradawi is also the author of a famous open letter to Jacques Chirac in the wake of the French headscarf affair when the then French President made clear that the headscarf was a religious "symbol" that would not be tolerated in public schools (see Qaradawi 2010 for details). Books on the headscarf debate in France proliferate around this time, as do responses to the 2006 Regensburg speech of Pope Benedict XVI.

Al-Azhar and members of international fiqh academies, who have sometimes participated in the ECFR meetings. Although the ECFR's Arabic publications are not easily available to the general public, the Council's majalla 'ilmiyya (published since 2002) circulates widely within circles of ulama.¹⁸³ The fatwas and research papers published by the ECFR are increasingly cited and discussed in Egypt (Barzanji 2008; Guindi 2008; Kasib 2009; Mahir 2007; Mat'ani 2003), Morocco (Hasani 2002, 2006), Kuwait, Saudi Arabia (Murad 1999; Nahwi 2008) and elsewhere – by ulama as well as by the less traditional and more cosmopolitan Muslim intellectuals engaged in the discourse on ijihad, tajdid al-fiqh, and maqasid al-shari'a.¹⁸⁴ The fatwas appear to be widely read but not unanimously accepted: scholars unaffiliated with the ECFR increasingly voice criticism against the minority fiqh project and the fatwas issued in its name. A controversy regarding the permissibility of buying a house through a mortgage was reported in *Al-Sharq al-Awsat*.¹⁸⁵ Taha Jabir Al-'Alwani's paper on fiqh al-aqalliyat was presented in Oman in 1998, published in *Islamiyya al-Ma'rifa* in 1999 and then online at IslamOnline. Within a few years a professor of political science in Cairo was engaging the debate with Alwani (Mustafa 2000); in 2001, a traditionalist Syrian scholar was condemning the call via his website (Buti 2004); and a Moroccan scholar was commenting in the pages of a diasporic journal (Hasani 2002). On the occasion of the Prophet's Mawlid in 2003, Shaykh Sa'id Ramadan al-Buti (b. 1929) voiced again his critique against the idea of a fiqh for minorities from his minbar in Damascus in a sermon that became known in the West as the Mawlid Khutba, broadcast live on satellite TV and made available in Arabic and in English online.¹⁸⁶ Scholars convening at the Assembly of Muslim Jurists in America (AMJA) delivered a lecture on the

¹⁸³ Ali Gumu'a speaks with appreciation of the ECFR's majalla in a series of articles published in 2006 in *Al-Ahram* (an English translation is available at http://www.commongroundnews.org/lib/pihmufti_en.pdf).

¹⁸⁴ For an example see Jasser Auda 2008: 165.

¹⁸⁵ The letter by Fu'ad Barazi and Suhayb Hasan to *Al-Sharq Al-Awsat* and Qaradawi's response in the same newspaper were republished in Qaradawi's book on fiqh al-aqalliyat (Qaradawi 2001: 179-183).

¹⁸⁶ <http://marifah.net/articles/mawlidkhutba-buti.pdf> (accessed 5 April 2011).

dangers of minority fiqh, perceiving in the call to differentiate between fiqh and shari'a a secularist ploy to desacralize Islamic Law (Sawi n/d).¹⁸⁷

Al-Jazeera's al-Shari'a wa-l-Hayat, a religious program led by Yusuf al-Qaradawi, became a major outlet for the dissemination of fiqh perspectives on Muslims in the West. A decision by the producers to privilege questions from Muslims in the West conferred a special status to the program amongst Arabic-speaking Muslims living in Europe (Roald 2001a; see also, for a contrasting assessment of the program's relevance for Muslims in Europe, Talon 2009). Many members of the ECFR have been invited to the programme – including Faysal Mawlawi, 'Abd Allah Bin Bayyah, Taha Jabir al-'Alwani, 'Abd al-Majid al-Najjar, Ahmad al-Rawi – while others have been called in over the telephone as external speakers (Ahmad Jaballah, Unis Qurqah). The program has also served as a space for the articulation of a number of views concerning minority fiqh and its alternatives. In a September 1997 episode on Muslim communities in the West, Qaradawi himself criticized the expression "fiqh al-aqalliyyat" for its lack of precision, pointing to the fact that many Muslim communities considered to be minorities (he mentions Ethiopia, Eritrea and the ex-Soviet Republics in Central Asia,) actually constitute majorities in their countries.¹⁸⁸ After some hesitation Qaradawi suggested the use of "fiqh al-ightirab", a polysemic term that carries the meaning of emigration as well as alienation. Two years later, in 1999, Qaradawi invoked fiqh al-aqalliyyat positively - in his preface to the "First Collection of Fatwa and Resolutions" of the ECFR - in an attempt to justify the existence of a European fatwa body separate from the existing fiqh councils in the Muslim world.¹⁸⁹ In June 2001 Qaradawi completed a full book on the subject at the request of the Muslim World League, titled "Fi Fiqh al-Aqalliyyat al-Muslima: Hayat al-Muslimin wast al-mujtama'at al-ukhra" (On the Fiqh for

¹⁸⁷ I deal with Buti and Sawi more extensively at the end of this chapter.

¹⁸⁸ Al-Shari'a wa-l-Hayat, "Fiqh al-Aqalliyyat", 14/9/1997.

¹⁸⁹ Qaradawi has not explained the reasons for this shift according to my knowledge.

Minorities: The Life of Muslims amidst Other Societies).¹⁹⁰ This book is still the most widely read text on minority fiqh. Since 1997 *al-shari'a wa-l-hayat* has aired dozens of episodes on the fiqh issues of Muslims in the West under titles such as “fiqh al-aqalliyyat”, “the specificities of European Islam”, or “the challenges of Islam in the West”.¹⁹¹ Muslim minorities in the West, however, are present far beyond the episodes exclusively dedicated to their issues. Their situation has also been discussed in programs dealing with the role of the faqih in the modern world, the concept of citizenship in Islam, non-Muslims in Islamic countries, or the practice of religious tolerance.

The website IslamOnline (actively supported by Qaradawi until a disagreement in March 2010 – see Abdel-Fadil 2011 for details) organized in 2003 a conference on fiqh al-aqalliyyat with members of the ECFR (Hussain Halawa and Salah Sultan) and a scholar at Al-Azhar (‘Atiya Fayad) for the benefit of IslamOnline’s own cybermuftis. The audio files and a summary were posted on the website. Over the years IslamOnline’s cyber-muftis (mostly Azhar graduates based in Cairo, and admirers of Qaradawi’s *wasatiyya*) repeatedly sought to justify fiqh al-aqalliyyat in their engagements with online users’ questions. Its live fatwa sessions and fatwa banks in Arabic and English have served as perhaps the major outlet for the dissemination of minority fiqh discourse to a global audience. This work is now undertaken by a new website, www.onislam.net, set up by the IslamOnline’s Cairo team following their break with the Qatar management.

The International Union of Muslim Scholars (*al-Ittihad al-‘Alami li-l-‘Ulama al Muslimin*), founded in London in 2004 under the leadership of Qaradawi,

¹⁹⁰ Tariq Ramadan, remarking on the subtitle of the book, will see in it a proof of Qaradawi’s limited understanding of the issues of local Muslims who are not living in “other societies” but who are at home in Europe.

¹⁹¹ According to Claire-Gabrielle Talon, as of September 2005, 50 out of 512 episodes of *al-shari'a wa-l-hayat* were dedicated to the situation of Muslims in the West (Talon 2009: 342). Even in the late 2000s, after dozens of programs, Qaradawi can be heard on *al-shari'a wa-l-hayat* explaining to his transnational audiences that some Muslims live as minorities, face specific problems, and require particular solutions – why, in other words, one may speak of a fiqh al-aqalliyyat. The great care that Qaradawi puts into the explanation seems to be related to the controversy (described above) created by the use of the term “minority”.

established a special committee to deal with minority questions (lajnat al-qadaya wa-l-aqalliyat al-islamiyya). An online journal – *al-Basa'ir* - is published under the editorship of 'Ali Qaradaghi (also a member of the ECFR, based in Qatar, and close to Qaradawi). Recent meetings of the IUMS have been held in conjunction with those of the ECFR, helping to disseminate to a wider public of specialists the relevant debates on Muslims in the West. The books published by the IUMS bear titles such as “We and the Other” (Qaradaghi) and “Muslims as Citizens of Europe” (Mawlawi).

Shaykh 'Abd Allah Bin Bayyah – already mentioned in relation to his Western travels – also contributed to disseminating fiqh al-aqalliyat in various forums in the Muslim World. A lecture on the relation between the maqasid al-shari'a and the usul al-fiqh delivered in Mecca in April 2006 ended with a discussion on fiqh al-aqalliyat – particularly the question of the wife who converts to Islam without her husband (Bin Bayyah 2006: 155-8). In 2007 Bin Bayyah authored a book entitled “The Craft of Fatwa and Minority Fiqh”, which was published both in Saudi Arabia (Dar al-Manhaj) and in Kuwait (by the Global Centre for Wasatiyya).¹⁹² Bin Bayyah can also often be heard on satellite TV (for example in the program *Al-Jusur* – the Bridges - at TV station *Iqra!*) answering questions related to Muslims in the West – for whom he has repeatedly declared a particular interest.¹⁹³ Interestingly, Bin Bayyah often has recourse to French terms (cohabitation, coexistence, citoyenneté) to explain the Islamic understanding of integration (indimaj) and associated concepts (ta'ayush). Although his scholarship relies mostly on classical texts (unlike Qaradawi, for example, Bin Bayyah rarely seems to refer to modern Muslim authors), Bin Bayyah occasionally invokes European thinkers such as

¹⁹² A review of the book appeared in the Saudi Islamic journal *Al-Umma*, online at <http://alummahmag.com/alummah/2010-05-03-09-34-01/2010-05-03-09-32-19/item/122-%D8%B5%D9%86%D8%A7%D8%B9%D8%A9-%D8%A7%D9%84%D9%81%D8%AA%D9%88%D9%89-%D9%88%D9%81%D9%82%D9%87-%D8%A7%D9%84%D8%A3%D9%82%D9%84%D9%8A%D8%A7%D8%AA.html> (accessed 1 January 2011).

¹⁹³ Bin Bayyah has declared this in a programme on the daily life of Bin Bayyah broadcast during Ramadan 2008 by *al-'Arabiyya* - available at <http://www.youtube.com/watch?v=D1igCPU071A> (accessed 1 January 2011). Like Qaradawi's offspring, Bin Bayyah's children lived for long periods in the West.

Foucault and Habermas. These two dimensions – the reliance on classical sources and the knowledge of French language and scholarship are often highlighted by his supporters as the foundations of Bin Bayyah’s authority.

Minority fiqh advocates share an interest in debates about *ijtihad* and *maqasid al-shari’a* (the objectives of the law) as most if not all of them appear to have written on these topics.¹⁹⁴ In the wake of 9/11 the minority fiqh discourse acquired new connections with proliferating concepts such as *tajdid* (which seems to have largely superseded the 1990s discourse on *ijtihad*¹⁹⁵) and *wasatiyya*. The Global Centre for *Wasatiyya* was established in Kuwait under the leadership of a member of the ECFR, the Sudanese ‘Issam al-Bashir (educated in Britain). It has posted in its website several articles on *fiqh al-aqalliyat* – often simplified versions of the articles published in the *majalla* of the ECFR for a wider audience. It has also organized a series of conferences in the West and in the Arab world that seek to promote its understanding of “moderation” (*wasatiyya*) in a post-9/11 world. The first international conference took place in London in May 2006 and was attended by many of the members of the ECFR based in Europe.¹⁹⁶ The second was held in

¹⁹⁴ Jamal al-Din ‘Atiyya’s 2003 book entitled “Towards a New Fiqh for Minorities” was preceded by a text on the *Maqasid* (translated into English in 2007 as “Towards the Realization of the Higher Intents of Islamic Law – *Maqasid al-Shari’ah* – A Functional Approach”). Alwani’s text on *fiqh al-aqalliyat* is also available as a chapter in Alwani’s book *Maqasid al-Shari’a* first published in 2001. On the paradigm of the *maqasid* in general see Johnston 2007. For its uses by minority fiqh advocates see March 2011, especially 34-38. More specifically, on the way the concept of *maqasid* is invoked in France, see Bowen 2010.

¹⁹⁵ The current emphasis on “*tajdid*” seems to be related to the ways in which the banalization of *ijtihad* in the previous decade – and the radically different understandings of *ijtihad* proposed by its advocates – detached the concept from its historical place in the Islamic legal tradition and made it function increasingly as an empty signifier. It is not clear however whether *tajdid* will not face a similar predicament. Other than stating the necessity of change in abstract terms, the force of the concept currently appears to reside in its lack of specification. In a book on the topic completed in 2003, Egyptian scholar and Minister of Awqaf Mahmud Hamdi Zaquq provides only the vaguest explanations for the need to renew Islamic jurisprudence, invoking the nature of the cosmos (“renewal is the natural mode of life and change is the law of existence”), and the situation of Muslim minorities after 9/11 (Zaquq 2007: 26-8).

¹⁹⁶ The motto of the conference was “*al-islam al-mabni ‘ala al-wasatiyya wa-l- i’ttidal huwa muftah takamul juhud al-muslimin fi urubba*”, translated by the organizers as “Islam based on Moderation and temperateness is the key to the integration of

Washington. The conference proceedings that have been published often include articles setting the basis for a minority fiqh – contributing to the further circulation of the concept.

Calls voiced from the Arab world for Muslims to integrate into European societies appeared to presuppose a specific diagnosis of the state of Muslims in Europe (their failure to integrate) and a particular distribution of moral responsibility for that failure (Muslims have failed to integrate because their practice of Islam was misguided). These Muslim scholars have thus implicitly offered both a theory of integration and a theory of how Islamic norms translate into social practices. By the late 2000s, however, a perception of stagnation of the minority fiqh project was spreading in the Arab world.¹⁹⁷ Increasingly, calls for integration were joined by condemnations of anti-Muslim discrimination in Europe. The International Islamic Fiqh Academy multiplied, in the second half of the 2000s, ad-hoc statements by its leadership to decry minaret bans in Switzerland, the Danish cartoons, insults upon the Prophet and desecration of the Qur'an. The Organization of the Islamic Conference mobilized at the United Nations to pass a law criminalizing Islamophobia. The Muslim World League published studies on anti-Muslim discrimination in the West and books on *islamufubiya* proliferated in the Arab world. Even Qaradawi, a self-promoted advocate of (regulated) dialogue with the West, seems to have become increasingly pessimistic about the future of relations between the West and the Muslim world. Banned from several Western countries (including Britain and the United States), and often deemed an

Muslims' efforts in Europe" (see <http://www.islam.gov.kw/imcus/imgs/studio/DSC4646.jpg>, accessed 5 April 2011).

¹⁹⁷ In an interview in Ryad in Spring 2008 a journalist from Al-Sharq Al-Awsat asks Qaradawi the following question:

"- What about the European Council for Fatwa and Research; it has been said that its activities have diminished lately. What are the reasons for that?"

The answer he gets is the following:

"- On the contrary; its activities are extremely vigorous. At present, it publishes a quarterly journal containing its research, and a monthly publication covering a variety of issues. It meets once or twice a year and deals with very important issues. The Council is actually ascending rather than descending, and we thank God for that."

See <http://www.asharqalawsat.com/english/news.asp?section=3&id=12353>.

extremist in most of the others, Qaradawi is regularly seen commenting on *Al-Jazeera* on the most recent anti-Muslim action in Europe – often finding himself at pains to explain the rise of anti-Muslim sentiment in the continent (from the West’s historical hatred of Islam to the impact of far-right wing parties). In his most recent contribution in print to the debate on Islam in Europe, a book on citizenship in Islam in which Qaradawi basically seeks to *indigenize* the concept,¹⁹⁸ the Muslim scholar maintains that Muslims in Europe lack a proper understanding of integration (*indimaj*) in Islamic thought (interestingly, Qaradawi speaks of thought, *fikr*, rather than *fiqh* – Qaradawi 2010: 80). Qaradawi criticizes the first generation of Muslims in the West for their refusal to integrate, and for transmitting this refusal to their offspring who seemingly accept the parents’ views “without discussion” (2010: 80). After distinguishing the proper Islamic understanding of integration from assimilation and isolation, Qaradawi asks – for the first time, as far as I am aware - whether Western societies actually accept Muslims as full citizens. His answer distinguishes between the pre- and the post- 9/11 period. While liberalism and secularism “in its essence” were dominant before the terrorist attacks in the United States, and fully recognized Muslims as equal citizens, Western positions on Islam have changed dramatically since then according

¹⁹⁸ Qaradawi’s history of the concepts of *watan* and *muwatana* appears to be anachronistic (he traces a genealogy of *al-watan* that goes back to Adam and his offspring, arguing that the emotional attachment to one’s homeland is a human – and indeed an animal – need – see Qaradawi 2010: 14-15) until one realizes that his purpose is to ground the idea of citizenship in the Islamic tradition, not to provide a critical study of the concept. Qaradawi does indeed recognize that the term “*muwatana*”, derived from the verb *waa-ta-na*, is recent (2010: 13), but he finds in the Constitution of Madina drafted by the Prophet an authentically Islamic affirmation of citizenship beyond religious difference (2010: 25). In Islamic legal concepts such as “*ahl al-dar*” (the people of the land), Qaradawi discovers “the key” to the current “problem” of citizenship in the Muslim world: instead of importing a foreign concept “from the market of Western thought” (i.e., citizenship), Muslims can now rely on their tradition to establish equality between Muslims and non-Muslims in Muslim societies. This move simultaneously protects the desire of the Muslim majority to reconcile with their faith, and reassures the minority’s legitimate fears of being treated as second-class citizens (2010: 40-41). Unlike his 1985 book on the subject, Qaradawi now argues that the ideas of “*dhimmi*” (non-Muslims living in Muslim states under an agreement) and “*jizya*” (a tax that non-Muslims subjects to Islamic rule historically had to pay in exchange for “protection”) should be dropped. He argues that the children of *dar al-islam* must have the same rights, although he opens an exception in matters of “religious divergence” (*al-khilaf al-dini*) which he, perhaps deliberately, refrains from defining (2010: 41).

to the Muslim scholar. Qaradawi specifically identifies the impact of “reactionary philosophies” in France – he names Alain Finkelkraut, Bernard Henri-Lévy and André Glucksmann – for deteriorating public opinion regarding Muslims.¹⁹⁹ Although Qaradawi ends in a positive note, by deeming the aftermath of 9/11 as an “exception”, and by predicting the ultimate triumph of humanism and cosmopolitanism in Europe (2010: 82-83), it is remarkable that even he no longer speaks of “fiqh al-aqalliyat” as such. If minority fiqh presupposed particular ideas about the failure of integration, and the moral responsibility of Muslims for this failure, the growing obviousness of European Islamophobia appears to be rendering the minority fiqh construct less plausible in the heartlands of the Muslim world. Seen in this light, fiqh al-aqalliyat appears to be just a moment – and a rather short one – in Muslim orthodox understandings of Islam in the West.

III- READING FIQH AL-AQALLIYYAT TEXTS

The Concept of Minority, Citizenship, and the Law

Advocates of minority fiqh seek to “restore the role of shari‘a in modern life” (Alwani 2003: 13).²⁰⁰ This commitment to the Islamic legal tradition, as Qasim Zaman (2002) has shown, is in many ways constitutive of the otherwise heterogeneous body of the ulama. In the writings of minority fiqh advocates, as I hinted above, this commitment is accompanied by a view of the minority status as constituting a distinctive political problem for the Islamic tradition. Accordingly, the concept of “minority” has given rise to quite wide-ranging debates: On what Islamic grounds can the status of minority be legitimized? How should the minority condition itself be understood – in terms of numbers, power differentials, legal rights, or states of mind? Does this status accurately

¹⁹⁹ Qaradawi’s understanding of these reactionary philosophies (*falsafat raj’iyya*) and their role in France is drawn from two articles published in a Tunisian newspaper (*Al-Sabah*) in 2007 by Las‘ad al-Wa‘ir (Qaradawi 2010: 82, ft 1). These French philosophers are the same that Tariq Ramadan controversially identified in 2003 as Jewish intellectuals who have abandoned their previous universalistic commitments in order to serve the interests of Israel. For a contextualization of these reactionary philosophies see Lindenberg 2002, and for a study that touches on the role they played in recent French debates on Islam, see Bowen 2007.

²⁰⁰ Quotations of Alwani are taken from the English text published by the IIIT in 2003, except when the Arabic text published in the ECFR’s *Majalla* (to which ‘Ujayl al-Nashmi responds) differs significantly from the English version.

reflect the reality of Muslims in Europe? Is the distinction majority-minority *natural* to Muslim legal thought *and* to the workings of European secular democracies - or is it the product of a political imagination which tends to view European Muslims as *less than* normal citizens?

In so far as fiqh al-aqalliyyat presupposes specific understandings of Europe, the discourse is part of a larger engagement with an idea of the “West” that continues to interpellate Muslim scholars across the board in particular ways. The issues of Muslim minorities in the West are thus often treated as part of larger discussions on interfaith dialogue and the clash of civilizations.²⁰¹ Practitioners of minority fiqh vary in their understandings of the historical specificities of the presence of Muslim minorities in the West. Some argue that the current minority situation is unprecedented (Ibram 2002), mirroring the claims made by a number of Western social scientists.²⁰² Others point to the fact that although Muslim minorities have historically existed and have in many ways been a condition for the expansion of the religion, their incorporation into the juristic tradition of fiqh has been limited due to historical contingencies.²⁰³ According to the latter line of reasoning, the contemporary necessity for elaborating a minority fiqh is variously related to the current centrality of minorities in Islam (Alwani 2003: xiii; see also Nielsen 2002 and Ramadan 2003); the connectedness of the modern world (Alwani 2003: xiii; Bin Bayyah n/d); the civilizational threat posed by the West; the need to dispel talk of civilizational clashes; the unprecedented level of penetration of modern state power into individual lives; and the possibilities offered by the institutionalization of minority rights under international human rights regimes

²⁰¹ Many of the books on “Islam and the West” that are so common in bookstores in the Arab world include a section on Muslims in the West. See, for two relevant examples, Buti 2007 and Zaquq 2005.

²⁰² Yusuf Ibram is a Moroccan scholar based in Zurich and a member of the ECFR.

²⁰³ Al-Najjar explains the relative lack of theorisation of minorities in fiqh by reference to the small number of Muslims living as minorities historically, and to the fact that by the time Muslim minorities acquired a certain importance the gate of ijtihad had already been closed (2003: 45-8). One Muslim explanation of the closing of the gate of ijtihad represents it as the result of attempts by the ulama to preserve the authenticity of the sharia from political interventions (Bin Bayyah, n/d).

(Alwani 2003: xii; Bin Bayyah 2007: 164; 'Atiya Muhammad 2007; see also Sulami 2005).

One of the most common starting points for the reflection on a Muslim jurisprudence for minorities has been the question of the religious status of Muslims living in non-Muslim lands. Critically engaging the fiqh tradition on this question, Muslim scholars have asked whether emigration from and residence outside traditional Muslim lands is forbidden (haram), discouraged (makruh), permissible (mubah), encouraged (mandub) or obligatory (wajib) – the five gradings that have historically defined the system of Islamic normativity. Classical scholars often assumed that the practice of Islam required an Islamic territory. Drawing on the Qur'anic injunction for Muslims to emigrate from Mecca to Medina, the Prophetic Sunna distinguishing between the lands of Islam and the lands of war or disbelief, and their reading of geopolitical realities, Muslim jurists have historically argued over the conditions on which life in a non-Muslim land might be possible (see, for an excellent account of the medieval debates with all their nuances, Abou El Fadl 1994; and for two contemporary engagements with these questions by Muslim scholars living in the West, Juday' 2007 and Ramadan 1999). Yusuf al-Qaradawi draws on two different structures of justification to legitimize the Muslim presence in the West. In a number of *fatwas* and other texts, he has argued from within the fiqh tradition that Muslims living in non-Muslim nations are not required to emigrate to Muslim lands: Qaradawi stresses here the universality of Islam and refers to the Qur'an (Qur. XXI: 107; Qur. XXV: 1). This universality usually requires, in a second moment, a redefinition of the *dar al-islam/dar al-harb* binary; Qaradawi preferring to use *dar al-'ahd* (the domain of truce) or the non-committal "non-Muslim lands".²⁰⁴ Historical

²⁰⁴ Dar al-Islam (The Domain of Islam) refers to the territories where the population is Muslim and/or shari'a is applied. It is classically opposed to Dar al-Kufr (The Domain of Disbelief) or Dar al Harb (The Domain of War), a non-Muslim space where the safety of Muslims could not be guaranteed and which was often considered to be de facto or potentially at war with Muslim nations. Intermediate spaces where Muslim safety was expected were deemed Domains of the Truce or of Safety. While the terms used to describe the West may vary (Alwani speaks of "dar al-da'wa", Ramadan of "dar al-shahada"), all practitioners of minority fiqh share a refusal to categorize the West simply in terms of dar al-harb. As Nielsen has argued elsewhere (1992: 86), the point to be made here is not that the distinction between Muslim and

memories of Mecca before the Hijra and of the first Companions' stay in Abyssinia are typically mobilized. In relative continuity with the classical fiqh discussions (Abou El Fadl 1994), the permissibility of residing outside Muslim lands is then made *conditional* solely on the safeguarding of religion.

Elsewhere (including in his treatise on fiqh al-aqalliyat), Qaradawi's defence of the possibility of living outside Muslim countries has been more overtly pragmatic: the Muslim presence in the West is a fact that is not only "permissible" but "necessary" for spreading the Islamic message, welcoming converts, receiving Muslim migrants, and politically defending the causes of the ummah (Qaradawi 2000, 2001; see also Nashmi 2005). This reasoning, which Qaradawi is careful to relate to the discursive tradition of the shari'a by naming it the "*fiqh of priorities*" (*fiqh al-awlawiyyat*), stands in contrast with the previous mode of argumentation in so far as it does not seek to relate itself directly to the founding texts or the established juridical schools, but seems to depend instead upon contextual assessments of changing social conditions (*fiqh al-waqi'*). In this sense, Qaradawi's justification of the choice to live under minority status appears symptomatic of his impetus to politicize fiqh – i.e., to render the Islamic legal tradition accountable to changes in underlying power relations. This politicizing impetus, which Qaradawi seems to share with all reformist actors, be they conservative or liberal, may also explain some of the larger Muslim debates and contestations around minority fiqh.²⁰⁵

Despite an acknowledgement of the different types of Muslim minorities in the "West" and in the "East" (Qaradawi 2001: 16-20),²⁰⁶ the writings of Qaradawi

non-Muslim lands has become irrelevant; clearly, the very idea of fiqh al-aqalliyat is an attempt to re-imagine this distinction in a "globalized context" governed by "international treaties". Having said this, it is also evident that the distinction between Muslim and non-Muslim contexts turns out to be significantly less clear than in the past; in fact, its relative importance has become a matter of debate and contestation among competing Muslim actors.

²⁰⁵ For a more specific critique of how advocates of minority fiqh politicize the Islamic tradition see Said Ramadan al-Buti (2007: 143-156).

²⁰⁶ Qaradawi's distinction between Muslim minorities in the West and in the East is remarkable because most authors engaged in this reflection assume "Europe" (Najjar) or the "West" (Alwani) to be the geographical framework of minority fiqh.

and his peers often betray an Arab-centric view of Islam which suggests that the real addressees of minority fiqh are (Arab) Muslim immigrants in Western Europe and North America.²⁰⁷ As Andrew March has recently pointed out, the focus on the “West” in the writings on minority fiqh indicates a perception of a distinctive *liberal* challenge created by the secular nature of Western political regimes (March 2009c: 36). The emphasis on geopolitical considerations - particularly the need to develop an active Muslim presence in the global decision-making centres of the West - further reinforces the symbolic exclusion of Muslims located at the European periphery. This may help to elucidate the relative lack of interest in minority fiqh among Muslim minorities outside Western Europe, and why the historical experience of Muslims in the Balkans - with the creative adaptations that Muslims in the region have devised to live Islamically under non-Muslim rule (Karčić 1999) - have remained largely outside the minority fiqh debate (in spite of the presence of the Bosnian *reisu-l-ulema* Mustafa Cerić among the members of the European Council for Fatwa and Research).²⁰⁸

Fiqh al-aqalliyat for Qaradawi and his peers is perhaps best understood then as the starting point for a general theory of Islamic law for Muslim minorities which builds on their *conditional legitimation*.²⁰⁹ It is an attempt to “preserve the identity of Muslims” in the absence of the Muslim state. In moving away from the problematics of the state by virtue of the minority status (and thus reiterating its relevance in Muslim majority lands), practitioners of minority fiqh

²⁰⁷ The implicit assumption, common among champions of minority fiqh, that Muslims in Europe are immigrants serves as a reminder that advocates of minority fiqh are mostly of Arab ethnicity (and some are first-generation immigrants themselves).

²⁰⁸ Although Mustafa Cerić’s project for establishing a “European Islam” based on the Bosnian experience and on a centralized structure of religious authority resonates in part with the aims of the fiqh al-aqalliyat school, Cerić himself has publicly declared he does not “believe in the fiqh of minority because [he does] not accept to be treated as a half-way Muslim” (Cerić 2004). Even if Qaradawi’s treatise on minority fiqh has been translated into Bosnian, possible reasons for the relative lack of interest in the concept in the region include the reliance upon the language of traditional fiqh and to the connotation that the term “minority” carries in the context of the ex-Yugoslavia. Obviously, many Muslims in countries like Albania, Bosnia or Turkey do not consider themselves as “minorities”.

²⁰⁹ For a perceptive analysis along these lines of the ECFR’s fatwa on residing outside Muslim lands see Peter 2006a: 450-452.

deliberately seek to shift religious authority and moral responsibility away from the state and towards the community - and its authorized scholars (Bin Bayyah n/d; Bishri 2004; Najjar 2003; Qaradawi 2001). This move depends also upon a fictional account of the legal primacy of the shari'a in Muslim majority countries, an account which purports to ignore the ubiquitous role of "man-made laws" in the legal reasoning of contemporary Muslim states.²¹⁰ Acknowledging the relative loss of the self-evident character of Islam in a minority setting (Najjar 2003: 48; Alwani 2003: 13; see also Roy 1999), advocates of minority fiqh seek to counter the double threat posed by "assimilation" and "isolation" through the interpellation of Muslims – including "forgetful" Muslims - as believers subject to the Divine Will (shar'). Writings on fiqh al-aqalliyat are to a large degree concerned with defining this Will and the demands it makes upon Muslims living in the West. Some authors remarkably recognize that the existence of a Muslim minority in the West is not simply given, but requires prior disciplining: for these writers (Alwani 2003: 25; Bishri 2004: 204), it is the role of Islamic leaders and institutions in the Diaspora to persuade Muslims living in non-Muslim countries that they actually form a minority community.²¹¹

If, as I have been trying to suggest, minority fiqh seeks to institute a relation of power - delineated by Islamic legal orthodoxy – that can restore the role of the shari'a in the life of Muslims denaturalized as minorities, it does so within a specific understanding of the political nature of Western societies (and of the place of Muslims therein). Secularism, for many of the Muslim authors considered here, is a distinctively Western development arising out of

²¹⁰ 'Abd al-Majid Najjar, a cosmopolitan Tunisian intellectual living in France, bases his call for establishing minority fiqh on the claim that Muslims in Europe are subject to "man-made laws" (Najjar 2003: 60-1). While this claim functions as a rhetorical strategy, the erasure of the legal transformations of the Muslim world in the 20th century is rather striking for someone educated at Tunis' Zaytuna.

²¹¹ The ideas that Muslims can become "alienated from their roots" (Alwani 2003: xv) or be "unaware of their identity" (Qaradawi 2001) are of course predicated upon a racialized understanding of Muslim-ness. Although scholars such as Alwani are acutely aware of – and even sensitive to - the perceived contradiction between understandings of freedom of religion in the West and the traditional condemnation of apostasy in Islam (Alwani 2003: xix-xx), exit conditions from the Islamic religion remain un-theorized in minority fiqh.

tensions within Christianity. Part of the difficulties of establishing Islam in Europe relates to the hegemony of a secularist understanding of religion as a private matter of inner faith (Najjar 2003: 53). In this political-theological framework, positive law functions both as the terrain and the boundary of Muslim claims. Muslims living as minorities are thus urged by minority fiqh advocates to respect the Constitution and the laws of the countries they settle in by virtue of an implicit contract.²¹² Despite an occasional reference to the legal authority that Muslims as citizens of European democratic nation-states also hold (Bishri 2004: 203), the understanding of Muslims in Europe as simple addressees of the Law seems to be widespread amongst minority fiqh advocates.²¹³ This vision reposes in turn on a perception of weakness which is further underscored by the regular emphases on *taysir* (lenience) and *darurat* (necessities). At the same time, calls for the state recognition of Muslim “religious, cultural, social, economic and political rights” (Qaradawi 2001), including Muslim Family Laws, try to extend the legal pluralism of Western societies, based on a collective understanding of religious freedom that seems to be widespread in the Muslim world.²¹⁴ The fact that these claims are often framed in a language of *equal* rather than *special* rights

²¹² Muslims are also urged, in at least one instance, to “love” Western countries: Salah Sultan’s emphasis on affect – on the need for Muslims in the West to “love,” show “gratitude” and “affection” to their new countries (Sultan 2008) – ironically mirrors the liberal state’s insistence on *romanticizing* citizenship.

²¹³ The clearest acknowledgement of this predicament is provided by Najjar: although he recognizes that laws in Europe are “established on the basis of collective cooperation” (Najjar 2003: 54-55), he goes on to claim that Muslim minorities have neither the power to change these laws nor even in some cases the right to claim to change them (Najjar 2003: 63). It is precisely this kind of reasoning that led the Union des *organisations islamiques de France* to refrain from participating actively in the demonstrations against the French headscarf ban in public schools in 2003 and 2004. According to the UOIF’s Muslim critics – particularly the Muslim youth organizations – this sensitivity to the politicization of legal discourse in France precluded the realization that French Muslims were citizens, not (neo-)colonial subjects.

²¹⁴ Maurits Berger’s work has shown how both Copts and Muslims in Egypt subscribe to such a conception of collective rights and often deem the religious situation in Egypt preferable to that of Western countries where rights seem to be individualised (Berger 2001, 2007). This explains why so many Muslim scholars are keen to invoke the organization of minority rights in the Muslim world as an example to be emulated in the West – thus perfectly reversing the reciprocity argument that is sometimes heard in European political discourse (“we will build you a mosque when Saudi Arabia builds a Church”).

signals a relative familiarity with tensions within liberal political thought: Western Muslims are urged to strive for recognition “as a minority amongst other minorities” and to establish legal forums for settling personal status like other religious groups.

Calls for legal recognition seem to presuppose both a secular-liberal regime (where such rights, as Qaradawi is keen on noting, are “guaranteed by the Constitution”) *and* a critique of liberal strategies of exclusion (which prevent the Muslim holders of such rights to effectively access them).²¹⁵ Two decades of controversy regarding the visibility of Islam in Europe have made Muslim actors acutely aware of the difference between the religious freedom granted by European laws, and the social and political obstacles which prevent its actual realization – a difference between the “formal” and “actual” equality familiar to critics of liberal legalism (Brown 1995; see also ‘Atiya Muhammad 2007 and Taskhiri 2005). It is in part the realization that Muslims need to fulfil certain previous conditions in the social field (including the acquisition of a specific cultural capital) in order to be able to have access to the formal equality promised by the Law (Bishri 2004: 204) that drives the enterprise of minority fiqh.²¹⁶

So far the main response of minority fiqh advocates to this conundrum has been to reaffirm the necessity of applying the existing (European) laws. Muslims are thus enjoined to “stand up for their rights” (Alwani 2003: 29) while Islamic institutions are urged to disseminate the knowledge necessary for Muslims to make use of the legal possibilities available to them. This reliance

²¹⁵ See Alwani 2003; Bishri 2004; and ‘Atiya Muhammad 2007. I borrow the concept of “liberal strategies of exclusion” from Mehta 1990 and Peter 2010. The sociological literature that points to these gaps between European constitutional rights and the actual freedoms of Muslims is quite extensive. It includes Frégosi 2008 for France; Simonsen 2002 for Denmark, Peter 2010 for Germany, etc.

²¹⁶ The realization that a legal decree does not guarantee equality does not seem to apply when the law in question is Islamic Law. Qaradawi states in his treatise on the status of non-Muslims in Islam: “Although man-made laws and constitutions speak of equal rights and obligations for their citizens, their realization in practice is thwarted because of the prejudices...upon which laws can have no impact, and because the people either have no sense of the laws’ sacredness or do not believe in submitting to legal authority. Islamic laws are, however, an exception. (Qaradawi 1985: 14).

upon law may be partly related to the traditional fiqh misgivings concerning political participation in non-Muslim regimes. It draws both upon a long tradition of Muslim legalism (Diamantides 2006) and upon a more recent history of penetration of cosmopolitan norms and Human Rights discourses in the Islamic world.²¹⁷ The primacy of Law should also perhaps be placed in a wider postcolonial context. As Comaroff and Comaroff (2007: 141-6) have recently argued, the current prevalence of zones of law and disorder dialectically feeding into each other often results in a “fetishization” of the former. Law appears to become the privileged language of a very wide range of actors since it promises a “ready means of commensuration” in the face of difference, heterogeneity, and fragmented subjectivities.

In the case of minority fiqh, the reliance upon law has rendered Muslim practitioners vulnerable to at least two different critiques – each bearing distinct political import. The first, voiced by figures such as Tareq Oubrou, criticizes minority fiqh for “misconstruing the legal status of Islam in Europe”.²¹⁸ While Oubrou may mean a number of different things by this claim, one of them appears to be the following: the attempt to make Islamic norms compatible with European legal systems partly through the state recognition of Muslim family law seems to the French-Moroccan scholar to be unrealistic and even counterproductive.²¹⁹ Although Oubrou’s “sharī‘a de minorité” also started off as an attempt to achieve a “double legality” - shari‘atic and French - (Oubrou 2004: 206), the politicization of law witnessed in recent integration debates in France (particularly during the headscarf affair) persuaded Oubrou of the need to reconcile Islamic norms not with “French law” but with “French culture” instead. Although the distinction between law, shari‘a and culture is central to the Islamic Reformist traditions where minority fiqh practitioners draw inspiration, “culture” has remained

²¹⁷ See on this point Johnston 2007. See also, for a historical contextualization of the relevant Islamic legal debates, Peters 1999.

²¹⁸ Oubrou, personal communication, Bordeaux 2005. On Oubrou see also chapter one.

²¹⁹ I do not discuss here whether Oubrou is right or not in this assessment. For a recent discussion of Muslim demands for state recognition see Williams 2008 and Bano 2008.

largely outside the integration process attempted by the institutions engaged in minority fiqh.²²⁰ Oubrou's project depends on a recognition of the cultural dimensions of historical fiqh (as well as the existence of shared cultural norms in France - to be measured ideally by sociological surveys). Placing culture at the centre of the hermeneutical exercise allows Oubrou to bridge the gaps between Islamic norms and French calls to integrate/assimilate Muslims. It also seems to open up a hermeneutical field which has wider implications than the simple invocation by advocates of minority fiqh of 'urf (custom) as a normative source for issuing fatwas.

The second – and perhaps politically more radical - kind of critique, articulated most notably by Tariq Ramadan, attempts to reformulate European Muslims less as a *docile group* and more as a *resisting or dissenting community* through an emphasis on “citizenship” instead of “minorityness” (Ramadan 2003; see also Mestiri 2004). In seeking to displace the legal imaginary which serves as the symbolic boundary of minority fiqh (and arguably of much of the current Muslim social-political activism in Europe), Ramadan wants to refashion Muslim activism within an ecumenical ethical horizon open to a greater range of political claims – and where Muslims see themselves as (at least) potentially part of the “ethical majority” (Ramadan 2003). The political possibilities unlocked by Ramadan's critique have started to be recognized by the members of the ECFR themselves.

These and other Muslim critics of minority fiqh have thus argued that the status of minority is not a natural category but rather the product of a specific political imagination which seeks to contain Muslim agency. Mohamed Mestiri (International Institute of Islamic Thought-France) considers that fiqh al-aqalliyat consolidates categories that are foreign to the practices of democratic politics. For the Kuwaiti scholar 'Ujayl al-Nashmi (also a member of the ECFR), the concept of minority presupposes a “nationalist framework”

²²⁰ As I argued elsewhere, integration in institutions such as the European Council for Fatwa and Research has tended to be understood in legal rather than cultural terms (Caeiro 2010a). Alwani comes closest to echoing Oubrou's call when he writes intriguingly of the “polemical relationship between legislation, whether divine or man-made, and cultural traditions and conventions” (Alwani 2003: xiv).

which does not correspond to contemporary post-national Europe (or the US). In so far as Western nation-states are “secular”, and both citizens and immigrants ruled by a “social contract” on the basis of “needs and necessities” (Nashmi’s way of describing the neutrality of the liberal state), the minority condition is deemed inappropriate to think of the Muslim predicament (Nashmi 2005: 20).²²¹ Nashmi’s sentiment is echoed by Muhammad Fath Allah al-Ziyadi, who stresses the inappropriateness of speaking of Muslims as minorities on grounds of religion in secular states such as France that do not identify the religious affiliation of its citizens. To insist on calling Muslims in France a minority, al-Ziyadi suggests, is one of the reasons that led to the hijab ban in public schools (Ziyadi 2005: 592-3). Other writers like Jamal al-Din ‘Atiya have started to think of minority fiqh in the context of the institutionalization of minority rights in international law. His use of fiqh interchangeably with law, even in non-Muslim contexts, highlights the hybrid nature of the discourse. Muslim scholarly debates about the minority status have thus begun to articulate two different universes of reference. While Muslim scholars are now involved in the contestation over the proper limits of legal pluralism, their engagement with the problematics of minority rights in a world increasingly governed by cosmopolitan norms is seemingly only starting.

The Prophetic Sunna, the Commitment to the Fiqh Tradition, and Affective Reason

Writings on *fiqh al-aqalliyat* presuppose, as I have shown above, specific understandings of Europe as a distinctive political space. As engagements with the Islamic legal tradition, however, they also appear in many ways to carry their own context. The minority fiqh discourse often reads as lists of legal maxims (*qawa'id fiqhiyya*) providing hermeneutical and methodological guidelines for muftis dealing with questions from Muslims in the West.²²² A set

²²¹ Nashmi also questions the relevance of the status of minority for fiqh: in so far as fiqh is a “method of extraction of rules”, considerations of power or number are not important. “Minority”, in this view, is incommensurable with the term – fiqh – which it purports to qualify (Nashmi 2005: 22-3; see also Buti 2007: 181-7).

²²² Writings on minority fiqh bear strong resemblance to the traditional adab al-mufti genre: they articulate a number of themes familiar to that literature, such as the

of these guidelines relates to the structures of religious authority. The often-repeated call for exercising “collective ijtihad” (Alwani 2003: 33; Ibram 2002: 70-71; Mahdi n/d; Qaradawi 2001; Sultan 2008) is an attempt to unify the various - and sometimes contradictory - fatwas of Muslim scholars, as well as a way of coming to grips with the complexity of Western societies, where “good and evil appear mixed in complicated ways” (Najjar 2003: 61-62; see also Bishri 2004: 204). The emphasis on taking the context (al-waqi‘) into consideration is another regular leitmotif (Qaradawi 2001: 44-46; Sultan 2008: 42-47), taken to its radical conclusion by Alwani’s call for incorporating social scientists into the fiqh reflections (Alwani 2003: 3, 33-6; see also Badawi in Alwani 2003: ix; and Ramadan 2009).²²³ This emphasis, often accompanied by a less than subtle effort to exclude scholars based outside Europe (and not affiliated to the institutions committed to minority fiqh) from participating in the discussions (Halawa n/d; Ibram n/d; Mahdi n/d), should be seen as an attempt to modify the capital required for speaking in the name of Islam (Peter 2006c). It is therefore perhaps not surprising that it should have elicited sarcastic responses from excluded Muslim scholars like Sa‘id Ramadan al-Buti, who prefer to emphasize instead the importance of knowledge of the Islamic texts and its disciplines (see below for details).

A second set of guidelines invoked by the advocates of minority fiqh deal directly with hermeneutical questions. These guidelines typically stress the objectives of the shari‘a (maqasid al-shari‘a), the understanding of priorities (awlawiyyat), and the consideration of the collective requirements over the

gravity of issuing fatwas, the danger of following people’s whims or submitting to the desires of the rulers, the contrast between the reticence of the pious predecessors regarding issuing fatwas and the current facility and haste in which so-called muftis respond to questions. The vitality of the adab al-mufti tradition under changed conditions is further demonstrated by the fact that criticisms of minority fiqh are also played out in the field of the etiquette of the mufti: Buti’s critique of the ECFR starts with a reiteration of the danger entailed in ifta’, and the practice of the pious predecessors of not answering all the fatwa requests (Buti 2007: 143-145). On the adab al-mufti see chapter one of this dissertation.

²²³ The emphasis on devising a “realistic fiqh” may perhaps be seen as an attempt to overcome the “pessimistic consciousness of the tension between ideal and actuality” which Kerr attributes to traditional Muslim scholars (Kerr 1966: 1). The notion seems to be derived from Sayyid Qutb (Judy 2004).

individual needs of Muslim minorities. This insistence on the values and principles of the shari'a over its historically-constituted norms appears as a condition for various kinds of strategic thinking, laying the ground for the emergence of what has been called a "public Islam" (Eickelman and Salvatore 2004). Understandings of the "common good" are thematized as preconditions for conveying Islam's universal message. A striking example is provided by Salah Sultan, who wonders what would happen if "the Muslims took upon themselves the mission of eradicating the illiteracy of 23 million Americans": "How many of them could become Muslims or think good of Islam and Muslims or at least stay neutral" (2008: 40-1).

The lists of principles are extensive, perhaps because minority fiqh advocates seek to contain the elements of arbitrariness and subjectivism inherent in the emphasis on upholding the maqasid of the shari'a (as their critics have repeatedly pointed out). The principles do not eliminate these arbitrary elements altogether but they succeed in many cases in rendering clearer the intended direction of the ijtihadi reasoning.²²⁴ Because they are sensitive to the politics of authenticity enacted by those who criticize fiqh al-aqalliyat as a regime of exceptions for "Westernized Muslims" (Buti 2007; Khan 2004; see also Ramadan 2003), most of the authors considered here rhetorically emphasize that minority fiqh is not a "fiqh of concessions" but an authentic fiqh bound by the rules of the universal shari'a (Alwani 2003: 4; Qaradawi 2001; Bishri 2004: 205).²²⁵

²²⁴ Najjar attends to the need to weigh conflicting goods: forbidding evil (mafsada) and promoting interests (masalih) are two kinds of acts valued in and of themselves, but when an evil and an interest are simultaneously present Najjar enjoins Muslim jurists to pay attention to the short and long term effects of each (Najjar 2003: 61-62): but how is one to distinguish the situations in which the evil is only temporary and the corresponding maslaha great in the future, from those where the maslaha is small and the evil so large that it will cause a fitna amongst Muslims in the future? How is the genuine interest (al-maslaha al-haqiqiyya) to be identified without falling into arbitrariness? Najjar does not seem to provide an answer.

²²⁵ 'Ujayl al-Nashmi's perception of Taha Jabir al-Alwani's characterization of fiqh al-aqalliyat as a "rigorous" rather than "concessionary" fiqh (Alwani 2003: 4) as an attempt to make life difficult for Muslim minorities, denying them the possibilities of legitimate derogations offered by the Islamic tradition (Nashmi 2005: 28), totally misses this point. On the exchange between 'Alwani and Nashmi see below.

Writings on minority fiqh have not only provoked wide-ranging debates within Muslim public spheres; they have also given rise to some controversy within the ranks of those scholars committed in principle to the idea of devising specific rules for Muslims in the West by virtue of their minority status. Below I focus on an exchange between two members of the European Council for Fatwa and Research, Taha Jabir al-Alwani and ‘Ujayl al-Nashmi. The exchange is remarkable because it highlights the diversity of understandings of minority fiqh in those institutions most closely associated with the project.²²⁶ The context of this discussion is the European Council for Fatwa and Research. Qaradawi’s first use of the expression *fiqh al-aqalliyyat* - in the late 1990s – was part of an attempt to legitimize the ECFR in the Muslim world,²²⁷ and various theoretical attempts to ground minority fiqh have been closely connected with the efforts to guide and redirect the ad hoc nature of the work of the European fatwa council (Najjar 2003; see also Alwani 2003: 14). The ECFR’s bi-annual scholarly magazine (*al-Majalla al-‘Ilmiyya*) has done much to foster the debate, publishing research papers and also occasionally responding to external criticism against *fiqh al-aqalliyyat*.²²⁸ A full day of discussion was devoted to the topic at the ECFR’s 12th ordinary session held in Dublin in December 2003 / January 2004. A paper by Taha Jabir al-Alwani on *fiqh al-aqalliyyat* was presented and discussed.²²⁹ This and other papers on the topic were published in the corresponding issue of the *Majalla* (issues

²²⁶ The internal diversity of opinion on this issue explains the adoption of a descriptive rather than normative understanding of *fiqh al-aqalliyyat* by the ECFR: “The final opinion of the Council on the Fiqh of minorities is that it means: the juristic rulings concerning the Muslim who lives outside the Islamic land” (Resolution 12/5).

²²⁷ In his introduction to the ECFR’s First Collection of Fatwas, Qaradawi wrote that the ECFR does not pose itself as a “competitor to the established fatwa bodies in the Muslim world” [the MWL’s Islamic Fiqh Academy and the Fiqh Committee of the OIC]; rather, according to Qaradawi, it complements such bodies through a specialised focus on what he called for the first time (as far as I am aware - a Muslim “fiqh for minorities”. If fatwas change according to place, time and circumstances, “what greater difference is there”, Qaradawi rhetorically asks, than that between “a Muslim and non-Muslim land”? (Qaradawi in ECFR [1999] 2002: X).

²²⁸ See the issue 12-13, 2008: 11-13.

²²⁹ Unlike the other North American members of the ECFR (Salah Sultan and Jamal Badawi), Alwani does not regularly attend the meetings of the European fatwa council. His paper on *fiqh al-aqalliyyat* was presented and discussed in absentia for health reasons.

4/5, 2004), which was to a large extent devoted to efforts at grounding *fiqh al-aqalliyat*. In his response paper (presented at a later meeting of the ECFR and published in the 7th issue of the *Majalla*), the Kuwaiti scholar ‘Ujayl Nashmi offers a very critical – and at times remarkably ungenerous – reading of Alwani’s text.²³⁰ Here I describe and then interpret the controversy that arose, all the more noteworthy since – as Nashmi himself points out – both scholars studied together the same subjects (*usul al-fiqh*) under the same scholars at Al-Azhar in the early 1970s.

Although Nashmi disagrees with Alwani on a range of different issues, the core of Nashmi’s critique of Alwani’s treatise focuses on the assessment of the place of the Sunna in the extraction of Islamic norms. Nashmi’s disagreement with Alwani on this count over-determines some of Nashmi’s reactions to unrelated claims made by Alwani. This debate sheds light also on what is at stake in the discussion of whether *fiqh al-aqalliyat* is just a branch of *fiqh* – like the *fiqh* of medicine, economic or politics (Qaradawi 2001; see also Najjar 2003: 50) – or whether it requires a new *fiqh* methodology (*usul al-fiqh*) – as claimed by Alwani (2003).

The status of the Sunna has arguably been at the centre of Muslim responses to modern challenges to religious authority (Brown 1996). Muslim scholars associated with the Islamic Revival – including those who advocate minority *fiqh* - have typically tried to navigate between the modernist attempts to dismiss Prophetic narrations in favour of the Qur’an, on the one hand, and the traditionalist reliance on the Sunna as the unsurpassable model for practical action on the other. Muslim Revivalists have sought to emphasize the complementariness of the two sources even as they recognize the ontological primacy of the Qur’an. In contrast to many of the controversial discussions in the Muslim world which deal directly with concrete issues related to the place of women in society, Islamic criminal law, and questions of economics, the

²³⁰ Nashmi has engaged polemically with modernist Muslim thinkers elsewhere. See his 1993 article “Al-Islam wa-l-Turath” in the *Majalla Al-Shari’a wa-l-Dirasat al-Islamiyya* (issue 19: 117-181) where Nashmi rebukes Muhammad Khalaf Allah’s “Al-Islam wa-l-Turath al-Islami” for its attempt – untenable according to Nashmi – to separate between Islam and the Islamic heritage.

practical implications of the exchange between Alwani and Nashmi are mostly implicit. To put it briefly, Taha Jabir al-Alwani argues, in his treatise on minority fiqh, that the Qur'an takes precedence over the Sunna. While this claim appears at first sight conventional for reformist actors keen on reviving the practice of *ijtihad*,²³¹ the repeated emphasis which Alwani places on this hierarchisation of the Islamic sources is – as Nashmi himself notes - quite remarkable (2003: 18, 19, 20). On closer look, this claim represents a break with Alwani's previous writings, which mainly stressed the "complementariness" of the two major sources in Islamic legal thought.²³² In *Towards a Fiqh For Minorities*, however, Alwani seeks to marginalize the Prophetic Sunna to the rank of mere auxiliary: "The Sunna revolves around the Qur'an and is closely tied up with it, but never surpasses or overrules it" (Alwani 2003: 18-19). While fiqh practitioners have always recognized that the Qur'anic text - as "the direct word of God Almighty, the eternal and absolute miracle" which "cannot be allegorically read or interpreted" - is ontologically different from the Prophetic Sunna (Alwani 2003: 18), they have not concluded with him that jurists cannot derive new rulings from the Sunna alone. For Alwani, however, the normative authority lies exclusively upon the Qur'an – and specifically upon what he calls its "higher principles".

There is a particular representation of the Sunna underlying Alwani's call for "a review of the relationship between the Qur'an and the Sunnah" (Alwani 2003: 19); this is a representation of the Sunna as "intolerant" which occasionally resurfaces in Alwani's writings.²³³ Alwani's Qur'anic-centred

²³¹ Qaradawi himself also stresses in many of his works the primacy of the Qur'an.

²³² In an article originally published in 1995, Alwani argued explicitly for the complementary of the Qur'an and the Sunna: "Both the Qur'an and the Sunnah represent sources of revealed knowledge that complement the natural universe...The Sunnah clarifies and elaborates on the Qur'anic epistemic methodology by linking the Prophet's example and the Qur'an's values so that these may be applied to the actuality of changing circumstances" (reprinted in Alwani 2005: 5).

²³³ This perception of the Sunna is revealed in passages like the following: "Once the Qur'an establishes a certain principle, such as tolerance and justice in dealing with non-Muslims, the ruling of the Qur'an takes precedence" (Alwani 2003: 20). Qaradawi provides an account of the Sunna which shares with Alwani the effort to derive general principles from Prophetic narrations but ends up emphasizing quite the opposite – the Sunna's "tolerance, convenience, and ease" - see Brown 1996: 119-122.

methodology, based on two crucial Qur'anic verses (Qur. LX: 8-9 and Qur. V: 8), seeks to establish "kindness and justice" as the two higher principles of Islam governing Muslim relations with the Other (Alwani 2003: 26-7).

In assuming that "tolerance" and "justice" can be transculturally defined by standards outside a specific tradition (Islamic or otherwise), Alwani's vision seems to rest on certain a priori philosophical-political commitments that are not fully made explicit. Part of Nashmi's critique of Alwani has been of a hermeneutical nature: in the absence of the explanatory Sunna, which Alwani voids of normative content, what are the grounds - Nashmi asks (2005: 37) - from which one can understand the so-called higher principles of the Qur'an? Alwani's prudent silence on the sources of these guiding principles leaves him exposed to the critiques of those claiming to be solely driven by a commitment to the founding texts of the Islamic tradition in all their multivocality.

What is at stake here, I submit, is not a particular understanding of how Muslims should relate to the Other. It is not even a disagreement about the need to reform specific historical normative understandings or to revise certain fatwas. Nashmi is part of the large constellation of ulama who view *ijtihad* as a contemporary necessity. The *fiqh* he and his peers desire is a "creative" one: Nashmi works within a complex temporality which simultaneously draws inspiration from the pious predecessors while interiorizing the linear narrative of progress and reform. The Kuwaiti Muslim scholar makes sufficiently clear in his response paper that he does not seek to apply old fatwas to current situations (Nashmi 2005). Like most other members of the ECFR, Nashmi also privileges the objectives of the *shari'a* over its historically-constituted norms, and emphasizes the need to adapt religious rulings to specific circumstances. Both Alwani and Nashmi belong to a school of thought which politicizes – through references to the *fiqh* of priorities – the Islamic tradition. If, in the eyes of critics like Nashmi, Alwani's comments about the Sunna appear unacceptable, it is not only because their basis in certain a priori philosophical commitments makes them liable to characterizations of unbridled personal opinion (instead of reliance upon the founding texts). It is also - and mainly - because they are seen as symptomatic of a *conditional*

commitment to the Islamic fiqh tradition. It is the threat that he perceives in this conditionality that underlies Nashmi's uncharitable reading of Alwani's text, and which explains why the critique is largely played out in the register of "affective reason".²³⁴ In other words, it is less the content of Alwani's engagement with the Sunna than his way of doing so that seems to be at stake.

To be sure, Alwani is not what one would conveniently identify as a modernist; he openly criticizes those Muslims in America who "tend to apologize for those statements ["randomly" picked out by "Islam's detractors"] and dismiss them as ancient and irrelevant" (Alwani 2003: xix). As a religious scholar, he naturally presupposes a "true" Islam distinguishable from its historical understandings (Alwani 2003: 25). For Alwani as for Nashmi, fiqh is also the terrain in which solutions to current problems are to be sought (Alwani 2003: 34). Alwani's project, however, is also predicated upon a specific appraisal of the inherited fiqh which borders at times on an assertion of its contemporary irrelevance. It is perhaps because Alwani's remarks on the Sunna are part of his larger critique of the fiqh tradition that Nashmi's rhetorical defence of the status of the Sunna needs to be so vigorous.

Many of Alwani's critiques of the fiqh tradition are shared by fellow members of the ECFR; but while the latter seek to minimize the impression of discontinuity, Alwani seems to deliberately wish to emphasize them.²³⁵ The tradition of fiqh is equated with a "mere collection of philosophical and polemic rules or linguistic and intellectual arguments" (2003: 12), in sum, a "minor science" (2003: 12).²³⁶ Past jurists were - in the eyes of Alwani - guilty of *imprecision* (they "did not classify the sources of Islamic law in a precise way",

²³⁴ I borrow this notion from Hirschkind 2006: 133-137.

²³⁵ The contrast between Alwani and Qaradawi or Najjar is in this regard striking: although they call for a new legal methodology (*usul al-fiqh*) for devising a minority fiqh – and often resort to a language that seems foreign to the fiqh tradition – Najjar and Qaradawi go to great rhetorical lengths to minimize the discontinuities with this tradition, which they repeatedly praise, while Alwani seeks on the contrary to deliberately emphasize ruptures.

²³⁶ Elsewhere Alwani (2005: iv) has criticized the "fiqhi mentality" of Muslim communities.

9), *introversion* and *parochialism* (they “overlooked the universality of Islam”, 9). Their approaches were “confused” (18), “simplistic” and “unscientific” (4), and their theories mere reflections of a particular historical context – one furthermore characterized by the logic of “conflict” (11) and a superiority complex.²³⁷

Nashmi’s main aim in his response paper is to demonstrate the contemporary relevance of the Islamic fiqh tradition. He does this partly by recasting Alwani’s reformist claims as unoriginal, and partly by showing (somewhat circularly) how they fall outside the tradition of the pious predecessors and the scholars of the past.²³⁸ It is Alwani’s attitude towards these scholars, however, that comes under the most severe criticism, justifying the irony and sarcasm with which Nashmi treats his fellow mufti. The lack of “respect” that Nashmi perceives in Alwani’s text is deemed incompatible with the discipline (2005: 49). It underlies Nashmi’s subtle exclusion of Alwani from the circle of the fuqaha (Nashmi 2005: 17-18). This is not (only) an authoritarian argument against internal critique. It also signals a different relationship to the tradition of reasoning which both Alwani and Nashmi purport to share, albeit differently. As Hirschkind has shown in another context, excellence in fiqh requires not only mastery of the relevant sciences but a certain inner disposition. This is also why Muslim scholars setting the conditions for issuing fatwas insist on the need for the mufti to be pious and to fear God (Sultan 2008).

I have been arguing that the polemical discussion between Nashmi and Alwani is less about specific Muslim attitudes towards non-Muslims than about different kinds of commitment to the fiqh tradition. But what are the contexts in which these two positions are articulated? Clearly, the two Muslim scholars assess differently the possibilities for gradual reform – the necessity of which

²³⁷ For a similar account of fiqh as the historical product of Muslim hegemony and superiority in medieval times see the works of Wahid al-din Khan (as described in Zaman 2004: 181-3).

²³⁸ Thus the call for introducing the social sciences into fiqh is equated with the centuries-old insistence on understanding the social conditions of the mustafti (Nashmi 2005: 29-30); Alwani’s call for a new type of ijtihad is condemned because the Sahaba were able to answer all kinds of question following the only method of ijtihad they knew (Nashmi 2005: 30-32), etc.

none of them really questions. These assessments, I suggest, appear in turn related to the positions that each scholar occupies in the Islamic religious field.

Alwani's reform project – which borrows significantly from the Islamization of Knowledge venture, with which he has long been associated (Abaza 2003) – views the “crisis” of the Muslim world as first and foremost an “intellectual crisis” (Alwani 2005). This diagnosis of a modern intellectual crisis is not, however, a call for a return to a pristine Islam, since classical Islamic sciences, not least the fiqh tradition itself, are also deemed in dire need of reform. Rather, it is a call for a much more wide-ranging – if somewhat ambiguous – critique of Western and Islamic intellectual traditions. Minority Fiqh for Alwani appears as a step in this wider reform agenda. His engagement with the minority status is in this sense quite self-consciously strategic: “There is a need to propose and develop such principles to assist in revealing more of the purposes of the Qur'an. This should, in turn, help in building up fiqh rules for minorities as well as majorities.” (Alwani 2003: 20).

While the inscription of minority fiqh within a global reform agenda significantly raises the stakes of the debate, Alwani's reform project – like Nashmi's and the ECFR's – also depends upon the continuing viability of authority structures. How should one therefore understand Alwani's argument that Islam has no clergy or “grand ‘ulamā' board” that can “monopolize the sources of religious knowledge and the interpretation of religious dogma” (Alwani 2003: xiv)? This claim, as Nashmi himself has pointed out, leaves the door wide open to all kinds of interpretations.²³⁹ While Alwani himself is wary of the individualization and assimilation of Muslims in the US which the fragmentation of religious authority engenders, the statement above suggests a greater sensitivity to the perceived weight of established traditions of reasoning than to the dangers of assimilation (and terrorism for that matter). It

²³⁹ Nashmi argues that there are clear preconditions for performing ijtihad and exercising religious authority, and no evidence suggesting that one group cannot monopolize the interpretation of religious scriptures at any one point in time (Nashmi 2005: 24-25). For Nashmi, the exercise of a control over Islamic interpretation by the ulama appears to be a necessary and desirable outcome of Islam's lack of clergy.

nevertheless leaves Alwani powerless in the face of conflicting religious advice: if “ordinary people can select the scholar whom they wish to follow and pick from the “common law” the reasons, terms and restrictions” (Alwani 2003: xiv), how can the ulama counter the “sea of confusion” in which Muslims find themselves when confronted with “differences in opinion among jurists” (Alwani 2003: 7)? If Alwani’s discussion suggests that (contrary to Qaradawi, Nashmi and many of his peers within the ECFR) Alwani locates himself within the margins of the Islamic religious field, it also appears to highlight a more general perplexity regarding the *intractability* of the problem of authority in contemporary Islam.

IV- CONCLUDING NOTES

After highlighting in some detail the historical contexts in which fiqh al-aqalliyat discourse has emerged and continues to circulate, this chapter has provided an interpretative account of the ongoing Muslim scholarly debate on the status of Muslim minorities living in the West. I argued that writings on minority fiqh – as the very expression “fiqh al-aqalliyat” suggests – are predicated on a commitment to the Islamic legal tradition, and on an understanding of the minority condition as posing a particular challenge to that tradition. I then tried to show that the kinds of commitments to fiqh as well as the understandings of the appropriateness of the minority condition to describe the situation of Muslims in Europe actually vary widely even amongst minority fiqh advocates. This variation seems to reflect the fact that Muslim actors writing on the topic come from different social and intellectual backgrounds;²⁴⁰ if they write mostly in Arabic, they nevertheless address different audiences and respond to divergent concerns.²⁴¹ The starting points

²⁴⁰ Qaradawi and Alwani are traditionally-trained ulama who have earned doctorates in fiqh from Al-Azhar, while Bishri and Najjar, although qualified in fiqh, are more eclectic Muslim/Islamist intellectuals. They all seem to share however an emphasis on Islam’s comprehensiveness, a hallmark of the Muslim Brotherhood paradigm.

²⁴¹ Qaradawi’s work on fiqh al-aqalliyat, to give just one example, has been presented at the Muslim World League’s 4th General Islamic Conference in Saudi Arabia (April 2002); it has been discussed in front of a transnational lay audience on Al-Jazeera’s *al-sharia wa-l-hayat* (14 September 1997; 2 May 1999); it is widely available for a general readership in Egypt; and has been presented by Qaradawi to gatherings of Muslims on the occasion of his visits to Europe – and in his meetings with European state officials.

of their reflections range from the continuation of an interest in non-Muslim minorities under Islamic states (Qaradawi 2001), to a contextual engagement with debates on Islam in Western public spheres (Alwani 2003), to a critical approach to human rights discourses ('Atiyya Muhammad 2007). It is perhaps in the relatively open-ended nature of the minority fiqh discourse, liable to different appropriations by various actors, that resides the interest and appeal of the discourse. The global circulation of fiqh al-aqalliyyat discourse can thus be explained - at least partly - by the concept's own indeterminacy.

If the analysis above is correct, an important follow-up question needs to be tackled: if minority fiqh does not presuppose thick views about either Islam as a religious tradition or the West as a political space, how can one account for the resistances (often fierce resistances) that the minority fiqh construct encounters amongst some sections of the Muslim ummah? I have focused in this chapter on the views of minority fiqh advocates, discussing only briefly the criticisms levelled at the idea of a minority fiqh project by non-members of the ECFR. Religious scholars who are also committed to the Islamic legal tradition and proponents of integration, such as Sa'id Ramadan al-Buti and (to a minor extent perhaps) Salah al-Sawi, have expressed more than just mild criticism against fiqh al-aqalliyyat. As briefly mentioned above, in 2001 Shaykh Buti deemed minority fiqh a "catastrophe" on his webpage,²⁴² and he has since then repeated his opposition to the construct and the institutions associated with it (Buti 2007 and n/d). Particularly challenging to decode are critical engagements with fiqh al-aqalliyyat that stick to an etymological line of argumentation: how should one interpret those (numerous) voices that claim that minority fiqh is illegitimate simply because the expression is not to be found in the old books? While one can speculate on the specific

²⁴² The online text has been reprinted in English and in Arabic in Buti 2004. Buti equates the call to develop a fiqh for minorities with an ideological plot by Western imperialists to divide and conquer Islam. The disappointment the Shaykh feels with minority fiqh seems all the greater given the hopes he has placed on the future Islamization of Europe (Buti 1999). For a study of the views of Sa'id Ramadan al-Buti and his son Tawfiq in the French context see Bowen 2010. For studies of Buti that place him in his Syrian context see Christmann 1998 and Houot 2008-9.

understanding of language that underlies this kind of argumentation, what conclusions might one draw from it?

One solution to this predicament lies perhaps in treating the more vocal critiques of *fiqh al-aqalliyat* as misconstrued or embedded in struggles for authority (see for example Karman 2008). This answer may be tempting in some cases. Sa'id Ramadan al-Buti's dismissal of the ECFR as a body of incompetent individuals "bearing no relation to *fiqh*" (Buti 2007: 152) appears to be the exact mirror image of the condemnation by ECFR members of "Eastern" muftis issuing fatwas for "Western" Muslims who live in contexts those muftis supposedly cannot understand. Since these minority *fiqh* critics share many of the commitments of minority *fiqh* advocates (they also attend the same conferences, publish in the same journals, write for the same websites), the questions they ask nevertheless deserve to be taken seriously. What exactly are these minority *fiqh* critics arguing? In *Al-Islam wa-l-Gharb* (Islam and the West), Sa'id Ramadan al-Buti makes a serious allegation against the ECFR by claiming that their "supposedly Islamic fatwas" are actually "opinions serving Western interests" (Buti 2007: 143-156). According to Buti, minority *fiqh* advocates are doing no less than "trying to change the well-established rulings of the *shari'a*...under the pretext of *fiqh* reform (*tajdid al-fiqh*)"...having "succumbed to the pressures of the modernist trend (*tayyar al-hadatha*)" (Buti 2007: 145-6). Buti's claim needs to be situated in a politics of authenticity where change is sometimes praised and sometimes condemned. The claim betrays a deep-rooted suspicion of the "West" as imperial agent (see also Buti 2005) that Buti manages to reconcile with his support for the "integration" of Muslims into European host societies (Buti n/d). The claim may nevertheless seem surprising in light of the fatwas that have actually been issued by the European council (see chapters 3 and 4). Buti seems to be particularly concerned about the idea that Muslims in the West should have a separate *fiqh*, and about the related possibility that this *fiqh* will serve "political goals". Regarding the first point, it is conceivable that Buti is worried not so much about the actual fatwas that have been issued by the members of the ECFR (although he clearly objects to a few of them, such as the mortgage fatwa to be discussed later) but rather with the open-ended

possibilities opened up by their claim to establish a new fiqh – not only in the West but also in the Muslim world (Buti sees clear connections between the minority fiqh discourse and the project of tajdid more generally). Buti is of course a traditionalist scholar committed to the juristic madhhab, and some of his earlier publications have made clear that he sees the selective and eclectic approach to the Islamic legal heritage (practiced for example by Qaradawi) as a grave threat to the integrity of the shari'a. This explains perhaps why Buti, when speaking to European Muslim audiences, is keen to de-emphasize the possibility and the scope of ijtihad today (Buti n/d). Concerning the second point, Buti's denunciation of the political (siyasi) and factional (hizbi) interests driving the fatwas (Buti seems to target here the Union des organisations islamiques de France, an organization inspired by the Muslim Brotherhood which has been involved both in the minority fiqh project and in the French state's process of institutionalisation of Islam) can be read as a personal attack on the integrity of those Muslim actors as well as (and perhaps more productively) as an attempt to point to the tensions and perhaps inescapable contradictions that obtain once a religious organization seeks or accepts to become the interlocutor of a non-Muslim state. As Buti sharply points out, "anyone who responds to the state's policy has to answer its demands" (2007: 151). In the current context, Muslim actors who accept to participate in the state's Islam policies become tied to the post-9/11 securitarian rationalities: "they are required to prove that Islam is against terrorism, that its rulings are based on tolerance, and that they are prone to development and progress" (2007: 151). The costs seem so high to Buti that only a higher goal may justify this course of action. For the Syrian scholar, the UOIF and its sister organizations in Europe are prepared to compromise their religious tradition in order to gain the confidence of the West and ultimately achieve power in the home countries of the Muslim world – a reference in all likelihood to the links between the UOIF and the ECFR to the Muslim Brotherhood (Buti 2007: 152).

The Egyptian Azhari Salah al-Sawi (b. 1954), a Salafi scholar based in the United States, is another case in point. Sawi is a prolific writer, the author of a "polite refutation" of a fatwa of the ECFR on the permissibility of buying a

house through a mortgage (see the following chapters), of a book designed to answer the questions of Americans about Islam after 9/11 (Sawi 2006), and many other texts about Islam, secularism, and the application of the shari'a.²⁴³ In an address given to the Association of Muslim Jurists of America (AMJA) in the mid-2000s, Salah al-Sawi developed his own complex engagement with minority fiqh (Sawi n/d). In this lecture Sawi refuses to be drawn into a simple with-or-against relation to fiqh al-aqalliyat. Concepts are to be judged by their function, he argues, and by their adequacy to particular problems. One way of understanding his position then is as a principled refusal to be drawn into the very binaries that fiqh al-aqalliyat appears to reinstate – including perhaps the oppositions between the universal and the particular, and between the minority (the West) and the majority (the Muslim world). In so far as fiqh al-aqalliyat draws upon the resources of the Islamic legal tradition, it is not an illegitimate concept. For Salah al-Sawi, the call of minority fiqh advocates to dissociate between fiqh as human construct and shari'a as divine law is nevertheless a secularist ploy meant to undermine the sacredness of the Islamic legal tradition – similar, according to him, to the efforts of “secularists” like Nasr Hamid Abu Zayd (referred only as the author – “sahib” - of “Mafhum al-Nass”). Sawi's damning assessment – damning for proponents of fiqh al-aqalliyat who proclaim a commitment to the Islamic legal tradition – is nevertheless shared by many (less vocal) critics of the minority fiqh project (including Nashmi). What are the consequences, they ask, of a reform project that openly devalorizes the Islamic legal tradition? Given their critique of the historical manifestations of the shari'a, what can advocates of fiqh al-aqalliyat save from the idea of Islamic Law as divine? How can they reassert the contemporary relevance of the Islamic tradition – their avowed aim - if their project works precisely to devalorize it?

The issues raised by Buti and Sawi are clearly important. They help to explain why critiques of minority fiqh have often been so strongly worded. While it is true that minority fiqh critics sometimes oversimplify the ideas of minority fiqh

²⁴³ Many of his books are available online at Sawi's webpage (<http://el-wasat.com/assawy/>).

advocates, the way the latter have dismissed the former suggests that the reverse is also true. Both sides often adopt an anti-hermeneutical stance (Euben 1999) that denies the subjectivism inherent in its own reading. Scholars like al-Buti seem to suggest that their reading of the Islamic tradition is the only possible reading – for example, by making the claim that “no faqih” ever justified an exception on the basis of geographical location other than in the realm of the “siyasat al-shari‘a” and penal law (Buti n/d).²⁴⁴ Both Buti and Sawi invoke the consensus of the scholars to foreclose any discussion. Likewise, members of the ECFR often suggest that their positions flow directly from the reality of Muslims in Europe – as if that reality could only be interpreted in a single manner.²⁴⁵ They insist on depicting opposition to their fatwas as resulting from an inadequate knowledge of the European context, rather than stemming from a different vision of Islam in Europe.

The vitality of these discussions notwithstanding, the terms of the debate on minority fiqh may appear in certain respects to be quite narrow. Advocates and opponents of fiqh al-aqalliyat do not by and large seek to disrupt “the immanent relationship between normative particularism [fiqh] and social behaviour” which is sometimes seen as one of the prime dimensions of functional pluralization of Islamic knowledge (Mandaville 2007). In some ways they seek precisely to reaffirm this relationship. These Muslim voices nevertheless act in social contexts where Islamic knowledge has been de facto resettled as one among various systems of authority, standing sometimes in open conflict, often in productive tension with each other. As a series of engagements with the Islamic legal tradition and with the reality of Muslims in the West, these transnational conversations are part of a wider

²⁴⁴ In two separate Islamic conferences which I attended in Paris in 2003 the Buti family (Sa‘id Ramadan and his son Muhammad Tawfiq) categorically denied that the change of opinion of imam al-Shafi‘i following his move from Baghdad to Cairo – known in the fiqh books as the old and the new Shafi‘i positions – had anything to do with geography. Shafi‘i’s changed opinions are often invoked as a legitimating precedent by those calling for an adaptation of Islamic norms to suit European realities. For the Buti family, however, Shafi‘i’s changes resulted merely from a refinement of his methodology, and a deeper awareness of the relevant texts.

²⁴⁵ Tariq Ramadan seems to fall under the same logic when he calls for incorporating social scientists (or ulama al-waqi‘) into the decision-making processes. On reality in minority fiqh discourse see also chapter five.

and complex debate about Islamic hermeneutics, political and religious reform, Islamist politics, and imperialist projects (Mahmood 2006; Bishari 2006). Like the discourse on “Islamic moderation”, minority fiqh emerges as an internal critique and as a civic response to the fear of Muslim radicalization and “Islamic terrorism” – a response which simultaneously lends credence to, and seeks to redirect, the European debates and policies on the integration of Muslims.²⁴⁶ The discourse seems to share with the wider integration debates in Europe a similar set of assumptions, and a particular concern with the social consequences of religious interpretation. Fiqh al-aqalliyat provides in this regard a prime example of how “the penetration of geopolitics into religious discourse impacts the politics of knowledge production” in contemporary Islam (Mandaville 2007: 112). If the relative success of the minority fiqh construct lies in the possibility it gives to a range of Muslim actors to engage and re-shape debates about the integration of Islam in Europe, its limits are related to the reliance upon a discursive tradition – fiqh – which is increasingly contested by Muslim and non-Muslim voices alike.

²⁴⁶ Taha Jabir al-‘Alwani is the most explicit about the importance of fiqh al-aqalliyat in the context of the “war on terror”: “The shattering events of September 11 have left everyone in a state of shock. Since then, Muslims and Americans have woken up to a new reality, the like of which has never been known before. Since then, the need has arisen, as never before, for a new fiqh dealing with the question of Muslim minorities in the West in particular” (Alwani 2003: xviii).

PART TWO

THE EUROPEAN COUNCIL FOR FATWA AND RESEARCH

CHAPTER THREE

The Dynamics of Consultation

I - INTRODUCTION

In the previous chapter I looked at the debate that occupies Muslim scholars on the legitimacy of a minority fiqh. I suggested that these theoretical discussions are underlined by specific ideas about the Islamic legal tradition, on the one hand, and by particular views on Europe as a political space, on the other. An attempt to understand more fully the minority fiqh project must now go beyond the study of these theoretical texts and engage the practical orientations – i.e., the fatwas - that are issued in its name. In this and in the following chapters I focus specifically on the work of the European Council for Fatwa and Research. As suggested above, this collective fatwa body plays a structuring role in the discussions on fiqh al-aqalliyat and thus constitutes a privileged case-study to understand what is practically at stake in the minority fiqh debate. In this chapter I try to show the interest of studying a collective fiqh council such as the ECFR, then look more specifically at the dynamics of requesting and producing a fatwa.

The ECFR is not unique as a fatwa body operating in the West. National fatwa bodies exist in a number of countries, although their operations appear to be quite limited. Across the Atlantic the equivalent institution is perhaps the Fiqh Council of North America (FCNA), an older body of some 18 scholars from the US and Canada which convenes regularly to discuss issues relevant to North American Muslim communities.²⁴⁷ Engaged in a shared normative reflection on minority fiqh, the ECFR and the FCNA have overlapping members, cooperate on various issues, and sometimes disseminate joint statements (for

²⁴⁷ Three of its members are also affiliated to the ECFR: Taha Jabir al-Alwani, Jamal Badawi and Salah Sultan (although Alwani does not attend for health reasons and as a consequence is no longer listed as a member). For an account of the FCNA, which has been operating since March 1988, see DeLorenzo (1998; 2000). One of the FCNA's most famous fatwas, a condemnation of terrorism in the name of Islam issued in July 2005 (three years after its offices were randomly searched by US federal agents), is available at the council's official website www.fiqhcouncil.org.

example on the establishment of the lunar calendar and the beginning of the month of Ramadan).

There is also a less-known fatwa body called the Assembly of Muslim Jurists in America (majma' fuqaha al-shari'a bi amrika, AMJA), founded in 2002 in Maryland, US. In terms of fatwa production, the AMJA is by far the most prolific body, its website (www.amjaonline.com) containing more than 3000 fatwas. Its transnationalism is also remarkable: despite its name, AMJA consists of a broad panel of Muslim scholars from around the world; its annual sessions have taken place in Denmark, Nigeria, Egypt and Bahrain.²⁴⁸ Although the difficulty of getting visas for Muslim scholars to go to the United States in the post-9/11 era may be one reason for holding the sessions outside America, the geographical rotation of its meetings suggests a deliberate attempt at internationalization. While AMJA is similarly committed to the spread of “moderation” and the fight against “extremism”, this fatwa body seems to have been established as a counter-voice to the FCNA and ECFR, as suggested both by the prominence of the Egyptian Salah al-Sawi, a critic of fiqh al-aqalliyat (see chapter two), as well as by the presence of Fu'ad al-Barazi, a founding member of the ECFR who resigned acrimoniously following a disagreement concerning interest-based transactions in the West (see chapter three).²⁴⁹

²⁴⁸ Although the difficulty of getting visas for Muslim scholars to go to the United States in the post-9/11 era may be one reason for holding the sessions outside America, the geographical rotation of the AMJA's meetings clearly suggests a deliberate attempt at internationalization.

²⁴⁹ A report of one of the AMJA's meetings – held in Copenhagen in June 2004 because of visa restrictions to the US – is available at www.islamonline.net/Arabic/News/2004-06/22/article05.shtml. As the coverage of the AMJA's meeting by IslamOnLine – a media outlet closely connected to Qaradawi (and to the ECFR) – suggests, the relationship between the ECFR and the AMJA is not exclusively one of competition. Indeed, AMJA's chairman, the Egyptian scholar Hussein Hamid, has personally attended several sessions of the European fatwa council, and the ECFR's Suhaib Hasan from Britain is also listed among the AMJA's permanent muftis (see www.shariaacademy.net and www.alsharieah.com for more information). At least one scholar – the Jordanian-American Ahmad Shleibak – is a member of both the AMJA and the FCNA. Furthermore, in an interview for the website of the Global Wasatiyya Centre (Kuwait), the secretary-general of the ECFR Hussein Halawa described the relations between the ECFR and the US-based fiqh councils as “cordial” (“Halawa: la ufti li-l-sharq..wa ulama al-gharb adra bi-fatawahum”, http://wasatiaonline.net/news/details.php?data_id=466).

Given the amount of publicity it has generated, and the institutional framework that sustains it, the ECFR nevertheless appears to be the most prominent fatwa body in the West. It was conceived as an interim body to fill the authority gap until muftis trained in Europe, fluent in the native languages and knowledgeable of the local contexts, could take over. In his opening speech delivered in London in 1997, then president of the FIOE, the Iraqi-born Ahmad al-Rawi, outlined in detail the reasons for the Council:

‘Arrived with the waves of emigration, the Muslim preachers, imams and scholars of different tendencies, ethnic and social backgrounds did not really know the European society; they ignored the language and had difficulties communicating. The fact that they came from another generation increased the conflicts with the new generations raised in the Western society. Without taking into consideration the circumstances of the new generations, the fatwas that were issued carried great contradictions and striking differences, despite the uniformity of life in the West. These divergences had immediate repercussions on the cohesion of Muslim communities in Europe.’

While still ‘waiting to train the first (European) scholars,’ Rawi continued, ‘[the FIOE] has not spared efforts to establish the European Council for Fatwa and Research, gathering distinguished ulama known for their piety and knowledgeable of the European reality. These scholars have the mission of orienting and counselling European Muslims on how they should behave daily with their co-citizens, at the individual, collective, or institutional levels, in the field of politics, society and economics; they will also help them solving typical problems facing Muslims in European societies, such as those related to the Muslim headscarf. We wish the Council will become an essential reference for European Muslims, representing them and carrying their aspirations at the institutional level on the whole of the European territory, so that it can solve the problems and participate with the rest of the Islamic organisations in the promotion and dissemination of Islamic values in Western societies. Only thus can we

pretend to truly integrate Muslims in Europe, rooting the culture of social peace and the necessity of civil security in the society to which they belong.²⁵⁰

By constituting the European fatwa body, Rawi and the FIOE aimed to provide an authoritative reading of the Islamic tradition in a context of migration and social change – an effort which, regardless of the limitations of the tradition upon which the members draw, is difficult to secure because its authority requires recognition from Muslim audiences to be effective. The fatwa body explicitly aims at “guiding Muslims in Europe”, “promoting a unified fatwa” against the cacophony of the religious advice currently circulating, and “becoming a reference” for Muslim and non-Muslim institutions, including state authorities (ECFR: 1-2). If the anxiety about the lack of unity of Muslim scholars permeates the writings of the ulama since time immemorial, the ECFR’s ambitious goals seem predicated on a number of more contemporary shared assumptions: the perception of inadequacy of the local non-institutionalized forms of Islamic advice (the fatwas given by local imams); the posited need to produce interpretations of the shari’a geared to contexts understood as particularly new (leading to repeated calls against transnational forms of ifta’ different from its own), and a specific understanding of the possibilities of fatwas as media forms to spread such new interpretations. Below I provide a detailed account of the dynamics of consultation that characterize the work of the ECFR.

II – REQUESTING A FATWA

“For husbands and wives to know I raise the following question”... (*Majalla* 8-9: 352 for English translation; 340 for Arabic original)

The questions that Muslims submit to the ECFR – an often neglected part of the fatwa - provide insights into how European Muslims engage with

²⁵⁰ Ahmad al-Rawi, opening speech of the President of the FIOE during the founding session of the European Council for Fatwa and Research (in Arabic), London 1997. Not published. The transcript of the script – kindly given to me by Ahmad al-Rawi - is included in the Appendices.

institutions of authority. Although these materials have largely escaped the attention of researchers, Muslim scholars have been acutely aware of the importance of the questions underlying the fatwas. For Taha Jabir al-'Alwani, one of the main architects of minority fiqh, "redefining the question" is precisely a crucial "exercise in education" for the mufti, an exercise which reflects a distinctive "sense of responsibility" and is worthy of almost three pages of discussion in his short introduction to fiqh al-aqalliyat (Alwani 2003: 4-6; see also Nashmi 2005: 28-30).

Among the various discursive products issued by the Council (press statements, resolutions, recommendations, essays), only fatwas retain the dialogical elements that allow direct insights into the lives of Muslims in Europe.²⁵¹ What issues are considered relevant? What aims and expectations underlie the questions? What kind of authority is attributed to the ECFR? How do hierarchies of class, gender, generation, or ethnicity function in relation to the dynamics of consultation (futura)? In order to examine the kinds of commitment and expectation that prompt and shape the ECFR's attempt to "discipline" Muslims in Europe I draw mainly on the questions included in the two collections of fatwas published by the ECFR.²⁵² In full awareness of the

²⁵¹ This does not mean that there are no dialogical elements in the resolutions (qararat) – in many cases it is clear that real questions from petitioners are at the origin of the resolution (this is explicitly mentioned in the text of the resolution at least twice: 26² or 33²) – but just that these dialogical elements become more difficult to trace. The two published collections of fatwas by the ECFR, for example, present 80 fatwas (fatawa). Only 50 of those are actually "answers" (jawab) to specific questions. The remaining 30 texts are also called fatwas but instead of beginning with a question they begin with a topic and contain a "resolution" (qarar al-majlis) instead of an answer. Unless otherwise specified I employ the word fatwa, in accordance with the ECFR's use, as the term to denote both kinds.

²⁵² The two collections were published in Cairo first separately, then in 2002 gathered in a single volume simultaneously in Arabic and English. Unless specified, page numbers and quotations refer to the latter, with only minor changes either to capture the Arabic original better or to adapt it to academic English. *The First and Second Collection of Fatwas* (corresponding to sessions 1 to 8) include, in addition to 80 fatwas organized thematically and separated by collection, a preface by the Secretary General (2002: V-VI), an introduction by Qaradawi (2002: VII-XII), a brief presentation of the Council (2002: 1-10), 9 general pieces of advice (ARABIC) to European Muslims (2002: 11-13), and 5 recommendations (ARABIC) issued in the 3rd session (2002: 15-19). In this section I draw mainly on the fatwa materials: I use simple numbers when referring to the fatwas of the first collection while for fatwas

doubts, voiced by many scholars, concerning the “transparency” of fatwas for the study of Muslim societies, I hope to show below that these published texts nevertheless go some way towards elucidating the complex social and interpretive relation between mufti and mustafti (Masud et al 1996: 20) in this particular context, providing some crucial insights into the demand for authority in European Islam.

Finally, in the analysis below I also underplay the possibility of imaginary questions: while this issue has interested many a researcher – as well as some Muslim scholars²⁵³ – its significance depends largely upon a sharp division between the scholar (‘alim) and the non-scholar (‘ammi) which may have reflected traditional ifta’ but which has become problematic today. In contexts where the boundaries between mufti and mustafti have become increasingly blurred, and the communication between them mediated by a range of professionals, editors and publishers, I believe that the relevance of this question has sharply decreased.²⁵⁴

Petitioners

Questions have arrived at the ECFR from most European countries, including those where the Council has no base (or affiliated member): here lies perhaps one of the few incontestable achievements of the ECFR in its first decade of existence, due to a large extent to Qaradawi’s reputation as a “global mufti”. The decision taken in 1998 to set up two regional fatwa committees in France and Britain suggests that these countries are at the origin of an important

taken from the Second Collection I attach the sign ², so that the first fatwa of the First Collection is 1, while the first fatwa of the Second Collection is 1².

²⁵³ Rashid Rida famously accused a fellow mufti (Muhammad Bakhit al-Muti’i) of inventing questions from petitioners abroad to profile himself as a religious authority of international standing (Skovgaard-Petersen 1997: 20).

²⁵⁴ This is of course even more pronounced in bodies of collective ijihad such as the ECFR, where local imams or individual scholars may submit questions that interest them personally for discussion – questions which will elicit fatwas, giving the ECFR the opportunity to voice its collective opinion on an issue it deems important. Can one meaningfully speak in such cases of “invented questions”? Members of the ECFR have downplayed the distinction between questions originating from petitioners and questions originating from Muslim scholars – by suggesting, for example, that the question of the headscarf in France “est posée”, regardless of whether Muslims have requested a fatwa on the issue or not (Ahmad Jaballah, personal communication, Paris 2003).

number of fatwa-requests (unsurprisingly, of course, given the demographics).²⁵⁵ Although the fatwas published in the two collections mention explicitly only Belgium, Britain, Germany, Poland and the United States, fatwas have also been issued in answer to requests from Denmark, Egypt, Greece, Finland, France, Ireland, Italy, the Netherlands, Norway, Romania, Sweden, Switzerland. “Minorityness” here seems deliberately restricted to the West – unlike other collections of fatwas for “Muslims living as minorities”, there are no queries originating from places such as India or South East Asia.²⁵⁶ This fits of course with the ECFR’s self-understanding as a European/Western body.

The single greatest number of questions received by the ECFR is related to the status of women, appropriately reflecting the politicization of gender issues in European Islam.²⁵⁷ This gender focus is also in line with Qaradawi’s more general observation that women demand more fatwas than men - supposedly because of an essentialized vision of women’s superior level of piety (Qaradawi 1999: 36), but perhaps more importantly because women’s issues are the domain where the discrepancies between classical fiqh and contemporary expectations seem to be the widest. Out of the forty-three fatwas published in the ECFR’s *First Collection*, no less than twenty-one concern the position of women in Islam. In the *Second Collection of Fatwas* this rate decreased to thirteen out of thirty-seven. The number and nature of questions emanating from women has propelled the exclusively male members of the ECFR into the ambivalent role of arbiters of women’s rights

²⁵⁵ I discuss the French committee Dar al Fatwa in the following chapter. The ECFR’s British fatwa commission seems to operate rather informally from Leeds Grand Mosque, where Abdallah al-Judai (b. 1958, Basra, Iraq) gives fatwas over the telephone from 2-3pm four days a week (Monday to Thursday). See, for more details, www.leedsgrandmosque.com. Al-Judai, who teaches usul al-fiqh at the European Institute of Human Sciences in Wales, has also issued occasional written fatwas, including a ruling dating from 1995 on combining evening prayers, and a much publicized ruling prohibiting British Muslims to fight against British troops in Afghanistan. The text of the latter fatwa is available in Dilwar Hussain 2004a: 111-2.

²⁵⁶ Ibn Baz and Uthaymeen’s collection includes a question from “a brother from the Philippines” (Ibn Baz and Uthaymeen 1998: 28).

²⁵⁷ There are of course strong colonial precedents to this (see among others Amir-Moazami and Salvatore 2003). For a study of the place of women in the fatwas of an Egyptian mufti, see also Zebiri 1993.

and duties. The questions range from basic daily matters (can a woman cut her hair without the husband's permission? Can she attend Islamic circles in the mosque?) to crucial contemporary fiqh issues (can she marry without a male guardian? Does she have the right to divorce? What is the status of her marriage to a non-Muslim?).

The question of whether a husband has 'the right' to prevent his wife from visiting her parents, or the mother who wonders if she has 'the right' to rest after giving birth, seem to be asked by women seeking to secure an authoritative opinion that will allow them to make an Islamic claim in a domestic dispute.²⁵⁸ Such questions point to the unsuccessful naturalization of the patriarchy underlying some of the constructions of classical and modern Muslim jurists. Requested by Muslim women engaged in routine struggles against perceived injustices, fatwas appear here as "internal interventions" (Amir-Moazami and Salvatore 2003: 55) in Islamic traditions. The fatwa is implicated in the attempt to distinguish sharply between cultural and religious forms that has become so entrenched in second (and third...) generation European Muslim discourse. The fact that such questions tend to be formulated in the rather assertive terms - of rights instead of duties - suggests a representation of gender roles which sits somewhat uneasily with the emphases on "complementarity" that characterize some contemporary forms of Muslim piety, both in Muslim majority societies (Mahmood 2005) and in the West (Jouili 2006; Jouili and Amir-Moazami 2006).²⁵⁹

Converts to Islam also make up an important segment of the petitioner population. In the first three sessions of the ECFR, six questions

²⁵⁸ In one instance it is actually the husband who is seeking a fatwa in order to counter his wife's claims: "Is it compulsory upon a husband (father) to attend educational courses which teach how to solve children's problems?" (First session, ECFR 2002: 79).

²⁵⁹ Batool al-Toma (New Muslims Project, Islamic Foundation, Leicestershire, UK), who has sent various fatwa requests to the ECFR, states the following: "As I work with women who convert to Islam I often find that these women, women who are highly educated, skilled and, in some cases very professional, slip into this 'submissive' mold which they unwittingly and quite naively understand to be a state of 'piety'." ("Can Muslim Women Really Make a Difference", Live Dialogue with Batool al-Toma, IslamOnline, 11 May 2005 – online at <http://www.islamonline.net/livedialogue/english/Browse.asp?hGuestID=TQzIGZ>, accessed 19 May 2008).

(and perhaps more) out of the forty-seven that were answered came specifically from them. Their concerns extend from which *madhhab* to follow, to guidelines on answering external criticisms of Islam, inheriting from non-Muslim relatives and, especially for women, ways of regulating family conflicts arising from cultural differences. Institutions such as the New Muslims Project (www.newmuslimsproject.net) based at the Islamic Foundation in Leicester have referred to the ECFR on a number of occasions, including concerning the question of whether a married woman who converts to Islam can remain wed to her non-Muslim husband.²⁶⁰ The newsletter published by the NMP, *Meeting Point*, often carries answers to questions by ‘Abd Allah al-Juday’ (Abdullah al-Judai), the member of the ECFR in Leeds.

A number of questions are also sent by Muslims seeking to repent from past misdeeds, revealing a wide range of actual religious practice among the *mustafti* population. The ECFR is expected to act here as a sort of absolver, determining the amount and character of the penitence. Such petitions seem to cut across generational lines. To a young Muslim who had an illicit relationship with a girlfriend, it counsels prayer and steadfastness; to a middle-aged mother guilty of abortion, it recommends repentance and charity.²⁶¹ Many questions originate from imams residing in Europe, both members and non-members, demonstrating that local Muslim scholars turn to the ECFR for expert advice in a number of fiqh issues. One imam, for example, wrote: “A couple has lived outside marriage for many years but now they wish to ratify an Islamic marriage. May we write such a contract for this couple?” Another imam asked: “When people die in the home country, may

²⁶⁰ Batool al-Toma, personal communication, May 2008. Founded in 1993, the NMP provides assistance to British converts to Islam. According to its website, “The most sought after information are the procedures related to conversion and its aftermath, maintaining relationships with non-Muslim family and friends, addressing hostility and confrontation sensitively, marriage and family life, accessing Islamic knowledge and Arabic, and the general need to discuss the doubts, fears, hopes and aspirations of life as a new Muslim.” (<http://www.newmuslimsproject.net/counselling-and-advice.html>, accessed 13 May 2008). The ECFR has dealt with some of these questions in its fatwas.

²⁶¹ It is interesting to note in this regard what Ben Achour has written: “L’islam a son Eglise, qui « sait », interprète, mais surtout, et c’est ce qui échappe à la plupart des observateurs, « intercède »...[l]e Faqih indique la voie, et le simple croyant...se sent lié par la parole du Faqih” (Ben Achour 1992 : 21-22).

we pray for them in absentia?”, or one person inquired: “Can we collect and distribute zakat?”

Local or national Muslim organizations also refer to the ECFR – particularly, it seems, in those countries where the Muslim leadership comes from Arab countries and has links to the Muslim Brotherhood. The Islamic Council of Sweden (Sveriges Muslimska Råd, or SMR) has been working since the late 1990s with a local cooperative insurance company, Folksam, to develop a range of insurance policies deemed compatible with the shari‘a. The SMR’s vice-chairman, Mahmoud Aldebe, has requested in this process fatwas from the ECFR to ensure the proposed insurance policies are Islamically valid.²⁶² The ECFR approved Folksam’s policies for business insurance and funeral insurance based on mutuality (i.e., the surplus is shared with the members).²⁶³ The program devised by Folksam and the Islamic Council of Sweden has been explained to Muslims during Friday prayers and through a brochure in Swedish which has been distributed to the country’s mosques.

The Islamic Council of Norway (Islamsk Råd Norge) has a Hilal Committee (Hilalkomiteen) to establish the Islamic lunar calendar with precision. If the ECFR’s decision to combine astronomical calculations and eye-witnessing has provided a solution to the beginning and end of Ramadan, the ICN’s Hilal Committee still struggles to set a date for Eid al-Adha that is accepted by the whole of Norway’s diverse Muslim community. In coordination with various local Muslim actors, the ICN’s Hilal Committee sent a carefully drafted question to the ECFR in 2002 which was debated in the Council’s 12th session in Paris.

²⁶² Aldebe (b. 1954) is the Jordanian president of the Muslim Association of Sweden, Sveriges Muslimska Förbund, considered the largest Swedish Muslim organization.

²⁶³ Maria Sköld, “Lockar inte svenska banker”, Göteborgs-Posten, 8 June 2007 (<http://www.gp.se/gp/jsp/Crosslink.jsp?d=898&a=351280>, accessed 13 May 2008). For more information on Folksam’s partnership with the Swedish Muslim Council see the paper presented by Folksam’s project leader Stig Karels, “Affinity marketing - Products for the Islamic community”, to a specialized meeting on mutuality held in Bruges, Belgium, in 18-21 October 2006 (online at <http://www.insurance-mutuals.org/AISAM-ACME Congress 2006 Karels en.pdf>, accessed 13 May 2008). See also the ACME’s Rapport of December 2003, p. 12 at <http://www.acme-eu.org/documents/rapportUK25.pdf>.

In France, the UOIF regularly coordinates the beginning and end of the month of Ramadan with the ECFR (although it now waits for the decision of the Conseil français du culte musulman before it announces its final date). Likewise, the Koordinationsrat der Muslime in Deutschland and the Zentralrat der Muslime coordinate their lunar calendar with the ECFR's secretary-general in Dublin. Recently, the Central Council of Muslims in Germany - working in coordination with the German Football Association - asked the ECFR (as well as Al-Azhar) to back up its decision to allow professional footballers in Germany to break their fast if football is their only source of income and if fasting diminishes their performance.²⁶⁴

There may be different motivations underlying the appeal made by local Muslim organisations to the ECFR. The aim may be to elicit an authoritative opinion, as in the previous examples, or to defer an opinion on a controversial topic, as seems to be the case in the recent decision by the leader of the Islamic Council of Norway Senaid Kobilica to send a request to the ECFR to provide a fatwa regarding the position of European Muslims regarding homosexuality.²⁶⁵

The ECFR's fatwas sometimes elicit further questions. If an interest-bearing mortgage is allowed for the purchase of a house because Muslims are in need, can an Islamic Centre be financed via a similar loan, asks a delegation of Norwegian Muslims (Fatwa 8/15, Majalla 8-9: 347). The fatwas are not always final and authoritative, however, and Muslim organisations in Europe have also contacted other muftis abroad regarding the ECFR's own fatwas. In 2007 the following question was sent to Sheikh Muhammad S. al-Munajjid in Saudi Arabia: "We run an Islamic center in the city in Britain, and we want to

²⁶⁴ The incident was sparked by a clause in the contract of Muslim football players that stipulated that fasting without the club's permission was not allowed. The club, FSV Frankfurt (second-division), explicitly warned their players against fasting in 2009, prompting the fatwa in July 2010. According to Aiman Mazyek (secretary-general of the Zentralrat) speaking to Associated Press, the ECFR approved the fatwa – although no statement was found in the ECFR's website (AP, "German soccer gets ruling on Ramadan fasting", 28/7/2010).

²⁶⁵ Tore Letvik, "Ber fatwaråd gi råd om homo-dødsstraff", *Dagsavisen*, 3/12/2007 (<http://www.dagsavisen.no/innenriks/article323752.ece>). See also <http://islamieurope.blogspot.com/2007/12/norway-islamic-council-turns-to.html>.

establish the dates of the beginning and end of Ramadaan for the people who pray in our center. Our goal is to try to unite the Muslims on this matter, but some of them think that we should sight the moon whilst others think that we may use calculations. The European Fatwa Council has its own view on this matter, please note that it is the body which takes care of issuing fatwas to the Muslims in Europe...Should we follow the European Fatwa Council even though they use calculations to determine the beginning and end of Ramadan, or should we continue our efforts to unite the mosques in our city even though that goes against the view of the Council?"²⁶⁶

The ECFR has also responded, indirectly, to questions put forward by European State bodies. The Islamic Council of Norway, as the Norwegian State's privileged interlocutor on Muslim affairs, was solicited in 2002 by the Municipality of Oslo to provide guidelines regarding burying practices in Islam.²⁶⁷ The head of the ICN's imam commission, Sheikh Mahboob Rahman (born in Pakistan, and also a member of the ECFR), was asked by the Municipality to provide answers to a number of questions in order to facilitate the application of Islamic rules in Norwegian cemeteries.²⁶⁸ When the Municipality asked whether burying family members on top of one another was allowed in Islam, a practice sometimes used in order to save space in the already crowded cemeteries of the Norwegian capital city, Mahboob Rahman considered that the question should be sent to a higher authority, the ECFR. The ICN drafted the question in Arabic and sent it by fax to the ECFR's Hussein Halawa a few months before the 12th session of the ECFR took place in Paris. The ECFR discussed the matter with Mahboob Rahman and the head of the Islamic Council of Norway and issued a brief answer stating that such practice was allowed if judged necessary. A copy of the fatwa was sent

²⁶⁶ The fatwa is available at <http://www.islamqa.com/ar/ref/37667> (accessed 27 May 2008). In his response, al-Munajjid argues that "it is not permissible to follow the Council mentioned if they depend on astronomical calculations and not on sighting of the crescent". A brief discussion of this controversy is found in <http://www.al-kanz.org/2007/09/05/le-conseil-europeen-de-la-fatwa-ramadan-lastronomie-et-le-calcul-mais-pas-la-lune6-ramadan-2007/>.

²⁶⁷ Cemeteries in Norway are managed by the Church except in Oslo, where for practical reasons the Municipality of Oslo is in charge.

²⁶⁸ Lena Larsen, personal communication, Paris 2008.

by fax to the Islamic Council of Norway some weeks later and transmitted to the Municipality, becoming an accepted practice. This process confirms that, in democratic societies, secular arrangements have to be constantly (re-)negotiated between the State and religious institutions. Confronted with the excesses of social life, which transgress the public-private divide, the secular state cannot escape from the process of defining religion, even if only for purposes of regulation.²⁶⁹

In contrast to the fatwa councils of the Muslim world, however, the ECFR has not had to respond – as far as the author is aware - to questions put forward by legal courts (although some members have, in their individual capacity, been solicited by European judges to explain the Islamic position concerning specific acts). The *istifta* comes mostly from Muslim individuals. When questions have been received from organisations, they tend to be Muslim bodies or, in one instance, the World Health Organisation Regional Office of the East Mediterranean in Cairo.²⁷⁰

How can one try to put the petition in the context of the life of the individual who requests it? If, by requesting fatwas from the fatwa council, petitioners naturalize the project of the ECFR, it is not always clear whether the fatwa request represents a first, intermediate, or final step in an individual quest for authority – even if the regular invocation of competing claims in the petitions suggests a lengthy and non-linear process of consultation.²⁷¹ The (supposedly

²⁶⁹ I treat Norway as a secular state even though the Lutheran Church occupies there a particular place in it.

²⁷⁰ The question related to a vaccine against poliomyelitis that contained trypsin, a product derived from pig (Fatwa 11/6, Stockholm 2003, available from the World Health Organisations's website www.who.int). Although it did not in any way relate to Muslim minorities, it is a testimony to the authoritativeness the ECFR has acquired.

²⁷¹ Petitioners often invoke specific interpretations of Islamic Law and ask the ECFR to position itself in relation to the former. Examples of this procedure include the following:

- "Would the honourable members of the ECFR comment and explain the issue of the Salvaged Group (al-firqa al-najiya)...as some Muslims have claimed that they are this group and that all other Muslims are destined to ultimate failure?" (ECFR 2002: 27).

modern, or post-modern) phenomenon of fatwa shopping – i.e., the individual act of requesting fatwas from different muftis until a satisfying answer is received – has been much debated recently, within Muslim communities as well as in the scholarly literature, although the evidence for this phenomenon remains largely anecdotal.²⁷² In addition to fatwa-shopping, a comparison between fatwa requests sent to the ECFR and those sent to other muftis suggests furthermore a degree of in-built selectivity on the part of the mustafti, whose questions seem already geared to specific kinds of muftis.

Two examples may be invoked to illustrate this dynamic of in-built selectivity: A question that, starting from the criticism of the (supposedly) Muslim aversion of dogs, asks whether there is a madhhab “which states that dogs are clean, so that this difficulty may be lifted from us” (ECFR 2002: 37) is tailored to a council which navigates between juridical schools (a practice which Qaradawi calls “selective ijtihad”) and strongly emphasizes the need to facilitate the life of Muslims. The question would seem out of place if addressed to muftis attached to a specific madhhab (traditionalists) or to scholars explicitly committed to finding norms only in the Qur’an and Sunna

- We have heard of the death of someone who lives in another country and we are asked to pray janaza in absentia...This used to occur frequently until some brothers objected to this practice...Is it acceptable for us to pray janaza in absentia(...)? (ECFR 2002: 39)

- “A few years ago a group of Muslims rented a hall for the Muslim community in the city for performing their prayers and practicing their educational activities. Soon the direction of qibla was determined with several compasses, and prayers were performed accordingly for about a week. Since the direction the compasses pointed to was not parallel to the wall of the praying site...the then Imam of the group gave his fatwa that it was permissible (or preferable) to change the direction so that the rows would be parallel to the long wall of the hall...The direction was actually changed and lines were drawn to mark the rows on the floor parallel to the wall and they have been still in that position till now. Whenever a brother objects to that, calling for abiding by the original principle, he is confronted with the saying that the fatwa is still valid, and that raising the problem in the presence of new praying persons who are not aware of it would create controversy. What is the ruling about our situation in the light of Sharia?” (ECFR 2002: 110-111).

²⁷² Fatwa shopping and even, in some cases, legal forum shopping – ie, the process whereby an individual chooses to solve conflicts according to Islamic normativity or Western positive law in function of the anticipated benefits of each – seems to be prevalent enough in France to deserve a public condemnation by local members of the ECFR at the Muslim annual gathering of the Bourget (Al-‘Arabi al-Bishri, *Dar al-Fatwa*, May 2008). Condemnations of fatwa-shopping are prevalent in Islamic discourse.

(salafis).²⁷³ The ECFR's sharp answer is simply: "Yes. The madhhab of Imam Malik ibn Anas states that dogs are clean. Hanafis believe that a dog's body is clean and that the uncleanness is restricted to the saliva and its bodily waste" (ECFR 2002: 37). By contrast, the following question - sent to the Saudi scholar Ibn Baz - would make less sense if addressed to muftis with different opinions on gender segregation: "Many Islamic societies suffer from the problem of mixed education between boys and girls, which they have inherited from the time of colonisation or from the practice of copying western civilisation. What are the dangers of mixed education and how can we rid ourselves of it?" (Ibn Baz and Uthaymeen 1998: 32).²⁷⁴

This is not to say that there are no dissonances between petitioners and muftis – there clearly are, as can be seen from the ECFR's response to a question about the abuses of polygamy (ECFR 2002: 132-135; see my discussion below), or when Ibn Baz seems to ignore a question on the importance of knowledge of the context for formulating appropriate fatwas (Ibn Baz and Uthaymeen 1998: 33-34). What I am suggesting, however, is that Muslims at large, confronted with a degree of fragmentation of religious authority, are often aware of the different types and ethos of muftis, and target their questions accordingly.

Contents

A cursory look at the thematic distribution of the ECFR's published fatwas immediately reveals the importance in Europe of a certain kind of Muslim cultural politics: family relations (26 fatwas) and issues of manners and etiquette (twelve fatwas) provide the subject matters to almost half of the eighty fatwas included in the First and Second Collections.²⁷⁵ This highlights

²⁷³ This question would in itself be frowned upon by many scholars, old and new alike. As the 13th century Muslim jurist al-Nawawi argued, in his brief exposition of the *adab al-mufti*, lay Muslims are not allowed to pick and choose from any madhhab.

²⁷⁴ As I discuss more extensively in the section on the discursive styles ("Forms"), elaborating on a point made by ISIM's former director Khalid Masud, the contextualisation of the question by the mufti often provides invaluable information about his or her sensibility and commitments.

²⁷⁵ The categories I establish here are partly my own; the ECFR divides the fatwas of the first collection according to the following: 1) da'wa and Muslim affairs, 2) cleanliness, hygiene and prayer, 3) Finance and Money, 4) Work and Earnings, 5)

both the contemporary relevance of issues of collective identity and the extension of the fatwa genre away from legal domains towards ethical issues – a phenomenon not restricted to Europe but which may be exacerbated here due to the “identitarian twist” (Salvatore 2001) of Muslim traditions in a migratory and minority context. As the members of the ECFR put it, family remains the “biggest obsession” (Majalla 8-9) of European Muslims.

In light of the existing scholarship on shari’a in the West, which tends to frame the debate in legal terms, it is noteworthy that less than a dozen fatwas can be said to have direct legal consequences. If the questions asked by Muslims to the ECFR may be considered appropriate indicators, the construction of the shari’a as posing a legal challenge to Western laws seems particularly out of place. The importance of shari’a seems to lie less in the ways it affects the legal field than in its varying capacity to discipline subjects – thus confirming the Foucauldian insight that a study of law, in so far as it focuses on coercion or repressive power, diverts attention from the extra-legal mechanisms through which power produces subjectivities.

Financial matters – including those related to work, zakat and banking practices - constitute the second largest section with sixteen fatwas. Issues related to Islamic banking have continued to preoccupy the members of the ECFR since as a number of subsequent and still unpublished fatwas deal with questions ranging from transactions in the stock exchange to the use of bank loans for a variety of purposes. The importance of financial issues in the organization of Muslim life in Europe²⁷⁶ seems to have been largely neglected in the scholarly literature. This neglect, I would like to suggest, appears

Marriage and Divorce, 6) Family and the Muslim Household, 7) Food and Drink, 8) Mannerisms and Behaviour, 9) Miscellaneous. (The second collection includes also fatwas on Zakah; on fasting and Qurbani, on Funerals).

²⁷⁶ Tariq Ramadan, commenting the ECFR’s fatwas on financial issues for Editions Tawhid, remarks the following: “Sans doute est-ce le domaine dans lequel les musulmans attendent le plus de contribution de la part du Conseil (européen de la fatwa et de la recherche) tant les questions financières sont difficiles en Occident. Gérer son argent, son salaire, son capital ou ses investissements dans le monde de l’activité économique ou financière à la lumière des prescriptions islamiques est une épreuve de tous les instants.” (Ramadan in CEFR 2002: 87). Ramadan goes on to hint at a critique of the ECFR’s answers in relation to financial questions – a critique which he develops more openly and extensively in *Les musulmans d’Occident et l’avenir de l’islam* (Ramadan 2003).

related to the fact that, in their attempt to avoid bank interest in its myriad forms, these fatwas typically express a concern with the afterlife and presuppose a subjectivity that can neither be subsumed under the liberal mould nor easily be construed as a threat.

Questions related to the performance of rituals are relatively few (five), especially when compared to those requested from French-Algerian muftis I have seen answering questions on the telephone. If this disparity confirms the need to pay attention to the media constraints of the ECFR (and to the corresponding adjustments in the petitioners' expectations), it is also noteworthy that this scarcity of fatwas related to religious rituals (*ibadat*) contrasts with the fatwa collections published by al-Azhar and Dar al-ifta' in Egypt (Orelli 2002: 113), the radio fatwas studied by Messick in San'a' (1996: 317), or the opinions stored in IslamOnLine's Fatwa Bank (Gräf 2008: 12-13). Very few petitions furthermore deal with questions of Islamic interpretation or *tafsir* – questions which constitute a quarter of the fatwas delivered in Yemen (Messick 1996: 317) and almost half of the petitions in other contexts. It is difficult however to ascertain whether this results from a specificity of European Muslims or simply from the selective mediation of the ECFR's scholars.

Finally, only two published fatwas can be classified as political in the narrow sense: one deals with Muslims voting and standing for elections (ECFR 2002: 100), and the second with the Islamic status of Jerusalem (ECFR 2002: 189-192)²⁷⁷. Revealingly, these fatwas are included in the

²⁷⁷ Suggestively entitled "Giving up Jerusalem is a betrayal of Allah, His Messenger and the Believers", this fatwa is a deliberate intervention in the Israelo-Arab conflict which may seem out of place in a collection of European fatwas. Although I have not been able to obtain a satisfactory answer on how this question became an issue for the European fatwa council, the most likely explanation is that it was sent to the ECFR as a question (*istifta*). The attachment to the Palestinian cause of the ECFR's leadership is well-known; according to Xavier Ternisien of *Le Monde*, this fatwa is one of the reasons underlying the non-publication of the French translation of the ECFR's 2nd collection of fatwas ("L'UOIF s'oppose à la parution d'un recueil de fatwas", *Le Monde*, 24 May 2005). This allegation, plausible given the French Muslim organization's documented efforts to distance itself from Qaradawi's positions on the Israelo-Palestinian conflict, was quickly denied by the UOIF in a laconic statement asserting its support for the work of the ECFR without reference to the fatwa in question (See "Communiqué de l'UOIF à propos de l'article du quotidien "Le Monde" du 23 mai"). In any case, the fact that this fatwa has not been directly criticized by

category “miscellaneous” (*fatawa mutafarriqa*). Although the work of the ECFR after 9/11 has become more overtly political (see below), there is little evidence suggesting that this is driven by the grassroots – i.e., driven by questions from Muslim petitioners.

Although few questions are framed in relation to “Europe” as such,²⁷⁸ the questions typically asked to the ECFR relate to the adaptations of Islamic norms to the European context, both at the level of religious worship (*‘ibadat*) and at the level of social practices (*mu‘amalat*). Examples of the former include how to determine the prayer timetable in (Northern) European countries; when to start the month of Ramadan; combining prayers in the rainy winter. Instances of the latter include the status of meat products in the West; marriage contracts and divorce certificates issued by non-Muslim judges. Some questions appear to be universal, such as those related to doctrine or biomedical issues, but even then many take on a special significance in the context of Muslim minorities and life in pluralistic societies. Thus, while criticism by ‘Europeans’ or ‘atheists’ informs a number of fatwa-petitions, “freedom of conscience” becomes at least in one instance a standard against which Islamic norms are measured - highlighting in both cases the reflexivity required of Muslims living in the West. Catering for an alcohol-drinking clientele (ECFR 2002: 50) appears also as a distinctive multicultural dilemma. A question on praying the Friday *jumu‘a* before or after its allocated time (ECFR 2002: 18) highlights the professional constraints on religious practices in a non-Muslim setting; an enquiry into the obligation or otherwise of sticking to one *madhhab* (ECFR 2002: 31) demonstrates the crisis of the traditional *fiqh* schools among the heterogeneous Muslim communities of the West; another question on the orthodoxy of praying in *absentia* for dead ones (ECFR 2002: 39) hints at the splitting of families and

European Muslims seems to indicate that such transnational solidarities are widely shared.

²⁷⁸ Questions specifically framed in relation to “Europe” are rare (7; 42); other questions take the West/East (13; 17; 29; 31) or the Muslim / non-Muslim lands (1; 9) binary as their point of departure. A larger number of questions, however, are framed in local (“in our city”) or national terms (a doctor practising in Britain; a young Muslim forced to live in exile in Germany; a convert in Poland; a student in Britain).

the pangs of migration; one fatwa on the language of the *khutba* illustrates the acculturation of Muslims in Europe; a further enquiry into the modalities of distributing *zakat* to the needy ones (ECFR 2002: 42) tells a story of seasonal work and precariousness, just as it provides a picture of Muslim life without traditional Islamic institutions.

Forms

Istifta presupposes from the outset a specific relation to the written word; a relation which implies a recognition and acknowledgement of textual forms of authority.²⁷⁹ Despite being often neglected the forms (or discursive styles) of the questions can be as revealing as their contents; they often provide insights into the subjectivity of the petitioner, as well as informing us of the ways in which relations of authority are constructed and naturalised. Focusing in particular on the varying degree of personalisation of petitions, I offer here some provisional ideas about how the *mustafti*'s discursive style can be related to the type of question that is asked, and to the kind of subject that asks it.²⁸⁰

The questions submitted to the ECFR (via a variety of media – not only written questions delivered in hand or by post, but also telephone enquiries, faxes and emails) have been formulated both in personal and impersonal

²⁷⁹ This particular relation to the written word of the *mufti* may sometimes appear puzzling: how is one to understand, for example, a Muslim believer who seemingly suspends his judgement by submitting this question to deliberation in the ECFR: "After delivery my wife's stomach remained large. At that time the doctor said it would return to normal after a period of time. Nevertheless, this has not happened. So my wife visited the doctor again and the doctor prescribed massaging her stomach. This massage would be done by a female nurse (non-Muslim) and the treatment involves uncovering certain parts of the body that should be covered. In light of that, is this treatment permissible?" (Fatwa 2/17, 2007).

²⁸⁰ I find Benkheira's brief study of a late 20th century Algerian fatwa collection (2004: 87-94) inspiring here. As he shows there, the personalisation of a question is often linked to a moral discourse or *mise en scène* (Benkheira 2004: 88) that assumes the *mustafti*'s responsibility, takes her salvation in the afterlife as its object, and is driven by the fear of divine punishment. By contrast, petitions geared towards establishment of justice *in this world* adopt generic terms, try to construe the individual as victim, and seek either to achieve individual gains or to avoid punishment by the state. Although Benkheira does not say so, the first type of questions seems to presuppose a subject which one could call "pious" (Mahmood 2005) while the latter kind appears informed by a more "liberal" subjectivity.

terms, as well as in combinations of both.²⁸¹ An impersonal or neutral tone is specifically encouraged in the adab al-fatwa manuals (see chapter one); in principle it is this impersonality of the question that makes the fatwa, unlike the court decision, inter-subjective and fit for publication.²⁸² Impersonality requires the skill and/or the willingness to convert a personal dilemma into a generic question (typically signified by the change of the subject from the first to the third person). Such questions may be of different kinds: Sometimes the issue at hand does not seem to concern the mustafti directly, who simply acts as mediator potentially indifferent to the answer. In most cases, however, it seems reasonable to assume that the person who asks is directly concerned. In a few occasions, it appears that a neutral tone may even be part of an attempt by the mustafti to disguise or underplay a personal question of specific emotional value.²⁸³

Generic questions are typically open-ended and geared towards the future: petitioners who ask about “the shari‘atic rule” concerning particular cases discursively place themselves under the authority of the ECFR and accept (at least in theory) the possibility of correcting past behaviour: such are the high stakes implied in questions ranging from “Is residing in a non-Muslim land allowed in Islam” to “Are fathers required to attend educational courses to solve children’s problems?”. While these issues seem at first sight not only

²⁸¹ Given my reliance on published materials I cannot be certain that originally personalized questions have not been reformulated in more generic terms for purposes of publication. This has historically been the role of the fatwa amin – a position which does not exist officially in the ECFR – and even if it seems reasonable to assume that the editor or the secretary general (or other members) may sometimes have taken up this function, the reformulation is now much less “decisive” (Heyd 1969: 49) than in other periods, not least because the ECFR’s answers are more extended than the responses commonly given in routine Ottoman futya. My discussion is therefore based on published questions which are (or have been left) personalized and those which are not (or have been converted into generic questions).

²⁸² This is the case despite the well-known dictum that fatwas change according to place, time and circumstance. One tradition which captures this is the saying that - as long as the question remains the same - the answer is valid until the Day of Judgement if no authorized ijthihad contradicts it.

²⁸³ Examples of this include the following: “Does the woman have the right to rest during the postpartum period, or is she also obliged to carry out the duties of receiving guests” and “If a woman fell ill and wished her husband stopped receiving guests during her illness is she compelled to serve their guests regardless”. In both cases, it seems improbable that a mediating voice was involved.

unpredictable in their outcome (i.e., they do not explicitly anticipate any particular response), but also haphazard in their distribution of moral responsibility (in cases involving competing claims, both parties may in principle be wrong), a closer analysis of this kind of petitions often reveals a more complex story. Unsurprisingly, the formal open-endedness of the *istifta* is shaped (and therefore restricted) by the *mustafti*'s framing of the question and by his attempt to contextualize the case at hand, as evidenced by a query about the permissibility of masturbation "given that it prevents adultery", an enquiry on a wife's "right to rest" in the post-partum period, or a more intriguing question about the punishment of apostates given the perception (of the petitioner or of the wider society?) that death constitutes a "clear breach of the freedom of belief".²⁸⁴ If the *mustafti* always initiates and constrains the *mufiti*'s interpretive activity (Masud, Messick and Powers 1996: 22), the inclusion of contextual information not strictly necessary to the question appears here as a particularly strategic move introduced to elicit a particular response: in this regard it constitutes perhaps a classic example of the popular attempt to (mis)guide the Islamic scholar that the *adab al-fatwa* literature severely warns *mufftis* against (see chapter 2). Generic questions ultimately lend themselves easily to the staging of competing claims – often

²⁸⁴ The ECFR responds by trying to shift the terrain away from the issue of freedom of religion (which it thus implicitly recognizes) towards a discussion about the need to be loyal to the nation (seemingly erasing the differences between the *ummah* and the framework of the modern nation-state). The main aim of the ECFR here seems, however, to be the removal of the possibility of individual punishment of apostates by making the application of the death sentence the exclusive prerogative of the Islamic state. The full answer is the following: "Executing whoever reverts from Islam is the responsibility of the state and is to be decided by Islamic governments alone. Islamic organisations and establishments cannot make such rulings nor can they carry them out. In any case, a considerable number of our predecessors (Salaf) agreed that not all who revert from Islam are to be executed, but rather those who declare their action in public and may cause *Fitna* by bringing down the name of Allah (swt), His prophet (ppbuh) or the Muslims. The punishment of execution in this case is to protect and preserve the entire nation from the evil that this individual will undoubtedly bring, and is not a case of confiscating his or her rights to expression and belief. Indeed, by committing such an act, the individual has transgressed upon the rights of others as well as the entire state and nation, which come before anyone's individual rights. Modern legislation uses the term "High Treason" for crimes similar to the act of one who reverts from Islam then announces this in public and wages a campaign against Islam and the entire nation" (ECFR 2002: 30-31). For a treatment of apostasy in Islamic Law see Peters and de Vries 1976. For a critical study of Qaradawi's views on the issue, see Krämer 2006.

formulated in the very liberal framework of “rights” versus “duties” – which, while not necessarily devoid of spiritual concerns, are usually related to the distribution of tasks and responsibilities in this world.

If generic questions seek by and large to elicit *informative fatwas* and construct the relation between mufti and mustafti as one essentially marked by knowledge differentials, highly personalized petitions are characterized by a strong moral discourse and figure the ECFR in the substantially different role of the *pastor* responsible for the administration of souls. In this second configuration the mufti not only provides information (although he may also do that) but more importantly he seems to absolve, to determine penitence, and to accept repentance. These personalized questions (i.e., 1, 3, 14, 16) plunge to various degrees the reader into the subjective world of individuals facing particular moral dilemmas.²⁸⁵ An example of this kind is a question from Germany which deserves to be quoted in extenso:

I am a young Muslim who arrived in Germany as an obedient Muslim and remained so far many years. However, I then strayed from the straight path and committed adultery many times with a girlfriend. I kept descending down the path of immorality and wrong-doing, even drinking alcohol. Since the beginning of the month of Ramadan I decided to repent and to return to the ways approved by Allah Almighty. Until now Allah has helped me to remain obedient and I ask Him that my repentance be pure and sincere. I now wish to cleanse myself from the filthiness which I indulged into, and I only wish for a Muslim Caliph to perform the punishment decreed by Allah Almighty upon me, so that my body and soul may be truly cleansed and purified. I feel anxious that I have committed adultery many times and I do not know how to cleanse myself from this sin (ECFR 2002: 29).

²⁸⁵ Unfortunately, from the perspective of this research, not all such questions are deemed worthy of publication; in some of the ECFR meetings that I have attended I witnessed how highly personalized petitions considered too specific in their details have been left out of the ECFR’s final statement because, according to the ECFR’s secretary general, the specifics of the case make it of little interest to others.

Personalised questions like the one above presuppose a particular kind of sensibility; they are rarely framed in terms of rights or duties, often assume outright the mufti's active moral responsibility, and are primarily oriented towards the afterlife. While the trust placed in the mufti appears unconditional, it seems unlikely that lenient fatwas will always satisfy the petitioner; as Asad has suggested in a different context, pain – here the wish to be physically punished - is part of a larger quest for a pious life and therefore belong to a technique of the (Muslim) self. The petitioner here is clearly familiar with Islamic legal dispositions regarding zina (extra-marital sex) and, unlike the open-ended questions of the previous kind, the petitioner here has little to lose: in requesting a formal fatwa he is already engaged in the process of appeasing his conscience.

The fatwa grants him respite: after praising his efforts to return to the straight path it states that “repentance” suffices.

Fatwa 22 provides a second example of this type of highly personalized request:

“I would like to know how much money I should pay for the abortion of an unborn baby before it became 120 days old. The reason for the abortion was because it was causing tremendous psychological pressure upon the mother who is a medical student, and who felt that she would never be able to cope with her studies whilst bringing up the child. The abortion was done because we felt that this was sufficient justification. However, the mother now feels great regret, particularly since she learnt that Islamic Shari’ah forbids abortion even at the very early stages of pregnancy” (ECFR 2002: 63).

As in the first case, the petitioner (seemingly the husband of the medical student) is aware that the Islamic legal dispositions for expiating abortion involve the payment of a sum of money to particular individuals. Here too moral responsibility is assumed by the petitioner. The religious literacy that is evident here (and in various other questions, personal or generic) testify to the (global) dissemination of a particular view of Muslim piety as requiring a

personal familiarity with the modes of reasoning of the shari'a.²⁸⁶ Such religious literacy is also evident in the invocation of particular Islamic texts necessitating clarification: "Would the honourable members of the ECFR comment and explain the issue of the Salvaged Group (al-firqa al-najiya) mentioned in the Hadith of the Prophet Muhammad" (ECFR 2002: 27).

A third example of an online petition written in French merits to be quoted here, even though it is not directed at the ECFR but at one of the leaders of the Saudi Islamist opposition, Salman Ibn Fahd Al-'Awda, who runs the site www.islamtoday.net²⁸⁷:

"Il y a 1 an j'ai acheté ma maison à crédit. La fatwa du conseil européen m'a beaucoup aidé à prendre cette décision avec le fait en plus que ma fille est handicapée moteur cérébrale (J'ai donc construit ma maison en conséquence). En ce mois béni je regrette fortement le fait d'avoir pris ce crédit et j'en veux beaucoup à dar el fatwa de l'UOIF et au conseil européen de la fatwa d'avoir émis cette autorisation car je pense que je ne l'aurais pas fait si elle n'existait pas. Maintenant je suis obsédé à ce qu'Allah me réserve ici bas et dans l'au delà sur le fait d'être entré en guerre contre lui(...) Comment estimé [sic] vous mon cas vis à vis D'ALLAH? (...) Peut-on encore

²⁸⁶ Although a long-standing Islamic tradition of moral responsibility (going back at least to the 18th century Yemeni scholar Shawkani and upheld by contemporary muftis such as Qaradawi) also requires individuals to ask explicitly for the evidence (al-dalil al-shar'i) that underlies the fatwa, only one petition - from a Muslim living in Brussels (in all likelihood a recent immigrant, perhaps single, and not possessing the nationality of the country) who asks about the legitimacy of residing in non-Muslim territory - specifically demands the relevant evidence from "the Qur'an, Sunna, and authoritative scholars" (ECFR 2002: 23). Given the ECFR's consistent inclusion of the reasoning and proofs that underlie its fatwas, it could nevertheless be argued that the need to request textual evidence is less evident here than in other contexts (and may have been deleted in the process of editing the fatwas for publication).

²⁸⁷ Salman al-'Awda is, with Safar Al-Hawali, the main leader of the movement known as the Islamic Revival in Saudi Arabia – an Islamist oppositional movement with an ethos close to Qaradawi's wasattiyya (for the context of emergence of this movement see Kostiner 1997). Al-'Awda supervises the website www.islamtoday.net, where he delivers fatwas in Arabic, English, French. In 2007 his participation in a major Islamic gathering in Switzerland was cancelled due to the Swiss authorities' refusal to grant him a visa. He has attended a session of the ECFR held in Istanbul in July 2010 and according to Al-Shari'a wa-l-Hayat he is now a full member of the ECFR.

faire confiance au conseil européen de la fatwa et de Dar el fatwa de l'UOIF?"²⁸⁸

This follow-up question suggests that the discourse of the mufti is authoritative, even if the petitioner eventually regrets having adopted the ECFR's lenient fatwa – having recourse to usury being associated here (following an often-quoted hadith) with waging war against God - and consults another scholar in search of tranquillity.

At the risk of oversimplifying messy and often contradictory realities one could argue that if all petitioners deferring to the ECFR enact a specific relation towards the written word (and naturalize the ECFR's disciplining project), they do so broadly under two different models: questions formulated in terms of "rights" presuppose a subject which is close to the liberal model, inquisitive and to some extent individualistic, who requests informative fatwas and places the mufti in a potentially emancipatory position; those subjects one could call pious require pastoral care instead; the fatwas here have a therapeutic function. While the degree of religious practice and commitment seems to vary, most petitioners – pious and liberal - nevertheless confront the members of the ECFR with a particular conception of speech as leading to certain effects. They place the muftis under the responsibility of articulating a discourse which is understood as leading to certain effects.

²⁸⁸ The full text of the question is available at http://www.islamtoday.net/french/show_detail_section_french.cfm?qa_id=1434&main_cat_id=6 (accessed 15 April 2008). The answer, interestingly, is the following :

Cher frère,
1- Etant donné que tu as agi par nécessité ou par besoin, et en prenant la fatwa que tu as mentionnée, tu n'as alors aucun péché et il n'y a aucun mal à cela, si Allah le veut.
2- Tu as le droit d'emprunter de l'argent des non musulmans, car le prophète (qu'Allah prie sur lui et le salue) faisait cela (...)
4- Nous devons tous respecter et donner de la considération aux instituts scientifiques mentionnées, et nous devons demander à Allah de bénir les efforts de ceux qui travaillent dans ces instituts, de leur donner le succès et d'accepter ce qu'ils font.

The answer, which testifies to the similarities between the Ikhwani ethos and the Saudi Sahwa, safeguards the authoritative position of scholars (and their research centres) against the (ever-present) possibility of staging a war of fatwas.

III - DELIVERING A FATWA

How does the ECFR respond to the expectations of the petitioners? What kinds of fatwas are issued, and what assumptions underlie these texts? How do the members of the ECFR seek to assert the authority of the “decisive legal fatwas” (ECFR 2002: 2) they aim at delivering? In this section I explore the spaces, persons and processes involved in the production of fatwas.²⁸⁹ I draw on my observation of four sessions of the European Council for Fatwa and Research – in Paris in July 2002, Dublin in January 2003, Stockholm in July 2003, and London in July 2004 – and complement these observations with an extensive number of interviews conducted with members and observers. Some muftis have also publicly discussed aspects of this deliberative process in a variety of media forms; I also draw on their accounts.

The Setting

The sessions of the ECFR have taken place once or twice a year since 1997. With a few notable exceptions, they have been held in a hotel or conference room of an Islamic centre located in the suburb of a European capital. The functional, purpose-built Islamic Cultural Centre of Ireland (ICCI) in Clonskeagh – in the southern outskirts of Dublin – has provided a secluded location particularly amenable to these debates. Since the early 2000s it is here that the secretary-general finalizes and then disseminates the general statement of each meeting of the ECFR. Located at the periphery of the European Union, in a country where debates on Islam have until recently been less vivid (and less hostile) than elsewhere, the ICCI’s current prominence as the headquarters of the ECFR is the product of the convergence between three main factors. Financial capital comes from the oil-rich Arabian Gulf, in particular Sheikh Rashid Hamdan al-Maktoum, Deputy Prime Minister of Dubai, whose Dublin-based Charitable Foundation built the ICCI in the late 1990s and funds both its activities as well as the ECFR’s.²⁹⁰

²⁸⁹ For inspirational ethnographies of the fatwa in different contexts see Agrama 2010 and Messick 1993.

²⁹⁰ The Charitable Foundation of Shaykh Maktoum has been involved in a number of projects in Europe, including the publication of a collective book on Muslims in the West edited by Abu Shamala (1999).

The Egyptian state provides religious expertise: the ICCI is staffed with Azharis paid by the Egyptian Ministry of Endowments, including the imam of the Centre – and the ECFR’s current secretary-general - Shaykh Hussein Halawa.²⁹¹ The ICCI’s centrality in the minority fiqh project results also from the decentralization policy of the FIOE, which has deliberately spread its main institutions across European nation-states, undoubtedly to minimize the effects of a potential clampdown (in memory perhaps of the tribulations of the Muslim Brotherhood in the Arab world). If it has sometimes been argued that Europe provides a unique space of freedom for the elaboration of Islamic thought, the spectre of illegality, travel restrictions and other bans which hovers over the constellation of actors and institutions involved in the *fiqh al-aqalliyat* project serves as a reminder that such freedom is today far from unbounded.

While Dublin has been the most common location for the ECFR meetings, the venue changes as the Council’s leadership seeks to use the opportunity to meet local Muslim communities, interact with state authorities, and expand its audience – in other words, to fulfil the aim of becoming a “recognized religious authority” in the European continent. In its first dozen years of existence (1997-2010), the ECFR convened 20 sessions in eight different cities: Dublin, Istanbul, Köln, London, Paris, Sarajevo, Stockholm and Valencia.

The European responses to the ECFR have ranged from the enthusiastic through the indifferent to the hostile. The prestige of the ECFR’s chairman Yusuf al-Qaradawi usually ensures a keen reception in Western cities with large Arab populations. On occasion, however, the meetings of the ECFR have been overshadowed by negative media coverage (including paparazzi standing outside the hotel), as happened in London in July 2004.²⁹² On other

²⁹¹ Hussain Halawa replaced ‘Abd Allah al-Juday’ as secretary-general of the ECFR when the fatwa body’s headquarters moved from Leeds to Dublin at the turn of the millennium. Halawa is not a member of the FIOE or the Muslim Brotherhood but maintains a very close relation to Qaradawi. He is also chairman of the Irish Council of Imams (founded in September 2006).

²⁹² Qaradawi was criticized in the British media for his positions regarding women, homosexuality and suicide-bombing. For details of the controversy, and how it

occasions, the members of the ECFR have received almost a statesman-like welcome by the local political authorities – in Valencia, Spain, as well as in Sarajevo, Bosnia-Herzegovina. Like other religious communities, Muslims in Europe are polarized. In the early 2000s individuals of Salafi orientation stood outside the ICCI in Dublin distributing leaflets while the members were convening inside the Islamic Centre. The leaflets condemned the ECFR's fatwas as "misguided" and the institution as "political" and included the counter-opinions of the late Saudi scholars Ibn Baz and Ibn 'Uthaymin. During the meetings (or soon afterwards), government officials will occasionally be asked by the media and opposition parties whether it is "right" to allow such scholars into the country. Given the post-9/11 tone of public debates on Islam in Europe, discretion sometimes appears to be the best support that vigilant state actors can provide to the ECFR.

This politicized atmosphere undoubtedly contributes to the relative isolation, if not secrecy, which often surrounds the meetings of the ECFR in Western Europe.²⁹³ The homogeneity of the setting – an impersonal and scarcely decorated conference room - and the bleak landscapes of European suburbia where the meetings are usually held provide a sharp contrast to the global interconnectedness and media exposure of the scholarly debates taking place inside. As I have described in the previous chapter, *fiqh al-aqalliyat* has become an established field of research, drawing interest and attention from a large spectrum of religious scholars, Muslim activists, policy makers and social scientists – from Australia and the United States to Malaysia and China. The leadership of the ECFR has a large transnational audience (Qaradawi has been called a "global mufti" for some reason). Journalists dispatched from Cairo record the proceedings and write daily reports of the debates for www.islamonline.net, one of the most prominent Islamic portals on the

reshaped the subsequent reception of Qaradawi in Western Europe, see Caeiro and Saify 2009.

²⁹³ Explaining why the meetings of the ECFR were not open to the Muslim community, a member of staff at the Islamic Cultural Centre of Ireland once said to me: "We don't want people to come in and run away with part of a fatwa without taking the full context of the discussion" (personal communication, Dublin, January 2003).

Internet; parts of the discussions and interviews with the scholars are sometimes shown at the satellite TV station Al-Jazeera; the meeting's resolutions are published and discussed in fora such as the daily newspaper Al-Sharq al-Awsat and the (recently-discontinued) magazine of the FIOE Al-Urubbiiyya – not to mention a plethora of other locations on the Internet.²⁹⁴ Although the primary discursive field in which the ECFR operates is arguably located in the Muslim world, the Council's active engagement in national and European debates about the integration of Muslims has drawn attention from mainstream media such as the BBC, The Guardian, Le Monde and the Wall Street Journal. Since 2008, the debates are even broadcast live through the ECFR's website (www.e-cfr.org) to a global audience. This remarkable public orientation makes the scholars acutely aware that by issuing a collective fatwa, they are taking position in a larger debate about the relevance of Islamic Law in the modern world.

The Actors

“The sessions of the Council are like the hajj before the modern reforms” (which made meetings between pilgrims of different nationalities increasingly difficult)

Mahmud Mujahid Hassan, ECFR member based in Brussels, personal communication, 2002.

Members of the ECFR consist of some thirty Islamic scholars, coming from different parts of Europe, North America, and the Muslim world. They include a “professor” (Qaradawi),²⁹⁵ two “qadis” (the Lebanese scholar Faysal Mawlawi and the Mauritanian judge `Ali Salim), a dozen “doctors” (the

²⁹⁴ Many of these media circuits are closely associated with the networks built around the ECFR's chairman. Yusuf al-Qaradawi provides support for IslamOnLine; runs a weekly programme on Al-Jazeera titled Islamic Law and Life (al-shari'a wa-l-hayat), and is regularly interviewed in Al-Sharq Al-Awsat. For a description of some of the features that have made Qaradawi such a prominent presence in the contemporary Islamic field see Gräf and Skovgaard-Petersen 2009.

²⁹⁵ There are a number of members who can rightly be called professors: 'Ujayl al-Nashmi, Abdallah Bin Bayyah, Abd al-Sattar Abu Ghudda. In the brochure of the ECFR which circulated in the mid 2000s, however, only Qaradawi is called “ustadh”. A copy of the brochure is included in the Appendices.

scholars with a PhD) and many “shaykhs” - the basic expression of scholarly status. If the term “fatwa” is employed to designate most of the discursive products issued by the ECFR (including those that do not originate in a question from a petitioner), the term “mufti”, derived from the same root, is scantily used by the actors involved.

According to the internal statutes of the Council, the scholars have to meet five conditions to qualify as apt to issue fatwas for Muslims in Europe:

- 1- Possess the appropriate shari'a qualifications at university level, or to have been committed to the meetings and circles of scholars and subsequently licensed by them, and to have a good command of the Arabic language;
- 2- be of good conduct and commitment to the regulations and manners of Islamic shari'a;
- 3- be a resident of the European continent;
- 4- be knowledgeable in Islamic jurisprudence (*fiqh*) as well as being aware of the current social surroundings;
- 5- be approved by the majority of [the Council's] members (ECFR 2002: 4-5).

The ECFR is testimony to the desire to relocate Muslim authority to the West. Islamic scholarship, however, still appears rooted in the heartlands of the Islamic world. Exceptions to residence in Europe (point 3) can thus be made for those who do not live in Europe but nevertheless “carry the worries and anxieties of their fellow Muslims in Europe, visit them on a frequent basis and appreciate their conditions and living situation” (ECFR 2002: IX). Their number should not exceed 25%, according to the statutes adopted in 1997. Although this percentage increased further at the turn of the millennium as the leadership of the ECFR pursued a policy of inclusion of muftis based in the Muslim world (to prevent external criticism), the policy seems to have been reversed since the establishment of the International Union of Muslim Scholars in London in July 2004.

The internal statutes stipulate that the four Sunni schools of jurisprudence and the size of the Muslim populations of European countries must be proportionally represented in the Council.²⁹⁶ Currently, Britain and France accordingly provide the greatest contingent of scholars (6 and 5 respectively). While all the French-based scholars come from North Africa and work (or have worked) closely with the Union des organisations islamiques de France, the scholars in the UK exhibit greater heterogeneity. They include a leading Tunisian Islamist exiled in London (Rashid Ghannushi), a formal member of the Muslim Brotherhood and, until recently, the president of the FIOE (Ahmad al-Rawi), an Iraqi hadith specialist based in Leeds ('Abd Allah al-Juday'), the Manchester-based Libyan scholar Salim al-Shaykhi, and two South Asian scholars of Deoband and Ahl al-Hadith sensibilities (Bradford's Ismail Kashhoulvi and London's Suhaib Hasan). Millî Görüş is represented by two Turkish scholars based in Germany. The Bosnian Grand Mufti Mustafa Cerić and Muhammad Sadiq, a German convert who joined the ECFR in the early 2000s, are the only native Europeans (outside Turkey). Countries such as Spain, Belgium, Netherlands and Switzerland provide one member each – while Italy, Austria, and Eastern Europe outside Bosnia-Herzegovina are absent.²⁹⁷ There are also two members from the Fiqh Council of North America (Jamal Badawi and Salah Sultan) sitting in the ECFR.²⁹⁸ Despite the

²⁹⁶ The juristic school in which each individual member was primarily trained in is generally known and taken into consideration in the discussions. However, differences between Hanafi, Hanbali, Maliki and Shafi'i scholars seem considerably less important today than in the past due to the wide acceptance of inter-judicial reasoning or *talfiq* (Krawietz 2002). For the leadership of the Council, borrowing from different schools is a key instrument for facilitating the lives of Muslims (*taysir fi-l-fatwa*): *talfiq* has become inextricably linked to *taysir* (Qaradawi 1995). By contrast, the members known in the Council for being against "facilitation" seem to care more for the madhhab than their counterparts. Ibram, for example, has hailed the inclusion of Hanbali scholars from Saudi Arabia in the European fiqh council as an improvement which redresses the imbalance between "easy" and "rigorous" trends within the ECFR (Ibram n/d).

²⁹⁷ The late chairman of the Islamic Community in Albania Sabri Koçi, and the then Grand Mufti of Bulgaria Mustafa Illish Hajji were invited to be members of the ECFR. They were removed from the Council's membership list for failing to attend the collective meetings and have not been replaced by those which succeeded them at the head of their respective Islamic communities in Albania and Bulgaria.

²⁹⁸ Taha Jabir al-Alwani was among the founding members of the ECFR but attended only one session (Paris 2002). His name has been removed from the more recent lists of ECFR members.

FIOE's professed effort to include the diversity of Islamic tendencies present in Europe (Rawi, personal communication, Leicester 2002), the ECFR remains exclusively male and Sunni, overwhelmingly Arab in ethnicity, and close to the "middle-ground" (*wasatiyya*) ethos of Yusuf al-Qaradawi and the Muslim Brotherhood.²⁹⁹

Members of the ECFR share a commitment to fiqh, which remains the ground in which solutions to the problems of Muslims are sought. They also have relatively acute senses of inhabiting a particular geopolitical location: they seek not only to establish Islam in the West but also (or in doing so) to "build bridges" between Islam and the West in a time dominated by clash-of-civilization talk.³⁰⁰ The cosmopolitanism and heterogeneity of the group are quite striking. The ECFR's members include Ministers of Justice or Religious Affairs in the Arab World and Islamists banned from their home countries; wealthy faculty deans and professors of shari'a in the Gulf alongside religious entrepreneurs who often struggle to make ends meet in Western Europe; scholars actively working at the forefront of the digitalization of Islamic knowledge, and imams with very limited levels of cyber-literacy; muftis who navigate effortlessly across the traditional schools of jurisprudence, and those firmly committed to one madhhab. Although the council's chairman considers ijtiḥād an "obligation" (Qaradawi in ECFR 2002: 4), the ECFR even included one scholar – the Egyptian-Belgian Mahmud Mujahid Hassan - who until his retirement considered that it was not allowed to engage in ijtiḥād in the present times (personal communication, Brussels, 2002).

The ECFR scholars also occupy divergent positions in what might be called the global Islamic field. Many of them are definitely part of what we might call the orthodox establishment. They move in the Arabic-language "global public space of normative reference and debate" (Bowen 2004b: 880) that

²⁹⁹ On the concept of *wasatiyya* see Gräf 2009.

³⁰⁰ A good illustration of this was provided by Ahmad al-Rawi in his participation in the program *Al-Shari'a wa-l-Hayat* of 31 August 1997 ("Relations between Islam and the West"). Questioned by the presenter (Ahmad Mansur) and by call-in viewers about the West's hatred for Islam, Rawi kept trying to convince the audience (without much success) that there's more to the West than hatred for Islam.

characterizes contemporary Muslim fiqh. Mobile figures who travel around the (Muslim) world, some members of the ECFR are also regular speakers at various international fiqh conferences organized by the Muslim World League, the Ministries of Religious Endowments in Arab states, and other public or private institutions across the Arab world. Quite a number of scholars ('Abd al-Sattar Abu Ghudda, 'Abd Allah Bin Bayyah, Muhammad Hawari, 'Ali Qaradaghi, Taqi al-Din 'Uthmani) are affiliated to or have presented papers in the meetings of the prestigious international fiqh councils based in Saudi Arabia. Many sit in the shari'a boards of Islamic banks ('Uthmani, Qaradawi, Bin Bayyah) and have taken a lead role in the development of an Islamic discourse on bioethics (such as Qaradaghi - see Ghaly 2010). They have developed extensive media networks: Qaradawi, Mawlawi, Bin Bayyah, Ujayl Nashmi and others have their own personal websites; Qaradaghi was the deputy-director of www.IslamOnline.net. In addition to published fatwa collections, a few have their own weekly fatwa shows in satellite TV stations: Bin Bayyah in Iqra, Qaradawi in Al-Jazeera, Salim al-Shaykhi in Risala. Although some of these figures are based in the West, most of them actually reside in the Gulf. Despite visa restrictions, many of the scholars from the Muslim World also meet their counterparts based in Europe when they travel to the West to participate in the conferences and festivals of the Muslim Diaspora (such as the meeting of French Muslims at the Bourget in France, the annual conference of the Muslim Association of Britain, etc). In the internal discussions these cosmopolitan scholars speak with the self-confidence of men supported by a vibrant historical tradition. They deliver the opening speeches and chair the sessions, moderating and often setting the tone of the collective discussions. The papers they present are also more likely to be published in the majalla 'ilmiyya of the ECFR.³⁰¹

³⁰¹ I discuss the majalla 'ilmiyya in the next chapter. Here suffice to note that the most prolific authors in the majalla tend to belong to the international networks of the global Islamic orthodoxy that I have described here: Qaradawi, Mawlawi and Muhammad Hawari have 7 papers published in the first 15 issues of the Majalla, followed by 'Ali al-Qaradaghi (6), Bin Bayyah, Ghannushi and Najjar (5 each). This does not mean that they are based in the Muslim world. Among the 81 papers published by members of the ECFR in the majalla, 43 come from members who live in the West and 38 from scholars based in the Muslim world.

Although the ethos of *ijtihad*, the language of *wasatiyya* and the invocation of the *maqasid* which characterize this group of scholars has become widespread, Yusuf al-Qaradawi's approach to Islamic Law occupies a position of dominance within the ECFR that it does not have in other international fiqh councils.³⁰² This seems to explain why Qaradawi himself has regularly lauded the ECFR's work,³⁰³ and why he has been very keen to reproduce the experiment at a larger level through the IUMS. The collective fatwas of the ECFR borrow extensively from his own fatwas (and to a less extent from the fatwas of the other ECFR members that partake in these global circles). And yet, for those members who reside outside Europe, their membership of a European Council is considered problematic. It is deemed "exceptional" in the internal statutes, and their precise percentage has been the object of regulation during the ECFR's administrative sessions. Qaradawi himself in Al-Shari'a wa-l-Hayat has been asked to explain why "Eastern" scholars can sit in a "Western" council, and to what extent they can actually understand the issues that Muslim minorities in Europe face (Al Shari'a wa-l-Hayat, 11/2/2001).³⁰⁴ The idea that scholars based in the Muslim world may legitimately issue fatwas for Muslims in the West thus appears questionable even the Gulf – not least perhaps because of the emphasis that Qaradawi and his peers place on having an appropriate knowledge of the local contexts (see chapter two).

³⁰² Ghaly (2010) describes how Qaradawi's fatwa on milk banks – which was marginalized during the relevant discussions at the OIC's International Islamic Fiqh Academy – was adopted by the ECFR almost unchanged.

³⁰³ See for example <http://www.asharqalawsat.com/english/news.asp?section=3&id=12353>.

³⁰⁴ During this show of Al Sharia wal Hayat dedicated to the ECFR, the moderator (Mahir 'Abd Allah) invited viewers to participate in a poll that the satellite station was running on whether scholars from the East could issue fatwas for Muslims in the West. Although the idea that Middle-Eastern muftis issuing fatwas to European Muslims unaware of the real contexts is a leitmotif in the discourses of members of the ECFR, the question seemed to pose a religious challenge to the programme guest Qaradawi, who demanded a reformulation to the question: according to the Egyptian-Qatari scholar, what was at a stake was not the geographical origin of the mufti but his ability to grasp the issues. See for more details Al-Shari'a wa-l-Hayat, "al-majlis al-urubbi li-l-ifta'", 11/2/2001 (<http://www.aljazeera.net/Channel/archive/archive?ArchiveId=89496>).

In contrast to this cosmopolitan group of scholars, there are a number of individuals sitting in the ECFR who perceive themselves – and often are perceived by the others - as outsiders. These scholars are usually based in Europe and include members of the FIOE (the institution which has founded the ECFR and which is widely perceived to control the internal proceedings). Although formally trained in Islamic Law and its adjunct sciences, most of the Europe-based scholars do not have the impressive religious credentials of their Middle-Eastern partners. With the exception of the scholars from the South Asia Diaspora (Suhaib Hassan, Ismail Kashhoulvi in the UK and the Norway-based Mahbub al-Rahman), ECFR members based in Europe rarely dress in the traditional clothes of the religious scholar during the sessions of the council; instead of a turban and a jalabiyya, they wear Western suit-and-tie outfits – a sign of modesty perhaps in front of the other scholars but also a reflection / recognition of their own status within the Council. These scholars speak less in the collective meetings, and more tentatively; they tend to be more sensitive (and vulnerable) to local state policies and public debates, and worry more about how the fatwas will be received in their national contexts. Quite often, they express their dissent by invoking the need to take the context (al-waqi') into consideration. It is because of their presence in the ECFR that a vocal opponent of the minority fiqh project, the Damascene Sa'id Ramadan al-Buti, has been able to argue that most of the members of the European fatwa council have “no relation to fiqh” whatsoever (Buti 2007: 152) – an accusation that has elicited repeated denials in the ECFR's own al-majalla al-'ilmiyya (issue 4-5: 10 and issues 12-13: 9-17). If they are referred to as the “non-specialists” in critiques of the ECFR (Al-Sawi 2008: 13), they nevertheless have a legitimacy that the “specialists” from the Muslim world do not have – a legitimacy that comes from living in the West (and needing to engage with non-Muslim authorities), and one that they are able to invoke in order to push their points of view in the collective discussions.

A third group of scholars in the ECFR appear to be somewhat marginal in the collective discussions not because of their religious capital but because they are tied to other transnational Muslim networks. This is the case of the scholars from Turkey and South Asia who are affiliated to specific Muslim

organizations (Millî Görüş, Ahl al-Hadith). They seem to relate their fiqh positions primarily to the expectations of their communities and to the wider aims of the movement.

Although the external image of the ECFR is often a monolithic one,³⁰⁵ there are therefore several factors which contribute to a considerable internal differentiation among its members, including age, charisma, mother language, country of residence, disciplinary training, formal membership in other Muslim organizations, and hermeneutical approaches. The deliverance of a consensual fatwa depends upon the ability to cultivate a space of scholarly debate that cuts across these boundaries.

The Deliberations

The task at hand is to issue fatwas that can “*meet the needs* of Muslims in Europe, *solve* their problems, and *regulate* their interaction with the European societies” (ECFR 2002: 2, *italics mine*).³⁰⁶ The fatwa is seen here as a “craft” (Bin Bayyah 2007) which must simultaneously protect the identity of Muslims (including “forgetful Muslims”) by reiterating the relevance of the shari‘a *and* adapt Islam to the diasporic contexts in which the Muslim communities of Europe live.

³⁰⁵ Muslim and non-Muslim critics of the ECFR often present the fatwa body as an institution tied to the Iqhwani ideology. While Salafi-Wahhabi scholars criticize the ECFR for being tied to the “political organization” of the Muslim Brotherhood, at the Grande Mosquée de Paris (GMP) the ECFR is curiously referred to as a Wahhabi institution. The latter’s reasoning is based on the GMP continuing attachment to the Maliki madhhab, an attachment which constructs Iqhwani and Salafi groups as part of the same broad ideological configuration that displaces the traditional authority of the madhhab.

³⁰⁶ In Arabic: “*isdar fatawa jama’iyya tasuddu hajat al muslimin fi urubba wa tahallu mushkilatihim wa tunadhdhimu tafa’ulahum ma’ al-mujtama’at al-Urubbiyya*” (MUIB 2002: 12)- There are in fact two main discursive products coming out of the sessions of the ECFR: answers to questions (fatawa), and collective resolutions (qararat) on issues requiring - according to the muftis - an authoritative Islamic position. The boundaries between the two genres are in fact quite blurred, not only because a question from a petition may be reformulated in more abstract terms and be made the object of a resolution, but also because the issues that are put forward by individual members often originate in actual questions they were asked in their local context. See also my discussion below.

Many of the issues that are collectively discussed in the ECFR meetings come in the form of questions from Muslims living in Europe (see above). These questions are usually sent by letter, fax or email to the Islamic Cultural Centre of Ireland, where the ECFR's secretary-general receives, organizes, and sometimes forwards the questions to members known for their expertise in the field. The institutional framework of the ECFR and the limited time of each session do not allow all questions to be answered.³⁰⁷ Questions directly relayed by members of the ECFR stand a greater chance of being collectively debated during the session. Certain issues deemed to be consensual – such as the obligation for a Muslim woman to wear the headscarf – will simply not be discussed. Issues deemed to be too politically-sensitive (such as homosexuality) may also be put aside. Questions arrive from Western and Eastern Europe alike, mostly from Arabic-speaking Muslims, often working in institutions associated with the FIOE.³⁰⁸ The responses of the ECFR to these queries constitute *fatwas* in the traditional sense: answers by religious experts to questions emanating from believers.

The challenge for the muftis in this exercise lies in the lack of interaction with the petitioners. Except in those cases where the petitioner is known to one of the scholars, the questioner is a complete stranger. Sometimes factual information considered unimportant by the petitioner – but crucial for the mufti's interpretive work – may be missing: Under what precise circumstances did the husband pronounce a triple divorce (*talaq*), and were there any conditions - such as anger or drunkenness - that might invalidate the pronouncement? What was the “breach of the shari'a” which the sinful imam committed that has led members of his congregation to question whether they can pray behind him at the mosque?

³⁰⁷ Although it is possible to have the question answered by the ECFR's regional fatwa commissions in France or Britain, in practice this does not seem to happen systematically.

³⁰⁸ Although the fatwas published in the two collections mention explicitly only Belgium, Britain, Germany, Poland and the United States, fatwas have also been issued in answer to requests from Finland, France, Greece, Ireland, the Netherlands, Norway, Romania, Sweden, Switzerland.

Muftis are trained to be sceptical of petitioners: the *adab al-mufti* literature which lays out guidelines for issuing fatwas is replete with warnings against people who ask irrelevant or misleading questions to test or ridicule the religious scholar.³⁰⁹ In the case of the ECFR, the formulation of the question often confronts the members with other scholarly opinions (expressions like ‘some claim that’ and its variants are recurrent). The set of questions that experienced muftis routinely ask petitioners in order to ascertain the sincerity, the level of religious commitment, and the psychological importance attached by the petitioner to the problem at hand, is impossible to replicate in this setting. To borrow a commonly-used metaphor, the petitioner’s absence makes the diagnosis of the spiritual illness difficult, rendering the provision of a remedy in the form of a fatwa all the trickier.

The muftis try to counter this absence through a careful reading of the petition – a reading which seeks to lay bare not only the factual details but also the particular sensibility of the petitioner. Sometimes the formulation of the question hints clearly at what the desired answer is: the woman who asks whether her husband has ‘the right’ to prevent her from visiting her parents, like the wife who enquires whether it is permissible for the husband to live off her income, and the mother who wonders if she has ‘the right’ to rest after giving birth, are all seeking an authoritative opinion that will allow them to make an Islamic claim in a domestic dispute.³¹⁰ The muftis often oblige. On the other hand, a question which is seen as lacking a commitment to traditional fiqh may elicit a contemptuous answer, even when that answer

³⁰⁹ As T. J. al-Alwani states in his short treatise on minority fiqh, ‘Inquiries arise for a variety of reasons: there are questions that seek knowledge or information; there are affirmative questions; rhetorical questions; loaded questions that refute a statement or contradict it: leading questions aimed at exposing the ignorance of the respondent, and so on’ (Alwani 2003: 5; see also on this point Jackson 1992). For this American scholar of Iraqi descent, the whole exercise of minority fiqh is about ‘redefining the question’ in order to ‘teach people how to phrase questions accurately’, ‘highlight all the elements that shape the question’ and ‘prepare the inquirer for receiving the appropriate answer’ (Alwani 2003: 4-5).

³¹⁰ As mentioned previously in at least one instance it is actually the husband who is seeking a fatwa in order to counter his wife’s claims: ‘Is it compulsory upon a husband (father) to attend educational courses which teach how to solve children’s problems?’ (First session, ECFR 2002: 79).

clashes with the logic of the ECFR's project. By contrast, a leading question which clearly tries to push the boundaries of traditional fiqh but shows an awareness of and sensitivity to the Islamic legal tradition has a chance of mobilizing the energy of the Council's members.³¹¹

The answers of the ECFR try to be comprehensive, outlining different possibilities and their corresponding rulings in order to make up for any missing information, without taking much shared knowledge for granted. The scholar who drafts the fatwa proposal is expected to engage with the authoritative Islamic texts (especially the Qur'an and Sunna); to disclose the

³¹¹ A fatwa on polygamy and another on the marital status of a married woman who converts to Islam while the husband remains non-Muslim illustrate this dynamic. In relation to the former, although I do not have the exact formulation of the original question, the ECFR's ruling on "the allowance of marriage to four women and the abuse of this allowance" indicates clearly the kind of argumentation that the petitioner put forward: "As for those who say that this allowance is often abused by some men, it is an unfortunate fact that many rights are abused or are used in inappropriate manners. This does not mean that we must cancel these rights. Indeed, there are many men who abuse their first and only wives, so does this lead us to cancel marriage in its entirety?" (ECFR 2002: 134-5). The lack of reference to the European legal context where polygamy is forbidden is striking given the emphasis elsewhere on respecting the laws of the countries in which Muslims live, and the numerous statements made by the ECFR leadership that since polygamy is not a religious obligation, its ban in Europe does not constitute a religious problem.

By contrast, the question about the married woman who converts to Islam starts with the observation that "in the West it has been noticed, as a definite phenomenon, that women embrace Islam more often than men". The issue is simple, the petitioner continues, when the woman is single, but a problem arises when she is married, particularly if the couple have children and a relationship based 'on mutual love, intimacy, understanding'. The *mustafti* is learned; he knows what the conventional answer is: 'generally, most scholars issue a fatwa which forces her to divorce immediately'. Despite the same detached tone, the *mustafti* then tries to emotionally move the *mufti* by arguing that 'having to sacrifice the life she had established is, practically, a very hard thing to do for a newly-converted woman'. By relating the precise issue to the sociological number of conversions, and hinting at the difficulties facing newly-converted women, the *mustafti* is seeking to impact on the *muftis'* hierarchy of Islamic duties: 'some women in this situation verily wish to embrace Islam, but this forced separation from their husbands and the consecutive family breakdown constitute obstacles in the way of their conversion'. Far from expecting an answer that removes the traditional interdiction of marriage between Muslim women and non-Muslim men, what is requested is a sympathetic understanding of the exceptional nature of the problem. The questioner concludes: 'Is there any proper solution for this complicated problem from a shari'atic point of view in the light of the Qur'an, the Sunna and the finalities [maqasid] of the shari'a?' The discussion on this issue spanned three sessions, involving some changes of heart on the part of prominent scholars. A full volume of the ECFR's scientific review is dedicated to it.

reasoning that underlies the opinion; and to inscribe the specific issue in a broader narrative structure. This methodology founds the regulatory power which the muftis attribute to their fatwas. It also transforms an individual question into an opportunity for *da'wa* and *tarbiyya* – for showing the comprehensiveness of Islam and for inculcating the virtues necessary to live a pious Muslim life (see on this point chapter four).

The wide range of sensibilities of ECFR affiliates is demonstrated by the very different literary styles and tones adopted in the texts. While some fatwas seem to be formulated in neutral terms, others are quite passionate about their subject matter.³¹² The fatwa's own distribution of moral responsibility explains why the conventional legal criteria of "detachment" and "objectivity" (Latour 2004) do not seem to arise in this setting. Although the fatwa is not legally binding, the mufti and the petitioner are ethically bound to each other; they will both be held accountable (albeit in different ways) for the fatwa: how the mustafti presented his case; what the mufti said; how the petitioner acted upon it, and the consequences of this action (Ibram n/d; see also Agrama 2010).

The kind of fatwa-giving which I have described above typically occupies only one of the four days of the ECFR's meeting. In recent years the sessions of the ECFR have been largely structured around the presentation of research papers and the drafting of authoritative opinions (*qararat*) on issues that do not necessarily originate in questions from Muslim communities.³¹³ These

³¹² This is particularly clear in women's issues. In one fatwa the ECFR argues in a detached manner that a woman should ask for the husband's permission to cut her hair if he's bound to notice the change (Fatwa 21, 1st session), but in the answer to whether the husband can prevent his wife from attending Islamic women gatherings, it changes the tone: 'The problem with many Muslims who lack sufficient Islamic knowledge is that they impose their moods, mentalities and personal views upon Islam. Therefore we often find someone who is rough and merciless, treating those around him, including his wife and children, in a very aggressive way and rough manner and may go to lengths of claiming that this is part of Islam' (Fatwa 25, 1st session).

³¹³ The distinction between the opinion/statement (*qarar*) and the fatwa is often lost in the publications of the ECFR itself, where the term fatwa denotes both the answers to specific questions and the unsolicited opinions issued by the Council.

texts do not strictly-speaking partake in the same moral universe of the fatwa which I have described above, but they seek to bind their addressees through a mode of *interpellation* that also draws on the performative power of Muslim ethical speech. In the absence of a specific question, how do the scholars go about producing a text that will be disseminated in their name? What are the criteria that define an apt statement in this context? And what precisely is to be debated?

The choice of topics worthy of study and collective deliberation is collegial (and therefore reflective of the internal power differentials and likely to represent first and foremost the concerns of the Council's leadership). Sometimes the choice clearly responds to concerns internal to Muslim communities. Family issues – especially marriage and divorce - arguably absorb most of the time of the imams officiating in mosques across Europe. Considered by the leadership of the Council as “the greatest preoccupation” of European Muslims (Majalla 8-9: 9), a few sessions of the ECFR have been devoted to discussing the general frameworks as well as the precise rules of Muslim family matters in Europe. Likewise, the calculation of the prayer timetable and the month of Ramadan as well as the thorny issue of financial transactions involving myriad forms of forbidden interest/usury (*riba*) are questions which have been discussed at great length both within Muslim communities and at the ECFR.

On other occasions, the topics relate much more directly to the way debates on Islam in Europe are framed in the public sphere: The ECFR produced a fatwa on “jihad and its relation to terrorism” in the aftermath of 9/11; issued a statement on the French proposal to ban the headscarf in public schools in January 2004; and initiated in 2007 a reflection on the uses and abuses of the concept of “integration” as it is deployed in Europe today.

Since a statement or resolution (*qarar*) is not bound by a specific question, part of the discussion between the members is precisely about setting the terms and parameters of the collective discussion: Should the ECFR's condemnation of terrorism mention the ‘special case’ of the Palestinian

struggle, or would making that distinction explicit in the current climate serve primarily the interests of the pro-Zionist lobby? Does engaging Tantawi's comments on France's right to ban the hijab from its public schools diminish the impact of Shaykh Al-Azhar's opinion or merely contribute to the public display of Muslim divisiveness? To what extent should the ECFR follow public debates in conflating integration and anti-terrorism agendas?

The deliberative process leading to the collective fatwa is similar to that which culminates in the resolution. Both typically require numerous drafts, lengthy discussions, and some patient negotiation.³¹⁴ A previously-issued fatwa by a recognized religious authority is often the starting point of the discussion. The ECFR scholars draw on the textual production of their own members (especially Qaradawi), the two major international fiqh councils (the Muslim World League's Islamic Fiqh Council in Mecca and the International Fiqh Academy of the Organization of the Islamic Conference in Jeddah), and a variety of fatwa bodies located in the Muslim world (Al-Azhar, Kuwait's fatwa commission, the Saudi Commission of High Scholars). Many of the relevant fatwa collections are available electronically and easily accessible during the meetings. Staff from IslamOnline covering the session for the website may distribute printouts of the relevant fatwas from their online fatwa database (the Arabic fatwas are in fact often the individual opinions of some of the scholars attending the meeting such as Qaradawi, Mawlawi or 'Ali al-Qaradaghi). The members often disagree on whether the ECFR should try to revise these fatwas or simply endorse them, but the main thrust of the ECFR's approach is arguably captured in a remark by 'Abd Allah Bin Bayyah during the 12th session of the Council in Paris. Growing increasingly frustrated about the collective discussion on investing in the stock exchange, the Mauritanian scholar burst out - to general laughter – with the following remark: “if you want to forbid it just call the international fiqh council [of the OIC] in Jeddah and let us all go home”.

³¹⁴ Traces of the long discussions which certain issues have elicited can also be found in the texts of the fatwas: “Having discussed the issue (of the right of the Muslim woman to divorce herself) at considerable length, The Council reached the following...and “The issue of a Muslim's permanent residence in non-Muslim countries is one which has been discussed and debated at length”...

The role of the first drafter is important in setting the frame of the debate, but it is not decisive. After the first draft is read aloud, passages are dropped, elaborated or modified. Since the authority of the fatwa is deemed to be directly proportional to its proximity to a general consensus, the ECFR's leadership tries to accommodate most of the objections which are formulated by the members. Voting by show of hands – the conventional method of resolving divisive issues within fatwa bodies in general – is rarely practiced. Although it is theoretically possible to attach a dissenting opinion to the text of the collective fatwa, this is seen as diminishing the authority of the ruling and therefore discouraged. The only published fatwa which carried a dissenting opinion (by Fu'ad al-Barazi) was issued in 2000 and related to insurance (Fatwa 27²). In the fatwa concerning the possibility of acquiring a house through an interest-bearing loan, the failure of the ECFR's leadership to attach the dissenting opinion of three scholars to the published text of the fatwa led to their resignation (see below for details). But consensus sometimes is difficult to reach; many issues had to be adjourned once or twice. These included the following: defining the concept of fiqh al-aqalliyat; deciding on the marital status of a married woman who converts to Islam while the husband remains non-Muslim; establishing the prayer timetable; providing a definition for terrorism; rules of child custody; unregistered marriages. Some issues have been indefinitely postponed, like the status of meat products slaughtered by non-Muslims. When a consensual answer appears impossible, the leadership of the ECFR may decide to send the fatwa of one of its leading scholars instead. In one case, when the members could not agree on whether getting an interest-bearing loan to build an Islamic Centre should be allowed, discouraged, or forbidden, a previously-issued fatwa by the ECFR's vice-chairman Faysal Mawlawi (which allowed it) was sent to the petitioner. Likewise, when prominent members disagree on the validity of a talaq pronounced by a husband at the wheel while the wife was seemingly insulting him, Qaradawi's opinion that the particular circumstances of the pronouncement (and the fact that the couple has children) make the divorce reversible will be sent to the petitioner. In both cases, the members (including those personally against the easy solution) tacitly agreed to provide the

petitioner with the most lenient opinion (in the form of an individual fatwa). The fact that the disagreement here was between senior scholars (Qaradawi against Mawlawi, or Bin Bayyah against Qaradawi) was important. The status of such scholars conferred legitimacy upon their opposing opinions, and an individual fatwa from one of them was considered here to be sufficiently authoritative for the petitioner to serve as a substitute for the ECFR's fatwa. A permissibility from a less senior scholar would probably have been marginalized.

What the muftis do in most of these debates is to engage in a hierarchization of textual authorities, weighing different interests and establishing priorities – in other words, they set about constructing, each time anew, what they call a fiqh of balances and priorities (fiqh al-muwazanat; fiqh al-awlawiyyat). The meaning and scope of ijtihad at the ECFR relates mostly to the understanding and application of fiqh maxims (qawa'id fihiyya). The choice between fiqh rules and the debates on their application reveal in turn important individual differences both in terms of commitment to the Islamic fiqh tradition and in terms of understandings of the situation of Muslims in Europe. Amongst the questions typically debated between the scholars are the following: How should one articulate specific injunctions with general rules? What importance can be given to marginal opinions from the fiqh heritage which contradict the views of the majority of the scholars (al-jumhur)? How does one construct a coherent system of Islamic jurisprudence without relying upon the madhhab? What should be the guiding principles that may arbitrate between competing texts? How should one evaluate specific hadith? When can specific Qur'anic statements or Prophetic sayings be suspended in order to achieve the more abstract goals and aims of the shari'a (al-maqasid al-shari'a)? What criteria should one use to determine these goals (maqasid)? What issues can legitimately be considered necessities which suspend established norms? How should a necessity (darura) be distinguished from a simple need (haja) – and when does a need, if widespread, constitute a necessity? Furthermore, if the role of the mufti is to “make life easy” (Sufiyan al-Thawri in ECFR 2002), where should the line between facility (*taysir*) and neglect (*tasahul*) be drawn? In so far as Islamic normativity – particularly the fatwa - is responsive to the

“reality” of local Muslim communities, when can the understanding of the “context” change the status of an Islamic ruling from forbidden to permissible (or vice-versa)? What are the meanings and fields of application of reform (tajdid, ijihad)? These issues are often intertwined in complex ways. During the internal discussions scholars take a variety of positions on these issues, sometimes change their mind, and eventually (usually) settle on a compromise. Since the Muslim scholars operate in a distinctive public space of debate and deliberation, their answers to these questions should not only be internally persuasive but also seem convincing and justifiable to the larger transnational Muslim audiences to which they appear accountable. Qaradawi will be asked on Al-Jazeera’s Al-Shari’a wa-l-Hayat to explain a fatwa (or to help those imams who are sympathetic to the fatwa respond to the arguments of their opponents); Bin Bayyah, in his Western travels and his Arabic books, will explain how the consensus on particular issues was reached at the ECFR; etc.

Below are some concrete examples of how these discussions are played out.

- Specific texts carry greater weight than general ones. Since the Prophet forbade interfaith inheritance in an authentic hadith (a specific text), but also stated that Islam does not harm the believer (a general text), can European converts to Islam be allowed to inherit from their non-Muslim relatives? How should “harm” be defined? What is the level of benefit that can outweigh such a clear Prophetic narration - and should “benefit” be measured exclusively in material terms, or should it also include an idea of ‘conformity to the (traditional) shari’a’?
- What weight can be given to narrations traced to the Pious Predecessors (such as the one which allows a Muslim convert to remain married with her non-Muslim husband) which historically were not taken into consideration by the conventional juristic schools? Even if one acknowledges that commanding female converts to divorce may make future candidates reticent, when should the prospects of conversion be allowed to overrule an established Islamic norm? On the

other hand, is it possible to identify a reason for the prohibition of interfaith marriage for Muslim women? If it is possible to identify the reason for the prohibition, and if that reason is based on a particular family structure (the implausibility of assuming that a non-Muslim husband will provide the necessary space for his wife to practice her Islamic duties and to appropriately raise her children as Muslims), to what extent is this family structure a universal given, or open to change and negotiation? Does this family structure conform to current Western realities?

- It is well known that necessities may make the unlawful allowed. But how should necessities be defined? Do needs – especially collective needs – fall under the same status as necessities? Home ownership in the West is almost impossible without a loan. Should one allow Muslims to contract high-street loans – usually forbidden because of interest – because they constitute a collective need? Or should one promote conformity to the Islamic tradition as a goal in itself – especially given the seriousness with which *riba* is condemned in the founding texts?

The Islamic normative tradition of *fiqh* has well-established methods for resolving such conflicts of interest, providing standards for drawing analogies, differentiating between general and specific texts, prohibitions of ends and prohibitions of means, or necessities and needs. These and other distinctions guide the ECFR muftis in their deliberations. But *fiqh* has not abolished the subjectivity involved in determining the appropriate balances and in facilitating the life of believers without illicitly transgressing the textual limits. It is precisely because the scholars acknowledge that such calculations necessarily involve a degree of human arbitrariness that they insist on the requirements of *din* (religion) and *taqwa* (piety) for the *muftiship* (Bishri 2007).

This deliberative process is universal in scope. In Europe, however, it connects with more specific questions about the integration of Muslims. The texts issued by the ECFR should not only “solve problems” but also articulate

the relevance of Islamic normativity for Muslims living in Europe, fostering a sense of belonging to the ummah. In order to do so the muftis sometimes draw flattering comparisons between Islamic norms and positive laws, try to show how the former are in conformity with human nature, and represent Western laws that differ from Islamic norms as the result of recent developments without firm basis (marriage without the guardian's consent). Scholars also debate the range of application of shari'a norms in Europe. Should the ECFR urge Muslims to seek recognition for the shari'a on a communal level, or should it stress individual conformity instead?

The fatwas and resolutions of the ECFR also have to be made relevant for the variety of Muslim communities and the heterogeneity of European contexts. How should, for example, the members of the ECFR understand the Qur'anic statement that the meat slaughtered by the People of the Book (Christians or Jews) is licit for Muslims in the self-avowedly secular contexts of Europe³¹⁵ - particularly when Millî Görüş members have helped establish a transnational network of halal meat products while the leadership of the UOIF allowed the consumption of mainstream meat products (other than pork) slaughtered by non-Muslims (and promoted that view as proof of its positive contribution towards the integration of Muslims into the Republic)?

Given the strong emphasis placed by the leadership of the ECFR on conformity with the Law, part of the task is to issue fatwas that stay within the limits of the laws of the different European states: does Romanian law require the consent of the woman's guardian (wali) for conducting a marriage? Are there conditions that may prevent or restrict the public teaching of the Arabic language?

Furthermore, since the fatwa must not "destabilize" the society (Ibrahim n/d), the production of a *pan-European fatwa* also requires an assessment of the shifting moods of European audiences regarding religion in general, and Islam

³¹⁵ The issue revolves in part around the question of Europe's identity: in what sense is it still Christian in the meaning implied by the Qur'anic revelation?

in particular. In other words, the fatwa must gauge the boundaries of acceptable religious discourses at each moment and across European countries in order to be able to serve “the interests of Muslims” and “the interests of the societies they live in” (al-majalla al-‘ilmiyya li-l-majlis al-urubbi li-l-ifta wa-l-buhuth 12-3: 1).

Given the diversity of legal and institutional arrangements across Europe, tensions often arise. Although post-9/11 debates on Islam have shown some signs of convergence across Europe around the political rationalities of anti-terrorism (Peter 2008), the range of possibilities and constraints that European Muslims encounter still varies significantly between countries in such (crucial) issues as Muslim marriage contracts; the availability of Islamic financial alternatives; the conditions for halal slaughtering; or the contexts for Muslim political participation. When discussing these and similar questions, the relevance of “Europe” as a framework for thinking about Islam often appears to the members to be much less obvious than it is usually assumed. A discussion about the French headscarf debate only a few months before the government’s decision to ban it from public schools had materialized is instructive here since it revealed sharp divisions between the French-based members of the UOIF and others. Wary of the consequences of openly defying a proposed law which had gathered almost universal support in France, the leaders of the UOIF sought a fatwa from the ECFR stating that Muslim girls could go to public school without the headscarf – in other words, a reiteration of their own position since the 1990s. Distance from the French context and disengagement from local Muslim politics led members such as Qaradawi to voice more vocal criticism. Collectively, members argued about the appropriate tone and effective structure of justification for expressing dissent and interpellating the French state. Ultimately, they crafted a statement that acknowledged – at the request of the FIOE – the positive role of the French state in the formation of the Conseil français du culte musulman (where the UOIF was controversially made a prominent member) but construed the wearing of the headscarf in public school as a right of citizens of democratic nations.

The fatwas issued by the ECFR also stand in a complex relationship to the practices of its Muslim addressees. The mufti cannot “follow people’s whims”, a reference to a famous Qur’anic injunction which is often reiterated during the ECFR’s internal discussions. And yet, the fatwa should be “accepted” by the Muslim community: at least, it should not fall outside the (imagined) expectations and practices of Muslim believers (or their spokespersons). This responsiveness is part of what ECFR members call “a realistic fiqh” (fiqh al-waqi’). Under these conditions, what position should the ECFR adopt in relation to the lunar calendar and the beginning of the month of Ramadan? How much attention should be paid to the actual practices of European Muslim communities? Should the members encourage Muslims to follow astronomical calculations in spite of being aware that some will continue to insist on the eye sighting of the moon? Or should the ECFR try to reconcile its position regarding astronomy with that of Saudi Arabia’s, which many Muslims regard as authoritative in these matters?

Outcomes

The outcome of such deliberative processes is always marked by a particular uncertainty. The muftis’ search for the ruling (*hukm*) appropriate to the particular case ultimately lies outside their control. They can merely hope to be “guided”, but since that guidance is impossible to verify, the outcome is inherently fragile. The fatwas can therefore be – *and have been* - revisited, revised, or completely rewritten.

In addition to this structural or epistemological fragility, the fatwas of the ECFR are also prone to more specific uncertainties. One consequence of the multiple authorships which underlie the collective text is that the fatwa will often defy a yes-or-no definition;³¹⁶ it may be incomplete and sometimes even

³¹⁶ Amongst countless examples one may cite this one: A Muslim who asks whether he can continue to work as a life-guard in a swimming pool receives this answer: “There is no harm in working as a life-guard at a mixed swimming pool provided you observe the Islamic requirement of avoiding looking at body parts that should not be seen and avoiding forbidden privacy and forbidden intermingling. It is apparent that you are committing prohibited deeds e.g. seeing women’s body. This is forbidden except in cases where it is strictly necessary. We recommend that you continue in

(deliberately?) miss the point. An inquiry into whether “Is it permissible for a Muslim to participate in the council elections in a European country, or to vote for a non-Muslim party which may not serve the interests of Muslims?” is deferred to local Islamic organizations. The question of whether a woman who converts to Islam may remain married to her non-Muslim husband proved so controversial that the “fatwa” issued by the ECFR merely outlines a range of positions without taking sides for or against. Although it has been read by opponents and defenders of the right of the woman to remain married with her husband as an authorization, some members – including Mawlawi - have claimed that no fatwa has actually been issued on the topic.³¹⁷ The collective fatwas of the ECFR will therefore not only express a range of sensibilities but also allow multiple readings. How they eventually circulate amongst Muslim and non-Muslim publics, and the kinds of appropriations or subversions that may take place, lie ultimately outside of the muftis’ control.

Three Examples

In the final section of this chapter I describe three fatwas that have contributed significantly to on-going debates about shari’a in the West. I have already hinted at them in this dissertation. Although the fatwas are somewhat untypical, their primary interest lies in what they reveal in terms of the institutional possibilities and constraints within the ECFR. They also help to render more concrete the deliberative processes that I described above in more general terms.

The fatwa on political participation in the West

One question related to the integration of Muslims in Europe is that of their political participation in non-Muslim countries, either through voting or standing for elections. While the once-problematic issue of naturalization seems now to be de facto settled, the question of political participation

this job while looking for another opportunity that does not make you commit prohibited deeds (Majalla 12-13: 37 for the English text; 509 for the Arabic).

³¹⁷ In a live fatwa session on IslamOnline a cyber-mufti asked Faysal Mawlawi to explain the ECFR’s fatwa authorizing a married woman to remain with her non-Muslim husband after her conversion; Mawlawi replied that no fatwa had been issued.

remains at the fore of intellectual debates, if not always Muslim concerns, in Western countries. The debate is revived when elections approach, with fatwas and counter-fatwas circulating quickly through the Islamic cyberspace. Democratic participation divides Muslim activists and scholars in the Islamic world, both on the theoretical and practical levels. In Europe, at least six different positions have been rehearsed across the Islamic spectrum (Hussain 2004c). There have been attempts to stay outside the system and condemn democracy as un-Islamic: the radical group Al-Muhajiroun disseminates a fatwa stating that 'any Muslim who votes for a person knowing that the Parliament is a body of legislating law is an apostate'.³¹⁸ There is a certain consensus among Salafi movements that democracy amounts to *kufr* (unbelief) since God is the only Legislator. A different position has been the effort to create an alternative system: the short-lived Muslim Parliament of Britain is the perfect illustration. Some Muslims have opted for a third way, that of joining political parties, while others have established Islamic parties – which have usually proved a failure. Other options have included lobbying, and the establishment of Muslim councils and federations.

The position of Qaradawi is characteristic of his general adoption of 'middle-ground' views. For the Egyptian scholar, the Muslim is a *political animal* by definition: 'the true character of a Muslim as required by Islam obliges him to be a man of politics. Every Muslim is required to fulfil the Islamic obligation of commanding good and forbidding evil'. Questioned on the compatibility between democracy and Islam, Qaradawi has argued that 'the content of democracy [is] in harmony with the essence of Islam', since 'mutual consultation (*shura*) is one of the bases of Islamic life',³¹⁹ although, according to the Muslim scholar, Islam takes precedence over democracy in setting the bases of the system. In the Muslim world, this thinking translates into fatwas that encourage Islamic movements towards participation in elections in order to 'lessen evil and oppression' (Qaradawi 1998: 277). In the West, Qaradawi holds that it is an obligation for local Muslims to join existing political parties and to express their voting power (Roald 2001a; Shadid and van Koningsveld

³¹⁸ www.almuhajiroun.com/fatwas/20-06-2001.php (accessed 19 March 2003).

³¹⁹ Undated fatwa delivered in answer to a question from Algeria, included in Yusuf Qaradawi 1998: 195-223.

2002). In both cases, Qaradawi's reasoning is based on what he calls the '*fiqh* of balances' or 'the *fiqh* of priorities'. Qaradawi's view on political participation is broadly accepted by the member organizations of the FIOE.³²⁰ However, during the second session of the ECFR, in October 1998, the issue was not straightforward.

The question was two-fold:

'Is it permissible for a Muslim to participate in the council elections in a European country, or to vote for a non-Muslim party which may not serve the interests of Muslims?'

The answer was uncharacteristically brief:

'This matter is to be decided by Islamic organizations and establishments. If these see that the interests of Muslims can only be served by this participation, then it is permissible on condition that it does not involve the Muslims making more concessions than gains'.

Out of the two questions, only the first one seems to be addressed. The answer places 'the interests of Muslims' as the foremost criterion, but it falls short of encouraging outright political participation – contradicting the president's own opinion. This fatwa illustrates the balance between different tendencies within the ECFR itself, tendencies that are broader than those represented in the FIOE. By delegating the decision to local Islamic institutions, the ECFR is deferring the authority and undoubtedly seeking to avoid criticism. The fatwa allows multiple readings, conveniently creating *spaces of dissension*.³²¹ one member, favourable to the political participation of Muslims, stressed that 'what needs to be remembered is the [theoretical] permission to participate' (Tahar Mahdi, personal communication, Paris 2003).

³²⁰ In May 2002, after the French presidential elections were won by Jacques Chirac, the UOIF very openly appealed to Muslims to vote for the socialist party in the legislative elections. Unusually, the UOIF's Dar al Fatwa published a fatwa on political participation on its website, www.uoif-online.com.

³²¹ For this concept, which originates in Foucault, I am indebted to Bowen (1993).

But others, differently inclined, have argued that this involves making 'more concessions than gains' and is therefore to be avoided.

In order to understand this ruling one needs to look at the context of its formulation. The fatwa was issued during the second session of the ECFR, a meeting dominated by another question: a Muslim immigrant in Brussels asked about the Islamic view on the Muslim presence in the West. In the internal discussions, the ECFR heard from a minority of members 'extremely strict views which call for all Muslims to leave these countries immediately...views [which] caused great difficulty and inconvenience' (ECFR 2002: 23). The issue seems to have occupied most of the session, and in the end the ECFR's fatwa – adopted by the majority – rejects that call, allowing Muslims to live in non-Muslim countries as long as the environment does not threaten their life, religion, and family.³²² In order to establish itself as the primary reference in Europe, the ECFR needs to keep different tendencies in its midst, including those opposed to the 'middle-ground' ideology of Qaradawi and the FIOE. The members know that the legitimacy of the ECFR is derived from its perceived inclusiveness; the need for consensus has therefore been all the greater, particularly in the first years. In the case of political participation, this led to an open-ended fatwa as a form of compromise.³²³

Acquiring a house through interest-bearing loans

The fatwa issued in 1999 at the end of the 4th session on the permissibility to buy a house through a mortgage has perhaps become, in the collective imaginary of Muslims in Europe (and beyond), the fatwa that best

³²² While the text of this fatwa demonstrates a clear willingness to legitimize Muslim settlement in the West, the implicit shared assumption is that this presence is indeed problematic. As Frank Peter has pointed out in an unpublished manuscript (Peter n.d.), by insisting on the need to preserve an Islamic identity and to fulfil a number of (unspecified) Islamic duties, the ECFR is actually 'suspending the judgement on this question ad infinitum', making the Muslim presence in the West 'durably dependent on their approval'.

³²³ In a subsequent resolution issued in July 2006, the ECFR develops the same approach further. It states that 'Originally it is permissible for Muslims living in Europe to take part in politics. Nevertheless, sometimes it can be permissible or recommended or prohibited... Adhering to Muslim morals... is one of the foremost criteria of Muslim participation in politics' (*al-Majalla al-`Ilmiyya li-l-Majlis al-Urubbi li-l-Ifta' wa-l-Buhuth* no. 10-1, part 2: 331).

characterizes – for good and worse – the work of the ECFR. The question is a recurrent one in Europe. As early as 1986, the World Assembly of Muslim Youth (WAMY) identified the housing problems of Muslim minorities as one of the most pressing needs requiring specific economic measures and solutions³²⁴. Most public answers given by imams in Europe have been against the use of mortgages, and this has created tensions within the community³²⁵. In the case of the ECFR, the question did not originate from one petitioner; it was rather introduced directly by some members at the first working meeting of the ECFR. In Sarajevo in August 1997, the four founding members residing in France (the Tunisian Ahmad Jaballah and the Algerian-born al-Arabi al-Bishri, Tahar Mahdi and Unis Qurqah³²⁶) brought up the subject of financial transactions in the West. A short paper, prepared collectively and read at the meeting by Tahar Mahdi, alerted to the importance of paying attention to the collective need of Muslims in Europe, and urged the Council to study this issue carefully. According to an internal source, this raised a few eyebrows already at the time. But with the support of the ECFR's president Yusuf Qaradawi, the "French" members were encouraged to research the issue more thoroughly in the future and present it in a subsequent meeting. Al-Arabi al-Bishri, who followed an Islamic education in Algeria and Saudi Arabia before studying economics in Paris, prepared the research, focussing more specifically on the question of buying a house through a mortgage. His study is a concrete example of the methodology of the *fiqh al-aqalliyyat* advocated by Taha Jaber Alwani: "besides religious knowledge, practitioners of this fiqh [for minorities] will need a wider

³²⁴ WAMY, *The Muslim Minorities – Proceedings of the Sixth International Conference of World Assembly of Muslim Youth, Riyadh, Saudi Arabia, 12-17 Jumad I, 1406 H. (22-27 January, 1986 C.E.)*, vol 1, p. 156.

³²⁵ Philip Lewis has noticed how in the 1980's imams who had recourse to mortgages faced difficulties with their Muslim congregation (Lewis 1994: 121). It is quite possible that the question sent to the ECFR on "the acceptability for the Muslims to be led in prayer by someone who commits some breaches of Shari'a" (Fatwa 8, 2nd session) is related to this issue.

³²⁶ In 1997, the four personalities were teaching at the European Institute of Human Sciences in Chateau-Chinon and they were chosen by the Federation of Islamic Organisations in Europe (FIOE) to become members of the ECFR. Both the European Institute and the ECFR were formed by the FIOE in the aim of providing Islamic European answers to Muslim European problems – the former as part of a long-term vision of training European imams, the latter as an interim measure.

acquaintance with several social sciences disciplines, especially sociology, economics, political science and international relations" (Alwani 2003: 3). This can be said to be the modern-day application of the classical injunction for muftis to study the question thoroughly, understand its context and consider its implications before offering an answer. Bishri drew on the initial findings of an on-going research project, funded by the European Union, entitled "Muslim Voices in the European Union – The Stranger Within", co-ordinated by the Centre for the Study of Globalisation, Eurocentrism and Marginality (CGEM) at the University of Manchester. The European Institute of Human Sciences in Chateau-Chinon was the project partner in France. This study, which ran from 1997 to 1999, aimed at examining "the nature of social exclusion, marginalisation, economic deprivation & cultural disadvantage" for European Muslims, be they citizens, residents or immigrants. It provided an analytical, descriptive and comparative account in eight European countries (including Belgium, France, Germany, Holland, Switzerland and the United Kingdom) of "the different ways and processes by which Muslims in Europe have been socially excluded and marginalised", with the objective of formulating appropriate policy recommendations. The first report on France, drawing on INSEE statistics, notes that:

"The type and quality of housing are closely linked to the level of household income. This indicator accounts for the inequalities that exist between the French and settlers. 12.82% of households of Muslim origin live in an individual house as compared to 55% of the French households. 10.68% are homeowners compared to 56% of French households...Lodging in private housing is very expensive and almost the majority of Muslim settlers are concentrated in public housing".

The authors remarked a correlation between "the nature and standard of occupation and housing" and "the degree of settlement and integration in the

host country"³²⁷ – an argument that supporters of allowing mortgages in Europe would take up during the internal discussions at the ECFR.

Al-Arabi Bishri's 18-page study was divided into six parts. In the first, he poses the problem:

"A person wants to buy a house whose cost he cannot afford. He approaches a financial institution to have a loan that he agrees to pay back in monthly instalments with a proportional interest rate determined in the loan contract. This interest rate is a) *plafonné* by the State Central Bank; b) it varies with a number of economic factors which will not be dealt with here; c) the object sold [the property] is named in the loan contract, which is dependant upon the fulfilment of the sale contract; d) the borrower will choose between two types of interest rates, fixed or variable (indexed on a number of financial indicators). One has to distinguish between these two types...in this study we will deal only with the loan at fixed rates."

Then, Bishri makes some juridical qualifications regarding the lending and sale transactions according to Islamic law. He asserts that this loan can be considered a *riba*-based operation, but drawing both on Ibn Rushd and Ibn Qayyim, Bishri points out that there are important distinctions to be made between different types of loans and their degree of *illicitness*. He quotes approvingly 'Abd al-Razzaq Sanhuri, a jurist known to us for his codification of many of the Arab legal codes, regarding the different types of *riba* – some of which are forbidden in themselves, while others are forbidden only in their

³²⁷ The text reads: "We believe that the nature and standard of occupation and housing is a sufficient indicator to measure the degree of settlement and integration in the host country". See Vol. 3, France Phase 1, at <http://cgem.unn.ac.uk/eumuslim/volume3/France1.htm>. It is not clear whether Bishri had full access to this report while preparing his research, but his regular contact with both the researchers and the orientation of "Muslim Voices" would have made him familiar with the general arguments and findings. Furthermore, all the statistics Bishri provides in his research come from this project (Personal communication from Bishri, Stockholm 2003).

means, according to the principle of disadvantage prevention (*sadd al-dhara'i*)³²⁸. According to Sanhuri, the Qur'anic dissuasions correspond only to the first type: this is the *riba* that exploits the most needy, and it is strictly prohibited; only necessity (*darura*) can remove the prohibition. The other types of *riba*, while normally forbidden, can be authorised if there is a need (*haja*) for Muslims. And Bishri goes a step further: in a sophisticated argument, he argues that the purchase of a good through a bank loan at a fixed interest rate is the equivalent of a sale through instalments where the price is raised proportionally to the delay given to the buyer. This, says Bishri, turns out to be a contract allowed in Islamic law, and subject to certain conditions.

Since Bishri does not discuss penalties on default payments nor forward sale (intrinsic to conventional high-street mortgages but forbidden in Islamic Law), this argument should have solved the problem of mortgages. But Bishri, aware of what he calls the "collective conscience of Muslims regarding the relationship between loans, banks and [extreme] *riba*", feels the need to back his argument up further. And he enters into sociological realm. To what extent can housing be said to be considered a necessity (*darura*), or a need (*haja*)? What is the relation between housing, the safeguarding of religion, and the definite settlement of Muslims in Europe? According to Bishri, *darura* in terms of housing relates to the protection of life and honour; *haja* is connected to stability and peace; and the rest is luxury. Outside Muslim countries, argues Bishri an extra element must come into consideration: "the safeguarding of religion" (*hifadh al-din*). An individual is subjected to two main influences: the home and the society. If in a Muslim country the two influences work in the same direction, in non-Muslim societies they are opposed, and thus the home becomes the privileged place for the protection of the Islamic identity. Bishri proceeds to define the exterior features (location in a good neighbourhood, proximity to mosques and to good schools) and the interior characteristics (the home must be spacious enough to allow all the members of the family some

³²⁸ It is noteworthy that Bishri quotes Sanhuri for, in his 1949 Egyptian Civil Code, Sanhuri stipulates that interest up to 7 per cent is legitimate – which seems to be in line with Bishri's personal opinion that only high levels of interest should be prohibited.

comfort and security *as per the norms of the country*) of the residence which safeguards the religion of the children. Invoking social sciences, Bishri declares that housing conditions impact on the educational achievement of children, their moral qualities, delinquency rates, neighbourhood relations and family conflicts. Statistically, 55.7% of immigrants in France – the majority of which are Muslims, considers the writer – live in homes too small for the size of the family, compared to the national rate of 11,5%³²⁹, a tendency bound to be exacerbated by current differentials in birth rates. What future, asks Bishri, awaits this Muslim population with such a gap between their housing conditions and those of the rest of the society? Bishri sees a link between the poor housing conditions of Muslims and the general failure of Muslims to make an impact in French society:

"Muslims in the West, and in France in particular, live under unsatisfactory housing conditions. Most were forced to live at the fringe of society, which explains why they have failed in several areas, as proven by statistics. The reason for this, and God knows best, is that 89,32% of Muslims are tenants rather than owners, and that generally speaking they have no means of choosing a satisfactory lodgement since need forces them to accept whatever they are offered."

Thus, for Bishri, home ownership is the only solution. Since the overwhelming majority of Muslims does not dispose of enough money to buy a home outright, Muslims "have no choice" other than to get a mortgage. This is, Bishri mentions in passing, the solution also adopted by the majority of the society. Home ownership is not only a personal necessity, but a collective one: how can this community fulfil its role (of propagating the message of Islam) if it is not even settled? Drawing on the writings of famous jurists such as Qarafi, Shatibi and Tahar Bin Ashur, Bishri invokes the concepts of collective necessity, of *maqasid al-shari'a*

³²⁹ All statistics provided by Bishri come from "Muslim Voices in the European Union" – personal communication, Stockholm, 2003.

(the finalities of the law), of *'ulum al-balwa* (the generalisation of an evil) and finally of *maslaha* (the common good) to support his argument for the permission of mortgages. In a handwritten addition at the end of his typescript, seemingly as an after-thought, Bishri alludes to Abu Hanifa's opinion that illicit contracts are licit in Dar al Harb.

The research was presented at a subsequent meeting, and it is considered unanimously to have made a strong impact. The issue split the Council in two opposite camps, pro and against, and the discussions spanned two sessions. Many members changed their minds. Passions ran high. In Dublin in October 1999, the fatwa was adopted by an overwhelming majority of eighteen votes for, four against. Three of the dissenters (Fu'ad al-Barazi, Suhaib Hassan and Yusuf Ibram) resigned, but only the Syrian Muslim Brother Barazi (based in Denmark) never returned.

The final text of the collective fatwa, painfully negotiated between the members, uses many of Bishri's arguments, introduces some new ones, and drops others. With more than one thousand words, the fatwa is one of the ECFR's longest: deeply aware of the potential criticisms, already rehearsed during the internal discussions with the opposing members, the text of the fatwa seeks to address them pre-emptively. It starts by reiterating conservatively the majority opinion regarding bank interest: "The Council supports what has been decided by Fiqh Councils throughout the Muslim World that bank interests are usury". Then, the ECFR invites Muslims to seek Islamic alternatives and, in their absence, to establish their own construction companies. In the case of lack of availability of any of the aforementioned solutions, the members "see no harm in buying mortgaged houses" if the buyer who purchases the house for himself does not already own a property and does not dispose of the capital required to avoid a mortgage. The text then explicitly mentions that the ruling is based upon two juristic principles: firstly, the necessity (*darura*) that "turn unlawful matters lawful", or the need (*haja*) "which can be treated in a similar manner to *darura*". Basing itself on five Qur'anic verses that express the permissibility of making exceptions out of necessity, and the facility that the Creator wants for His servants, the ECFR

argues that rented accommodation does not fulfil the normal needs of the Muslims: it doesn't grant them the feeling of security since they have to continue to pay rent for many years and may even be forced one day to evacuate the premises because of the size of the family or the number of guests they receive. The use of mortgages, estimates the ECFR, will further "help the Muslim community, being a minority, to free themselves from the financial pressure that renting accommodation often causes, and focus their attention to the call to Islam and help the host community wherever possible and permissible"³³⁰.

The second criterion was the opinion of Abu Hanifa's school that states that Muslims can trade with usury outside the sphere of Islam (*la riba bayna al-harbi wa-l-Muslim*). Little used by Bishri in his study, this opinion became considerably more important in the collective text. It is an example of the eclecticism practised by the ECFR, who refuses to be tied to any *madhhab* and selects at its own convenience opinions from within the entire fiqh heritage. This second criterion was intensively debated within the Council, since the conditions that traditionally legitimised usury contracts in non-Muslim countries were not strictly met and required some adaptations. During the sessions, the Syrian scholar Fu'ad Barazi (based in Denmark), and Suhaib Hassan (Indo-Pakistani living in Britain) argued the permission was contrary to the hanafite opinion, since the territory where this transaction takes place must be at war with Muslims (i.e., part of Dar al Harb) and the Muslim must be the receiver of the interest, neither of which apply in this case³³¹. In a move to pre-emptively answer these concerns, the text of the fatwa adopted by the majority argues that the Muslim still benefits, even if he pays the interest, for he acquires a property by paying no more than a monthly rent. The fatwa quotes one hadith which says "Islam increases and does not decrease" to make the classical argument that any harm arising from Islam cannot be but

³³⁰ Resolution 2/4: *Purchasing houses with an usurious loan for Muslims living in non-Muslim countries, i.e. taking up a mortgage to buy a house*. Dublin, 1999.

³³¹ The counter-argument made by other ECFR members was that the Hanafite geostrategy only conceived of two spaces, Dar al Islam and Dar al Harb, the latter not implying a permanent state of war but simply the non-application of Islamic Law.

the result of some misunderstanding. Perhaps realising the potential weakness of this position, towards the end of the text the second criterion is subordinated to the first one: "even if this transaction is declared as invalid by the Hanifi School of jurisprudence, and those who hold a similar view, it will certainly be permitted where Hajah (i.e. the need that is treated by jurists on similar grounds like Darurah, i.e. extreme necessity, which makes impermissible things permissible) comes into consideration."

A woman embraces Islam and her husband does not

One of the most controversial questions yet to be dealt with by the ECFR originated in a question from Ireland through its headquarters in Dublin. It concerned a married woman who had converted to Islam and was inquiring about the status of her marriage. This issue has been debated throughout the Islamic history and the contemporary fatwa literature testifies to its recurrence and social significance. In the case of the ECFR, the question, formulated in apparently neutral terms by a third party, is a typical example of how the *mustafti* 'not only initiates the *mufti*'s interpretative activity but also constrains it' (Masud, Messick and Powers 1996: 22), and therefore deserves a detailed analysis. The question starts with an observation: 'In the West it has been noticed, as a definite phenomenon, that women more often than men come to embrace Islam'. The issue is simple, the petitioner continues, when the woman is single, but a problem arises when she is married, particularly if the couple have children and a relationship based 'on mutual love, intimacy, understanding'. The *mustafti* is learned; he or she knows what the conventional answer is: 'generally, most scholars issue a fatwa which forces her to divorce immediately'. Despite the same detached tone, the *mustafti* then tries to emotionally move the *mufti* by arguing that 'having to sacrifice the life she had established is, practically, a very hard thing to do for a newly-converted woman'. By relating the precise issue to a sociological observation on the frequency of conversions, and hinting at the difficulties facing newly-converted women, the *mustafti* is seeking to impact on the *mufti*'s own hierarchy of Islamic duties: 'some women in this situation verily wish to embrace Islam, but this forced separation from their husbands and the consecutive family breakdown constitute obstacles in the way of their

conversion'. Far from expecting an answer that removes the traditional interdiction of marriage between Muslim women and non-Muslim men, what is requested is a sympathetic understanding of the exceptional nature of the problem, and a fitting answer. The questioner concludes: 'Is there any proper solution for this complicated problem from a shari`atic point of view in the light of the Qur'an, the Sunna and the finalities (*maqasid*) of the shari`a?'. The final invocation of the *maqasid al-shari`a*, which often allows for the departure from the textual limits of *fiqh*, shows once again the degree of learning of the petitioner.

The secretary-general sent the question to Qaradawi, whose conclusions fuelled the debate within the ECFR.³³² Qaradawi starts by acknowledging that, for many years, his opinion was that the woman must separate from her husband either immediately or after her *`idda* (waiting period). But after reviewing a dozen historical opinions on the matter, Qaradawi comes to the conclusion that the woman has the right to remain married and, crucially, to have sexual relations with her non-Muslim husband (the whole meaning of marriage, according to Qaradawi), provided two conditions are met: that the relationship 'does not have a negative impact' upon the woman's faith, and that she 'has hope he will convert' to Islam too. However, by ostensibly not defining the 'negative impact' upon the faith, and by not issuing a time limit for the husband's conversion, Qaradawi effectively gives the woman the possibility to keep her marriage indefinitely. His fatwa is based on secondary sources, mainly opinions of the two Companions and Caliphs, `Umar ibn al-Khattab and `Ali ibn Abi Talib, and one Successor, al-Zuhri, who are known to have given women the same option. Building upon these sayings, Qaradawi invokes the concepts of 'necessity' and 'removal of hardship' to justify his decision.

In his reply, Mawlawi tried to refute Qaradawi's arguments by contending that the opinions mentioned by the Egyptian scholar have never been followed by

³³² For a detailed analysis of Qaradawi's opinion and a comparative study of contemporary fatwas on the issue, see Saify 2004.

the *fuqaha*'. The Lebanese scholar conceded that non-Muslim countries abide by international conventions such as the declaration of Human Rights, and therefore women need not fear persecution on religious grounds, but he argued against Qaradawi that in these cases sexual relations are a violation of the shari'a, and that the preferable course for the woman is to divorce and marry a Muslim man (Saify 2004). The discussions in the ECFR spanned three sessions, starting in Dublin in 1999. The research papers were read, the evidence was reviewed; the hadith-based idea that Islam 'builds and does not destroy' (already invoked during a question on mortgage) was debated and contested. A full issue of the academic journal of the ECFR was devoted to this issue. Finally in Valencia in 2001, unable to reach a consensus, the ECFR issued a final declaration that states the two opposing views:

'According to the four main schools of jurisprudence, it is forbidden for the wife to remain married with her husband, or indeed to allow him conjugal rights once her period of waiting has expired. However, some scholars see that it is for her [to decide whether] to remain with him, allowing him and enjoying full conjugal rights, if he does not prevent her from exercising her religion and she has hope in him reverting to Islam. The reason for this is for women not to reject entering into Islam if they realize that they are to separate from their husbands and desert their families by doing so' (ECFR, Final Statement, The 8th Ordinary Session, 2001).

In spite of not taking sides, the message is clear: the ECFR implicitly leaves the woman the choice of the preferred answer, and therefore it enables her to remain married with her non-Muslim husband. In the current European context, this was arguably the first time that a positive answer to this question became available to the public. According to some internal sources, this was also the first time in the ECFR that European *`urf* (custom) – recognized as one source of legislation by the ECFR's internal charter – has had an important impact on the scholars' understanding of Islamic law. Whereas Mawlawi recognized the specific position of women in the West, Ahmed Rawi argued that 'the fatwa is only possible in the West because here the woman is respected, and this is a crucial difference' (personal communication, Leicester

2002). This decision does not question the prohibition of marriage between a Muslim woman and a non-Muslim man, which is nevertheless increasing in Europe. But members agreed that marriage in Islam is a civil contract, not a religious one. After all, as the Emirati scholar Muhammad Mansur told me, “the Prophet did not remarry his Companions after their conversion to Islam” (personal communication, London 2001).

CHAPTER FOUR

Textual Relations of Authority

In the previous chapter I described the dynamics of requesting and producing a fatwa within the ECFR. Although concrete examples were given to illustrate these dynamics, the corpus of texts was not presented in detail. This is the aim of the current chapter, which provides a closer reading of some of the texts issued by the European fatwa council and looks at how authority is textually constructed. The discursive products issued by the ECFR include fatwas, resolutions (qararat), statements (bayan) and advice (tawsiyat). They allow specific insights into how the institution seeks to integrate Muslims in Europe while protecting their Islamic identity.

I draw on the ECFR's *First and Second Collection of Fatwas* published in Arabic and English in 2002; the final statements delivered by the secretary general after each session of the council; and the 15 issues of the scientific periodical (majalla 'ilmiyya – hereby Majalla) of the ECFR published from 2002 to 2010.³³³ The majalla is a particularly reliable guide to the ECFR's recent textual production since it contains the statements, fatwas and research papers presented during the sessions of the fiqh council. The papers published there form the basis of the resolutions issued by the ECFR, thus reflecting more or less accurately the work of the ECFR as a whole. A brief description of the majalla's contents seems in order here. The first issue (January 2002) presented the structure and aims of the ECFR and included 7 research papers, all written by members of the ECFR, dealing with issues such as fiqh al-aqalliyyat (Qaradawi), the divorce pronounced by a non-Muslim judge (Mawlawi), copyright issues (Nashmi), shura and democracy ('Issam al-Bashir) and the stock exchange (Bin Bayyah). The second issue

³³³ The ECFR has also initiated the publication of a series of books. Four books have been published so far: Qaradawi's book on religion and politics in Islam (also published by Dar al Shuruq in Cairo), a book by 'Abd Allah al-Juday' on the division of the world according to the fuqaha (the question of dar al islam / dar al harb), a study by Hussam Shakir on political participation of Muslims in Europe, and 'Abd al-Majid al-Najjar's book on the fiqh of citizenship. Short versions of these books have been published in the Majalla of the ECFR. The books are available at the ECFR's website (www.e-cfr.org).

(January 2003) was fully devoted to the question of a married woman who converts to Islam while her husband remains non-Muslim. It included contributions by members ('Abd Allah al-Juday', Mawlawi, Nihat 'Abd al-Qudus and Qaradawi) as well as non-members ('Abdallah al-Zubair and Muhammed 'Abd al-Qadir Abu Faris).³³⁴ The third issue (June 2003) focused on arbitration (tahkim) with three papers dealing with various aspects of the question (Nashmi on international legal mechanisms, Qaradaghi on the banking sector and Mawlawi on the history and juridical principles of arbitration). The same issue contained other studies dealing with halal slaughtering (Ghannushi), fiqh al-aqalliyyat (Najjar), cloning (Hawari) and globalization (Qaradawi). The following double issue of the majalla (issues 4-5, published in June 2004) included three papers on fiqh al-aqalliyyat (Alwani, Najjar and Bishri) and five on prayer timetables (Suhayb Hasan, Abu Ghudda, Juday', Mawlawi and Hawari). The sixth issue of the majalla (January 2005) dealt with economic transactions (Bishri on buying a house on credit and Nashmi and Muhammad Nuri³³⁵ with two papers on the stock exchange), terrorism (Ali al-Imam), Islamic discourse (Muhammad Fadil Lafi³³⁶), Muslim/non-Muslim relations (Jamal Badawi), genetics (Qaradaghi) and milk banks (Qaradawi and Hawari). The 7th issue of the Majalla (July 2005) was devoted to family questions, with some papers dealing with the institution of the family in Islam in general terms (al-Imam, Hawari), others looking at the

³³⁴ 'Abd Allah al-Zubayr is a prominent Sudanese scholar, member of the Sudanese majma'a l-fiqh al-islami and professor at the University Al-Qur'an al-Karim wa-l-'Ulum al-Islamiyya in Khartoum. He has his own website (<http://azubair.com>). Muhammad 'Abd al-Qadir Abu Faris – of Palestinian origin - was a member of Parliament in Jordan in the early 1990s who now heads the national majlis al-thaqafa wa-l-tarbiyya wa-l-ta'lim.

³³⁵ Muhammad Nuri lives in France and teaches Islamic economics at the IESH in Paris. He has been a participant observer at a number of sessions of the ECFR.

³³⁶ Muhammad Fadil Lafi is a Tunisian scholar with a PhD from Khartoum University. He is the author of two books on religious dialogue and on reforming Islamic discourse. Both were published in Cairo and briefly presented in the ECFR's Majalla (Majalla 6: 280 and Majalla 7: 432). He used to work as 'Abd al-Majid al-Najjar's secretary at the IESH in Paris and in that quality he participated in some session of the ECFR in the early to mid-2000s, acting even at one point as a member of the Majalla's Administrative Board.

specificities of Muslim families in Western contexts (Najjar, al-'Amrani³³⁷, Jaballah), and the remaining focusing on more specific family-related questions (Mawlawi, Qaradaghi, Baqali and Abu Ghudda). Family issues remained the main topic of the following double issue (8-9. published in January 2006) with papers by Ghannushi and Mahdi on the Muslim family in the West, Hawari on sexual education, Halawa and Mawlawi on divorce, Bin Bayyah and Salim al-Shaykhi on custody, and Suhaib Hasan on the experience of the shari'ah council he works for in Britain. The issues 10-11, published in 2 volumes in May 2007, deal with political participation and citizenship, echoing (and deepening) the discussions taking place in the International Islamic Fiqh Council in Jeddah. The contributions include 11 members of the ECFR, 8 Muslim intellectuals unaffiliated with the council (Salah al-Din Salim Arqah Dan,³³⁸ Sa'id Abdallah Harib,³³⁹ Yasin Aktay, Rafiq 'Abd al-Salam, Abdelwahad El-Affendi,³⁴⁰ Ahmad Ramadan,³⁴¹ Nadia Mustafa³⁴² and Hussam Shakir³⁴³), and two French social scientists (Jean

³³⁷ Muhammad al-Kadi al-'Amrani is a Moroccan scholar who has spent many years in the Netherlands. He is the author of a 2-volume work on the Fiqh of Muslim Immigrant Families which focuses on the Dutch situation ('Amrani 2001). This book, the result of a PhD dissertation from the University of Muhammad V in Rabat, was also briefly presented in the Majalla of the ECFR (Issue 2: 449)

³³⁸ Salah al-Din Salim Arqah Dan or Arkadan (born 1952) is a professor of Arabic Literature in Kuwait with a PhD in Islamic and Arabic Studies from Glasgow University. He often writes on issues relevant to Muslims in the West, including a paper on the Danish Cartoon Crisis presented at an international conference organized by the University of Tanta, Egypt, in 2006. In 2002 he published a book on Political Backwardness in Contemporary Islamic Thought (Arqah Dan 2002).

³³⁹ Sa'id 'Adb Allah Harib is an Islamic thinker from the United Arab Emirates who studied at Al-Azhar's Faculty of Shari'a and Qanun. He writes on international relations and the new world order from an Islamic perspective.

³⁴⁰ Abdelwahad El-Affendi, the author of "Who Needs an Islamic State?" (2008 for the 2nd edition), is a Sudanese professor of political science at Westminster University (<http://www.westminster.ac.uk/schools/humanities/politics-and-international-relations/people/staff/el-effendi,-abdelwahab>).

³⁴¹ Ahmad Ramadan is the general director of the newsagency Quds Press International.

³⁴² Nadia Mustafa is a professor of international relations at Cairo University. She is closely associated with the IIIT where she directed a project on International Relations in Islam. She edits a journal called Ummati fi-l-'Alam (My Ummah in the World) and has written elsewhere on fiqh al-aqalliyat (see chapter two).

³⁴³ Hussam Shakir is a researcher based in Vienna and a regular commentator on European affairs in the Arabic media (Al-Jazeera). He used to work for Al-Urubbiyya.

Baubérot and Olivier Roy³⁴⁴). They deal with a wide range of issues, including Islamic political fiqh; notions of shura, khilafa and democracy; religion and politics in Islam and in the West; and the political work of Muslims in Europe. Issue 12-13 of the majalla (July 2008) focuses on citizenship (Qaradawi, Bin Bayyah, al-Imam, Sultan, Jaballah) and integration (Halawa, Najjar). It also includes a paper providing data on Muslims in Europe (Hawari), Jaballah, Halawa, Najjar, Ghannushi and Badawi. The issues 14-15 are dedicated to economic transactions. 11 research papers by 8 members and 3 invited guests deal with a range of financial transactions both in general (Qaradawi, Bin Bayyah, Suhayb Hasan, Ghannushi, Mustafa Oghlu, Muhammad Nuri) and applied terms (Judai, Qaradaghi, Abu Ghudda, Salim al-Shaykhi, Taha Kabashi). The issues covered in the majalla are reflected in resolutions (qararat) issued by the ECFR at the end of each session (included in the the general statements or al-bayan al-khitami).

The texts of the ECFR deal with a wide range of topics. Worship matters, economic transactions and medical/scientific issues³⁴⁵ have figured prominently in the texts issued by the fatwa body during its first 20 sessions. For my purposes here however I leave these topics aside in order to focus on arguably the three most important domains - broadly referred to as “politics”, “law” and “society” - which have occupied the members of the ECFR.

Politics

The research papers published in the majalla suggest an increasing politicization of the ECFR’s work. The fatwa body has functioned and

He is the author of a book on Muslim political participation in Europe published by the ECFR.

³⁴⁴ Both of these French scholars have become famous (amongst Muslims) in France for their opposition to dominant discourses on Islam. Baubérot is a sociologist and historian of laïcité who has long argued against the idea of a French exception in these matters. As a member of the Stasi Commission, he was the only dissonant voice, abstaining from the Commission’s proposal to ban the hijab in public schools. Olivier Roy is an international renowned scholar of political Islam who has taken a critical position against French state policies and public discourses on Islam, in particular through his 2005 book entitled “La laïcité face à l’islam”.

³⁴⁵ See for example resolutions 11/3 on Euthanasia and fatwa 37² on organ donation.

perceived itself as a political actor from its foundation – although its forms of political engagement have been limited to the production of texts. The ECFR called for the “recognition” of Islam in Europe, giving Austria, Belgium, Hungary and Spain as examples, and saluting on occasion the French state’s efforts to establish the Conseil français du culte musulman.³⁴⁶ The ECFR urged Muslims to establish judicial bodies to administer family law and religious affairs in accordance with European laws. It called upon Muslims not to abuse the welfare state, to respect the property and life of non-Muslims, and to provide a good image of Islam. Its cosmopolitan members have also been engaged in international debates on democracy and clash of civilizations. These concerns have been in the background of the ECFR’s activities. In July 2001, the ECFR even hailed the holding of its 8th session in Valencia as “a positive step towards an effective dialogue between the Islamic and Western civilisations, thus ending their historical struggle...and opening the door for the betterment of the world in light of more understanding and appreciation and in the shade of human and spiritual ethics, morals and values” (Final Statement – The 8th Ordinary Session).³⁴⁷ Until 9/11, however, the ECFR issued only one fatwa and one resolution dealing with politics in the narrow sense. The first was related to the issue of Muslim participation in elections. As described in the previous chapter; the uncharacteristically brief answer delegated the decision to local Muslim organizations. The resolution, issued in 2000, was related to Jerusalem. Reflecting the positions of the ECFR’s leadership on this issue (see in particular Qaradawi 2003), the resolution states that it is prohibited, even for the Palestinian leadership, to sell land in Jerusalem and to give up a part of Palestine in the course of negotiations. In January 2001, the ECFR also collectively approved Qaradawi’s fatwa calling for a boycott of Israeli and American products. The Palestinian struggle has continued to be an important issue for the leadership of the ECFR which has repeatedly condemned Israeli violations, showed

³⁴⁶ Final Statement, Stockholm, July 2003.

³⁴⁷ This unusual statement marks what must have a momentous gathering. According to my interviews with ECFR scholars, the reception of the ECFR by Valencia’s local authorities was almost equivalent to a head of state’s. No where else in Western Europe has the ECFR attracted such attention.

solidarity with Gaza, and called upon Muslims and non-Muslims in Europe to mobilize against the embargo and the occupation.

The politicisation of Islam in Europe in the aftermath of 9/11 has been reflected in the work of the ECFR. The leadership of the Council issued a condemnation of 9/11 immediately after the attacks. During the following years terrorism moved to the forefront of the ECFR's agenda.³⁴⁸ The ECFR scholars issued two resolutions distinguishing between jihad and terrorism in 2003 (Resolution 10/2 on Terrorism, Dublin, January 2003 and Resolution 11/6, Stockholm July 2003). The former briefly denies any relation between jihad and terrorism and distinguishes terror from armed resistance against occupation. The latter resolution is more extensive. It defines the basis of Muslim/non-Muslim relations in terms of mercy, love, solidarity and peace. Jihad in the battlefield is construed as resisting oppression and equated with the right to self-defense enshrined in human rights declarations. Interpellating Muslim youth directly, the ECFR urges them not to shed blood and to resort to peaceful forms of jihad instead. As the secretary-general of a prominent European Muslim institution, Hussain Halawa has also had to engage the media on several occasions in order to prove the peaceful nature of Muslims in Europe in the face of Al-Qaeda threats.³⁴⁹ The ECFR has also issued a statement asking for the immediate liberation of French journalist Florence Aubenas kidnapped in Iraq. The "war on terror" and the assimilationist turn of European debates on Islam led to the production of several ad-hoc statements including an appeal to join the peaceful demonstrations against the war in Iraq,³⁵⁰ a call for reconsidering the headscarf ban in French public schools,³⁵¹ and a statement against the publication of the Danish cartoons³⁵².

³⁴⁸ This agenda mirrors in part the priorities set by Qaradawi whose recent writings on jihad, terrorism and Palestine have informed the ECFR's internal discussions.

³⁴⁹ "European Fatwa Council to issue fatwa against Al-Qaeda death threat against cartoonist, editor under police protection", *Daily News Egypt*, 18/9/2007.

³⁵⁰ See "War on Iraq: European Jurists' View" dated 03/02/2003 in the Fatwa Bank of Islamonline.

³⁵¹ Bayan al-majlis al-urubbi li-l-ifta' wa-l-buhuth hawla masa'ala al-hijab fi faransa", Dublin, 4/1/2004. See also Islamonline, "Hijab Ban Severe Blow To France's Values: ECFR", at <http://www.islamonline.net/English/News/2004-01/05/article02.shtml>. French translations were also circulated in France via email lists.

The climate in Europe and the institutional consolidation of the ECFR led the Council to revisit issues linked to political participation and citizenship. After the brief fatwa issued in 1998, the ECFR made political participation one of the main issues of its 16th session in Istanbul (July 2006). Six resolutions issued at this meeting dealt with residence in non-Muslim lands, loyalty to European polities and political participation. In the next meeting (Sarajevo – May 2007) the ECFR focused on questions of citizenship and integration. In each case the delivery of the resolutions was preceded by a seminar where Muslim and non-Muslim experts (historian and sociologist of laïcité Jean Baubérot, Olivier Roy and Maurits Berger) spoke at length about the relevant issues.

Residence outside Muslim countries has often been the starting point of the reflection on fiqh al-aqalliyat (see chapter two). The ECFR issued a fatwa in its first sessions that allowed Muslims to live outside non-Muslim lands as long as they protect their religious identity. While reiterating the original fatwa, the ECFR added in 2006 a specification of the different types of rulings according to the circumstances. Living in non-Muslim countries may be permissible if it has no effect upon the individual; recommended if the individual is more empowered to contribute to society there than elsewhere; and obligatory when leaving would cause harm or corruption that could be avoided by staying. Citizenship and loyalty to the European countries have also been deemed unproblematic. The ECFR approved the January 2006 resolution of the International Islamic Fiqh Council in Jeddah that considers Islamic identity and citizenship requirements to be fully compatible. It considers “the essence of democracy” as similar to the Islamic shura. Viewing Islam as a “comprehensive project for societal reformation”, the ECFR considers engagement in politics a collective duty which sometimes may turn into an individual command. The definition of politics which the ECFR provides is a negative and legalistic one: the aim of political participation is to preserve

³⁵² “ECFR Statement on the Publishing of Anti-Prophet Cartoons”, available online at http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1158658488080&pagename=Zone-English-Living_Shariah%2FLSELayout.

rights and freedoms and to defend moral and spiritual values (Resolution 5/16). Although the 2006 resolution on political participation is more detailed than the 1998 fatwa, it also appears to delegate the final decision to other institutions: “It is permissible for Muslims living in Europe to take part in politics. Nevertheless, sometimes it can be permissible or recommended or prohibited”.

Law

I argued in chapter two that law constitutes the boundary of the claims-making undertaken by minority fiqh advocates. Law limits the ECFR’s call for recognition of Muslim Personal Status Laws: “The Council urges Muslims in the West to establish judicial bodies to preside over their personal status and religious affairs. Due respect, however, should be paid to the host European nations’ laws and regulations” (ECFR 2002: 12). It is the limit to the forms of protest envisaged by the ECFR (against the war in Iraq, the headscarf ban from French public schools, etc). Law provided, through a contractualist logic and a public order argumentation, the reason for accepting the decisions of non-Muslim judges in relation to marriage (18) and divorce (17²).³⁵³ Existing laws consolidate the shari’a protection of software copyrights (Resolution 1/8). They make insurance policies otherwise contrary to shari’a lawful (Resolution 2/8). Law is not only a binding constraint upon European Muslims. At least in one instance European laws appear to be imminently just: when Muslims in Europe are urged – in the list of recommendations repeated after each session - to “respect the laws of the countries that have received and protected them and enabled them to enjoy all the securities of decent living”. The Qur’anic verse that is invoked here is not the one about upholding

³⁵³ The contrast here with the fatwas from Ibn Baz or Uthaymeen is stark: the latter argues, in response to whether a man living in a non-Muslim country should follow the divorce proceedings laid down in that country’s law or those of the shari’a, that “It is not permissible for a Muslim to follow, either in his worship or his dealings with others, other than what is laid down in Islamic law” (Ibn Baz and Uthaymeen 1998: 73). Later, to a question about registering an Islamic divorce with the official authorities, Uthaymmen replies – almost theatrically - that “There is no objection to him registering it but it should be done according to Islamic Law. He should say that he has divorced his wife so and so, the daughter of so and so, according to Islamic Law and then it can be entered in the register of those people” (74).

contracts and fulfilling pledges (XVII: 34) but rather one about retributing good with good (LV: 60).

Europe is repeatedly portrayed as “lacking an Islamic legal system” (ECFR 2002: 132, 145). No reference is made to the modern transformations of the shari‘a in Muslim majority societies through codification and legislative reform³⁵⁴ – reforms which have significantly impinged on the legal status of foreign and bi-national Muslim women and men living in Europe addressed by the ECFR.³⁵⁵ The textual erasure of the Muslim World’s current legislation – and of any positive law for that matter - enables the ECFR to discuss issues of “family law” (such as the right of a Muslim woman to marry without a wali) solely in reference to the founding Islamic texts (Ibn ‘Abbas’ narration of a Prophetic hadith, a Qur’anic verse, and the opinion of the Hanafi school), conveying an idealized vision of a timeless shari‘a that makes the contrast between “Europe” and “Islam” all the more starker.

As the above example suggests, an underlying tension between the commitment to follow shari‘a and the obligation to obey European laws was often at play even in the early years of the ECFR. The tension was implicit in the kind of questions that were deemed to deserve an answer (the wife’s right to divorce, the status of her marriage to a non-Muslim, the ruling on a wife’s request to be divorced from a sinful husband, etc) and in ECFR’s mode of argumentation (discussing an issue without any reference to the actual legal situation, as in the fatwa allowing a woman to marry without a wali, or juxtaposing shari‘a and European law). The ECFR initially sought to reconcile the two by integrating the legal constraint into the fatwa – mostly it seems under pressure from the muftis based in France and affiliated to the UOIF/FIOE. Now the ECFR appears increasingly assertive of Islamic Law’s

³⁵⁴ This is true especially of the fatwas and resolutions issued by the ECFR. Some of the research papers published in the Majalla do mention the actual laws of Muslim countries – but almost never in relation to family issues.

³⁵⁵ See, for a recent overview of these reforms in the Arab world, Welchman 2007. The contrast with the UIOF’s Dar al-Fatwa is striking: as Ounis Qurqah (Head of Dar al-Fatwa and member of the ECFR) stressed at the Bourget in May 2008, marriage and divorce are ruled by legal contracts enforced by the state, both in the Muslim World and in the West.

primacy in matters of family law.³⁵⁶ This seems to reflect a shifting balance of power within the ECFR itself towards the universalistic visions of the ECFR's orthodox centre. Drawing on the British experience (Hasan 2006; Al-Shaykhi 2006) as well as on the understanding of the Lebanese context (Mawlawi 2003), members of the ECFR are now probing the spaces for the application of shari'a in the grey areas between the "official" and "unofficial" laws of European secular regimes. Marriages conducted in civil courts are no longer sufficient in the eyes of the scholars (Resolution 20/4). Extensive regulations for organizing the custody of children from divorced couples are provided with barely a mention of the state law that will eventually determine the outcome of the procedure (Resolution 5/15). In 2005, although the ECFR advised Muslims also to pursue official divorce procedures, the divorce granted to a woman - known as khul' – was considered effective regardless of its legal status. In 2010 Muslim "judges" were considered to be entitled to separate a couple even if the husband refuses to pronounce talaq – and no mention is made of official procedures (Resolution 20/3).

Shari'a is understood as a comprehensive discourse that applies to all times, places and circumstances. Although the comprehensiveness (shumuliyya) of Islam prevents in theory any division between Islamic rulings (Majalla 10-11, vol 2: 301), in practice the fatwas of the ECFR perform a series of legal-ethical distinctions. The first distinction is – as Mathias Rohe has pointed out – between individual conformity to, and collective application of, Islamic norms. In general Muslims in Europe must not engage in usurious transactions, but they are not responsible for the permission of interest/usury in non-Muslim lands (26²). Cremating a dead body is not acceptable in Islam, but Muslims need not seek to resist the practice in Europe: a Muslim doctor working in a hospital may sign a form stating there is no radioactive material in the dead body in order to allow the cremation to take place (43). The owner of a restaurant must not sell alcohol in its premises, but he can rent it out for a

³⁵⁶ The primacy of Islamic Law was admittedly even affirmed in the fatwa that accepts the divorce issued by a non-Muslim judge: "The principle is that a Muslim only resorts to a Muslim judge or any suitable (Muslim) deputy in the event of a conflict" (ECFR 2002: 145).

party where alcohol will be served (15). Moral responsibility is thus personalized here. The distinctions operated here are not always explicitized. However, in a famous fatwa allowing Muslims in the West to have recourse to an interest-bearing mortgage in order to buy a house for living, the ECFR clearly distinguished between the “civil, financial and political rulings of the shari‘a” (“ahkam al-shar‘ al-madaniyya wa-l-maliyya wa-l-siyasiyya”) – which are not the concern of European Muslims – and the regulations concerning worship, food, drink, clothes, and personal status law including marriage, divorce and inheritance – which they must strive to uphold (26²).³⁵⁷ The same reasoning also seems to underlie the ECFR’s reiteration of death as the punishment for apostasy and the punishment’s deferral in the absence of an Islamic state (4). If Muslims are urged to seek the legal application of Islamic family law, the application of penal law (hudud) is sidelined – even for a petitioner voluntarily seeking corporal punishment for previous extra-marital sex (3). Finally, a distinction is made between belief and practice: knowing (or denying) the correct ruling is distinguished from following or not following it.

The concern for European legal frameworks means that legal conflict is not directly envisaged in the texts of the ECFR. Even in instances when Islamic norms appear to clash with European positive laws, the ECFR reframes the issue in ways that recast the possible conflict in more amenable terms. Thus the death sentence against apostates in Islamic Law is equated with the modern crime of treason. The wearing of the headscarf in French public schools is a human right guaranteed by international conventions (January 2004 statement on the hijab). Freedom of expression is praised and distinguished from the freedom to insult religion (the ECFR’s statement on the Danish cartoons issued in February 2006). The ritual slaughtering of animals – forbidden in some countries because of the absence of stoning prior to the slaughter – falls under the protection of religious minorities (1999 resolution on the meat and poultry products sold by non-Muslims). Even the communal application of Islamic family law is seen as falling under the rights of religious minorities. In all of these issues the members of ECFR carefully construct

³⁵⁷ I have dealt with this fatwa in detail in Caeiro 2004.

their recommendations as claims for equal rather than special rights (urging the respect of all religious symbols, calling upon Western governments to allow Islamic religious institutions “similar to other religious communities”, etc) – suggesting a degree of sensitivity to, and familiarity with the corresponding liberal/multicultural debates in Europe.³⁵⁸

Society

The list of advice (*tawsiyat*) reiterated with only punctual changes at the end of each session consists of exhortations for Muslims to integrate without losing their Islamic identity. Muslim identity is defined by the ECFR extensively. It includes “matters of worship (*‘ibādāt*), social transactions (*mu‘amalāt*), morals (*akhlāq*), food, drink, family and social relationships, and good manners in dealing with others” (ECFR 2002: 11). In the fatwas of the ECFR Muslims are exhorted to maintain a distinctive cultural identity, not sharing in Christian celebrations (ECFR 2002: 97), preserving the ‘unique and independent character’ of youngsters (ECFR 2002: 13), donning the *hijab* in order to be ‘distinguished from the non-Muslim and the non-obedient’ (ECFR 2002: 35).³⁵⁹ Local customs are nevertheless to be followed in determining visiting times for divorced parents, private use of work equipments (25²), women leaving the house without asking their husbands (35²), regulating how women talk to foreign men (37). The Friday sermon can be delivered in local languages (Fatwa 12/1). Congratulating non-Muslims on their festivities – a hotly contested issue in contemporary fatwa literature – is also permissible

³⁵⁸ Correctly noting the relative neglect of religion in academic debates about liberalism and multiculturalism, Statham et al surprisingly purport to engage the problematics of equal versus special (or group) rights through an analysis of the mainstream media coverage of Muslim claims – not only neglecting to consider the biases induced by newspapers (despite a well-documented Islamophobia driven by the media) but also seemingly unaware that the decision to classify a claim as “special” rather than “equal” is not an objective act but the product of specific power relations. It is not surprising, perhaps, given these methodological flaws, that the authors conclude that Islam poses, by virtue of its “public and religious (sic) nature”, a particular problem to European liberal states (Statham et al 2005: 427).

³⁵⁹ Dealing lovingly with dogs and keeping the original name after converting to Islam provide two counter-examples where a level of cultural integration is actually desired (ECFR 2002: 37, 90-1).

(33²). Muslims are urged to attend the funeral of non-Muslim relatives (20²). They may inherit from non-Muslims despite a hadith stating the contrary (19²).

The leitmotif of the ECFR - “integration without assimilation” – is often translated in the fatwas into an initial exhortation towards the creation of Islamic institutions followed by a regime of exceptions that allows Muslims to adapt to condition in mainstream society. The Council has thus expressed the need for Islamic banks (in order to avoid interest-bearing mortgages), for *halal* slaughterhouses (in order to provide licit meat), for quasi-Islamic courts (to administer Muslim personal law), and for Islamic cemeteries (to properly bury the dead). These demands are then eased by the subsequent permission to take part in the dominant system: the use of high-street mortgages is allowed, and so is the consumption of certain meat products slaughtered by the People of the Book, or the burial in non-Muslim cemeteries.

The protection of the Muslim family has been at the centre of the ECFR’s concerns. Research papers published in the ECFR’s Majalla have shown a reality of Muslim family in Europe that is sometimes far from the image presented in Islamic discourse. In their fatwas the scholars of the ECFR seek to correct this state of affairs by outlining an orthodox vision of family relations. The fatwas generally display an awareness of the patriarchal nature of traditional fiqh, sensitivity to women’s claims for greater equality, and an unwillingness to uncritically adopt Western models. In so far as they choose to emphasise “gender equity” rather than “equality”, the fatwas seem to conform to the neo-traditionalist model proposed by Ziba Mir-Hosseini (2000) in her study of contemporary Iranian religious discourse on gender.

The equality of the spouses is categorically stated in a long fatwa issued in 1999 (Fatwa 15²). This equality is justified theologically by reference to Qur’anic verses that seek to establish love between spouses as the norm (Al-Rum: 21; Al.Nahl: 72; II: 187). After this principled statement the ECFR contextualises equality in relation to the specific rights and duties of the spouses, and perceives no contradiction in allocating the husband a degree of superiority due to his greater responsibilities (see also Fatwa 24). The aim is

not so much strict equality (“musawa”) than fairness in the distribution of rights and duties (“al-‘adl fi tawzi’ al-huquq wa-l-wajibat). The degree of authority enjoyed by the husband is limited both by God’s commands and by social conventions (ECFR 2002: 141). The precise rights and duties of spouses are outlined in detail in various fatwas. Women are thus urged to inform their husbands if they wish to leave their house (35²) or cut their hair in ways that change their appearance (21). Although no shari’a court would force a wife to serve her husband, she should care for her family (24). Her activities outside the home must not “transgress the rights of her husband” (25). Women are encouraged to open a bank account and keep their savings separate from their husbands to protect themselves in the case of a future divorce (27). Wives are sometimes depicted as immature and subordinate. Husbands by contrast are depicted as emotionally fickle (27), resorting to divorce for the slightest excuse (19), possessive (25) and sometimes misogynistic (25) and abusive (18²). Husbands must provide for their wives: “the woman is under no obligation to spend from her money on household living costs even if she had the financial means to do so” (26). The husband’s position as “head of the household” depends upon this financial contribution. Women may participate in living expenses “particularly if her working outside the house the need for a nanny for the children or a maid, or if it causes extra costs to be incurred such as transportation and extra clothing for the woman”. This contribution however is strictly proportional to the inheritance shares of classical fiqh: it must never exceed 1/3 of the total living expenses. “The husband is obliged to cater for two thirds (of living costs), at least, since he has the right to receive twice her share of inheritance then he must be liable for twice as much in living costs”.³⁶⁰ The husband should also help at home (24), take an active interest in the education of the children (30). Although he may prevent his wife from visiting a friend (32), he cannot prevent his wife from visiting her Christian parents (31).

³⁶⁰ The reasoning offered by the ECFR seems to be quite original. It depends on an independent analogy that is not backed by any of the four Sunni madhahib. These schools - as the ECFR make clear in their fatwa - did not “put any obligation upon the wealthy woman to support her poor husband” (27).

Within the basic patriarchal framework of the family, problems and injustices are corrected via moral exhortation. A husband who supports his wife financially without showing affection is reminded of the Prophet's kind dealings with his wives (Fatwa 6/15). A man married to a woman who does not pray and treats their children cruelly is advised to pray for her and to strengthen relations with other Muslim families (11/1). Although divorce is "the most despised act" that is allowed in the shari'a, as the famous formula goes, it may sometimes be "the best treatment" (29). If the right to divorce is in principle the prerogative of the husband, the woman may request that her marriage be terminated in front of a judge through khul' (16). Domestic violence is sufficient grounds for divorce (18²). Divorce in general should nevertheless be the last resort after all attempts to reconcile the spouses have failed.

Interfaith marriage is conditionally allowed. An already consummated civil union between a Muslim and a kitabiyya can be backed up by an Islamic marriage certificate (18). In a 2005 fatwa, a young man studying in Eastern Europe was allowed to marry a local non-Muslim girl despite the likelihood that she would not be "chaste" (Fatwa 1/15).³⁶¹ A resolution from the same year set conditions for Muslims wishing to marry non-Muslim women. The woman must be truly Kitabiyya (Christian or Jewish) – not a "Materialist Communist" for example. She must have high morals. The marriage must not lead to a *fitna* within the Muslim community (Resolution 6/15). Muslim women are prohibited to marry non-Muslims. Showing the degree of sensitivity to the perceived inequality between men and women in Islamic rules regarding interfaith marriage, the ECFR justifies the prohibition of marriage between a Muslim woman and a Christian or Jew in terms of the husband's greater responsibility and influence over the family (Fatwa 1/18).

The Power of Fatwas

³⁶¹ The Qur'anic verse that founds the permission for Muslims to marry Christian and Jewish girls specifies "chastity" as a condition (V: 5). A chaste woman, as the ECFR clarifies, is one that does not engage in sexual intercourse. The petitioner, however, pointed out that girls in Romania do not keep their virginity after their 15 years.

As I have hinted above, the ECFR's fatwas typically provide graded assessments of specific acts in accordance with the shari'a – from mandatory (wajib), encouraged (mandub) and allowed (halal; mubah), to discouraged (makruh) and forbidden (haram; mamnu'). The fatwas are seen, by the scholars of the ECFR themselves, as performative discourses (they have effects, and these effects can furthermore be easily traced).³⁶² The fatwas issued specifically by the ECFR purport to “*meet the needs* of Muslims in Europe, *solve* their problems, and *regulate* their interaction with the European societies” (ECFR 2002: 2, *italics mine*).³⁶³ Where does such *regulatory* power come from? How do these muftis seek to inscribe it upon European Muslims, particularly in light of the contradictory religious advice available? As I argue below, the ECFR tries to secure the authority of its fatwas through a) an engagement with standard authoritative Islamic texts, establishing the credentials of the muftis; b) the disclosure of the reasoning that underlies the opinion; c) the inscription of the specific issue in a broader narrative structure; and d) the invocation of a broader set of moral principles and juridical formulas (al-qawa'id al-fiqhiyya), which provides the opportunity to construct Islam (and Europe) in particular ways. The latter are central to the politics of authenticity through which the ECFR seeks to establish its authority.

The fatwas of the ECFR appeal to the shared modes of reasoning that characterize the Islamic discursive tradition: Qur'anic verses are the most commonly used source, followed by the collections of Hadith-s.³⁶⁴ Despite the

³⁶² The conception of fatwas as performative discourses is interestingly shared by opponents and advocates of the ECFR alike. While the advocates of the ECFR tend to view its fatwas as illocutionary speech acts (acts which do what they say), opponents stress both the illocutionary and the perlocutionary (ie, the fatwas' unintended effects) dimensions. For the classical formulation of the distinction between illocutionary and perlocutionary speech acts see Austin 1962. My understanding of performativity is drawn from Judith Butler (Butler 1997). Performativity for Butler denotes a speech act that also constitutes a mode of conduct (and not necessarily a speech act that transforms of the status of its object or subject by virtue of its enunciation, as in Austin's formulation).

³⁶³ By contrast, “misguided” fatwas “bring harm and shame to Islam” and encourage Muslims to steal, forge, and cheat (ECFR 2002: XI).

³⁶⁴ The collections of hadith cited in the ECFR's fatwas go beyond the Sahih of Bukhari and Muslim to include more controversial compilations of Abu Dawud, Al-Tirmidhi or Ibn Majah.

commitment to the practice of *ijtihād*, the binding consensus of the scholars (*ijmāʿ*) - or their quasi-consensus - is also regularly invoked/constructed (6, 3², 12², 14², 30²), while the opinions of Hanafi (7, 12², 14², 26²), Maliki (7, 9²), Shafiʿi (9, 14²) and Hanbali (9, 41, 14², 22², 26², 32²) jurists are summoned in a discretionary manner.³⁶⁵ Fatwas (from other muftis' or their own) have also been quoted, and sometimes revised. The fatwas most commonly quoted are those issued by the international fiqh councils (the International Islamic Fiqh Academy of the OIC in Jeddah and the Islamic Fiqh Academy of the Muslim World League).

References are also made in the ECFR's texts to juridical principles recognized as more controversial (ECFR 2002: 3) such as customs or *ʿurf /ʿadat* (23, 34, 37, 15², 25², 33², 35²), public interest or *maslaha* (37), the objectives or *maqasid* (5, 37, 26²), need (*haja*) and necessity (*darura*) (38, 26², 37²). Less conventional perhaps are the references to "logic" (37), "reason" (23, 28), "good taste" (23, 37, 15²), "human nature", "progress" (37), and even on three occasions to Arabic poetry (26; 22², 33²).³⁶⁶ The latter suggest the beginning of an incorporation, into the scholarly fatwa genre, of the textual protocols that characterize popular Islamic religious literature more broadly – a move rationalized by Qaradawi in his book on the methodology of issuing fatwas under the necessity of addressing the people in a "contemporary language" (see chapter one).

³⁶⁵ While none are binding on the ECFR, among the four schools the Hanbali tradition seems to be given a certain prominence, as suggested by the number of times it is invoked as well as by fatwas 22² and 32².

In at least one occasion the opinions of the four Imams (and their schools) are explicitly cast aside, however, in favour of a contextual reassessment of family responsibilities: "none of the Imams of Islam put any obligation upon the wealthy women to support her poor husband, apart from Ibn Hazm... However, we felt that it is preferable for a working woman to participate in providing for the household (ECFR 2002: 74; see also Rohe 2004: 180-181). This willingness to "politicize" fiqh – ie, to render it accountable for shifting power relations within the family - is uncommon. The fact that this casting aside is performed to the advantage of the husband suggests a sensitivity to male power that reminds one that the ECFR is after all an all-male body of scholars.

³⁶⁶ This heterogeneity of references seems to suggest the limits of Waardenburg's distinction of four main Muslim approaches to normative Islam in Europe (based respectively on the recourse to the Qur'an, to the tradition, to reason, and to spirituality) for the case of the ECFR (Waardenburg 2000: 56-63).

The reliance on the primary texts of the Qur'an and Sunna, the eclectic use of the four juridical schools of Sunni Islam (talfiq), the invocation of the maslaha and the maqasid, as well as the occasional citation of Ibn Taymiyya (17², 19², 33²), Ibn al-Qayyim (19², 33²) or al-Shatibi (17²), are unsurprising features for an institution claiming a reformist inheritance (salafiyya) and seeking to revive/appropriate the practice of ijihad.³⁶⁷ Given the undermining of the institution of taqlid, how precisely is the authority of the fatwa constructed by the ECFR? The beginning of an answer to this question is suggested in the ECFR's response to whether a Muslim convert is obliged to follow a specific madhhab (fatwa 5).³⁶⁸ Taking the question as an opportunity to speak of Muslim believers in general, the ECFR answers negatively - since they do not possess the knowledge required to choose between juridical schools common Muslims have no madhhab – and specifies that Muslims need to follow their mufti instead.³⁶⁹ Invoking one of the Qur'anic injunctions that lies at the heart of the muftiship (XVI: 43), the ECFR proceeds to enjoin Muslims in Europe to address “recognized scholars” each time they face a moral dilemma. Given the plurality of muftis how are European Muslims nevertheless to identify these real scholars? The members of the ECFR are aware of the question and address it indirectly when they argue that “a true Muslim always follows the stronger evidence”.

Leaving aside the seeming paradox (if Muslims cannot follow juridical schools because they do not have the requisite layperson's literacy to

³⁶⁷ Shatibi's reconstruction of maslaha/maqasid has proved productive to many Muslim reformists, including Khalid Masud (2001) or Tariq Ramadan (2003). The appeal of the two mediaeval Hanbali scholars is not restricted to their championing of ijihad but may also lie in the possibility they carry of “appeasing” ulama in the Gulf region, including Saudi Arabia. For the uses of Ibn al-Qayyim by modern Muslim reformists see Skovgaard-Petersen 1997: 75-77. The ECFR's free madhhab-borrowing is part of the attempt to surpass old divisions and appeal to larger audiences; it also however diminishes the import of the fatwas in milieux attached to specific juridical schools – such is the case of Millî Görüş, whose scholars participate in the ECFR's meetings but who ultimately draw (exclusively?) on the Hanafi school, leaving other opinions aside.

³⁶⁸ The full question is longer as the petitioner also enquires about the duties of a wife in relation to her husband's madhhab (ECFR 2002: 31-34). I do not deal with this here.

³⁶⁹ In Arabic: “an al-'ammi la madhhab lahu, wa innama madhhabihi madhhab man yafihuh.”

evaluate the respective strengths of the various schools, how can they decide between competing muftis whose evidence is stronger?), the importance attached to the disclosure of the reasoning and evidence that underlie the fatwa (ECFR 2002: 4) now becomes clear: it is the very efficacy of the ECFR's fatwas – their capacity to “regulate” the life of Muslims in Europe and to counter the “ignorant” and “misguided” advice of competing muftis - that is at stake.

The commitment to reveal the fatwa's underlying reasoning (broadly understood) presupposes a particular kind of moral subject - one that needs to be persuaded by textual modes of authority - and participates in the ECFR's attempt to use fatwas as occasions for educating/disciplining the Muslim community writ large. This disciplining is sometimes quite explicit, as when the ECFR “urges parents to bring up their daughters and the husbands to educate their wives according to the guidance of Allah Almighty” (ECFR 2002: 188, fatwa 35²).³⁷⁰ Tarbiyya, however, is typically achieved through the inscription of the question in a broader narrative structure - one that seeks to contextualize the issue and to provide the corresponding global Islamic perspective³⁷¹: thus a question about the marriage of a Muslim woman without her legal guardian (wali) starts with an evocation of the importance of marriage in Islam (ECFR 2002: 128); an enquiry about the collection of zakat by Muslim NGOs elicits an apologetic exposition of the functions of zakat in Muslim society (ECFR 2002: 116). This narrativity, facilitated at times by the transformation of the specific wording of a question (su'āl) into the more open-ended formulation of the resolution (qarār), is predicated on the assumption of a heterogeneous audience of European Muslims, and on the concomitant need not to take for granted much shared knowledge – a reasonable

³⁷⁰ In at least one occasion the fatwa also becomes an opportunity for da'wa. A Muslim woman asking what parts of the body must not be revealed to a non-Muslim of the same sex in a swimming pool is urged to speak about Islam to these non-Muslim women who wish to swim in women-only environments (Fatwa 32²).

³⁷¹ This seems particularly true in answers related to gender – it seems less prevalent in cases of bank interest, for example, where in no place does the ECFR provide the reason for the prohibition of riba. Although this has not been thematized by the members of the ECFR in such terms, this approach to fatwas bears definite resemblance to the shumuliyya or comprehensive approach of the Muslim Brotherhood.

assumption perhaps, particularly given the muftis' understanding of Muslims in racial(ized) terms.³⁷²

The fatwas of the ECFR appeal first and foremost to the established sources of the Islamic shari'a, and try to inscribe particular cases in the narrative structure of the Islamic orthodox tradition. The fatwas also invoke textually a broader set of moral principles and juridical formulas (al-qawa'id al-fiqhiyya) which appear key to the ECFR's educational/disciplining project.³⁷³ These moral-legal principles - ranging from "the permissibility of preventing a greater harm with a smaller one" to the notion that "customary practices constitute implicit contracts (25²) - serve to construct Islam in particular ways. Two principles help to locate the ECFR more clearly as a fatwa generating body: al-taysir (lenience, facility) and al-waqi' (reality/realism): they not only form two of the cornerstones upon which the process of integration of Muslims in Europe is attempted by the ECFR³⁷⁴ but also lie at the heart of the politics of authenticity enacted by the ECFR to establish its authority that I describe in the following section.

Contextualizing Fiqh / Constructing Europe: al-Taysir and al-Waqi'

More than mere expedients, al-taysir and al-waqi' seem to constitute two crucial elements in the ECFR's project and identity. As Qaradawi argues in his introduction to the ECFR's First Collection of Fatwas, "the message of this Council is to bring ease to its Fatwa for those Muslims, rather than difficulty and hardship, to bring glad tidings of Islam rather than bad tidings and ill-fate and to include people in the circle of Islam rather than exclude and alienate them, even if they practiced no more than the absolute minimum of

³⁷² Qaradawi unambiguously speaks of Muslims who have "forgotten their Islamic identity".

³⁷³ For a general description of the qawa'id see Abu Sahlieh 2006: 193-203 and Moussaoui 2003.

³⁷⁴ The importance of taysir and fiqh al-waqi' is further demonstrated in the way Qaradawi, in his introductory speeches, often refers explicitly to them when presenting the aims of the ECFR. They have been theorised in different junctures of Qaradawi's work (for the latter, fiqh al-waqi', see Qaradawi 2001: 44-46). Other foundations include the often-mentioned concepts of maqasid and maslaha but I do not to discuss them here in detail.

obligations. The Council aims to give Fatwa which seek ease and convenience, rather than strictness in search for staying on the safe side, taking heed in the statement of Sufiyan Al-Thawri: "Fiqh is when a trustworthy person offers ease in Fatwa, as for difficulty and strictness; all people perform this well" (ECFR 2002: X).

Taysir is of course a well-established (if not universally accepted) Islamic legal formula, one which has been greatly invested in contemporary times by Qaradawi and his peers.³⁷⁵ If taysir - construed by Qaradawi as 'the true spirit of Islam' - is mobilized here towards legitimating the ECFR, it is also "a necessity" imposed by the nature of the present times, evocative of the topos of moral decline which seems to run through Islamic history: Muslims today are thus 'in dire need for facilitation...their determination has weakened...while the obstacles in the path of goodness and their desire for committing evil have increased' (Qaradawi 2000: 141). Facility thus appears as a contextual attribute directly related to al-waqi', in so far as "reality" – both material (*the obstacles placed in the path of goodness*) and intangible (*the desires for committing evil*) - establish a hierarchy of necessities which taysir can then alleviate.³⁷⁶ In other words, a specific assessment of reality is here made a precondition for taysir – although, as the Salafi response makes clear, the link between the assessment and taysir is by no means self-evident.

One Salafi response to taysir can be found in a fatwa by Shaykh Ibn 'Uthaymin to the question of whether a woman convert should divorce her non-Muslim husband (a question which would a few years later occupy the

³⁷⁵ The usual Qur'anic reference to taysir is II: 185. Qaradawi has exposed his vision of taysir fi-l fatwa at various junctures of his work. Other contemporary formulations of taysir can be found in Mansur 1991 and 'Abd al-Latif 2003. Interestingly, the vision of taysir, broadly adopted by the European Council for Fatwa and Research, seems to be actualised differently in the various European countries. In Britain, it is portrayed as a struggle against taqlid (imitation) and "extremism"; in France, it is usually a cry for "authenticity" against the modernist interpretations of liberal thinkers which hold the high ground in public debates. As Martin van Bruinessen (2003) has pointed out, Qaradawi's perceived lenience has led some Muslims to mockingly rename his book *The Licit and the Licit in Islam...al-halal wa-l-halal fi-l-islam*. Qaradawi's response of course is that his opponents only talk about...Al-Haram wa-l-Haram in Islam.

³⁷⁶ Members of the ECFR readily associate taysir and al-waqi' in their discourse. See for example Jaballah 2002: 39.

ECFR). For ‘Uthaymin, the mustafti’s appeal in the question to “changing circumstances, benefit, and the rule of the lesser of two evils” becomes the occasion for outlining his view on the notion of taysir: “It might appear to some people that to implement Islamic law is difficult and severe in this matter and that it causes problems, while the truth of the matter is quite the opposite to what they imagine” (Ibn Baz and Uthaymeen 1998: 69-71). Particular theological conceptions (where facility, morality and justice become almost synonymous) lie at the core of discussions on taysir: both Qaradawi and Uthaymīn’s approaches seem to draw upon a shared theological framework – the idea that morality (the good and the bad) coincides with the law (the required and the forbidden). Such a theological framework, famously expounded by Ibn al-Qayyim, nevertheless enables two very different positions: the first is to rationalize all divine legal rules as moral, even if people “imagine otherwise”; the second is to shape legal rules to fit situated moral assessments of what constitutes good and evil in particular times – the maqasid approach usually epitomized by Shatibi.³⁷⁷ In Qaradawi’s works one finds an oscillation between the two positions, perhaps because he does not seem to have rendered his theological conceptions explicit. Instead of taysir, the response of Salafi scholars such as Ibn Baz and ‘Uthaymin to the modern religious crisis seems to be firmness and steadfastness in religion (see for example Ibn Baz and Uthaymeen 1998: 15).

Given that Salafi scholars such as Ibn Baz and ‘Uthaymin converge upon the diagnosis of a perverted world,³⁷⁸ but draw radically different conclusions about the need for taysir, how are “reality” and “facility” articulated by the ECFR?

As I have noted, members of the ECFR strongly emphasize the importance of the context: “awareness of the context” appears side by side with knowledge of fiqh in the conditions for membership (ECFR 2002: 5) and is mentioned again alongside the objectives of the shari’a as part of the

³⁷⁷ See on this point Johnston 2007, especially 161.

³⁷⁸ Ibn Baz speaks unambiguously of a “time of banishment and exile when Islam itself has been exiled, has many enemies, (and) the righteous are few in number (Ibn Baz and Uthaymeen 1998: 15).

ECFR's methodology (2002: 4). Quasi-absent from the writings of Salafi scholars,³⁷⁹ knowledge of the context represents a leitmotif regularly invoked in interviews and public speeches given by members of the Council (as in the aforementioned speech by Ahmad al-Rawi). Qaradawi devotes three pages to "understanding reality" (fiqh al-waqi') in his treatise on minority fiqh (2001: 44-46). Embodied in the often-cited formula that "fatwas change according to time, place and circumstance", the emphasis on the context underlies recent attempts to integrate social scientists as full members of the ECFR: a suggestion made in print by Taha Jabir al-Alwani (2003: 3) and received with some interest within the Council (see also chapter two). Research is needed in order to determine the likelihood of loss of hymen for young women who ride bicycles (Fatwa 38).

Although widely debated during the internal sessions, "reality" as such is mentioned explicitly only in two of the ECFR's published fatwas: its invocation serves to justify meetings between men and women against those interpretations of shari'a that stress complete gender segregation;³⁸⁰ and, on a different occasion, Islam's "realism" is used to naturalise polygamy.³⁸¹ "Reality" here is not only a descriptive idea but also a normative concept: Muslim scholars understand that *reality* is *also* a social construction, one which is often hardly distinguishable from its perception by the relevant

³⁷⁹ The contrast between the ECFR and Salafi scholars is again striking here. In his introduction to the collection of fatwas for Muslim minorities, Ibn Baz speaks of only two conditions for preaching and guiding believers outside Muslim lands: sincerity and knowledge of religion (Baz and Uthaymeen 1998: 16) and, when asked by a petitioner about the need of Muslim minorities to have "scholars and preachers who are aware of their problems and their present day situation", Ibn Baz concedes that "this is true" but proceeds to stress that "nobody should be sent unless he has both correct understanding of the tenets of the faith and discernment" (Ibn Baz and Uthaymeen 1998: 33-34).

³⁸⁰ "Meeting, co-operating and integrating between men and women is an instinctive and natural matter, which cannot be averted in reality (lā yumkin man'uhu wāqi'an). Indeed, Islam; the religion of natural instincts and inclinations, conveyed nothing which prevented such meetings from taking place, but rather set the following conditions and restrictions" (ECFR 2002: 184. For Arabic, MUIB 2002: 168).

³⁸¹ "The reason for the allowance for a man to marry more than one woman is because Islam is a realistic religion (din waqi'i) and one which is not based upon idealistic notions which would cause real problems of everyday life without solution or treatment" (ECFR 2002: 133. For Arabic, MUIB 2002: 125). See my discussion below.

actors.³⁸² When muftis based in Europe object to the dominance of the charismatic scholars from the Muslim world in the internal discussions of the ECF on the basis that one must also pay attention to the reality of Muslims in Europe, they seem to miss this point. All Muslim scholars interested in taking “reality” into consideration engage in a particular kind of naming.

Given the inherent malleability of the concept of “reality”, how is “Europe” or “the West” imagined by the ECFR? How does the context seep into the fatwas, and what projects does its invocation authorize? Conversely, in light of this impetus towards contextualisation, how is the Islamic tradition maintained and advanced? The relevance of these questions becomes clear once the heterogeneity of complex modern societies – not to mention that of Europe - is taken into consideration.³⁸³

“Europe” appears in the fatwas of the ECFR mainly in cultural, legal, and astronomical terms. I have dealt with the legal dimensions above. Here I focus on culture and astronomy. Europe’s geographical position in the Northern Hemisphere complicates the conventional procedure for determining the prayer timetable: for the ECFR it is therefore permitted to combine maghrib and ‘isha’a prayers when in some parts of Northern Europe during Summer the signs of ‘isha’a appear around midnight or disappear altogether, “so that Muslims do not face the difficulty which was lifted from upon them by virtue of the Holy Quran” (ECFR 2002: 115, fatwa 4²). From a meteorological perspective, the prevalence of rainy winters in Europe has given rise to discussions about whether the Prophet’s practice of combining evening prayers in rainy days in Arabia is appropriate at all in the European context (Ibrahim 2002; Qaradawi 2001).

Culturally, Europe appears sometimes as the outside of Islam. If a petitioner assumed the cultural exteriority of Muslims in Europe when asking how

³⁸² It is this conception of reality that seems to underlie the idea that the “reality” of Muslims in the West changes when they realize that living in the West has certain advantages (Al-Urubbiyya issue 24, p 24).

³⁸³ For a study of this question in discourses on French Islam see Peter 2006b, especially 69-73.

Muslims could stem criticism from “Europeans” for their dislike of dogs,³⁸⁴ the texts of the ECFR reinforce this perception on a number of occasions by similarly counter-posing “European societies” to Muslims (ECFR 2002: 2, REF).

Europe is defined as “permissive” (*bilād al-ibāhiyya*) on two occasions (41, 1²), and its permissiveness seems less a legal attribute than a cultural one. The polemics about Europe’s permissiveness is a mainstay of Muslim critiques of Western liberal culture, but what does the description of Europe as “permissive” in the fatwas of the ECFR enable? Significantly, the argument about Europe’s permissiveness is used to engage religious groups in civil society (founding the ECFR’s encouragement of interfaith dialogue - 1²) and to remove shari’atic prohibitions / minimize Islamic normativity (removing masturbation’s detestable character - 41).

The fatwa on interfaith dialogue provides a rare occasion for explicitly defining both Islam and the wider European context, and therefore may be worth describing in some detail.³⁸⁵ Issued before 9/11 – and thus preceding the unprecedented politicization of interfaith dialogue that followed the destruction of the World Trade Centre – the fatwa starts by staging a claim to uniqueness, rejecting attempts to eradicate essential differences between Islam and other religious traditions.³⁸⁶ This turns out to be the preamble to a detailed exposition of the similarities between Islam and other revealed religions: “all divine faiths acknowledge the existence of God, the notion of prophecy, and the Day of Judgement (or the hereafter). They accept the foundations of morals (*usul al-akhlaq*) and social structures such as the family. They hold similar views on environmental issues, human rights, rights

³⁸⁴ Fatwa 7: “We are constantly criticised by the Europeans when we demonstrate our loathing of dogs due to their uncleanness and due to our fear that they may touch our clothes. Is there a school of *fiqh* which states that dogs are clean so that this difficulty may be lifted upon us” (ECFR 2002: 37). The question comes from an immigrant Muslim and its explicit appeal to *taysir* points to the wider resonance of facility within Muslim communities.

³⁸⁵ The fatwa delivered by the ECFR is largely a shortened version of Qaradawi’s own opinion published separately in his book on minority *fiqh* (see Qaradawi 2001: 65-71).

³⁸⁶ The formulation here implies both Christians and Jews. If Qaradawi’s fatwa delves separately with Christianity and Judaism, the ECFR’s makes no distinction between the two monotheistic faiths.

of oppressed peoples, confronting despotism and injustice, rejecting genocide, aggression and fanaticism, disseminating tolerance, etc” (ECFR 2002: 102 Arabic version). These commonalities counterbalance the previously-mentioned dangers of “erasing differences” between Islam and other religions but do not provide a very strong basis for engaging in interfaith dialogue as such. This basis comes instead from the context: “What emphasizes (the need for) dialogue and stresses co-operation is the dominance of the materialistic, permissive and atheist culture (al-falsafa al-mādiyya wa-l ibāhiyya) and the crumbling of social order at a time where the entire world is connected to each other through the communication revolution which turned the world into a small village.” The fatwa concludes with the invocation of one Hadith and two Qur’anic verses paying testimony to the fraternity of mankind (ECFR 2002: 105-7).

Europe, however, is remarkably absent from a number of fatwas issued by a religious body deliberately committed to the integration of Muslims. Gender questions appear as particularly interesting instances of this absence. While many of the questions about rights and duties of spouses take transformations in Europe or intercultural relations as a starting point, most of the ECFR’s answers are built on a mode of argumentation which purposively overlooks (or minimizes) the context in order to provide reiterations of seemingly timeless Islamic norms. Such is the fatwa issued in 1999 on polygamy, entitled “the allowance of marriage to four women and the abuse of this allowance”.³⁸⁷ The text starts by reminding its readers that Islam limited the number of women a man can marry in a social context where such limits did not exist. The condition of fair treatment of all spouses is invoked (III: 3) but it is placed under the responsibility of the husband’s perception: “it is the confidence of

³⁸⁷ Although the original formulation of the question (assuming it existed) is not publicly available, the phrasing of the qarar suggests an explicit reference in the petition to the abuses which the allowance of polygamy has led to – this much is suggested by the fact that, despite the title of the resolution, the ECFR is unwilling to openly discuss such abuses. The fact that Qaradawi himself has recently become a bigamist may have weighted on the group discussions, but the gist of the ECFR’s text can also be found in a book written in the mid-1990s by Qaradawi on the status of women in Islam, where he deals separately with “the abuse of polygamy” and “the call of Westernized Muslims for its abolition” (Qaradawi 2002).

the man that he can actually be totally just and fair” (ECFR 2002: 133). No reference is made to the Qur’anic verse sometimes understood as implying that such fair treatment is impossible (III: 129). Instead, the members of the ECFR resort to an apologetic explanation of the rationale for polygamy: “The reason for the allowance for a man to marry more than one woman is because Islam is a realistic religion and one which is not based upon idealistic notions which would cause real problems of everyday life without solution or treatment. It is very probable that a man marrying a second wife could be solving a problem, in that his first wife is incapable of bearing children or has extended menstruation cycles which result in his sexual needs being unsatisfied. The first wife could be ill and thus, instead of divorcing her and leaving her alone, could marry a second wife and remain next to his first wife, and so on. This allowance also solves the problem of a widow who needs a husband to care for her but does not wish for an unmarried young man, similar to a divorced woman with children. Indeed this allowance may solve a social problem which arises from the high proportion of good women who want to marry in comparison to able men. This is a common problem which increases particularly in the aftermath of wars and the like.” (ECFR 2002: 133-4).

The scathing irony which meets the claim that “polygamy is often abused” suggests, in the formulation of the question unavailable to us, a petitioner preference (and perhaps that of some members of the ECFR) for a relative condemnation of the practice. The unsympathetic response with which the ECFR ends its fatwa speaks for itself: “As for those who say that this allowance is often abused by some men, it is an unfortunate fact that many rights are abused or are used in inappropriate manners. This does not mean that we must cancel these rights. Indeed, there are many men who abuse their first and only wives, so does this lead us to cancel marriage in its entirety? Freedoms are often abused. Should we cancel freedoms? We see that states and governments abuse elections; would it be right to cancel these processes? In fact we find that authority and government is frequently abused, so would it be acceptable to cancel authority and let society decline into a state of chaos? It would be better, instead of calling for the cancellation of

these rights, to set up boundaries and regulations which would limit the possibility of such rights being abused.” (ECFR 2002: 134-5).

Given its condemnation of Europe’s permissiveness elsewhere, the ECFR’s defense of rights-based liberalism constitutes of course not the least of the ironies. But amidst the rhetorical excesses of the text, and its abrupt inconclusiveness regarding regulations against polygamy’s possible abuses (which seemed to lie at the very heart of the question), the fatwa on polygamy appears inconsistent with the ECFR’s broader project of a European Islam in so far as the logic of the “implicit contract” effectively rules polygamy out – as many members of the Council, including its transnational leadership, readily acknowledge.³⁸⁸ Significantly, the invocation of “reality” in this fatwa – of Islam as a realistic religion (*din waqī’i*) – corresponds to a trans-cultural social (or biological?) attribute,³⁸⁹ and it contrasts with the absence of any reference to the legal European context where polygamy is forbidden. Although elsewhere social practices are distinguished from Islamic norms, gender issues are typically discussed in universalistic terms. If the text on polygamy appears exceptional in the corpus of fatwas issued by the ECFR, the underlying tension between a reiteration of the Islamic tradition’s contemporary relevance, on one hand, and the attempt to facilitate the integration of Muslims into Europe, on the other, seems to aptly characterize the ECFR’s written production.³⁹⁰

³⁸⁸ Faysal Mawlawi, in an interview, argued precisely that since polygamy is not a religious obligation its ban poses no difficulty to Muslims in Europe. See “Living Islam in the West: An Interview with Shaykh Faisal Mawlawi”, *Palestinian Times*, issue 98 (<http://www.palestinetimes.net/issue98/articles.html#7>).

³⁸⁹ The reference to the “realism” of the Islamic shari’a in relation to polygamy is often part of a traditionalist defence of the practice. It is also found, for example, in a treatise by Jamal Badawi, a member of the ECFR based in Canada, entitled “Polygamy in Islamic Law” (originally published by *Al-Ittihad* in 1972). For a different attempt by a member of the ECFR to think about the real and the ideal status of women in contemporary Muslim societies see Rashid al-Ghannushi 2000.

³⁹⁰ A similar example of a European absence is perhaps the ECFR’s fatwa on apostasy (4), where the muftis provide the rationale for executing apostates (« to preserve the entire nation from the evil that this individual will undoubtedly bring », reads the English translation) by equating apostasy with the modern crime of « high treason » - even though the scope of the norm is limited to the public performance of apostasy, and its application suspended by virtue of the lack of an Islamic government (ECFR 2002: 30-31). There are, however, various views on apostasy

But where does the (constitutive) attempt to assert the present-ness of the shari'a - in a European discursive field which seems to render such assertions implausible - lead the ECFR? What tensions arise between the ECFR's overlapping projects – of constituting pious, as well as law-abiding, European Muslims – and how are they articulated? As I argue below, the absence of “Europe” from a number of fatwas suggests an oscillation within the ECFR between an emphasis on the relative powerlessness of Muslims, and a stress upon their individual responsibility. The former founds a regime of exceptions which minimize or suspend traditional Islamic norms through concepts such as “necessity” and various emphases on contextualisation and the limits of the law.³⁹¹ The latter purposively ignore the context (or minimize its importance) in order to appeal to a more universal sense of individual moral responsibility.

A fatwa which tries to arbitrate between competing Muslim claims on the collection of zakah may be instructive here. The petitioner asks whether it is permissible to establish Muslim charities for the collection of zakat, and whether such charities may spend part of the money collected in administrative costs, despite the fact that some Muslims argue that the collection of zakat is “the sole right and responsibility of the Caliph” (5²). The ECFR's response seems to deliberately overlook the European context in which the question arises when it argues that the third pillar of Islam “upholds the financial and social basis of the society” (ECFR 2002: 116). After distinguishing three levels of responsibility for the accomplishment of zakat (including the Sultan, and “the social conscience of the ummah”), the fatwa ultimately appeals to a third level, “the inner guard of iman within the Muslim heart” - “even if no one forced” the individual to pay zakat (ECFR 2002: 117).³⁹²

within the Council: Yusuf al-Qaradawi's have been recently studied by Gudrun Krämer (2006); a description of Rachid Ghannouchi's more liberal opinions are found in Tamimi (2001: 78-79).

³⁹¹ Unsurprisingly, concepts of “need” and “necessity” have been at the heart of many controversial debates within the ECFR (and beyond). See for example Bin Bayyah 2004.

³⁹² A similar opinion was stated by Qaradawi in *Al-shari'a wa-l haya* on Al-Jazira, 14/09/2008. Regarding the administrative costs, the ECFR rules that the charities are “allowed to deduct from the monies which they collect [the sum necessary] to cover

Despite the repeated emphasis on the importance of the context, therefore, it appears that neither is the reference to the context unambiguous nor does it permeate all of the ECFR's written production.³⁹³ Instead, if fatwa requests take intercultural relations as their starting point, it could be argued that "Europe" as such does not figure prominently in the ECFR's texts. Despite Qaradawi's claim that "there is no greater difference than that between Muslim and non-Muslim lands" (a rhetorical justification for the existence of the ECFR), parallels seem to be established between Muslim and non-Muslim countries more often than the two are distinguished. Minority fiqh seems thus caught in the global dynamics that tend to collapse, or at least blur, geographical differences *even* in the eyes of its advocates. As the members of the ECFR readily argue themselves, borrowing a used cliché, "the communication revolution has turned the world into a village" (ECFR 2002: 107).³⁹⁴

their administrative expenses on condition that this does not exceed one eighth of the money collected" (ECFR 2002: 119).

³⁹³ It would appear therefore that the recurrent critiques of the ECFR's insufficient consideration of the context – articulated by members of the UOIF in France and by scholars of the Millî Görüş in Germany - are founded. What such critiques do not tell us however is how the context should be understood and approached.

³⁹⁴ "Thawra al-ittisal alati ja'alat min al-'alam qarya saghira". See also the ECFR's resolution 11/5 issued in Stockholm in 2003 on "The Islamic Discourse in the Age of globalization". It follows the discussion of a research paper bearing the same title by Qaradawi which has been published in the majalla of the majlis and extended in book format.

CHAPTER FIVE

Imagining an Islamic Counterpublic

So far I have been arguing that the complex deliberative process that underlies the ECFR's production of fatwas makes it problematic to speak of minority fiqh in this context as anything other than a project, diversely understood and variously implemented, by the heterogeneous members of the fatwa body. Given my particular interest in constructions of authority – how the muftis articulate, defend, and argue over religious authority – I have examined how the ECFR tries to secure the authority of its fatwas through an engagement with the standard Islamic texts, which establish the credentials of the muftis, and through the invocation of a broader set of moral-legal principles, which enable specific constructions of Islam *and* Europe. If I have dealt in some detail with two of these principles – the urge to facilitate (al-taysir) and the impetus towards contextualisation (al-waqi') – it is because they delineate most clearly the contours of the *politics of authenticity*³⁹⁵ which the ECFR articulates in print. It is through this politics that the members of the ECFR attempt to establish the fatwas' efficacy against competing religious opinions. In outlining now more explicitly this politics of authenticity I draw on Michael Warner's articulation of the concept of the "public" (2002: 49-90) to suggest that the construct called minority fiqh is perhaps best seen as the result of a performative conjunction between a particular tension (the tension, described above, between the cultivation of a pious Muslim subjectivity and the call for integrating Muslims into a given context) and a specific relation to public discourse.

By purporting to issue "decisive legal fatwas" (ECFR 2002: 2) that represent the "pristine shari'a" (ECFR 2002: XII)³⁹⁶ and "regulate" the life of European Muslims (ECFR 2002: 2), the ECFR enacts an *authoritative* discourse of "moderation" (wasatiyya) that does not deny competing interpretations but

³⁹⁵ I borrow this felicitous expression from Amir-Moazami & Salvatore (2003: 57) and Jeremy Stolow (2006: 76).

³⁹⁶ The Arabic expression is al-shari'a al-samha al-gharra' (MUIB 2002: 9 Arabic version).

constantly seeks to reaffirm its own (superior) authority.³⁹⁷ This politics of moderation or authenticity requires publicity.³⁹⁸ Publicity enables the enactment of this moderate discourse against the so-called “extremist” readings which push Muslims towards the margins of Europe and do Islam “harm” (ECFR 2002: XI, XII, 13, 23, 33).³⁹⁹ Although this is never explicitly stated in the fatwas (even though it is readily acknowledged in interviews with the author), the members of the ECFR also seek to counter the more modernist – or, in the famous formulation by Qaradawi, “lax” – religious interpretations which tend to minimize Islam’s normative import. This exclusionary project goes hand in hand with the ECFR’s attempt to promote a “uniform fatwa” in Europe (ECFR 2002: 1), and both depend instrumentally upon mass media for their success.

Ultimately, the ECFR’s project betrays an ambivalence regarding the social consequences of religious interpretation – an ambivalence that, based on a conception of Muslim ethical discourse as performative, seems to extend to the genre of the fatwa itself.⁴⁰⁰ This ambivalence points towards a perception, which appears increasingly prevalent among the ulama, regarding

³⁹⁷ For the distinction between *authoritative* and *authoritarian* discourse see Khaled Abou El Fadl 2002.

³⁹⁸ Even if the members have occasionally decided not to publish a fatwa (because of the specific nature of the question), or refrained from issuing a collective answer altogether (in cases when a collective fatwa seemed unreachable), spreading the ECFR’s “ijtihad” and “academic methodology” is considered an essential part of its work – and it is specifically taken into consideration during internal discussions. For a comparative discussion of publicity in early modern European liberal thought and in (some contemporary articulations of) the Islamic tradition of *nasiha* see Asad 1993: 200-236.

³⁹⁹ Although these harmful “scholars” are never mentioned by name, the allusions seem to refer to radical UK-based activists such as Abdullah El-Faisal, a Jamaican convert who used to preach in a mosque in Brixton, notoriously arguing that stealing and killing non-Muslims was permitted in Islam.

⁴⁰⁰ Tareq Oubrou, the imam of Bordeaux and one of the UOIF’s leading authorities, expresses this ambivalence most clearly through the imagination of the “negative fatwa” (see chapter one). While his constructs are by no means shared by all the members of the UOIF – not to mention those that sit in the ECFR – his distrust of a vicious circle of fatwas and counter-fatwas diluting all religious authority is widely shared. For a similar distrust of “media fatwas” – “les fatwas satellitaires” – see Bishri 2007 and Ibram n/d. This distrust is quite different, of course, from the advice given to muftis in the classical *adab al-mufti* literature to refrain from answering certain theological questions that may confuse the petitioner.

the current *intractability* of the problem of authority.⁴⁰¹ The institutionalization of collegial fatwa bodies such as the ECFR – attempting, without ever really succeeding, to centralize the production of fatwas and to counter the “fatwa wars” recurrently played out in the media - has been one of the typical responses by the ulama to this modern perplexity. But if the quest for (r)establishing a modern form of consensus or *ijma'* has proved elusive, the reason – I suggest below - lies perhaps less in the divisions amongst the ulama (real though they are) or in their varying hermeneutical strategies, than in the properties of public discourse, and in the open-ended nature of discourse's circulation within publics.

The members of the ECFR see themselves as addressing a European Muslim community and guiding it further into the path of the Islamic Revival. But whilst the fatwas of the ECFR purportedly seek to address a more or less *bounded community*, they should perhaps be seen as creating a distinctive *public* (or counterpublic) of European Muslims instead - despite (or perhaps because of) their internal differentiation in terms of language, ethnicity, class, political orientation, and shifting levels of religious practice and commitment. A public, as Michael Warner has pointed out, is an imagined relationship among strangers characterized by the reflexive circulation of discourse. A public requires “mere attention,” and its rhetorical imagination is a performative act – it creates a public merely by virtue of addressing it as such.⁴⁰² A public in this definition differs from crowds, audiences, bounded communities, formal organizations or social movements in important ways; its address is both personal and impersonal – the former confers upon a public a “sense of practical possibility”, while the latter enables a “hope of transformation” (Warner 2002: 49-90). My remarks below draw significantly on this formulation of the public.

⁴⁰¹ Thus, although Islamic literature – popular and scholarly alike - continues to stress that there is no “Church” in Islam, contemporary Muslim thinkers promptly add that there are “scholars” (see Qaradawi 1992).

⁴⁰² Attention is, as Zerubavel has recently pointed out in a different context (2006: 34-39), a function of power: in this regard, a fatwa of the ECFR on the women's right to divorce when the European legal field already gives them this right clearly commands less *attention* than a fatwa by a state mufti in a Muslim country where a woman's access to divorce is legally constrained.

The argument I am making here is not simply that the members of the ECFR are made aware – by questions which typically confront them with other opinions - that in answering the query, and publishing the fatwa, they are also collectively taking position in a public debate on the meaning and relevance of the shari'a. Rather, I am suggesting that the ECFR's use of fatwas to address "indefinite strangers" (Warner 2002: 56) as well as real petitioners *interpellates* Muslim subjects in Europe in certain ways. It brings about a specific kind of public, distinct (although not totally separate) from the logics of the market, and governed by a set of rationalities incommensurable (even if sometimes overlapping) with those of the state.⁴⁰³ While the European distribution of actual petitioners confers upon the ECFR's public a "sense of practical possibility", naturalizing its disciplining project, the larger audience of indefinite readers underpins the members' "hope of transformation" constitutive of any public. The projection of this public is, as Warner has shown, a distinctive modern form of power which partakes in processes of subject-formation. If the irregularity and spacing of the ECFR's meetings maintains this public at a significant distance from politics proper,⁴⁰⁴ the hegemonic aspirations of the ECFR's fatwas may contribute to politicize Muslim practices – i.e., to render them subject to public scrutiny (as well as the potential object of public regulation).

The rhetorical act of the imagination that constitutes this public coincides temporally with the establishment of a body committed to the integration of Europe's Muslims through the dissemination of appropriate fatwas to their (real or imagined) religious dilemmas. The public is enacted by the ECFR's

⁴⁰³ In my account of interpellation of a European Muslim subject I am indebted to Ruth Mas' analysis of secular Muslims in France (Mas 2006). See also, for a relevant discussion of the consequences of Khomeini's interpellation of Muslim subjects worldwide through his fatwa against Rushdie, Khan 2006.

⁴⁰⁴ As Warner has argued, the relationship of any public to the political field depends crucially on its regularity: "The more punctual and abbreviated the circulation, and the more discourse indexes the punctuality of its own circulation, the closer a public stands to politics" (2002: 68). The biannual rhythm of the ECFR's meetings prevent the fatwa council from maintaining a public presence and acting proactively in public debates (although the ad hoc dissemination to the media of a statement – such as that which followed the Danish Cartoon Crisis – may be seen as an attempt to surmount this handicap).

consolidation of a pious European Muslim subject through the repetitive enunciation of injunctions (tausiat) accompanying the religious opinions (fatawa and qararat); by the dissemination, at the end of each session, of a final statement gathering all the meeting's fatwas (usually delivered from the Dublin headquarters), its subsequent publication in the ECFR's scientific review / al-majalla al-'ilmiyya printed in Lebanon, the reprinting of the fatwas in periodicals such as Al-Urubbiyya, al-Da'wa (the Muslim Brotherhood magazine edited in London), al-Ra'id, al-Mujtama' and al-Wa'i al-Islami, their online circulation via IslamOnLine's English-language website, the commentary in media such as Al-Sharq al-Awsat or al-Jazeera's al-shari'a wa-l-hayat; and their eventual compilation for mass readership in Arabic and in English at two Egyptian presses (Islamic INC. and dar al-tauzi' wa-l-nashr al-islamiyya).⁴⁰⁵

This public appears therefore as a distinctively transnational space, crucially enabled by the proliferation (and dexterous usage) of modern mass media.⁴⁰⁶ While this international orientation draws in part upon an older social imaginary - the "global public space of normative reference and debate" that has characterized Muslim fiqh throughout the ages (Bowen 2004b) - the public at hand functions (as I argue below) through a reflexive circulation of discourse that goes beyond the expectations underlying traditional futya.

The language of discourse in this public draws upon the conventional protocols of the Muslim fiqh, with its five categories of evaluation (obligatory, encouraged, allowed, disapproved, and forbidden) and its distinctive mode of argumentation - even if the ECFR members strive to express the fatwas in as accessible an idiom as possible in order to reach large audiences. Significantly, this public also incorporates an acknowledgement of its own limits since, as many of its practitioners readily acquiesce, "fiqh itself is not

⁴⁰⁵ This has been followed by translations into other European languages, including a critically-annotated translation into French by Editions Tawhid which I discuss below. The ECFR's fatwas have also been published in Albanian and there have long been plans to translate the fatwas into other idioms, particularly German, Urdu, and Bosnian.

⁴⁰⁶ Even the questions are sometimes sent by European Muslims directly to Yusuf al-Qaradawi in Qatar or discussed by the Egyptian-Qatari mufti in his weekly phone-in show at Al-Jazira al-shari'a wa-l hayat, and later deliberated within the ECFR.

enough” (Qaradawi 2001: 31).⁴⁰⁷ This public seems furthermore to be characterized by a new impetus to open up the circulation of the discourse to further elaboration, even contestation, from voices within the body of the ulama as well as to those outside it: a suggestion that finds its most visible expression in the call for integrating social scientists and other secular experts – Muslim as well as non-Muslim⁴⁰⁸ - into the reflections of the ECFR.⁴⁰⁹ (It is in this sense that one could argue that, through the authority of its reasoned fatwas disseminated for mass consumption, the ECFR forces other Muslim actors in Europe to take position – for or against its opinions – and thus contributes to set the terms of the debate, becoming a structuring force in discussions on European Islam despite its otherwise relatively weak presence at the grassroots level.)

If the public that I am describing here does not sound unfamiliar, it is because it partly conforms to liberal understandings of public spheres. This public presupposes an individualised moral subject which, as Qaradawi has argued elsewhere, needs to be persuaded before he or she accepts a fatwa – a subject which is asked to read, and meditate, in a world where knowledge (al-‘ilm) precedes practice (al-‘amal). It is this subject which is also occasionally enjoined, by no less a figure than Qaradawi himself, to become

⁴⁰⁷ The acknowledgement of the limits of the language of fiqh by Qaradawi and other muftis appears nevertheless unconvincing to many Muslims, who consider the mode of reasoning underlying the fatwa to be binary and simplistic. Interestingly, such critique resonates partly even within the ECFR.

⁴⁰⁸ The presence of P. S. van Koningsveld and Maurits Berger (both from Leiden University), Olivier Roy (EHESS, Paris) and Jean Baubérot (GSRL/EPHE, Paris) in recent sessions of the ECFR testify to the urge to listen to social scientists speaking about religion in Europe (as well as to the attempt by the ECFR’s leadership to garner support for its activities outside Muslim circles).

⁴⁰⁹ See Alwani 2003, and Badawi 2003. This echoes Tariq Ramadan’s division of Muslim scholars between the ‘ulama al-nusus, who master the texts, and the ‘ulama al-waqi’i, standing for the social scientists. The establishment by the ECFR’s leadership of a scientific magazine to stimulate debate and critique and the proliferation of myriad types of religious expertise at IslamOnline are all part of the same impetus. As Bettina Gräf has recently shown (2008: 11), IslamOnline’s offer of online Islamic advice in forms other than fatwas – including the “social” and “medical” counselling (istisharat ijtima’iyya ‘amma and istisharat sihiyya) delivered by “experts” (khabir; mustishar) with specific competences – is perceived by Qaradawi and fellow muftis as a legitimate extension of ijtihad.

“his own mufti”⁴¹⁰ – a proposition that appears at first sight intriguing coming from an Islamic scholar who has spent the best part of his life giving fatwas to Muslims worldwide, but which nevertheless is in tune with Qaradawi’s regular emphasis on individual conscience, and his confidence that most Muslims, if liberated from the shackles of traditional authority (embodied in the madhhab), would opt for his middle-ground vision of Islam (al-wasatiyya), a vision which he regularly depicts as rational, easy, and in line with the spirit of the current times.

Revealingly, several of the dichotomies that the members of the ECFR mobilize to characterize this public seem to assume a linear temporality thus echoing those that are constitutive of liberal public spheres: they include, in the words of the ECFR’s leadership, the call to privilege “rationality” over “sentimentality”; “originality” over “repetition”; and “reform” over “tradition”.⁴¹¹ But while liberal publics are typically geared towards the exercise of deliberative democracy, the public of European Muslims brought about by the ECFR’s dissemination of fatwas differs in its pursuit of distinctive Islamic futures – futures underpinned by specific assumptions about the purpose of human life (Mankind’s creation to worship the Divine) and geared towards the cultivation of the pious virtues deemed necessary to ensure a life (and an afterlife) fitting these assumptions. Given this conceptual apparatus, this public can also be called a counterpublic.⁴¹² The precise relation between this

⁴¹⁰ Qaradawi, quoted in Skovgaard-Petersen 2004: 156. This statement is, of course, a re-articulation of the Hadith enjoining Muslims to consult their own hearts even if the muftis have given them a fatwa (istafti qalbak, wa law aftaka al-muftiyun).

⁴¹¹ See for example Qaradawi 2004. See also the insistence of the editors of the ECFR’s scientific review upon the necessity of originality/authenticity (asala) for publishing in the review – and the absence of any reference to piety as a precondition to Islamic discourse (surprising perhaps for muftis who have often emphasized the need for taqwa in order to issue fatwas).

⁴¹² Arguing against Nancy Fraser’s classic representation of counterpublics as oppositional spaces in relation to the mainstream (and male-dominated) public sphere (Fraser 1992), Warner suggests that counterpublics should be seen as those publics that struggle against a dominant public not only in terms of “ideas or policy questions” but also in their constitutive speech genres: “the discourse that constitutes [a counterpublic] is not merely a different or alternative idiom, but one that in other contexts would be regarded with hostility or with a sense of indecorousness” (Warner 2002: 86). Warner also suggests that a counterpublic must have a sense of its own subordinate status. Both of these elements apply to the public I am describing here.

counterpublic and the mainstream public sphere cannot be presupposed in advance but needs to be examined empirically.

Pursuing the description of the ECFR's imagined public, its paradigmatic figure can be said to be that of the modern "Muslim reader", who stands in a specific relation to the written word and to textual forms of authority. In his compelling account of the Islamic counterpublic of cassette sermons in Egypt, Charles Hirschkind (2006) has identified the "ethical listener" as a paradigmatic figure of the Egyptian Islamic Revival. The figure of the Muslim reader that I describe below is, like the ethical listener, an ideal type. Neither the "ethical listener" nor the "Muslim reader" need to be seen as ahistorical of course; below I try situate the figure of the Muslim reader in the European context. The two figures appear to be relational in so far as the Muslim reader often seems to be constructed in opposition to some of the perceived excesses of the sermon-listening public. In a recent statement Yusuf al-Qaradawi acknowledges that audio cassettes are a legitimate means of acquiring religious knowledge. He nevertheless warns that some tapes "do more harm than good, for they are not based on authentic sources" [of the shari'a], and complains that many preachers "focus on implanting fear, in an exaggerated way, in people's hearts about the punishments in the grave and the Hereafter. Thus they make things difficult for people rather than easy, and adopt an approach that intimidates rather than calls people to do good."⁴¹³ These comments suggest that the full import of Qaradawi's approach to fatwas needs to be situated in the context of the ethical sensibilities cultivated through cassette sermons.

On the notion of an Islamic counterpublic see Hirschkind 2006 and, for a critical response, Starrett 2008.

⁴¹³See http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503548892, accessed 26 May 2008. More generally, Qaradawi's reliance on the written text as "the most valuable and effective source of obtaining knowledge and culture" (*ibidem*) appears to reverse a centuries-old logocentric tradition predicated upon a distrust of the written word which is sometimes traced back to the Prophet himself. For one exposition of logocentrism or phonocentrism as the dominant tradition in Muslim societies see Fischer and Abedi 1990.

The figure of the Muslim reader was suggested by the Egyptian editor of an English translation of Qaradawi's *Fi fiqh al-aqalliyat* designed for Muslims in the West.⁴¹⁴ It designates here primarily the individual who engages in a silent and solitary reading practice (one that therefore diverges both from the recitation of the Qur'an and from the memorization of classical fiqh texts) and finds a measure of rational interest and/or spiritual comfort in the muftis' responses to the dilemmas faced by fellow Muslims residing in Europe. Reading everywhere is a culturally-organized activity; in the context of the Islamic Revival, this practice is regulated through a set of instructions initially formulated for the student of religion and now reactualized in printed format for an expanded audience.⁴¹⁵ Reading itself has elicited a number of fatwas delivered to answer questions such as how to read books of knowledge or where to seek knowledge.⁴¹⁶ The ideal profile of the figure of the Muslim reader can be pieced together from such texts. Reading is imagined here as

⁴¹⁴ Sheikh Muhammad 'Abdu (not to be confounded with the early Muslim reformer) of Al-Falah Foundation for Translation, Publication & Distribution (preface by 'Abdu in Qaradawi 2003: VIII).

⁴¹⁵ For an explicit consideration of the dangers for religious authority implied in today's "banalization of reading" and "proliferation of printed books" see 'Abd al-Rahman ibn Mu'ala al-Luwihiq's *Al mawsum bi-qawa'id fi-l-ta'amul ma' al-ulum* (translated into French - Louwayhiq 2002). In this treatise, approved by Ibn Baz, the Muslim scholar traces the rise of readers as an intermediate group between the scholars and the commoners, and he draws on a traditional distrust of reading (and the written word) to argue in favour of the scholarship acquired at great cost at the hands of the ulama. For the real scholar, al-Luwihiq states, "knowledge does not come after a one-night's-reading, but after countless sleepless nights and days of suffering" (al-Louwayhiq 2002: 30). More broadly, the emergence of a literary genre seeking to explain "the causes of scholarly disagreement", both in Arabic and increasingly in European languages, can be related to the exponential expansion of printed Islamic books, and often includes references to this expansion. For a study of reading practices in other, non-Muslim contexts, see the various contributions to Chartier 2003 [1985].

⁴¹⁶ See, inter alia, the fatwas by Ibn Uthaymeen on how to deal with books of knowledge ("kayfiyya ta'amul al-muslim ma' kutub al-'ilm", <http://www.islamqa.com/ar/ref/10690>, accessed 26 May 2008) and on the disadvantages of limiting oneself only to books ("salbiyat al-iqtisar 'ala-l-kutub fi-l-ta'lim", <http://www.islamqa.com/ar/ref/10678>, accessed 26 May 2008); see also, by Qaradawi, a fatwa on the knowledge of the shari'a which is compulsory for Muslims to acquire, and on the means of acquiring it (http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503548892, accessed 26 May 2008). The resemblances between this literature and the adab al-mufti regulations described in chapter one are also evident.

linked to a certain telos, presupposing particular ideas about knowledge, and partaking in the construction of specific subjects.⁴¹⁷ The Muslim reader requires sincerity of intention (niyya): this sincerity transforms reading into an act of worship, and guides the reader, enabling him to distinguish between useful and worthless knowledge. Reading is not done for its own sake (or for pleasure); rather, it is geared towards the acquisition of the necessary virtues for living in this world – and the next. It is linked to faith (iman) and to action ('amal) and requires not only a particular attitude of the mind but also an openness of the heart. Appropriately, many intra-Muslim debates on the ECFR have revolved around proper and improper modes of reading the fatwas, as well as on the intention of readers: many muftis of the ECFR have complained that “Muslims don’t read our fatwas properly, as they look only for a yes or no answer”, a simplification of the texts which seemingly distorts their meaning. Likewise, Tariq Ramadan in his commentary to the First Collection of Fatwas echoes the sentiment of various ECFR members when he warns that Muslims who read the fatwas looking only for facility are likely to find neither “spiritual comfort” nor “internal peace” (Ramadan 2002: 13).

Bereft of social context, the figure of the Muslim reader that I am evoking here may appear to resemble the implied reader which is always anticipated by the text – in other words, a figure similar to Umberto Eco’s “Model Reader” (1985: 68). How can one locate more precisely the figure of the Muslim reader? What are the social conditions of his (her) possibility?

Quantifying a public is a difficult task because “membership” requires only a fleeting state of being; a number of overlapping distinctions appear nevertheless key to locating the European Muslim reader – a figure which must be at least as heterogeneous as the mustafti population described earlier in chapter three. The first relevant distinction is that between Arabic

⁴¹⁷ As Qaradawi himself has pointed out, quoting “a wise scholar”, “Tell me what you read, and I (will) tell you who you are” (http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503548892, accessed 26 May 2008). My account below draws, in addition to the previously-mentioned sources, upon the French translation of Qaradawi’s *Le Prophète et le savoir* and *Les conseils de l’imam Adh-Dhahabi pour l’étude des sciences religieuses*. Tirés de son livre *Siyar a’alam an-nubala* published by Editions Sabil in France.

and non-Arabic speakers, a distinction which given the composition of the respective Muslim populations is declined rather differently in France, Germany or the UK. The Arabic-language collections of the ECFR's fatwas, freely distributed, circulate largely through the infrastructure of the FIOE, present across Europe mainly in the mosques and Islamic centres controlled by first generation Arabs, thus reaching primarily (male) Muslim leaders and imams involved in community structures; political refugees with background in political Islamic movements; and pious students in institutions of third-level education who were socialized in the Arab world. The English and the French translations of the ECFR's fatwas, however, target a considerably wider audience. While the English translation has been distributed free of charge, the French was sold commercially. Both can nevertheless be said to participate in the burgeoning market for Islamic books that has proliferated, in Europe and elsewhere, in conjunction with what is known as the Islamic Revival.

The figure of the Muslim reader that I am depicting here has therefore to be situated squarely in the context of the exponential expansion of the market of Islamic books associated with the religious revival which has affected Muslims in Muslim majority societies as well as many minority communities.⁴¹⁸ A further distinction, often found in the literature on the phenomenon of Islamic books (Gonzalez-Quijano 1998; El Alaoui 2006), between the books of the turath (Islamic Heritage), re-edited today to tap into a new specialized demand for scholarly works, and the pedagogical literature which summarizes,

⁴¹⁸ Although it is often alluded to, the hugely-expanding market for Islamic books in the context of the global Islamic Revival seems to have received less focused attention than it deserves. Gonzalez-Quijano's PhD dissertation on Egyptian publishers, published in 1998 as *Les gens du livre*, remains the best in-depth study of a fascinating phenomenon (even if it deals only partly with the specifically Islamic dimensions of the field). There are also articles dealing with more specific literary genres, such as pious novels in Bangladesh (Huq 2003). The only detailed study of the various facets of the Islamic book market in Europe that I am aware of is Soraya El Alaoui's *Les réseaux du livre islamique. Parcours parisiens* (2006). Although the study is already somewhat dated (the author's fieldwork, conducted in the 1990s, led her to predict a "crisis of the Islamic book" that current developments unequivocally contradict), and is sometimes ill-served by a tendency to reduce the phenomenon to its commercial and identitarian functions, El Alaoui's study contains many insights that serve as an interesting starting point for thinking about the Islamic book in France.

simplifies, or re-articulates the topoi of the Islamic classics specifically for a contemporary general audience, seems also relevant here.⁴¹⁹ Both the English and the Arabic versions of the ECFR's fatwa collections exist in two different editions published simultaneously by dar al-tauzi' wa-l-nashr al-islamiyya (an Egyptian press close to the Muslim Brotherhood). The hardback edition, reminiscent of the turath classics, seems to appeal to a religious elite (imams, Muslim intellectuals, advanced students), while the paperback copy seems geared towards a much larger readership, including women and the youth.⁴²⁰ If this analysis is correct, the targeted audience of the ECFR's texts comprises both a (male) intellectual elite from the first generation of immigrants, and a more general readership of Muslim youth (of both sexes) socialized in Europe.⁴²¹ The collection of fatwas of the ECFR is one of many volumes acquired by Muslims, who seem to read eclectically from the Islamic textual traditions of past and present in their quest for the knowledge deemed necessary for living as responsible believers in today's Europe.⁴²²

⁴¹⁹ The ECFR's collections of fatwas seem in tune with the proliferation in the Arab world of fatwa compilations for mass consumption which purport to address the daily problems of contemporary Muslims. They bear titles such as *Al-fatawa: dirasa li-mushkilat al-muslim al-mu'asir fi hayatih al-yawmiyya al-'amma* by Muhammad Shaltut, or Sha'rawi's *Al-fatawa: kullu ma yahummu al-muslim fi hayati-hi yawmi-hi wa-ghaddi-hi*. See Arigita (2003) for the contextualisation of such collections in the Egyptian context.

⁴²⁰ The two French translations of the ECFR's fatwas that I discuss below have been published as paperback only – logically, if one assumes that the public of the hardcopy edition (ie., the religiously committed Muslim elite) in France is overwhelmingly fluent in Arabic - unlike the British case.

⁴²¹ It seems possible to interpret the publication record of the ECFR as representing a gradual shift from targeting a general readership (exemplified by the rapid publication of the First and Second Collections of Fatwas) towards a focus on developing a scholarly field for specialists (symbolized by the publication of the more recent fatwas – alongside a number of studies - only in the Arabic-language scientific review of the ECFR.

⁴²² Assuming that online bookstores provide accurate information about their customers' purchases, the internet may become an unlikely site of ethnographic research: Muslimshop.fr shows, for example, that customers who bought the ECFR's collections of fatwas "have also bought" titles by Ibn Taymiya (*Al-'Aqida al-wasitiyya*), Muhammad Ibn 'Abd al-Wahab, Abu Bakr al-Jaza'iri (*Minhaj al-Muslim*), Ibn Arabi, Ibn 'Ishaq's two-volume sira of the Prophet, and a luxurious translation by Dar Al-Kotob Al-Ilmiyah of Abu Hamid Al-Ghazali's *Revitalisation des Sciences de la Religion* in four volumes - as well as a selection of Islamic perfumes (*Al-Rehab "Balkis" 12ml*, *Parfum Al-Rehab "Dakar" 3ml*). The eclecticism of this library – which effortlessly incorporates Salafi and Sufi authors – is confirmed by other observations pointing to the heterogeneity of the modern Muslim reader. For an online

It becomes clear here that if the *transnational* ethos of this Islamic (counter)public is at first sight striking, the reach of the public is mediated by the existence of *national (and linguistic) markets*. In this regard, the unparalleled degree of publicity that the ECFR has generated in France is undoubtedly related to the fact that the translations of its fatwas have been commercially distributed solely in that country: the competition between Gedis (the publishing house of the Union des organisations islamiques de France based in La Courneuve, Greater Paris), and the Lyon-based Editions Tawhid (close to the Young Muslim network inspired by Tariq Ramadan), produced two simultaneous translations of the ECFR's First Collection of Fatwas in 2002, responding to a market demand which had previously remained largely untapped.⁴²³

The Islamic book market which sustains the ECFR's collections of fatwas is partly enabled commercially by the growth of a pious Muslim middle class, and partly by subsidized publication costs thanks to donors in the Arab world (Bowen 2004a: 49). If the growth of the Islamic book has been linked globally

representation of the ideal library of the Muslim reader - which includes the French translation of the ECFR's fatwas - see "Les livres du musulman et de la musulmane" at <http://aqida.over-blog.com/categorie-806535.html> (accessed 29 May 2008).

⁴²³ A third translation of the ECFR's fatwas into French is available from the website of a local Conseil Régional du Culte musulman (CRCM-Champagne-Ardenne) at <http://www.crcm-cha.org/fatawa.php>. If there has recently been a proliferation of translations of fatwa collections into French, notably by Salafi scholars (including "Fatawas concernant l'enfant en Islam", "Recueil de Fatwas concernant les femmes", "Recueil de fatwas sur l'exorcisation légale – Rouqya", or Ibn 'Uthaymeen's two-volume "Fatawas sur les piliers de l'islam"), the ECFR's were undoubtedly the first of their kind to be published for a Francophone audience. By contrast, the fatwas of the ECFR have not been commercially distributed in Britain (although I was able to buy a rare English translation in WAMY's offices in London) or in Germany. In the former, a number of fatwa collections in English language have been publicly available since the 1990s, including one specifically targeting Muslim minorities (Ibn Baz and Uthaymeen 1998). In Germany (and elsewhere), Turkish-speaking Muslims can rely on the religious advice literature produced by the official Diyanet, Millî Görüş, or Suleimanci movements in Turkish. The Islamic book market in Europe has therefore developed partly in relation to linguistic competences of local Muslims, and to the opportunity structures specific to each European nation-state: in France, the legislative extension of the right to form associations to foreigners in 1981 is often identified as the starting to the French Islamic bookstore and publishing house (El Alaoui 2006: 173).

to what some observers have called the “objectification of Islam”,⁴²⁴ it also appears connected in Europe to the more specific intergenerational shifts which have, on the one hand, expanded the demand for vernacular translations of religious texts (reflecting the growing lack of Arabic competence of 2nd and subsequent generations of French/European Muslims of North African/Arab origin) and, on the other, created a new reading function linked to the relative loss of social plausibility of Islam in a minority situation (Roy 1999). In other words, if the shift from the first generation of Muslim immigrants to subsequent European Muslim citizens has been broadly a shift from an “islam vécu” to an “islam construit” – as Leïla Babès (2004: 199) has famously argued – then the demand for the Islamic book, like the demand for fatwas itself, appears to fit into this distinctively post-migratory or European phenomenon. The fatwa collections of the ECFR are among many volumes acquired by Muslims, who seem to read eclectically from the Islamic textual traditions in their quest for the knowledge deemed necessary for living as responsible believers in Europe today.⁴²⁵

MEASURING THE SUCCESS OF THE ISLAMIC COUNTERPUBLIC

To place the figure of the Muslim reader in context is not yet to answer questions about the success of the public imagined by the ECFR. Bearing in mind that a public is “always in excess of its known social basis” (Warner 2002: 55), what are the criteria that one should mobilize to quantify a public? How should one understand the gaps between the imagined public and the real contexts of audience? To which extent must these gaps be attributed to institutional deficiencies within the ECFR (still largely tributary of the Middle Eastern contexts of its leadership, and dependent upon an Arabic-speaking audience that by no means reflects the linguistic diversity of European Muslim communities)? How do they relate to the competing agendas of its members,

⁴²⁴ Anthropologist Dale Eickelman has provided the standard definition of objectification (see for example Eickelman and Piscatori 1996). See, however, for a critique of this notion Mahmood 2005: 53-57.

⁴²⁵ For an online representation of the ideal library of the Muslim reader—which includes the French translation of the ECFR’s fatwas—see “Les livres du musulman et de la musulmane,” <http://aqida.over-blog.com/categorie-806535.html> (accessed 29 May 2008).

torn between sustaining the global Islamic Revival and promoting a civil religion in Europe? To what degree should the distance between imagined public and real audience be seen as the inescapable outcome of the contradictions and instabilities inherent in all public discourse?

It is clear that the distribution of petitioners – a distribution that, according to statements from members of the ECFR and fieldwork observations by this researcher, is wider than what the institutional framework of the ECFR can accommodate⁴²⁶ – seems to legitimize the ECFR’s project. This chapter has suggested that the “scripturalism” that underlies the work of the ECFR is in tune with intergenerational developments in European Islam – i.e., the shift which has led Muslim youth, often excluded from mainstream European societies and increasingly disconnected from the countries of origin, to privilege the religious dimension of their multiple identities over ethnic and national markers. The authority attributed to the ECFR’s project also appears to be linked to the factors that fuel the demand for fatwas - including the discontinuities in the transmission of Islamic knowledge, a noticeable turn towards Islam as a comprehensive mode of life, the growing desire to adapt Islamic normativity to European conditions, the need, in particular for women, to elaborate strategies of survival and to navigate between normative orders (the customs of the parents, the hegemonic discourses emanating from mainstream society, and the attachment to Islamic Law). Fatwas, because of their pragmatic outlook, can be effective and costless tools in the construction of an Islam suited to the life experiences and aspirations of European Muslims.

Other sociological considerations may be relevant here. If Muslim communities in Europe can be seen as belonging to the “periphery” of Islam - in terms of both their cultural heterogeneity and their distance from the Islamic centres of learning and authority -, they may, as Lambek (1990: 25) argued in a different context, be “vulnerable to the influence of outsiders deemed to

⁴²⁶ Hence the need to delegate questions to individual members and to regional fatwa committees.

represent that authority”.⁴²⁷ The ECFR – and scholars such as Yusuf al-Qaradawi, trained at Al-Azhar (even more prestigious before its nationalization under Nasser), independent from the ruling elites in the Arab world and in the West, and gifted with a pitched voice to add to the turban and the jalabiyya dress conforming to traditional representations of the ‘alim - may appear to Muslims in Europe as representative of the “authentic” Islam, located in the heartland of the Muslim world, uncontaminated from foreign accretions.

However, to suggest that the ECFR works discursively to bring about a specific public of European Muslims (and thus shape a particular European Muslim subjectivity) is also to reformulate questions about the authority of its fatwas. In an age of mass-mediated communication - and particularly in situations where the discursive tradition of the shari‘a stands relatively apart from other power structures - circulation itself may perhaps be taken as a measure of religious authority.⁴²⁸ Circulation also enables the possibility of subversion. Given that the ECFR’s project can be read as a hegemonic attempt to set the terms of the debate on Islam in Europe, its hegemonic aspirations leaves the ECFR’s project particularly vulnerable to discursive interventions that interrupt the underlying process of subject-formation. Now I would like to put forward the hypothesis that, given the features of the public as a social imaginary characterized by the open-ended circulation of discourse, not all critiques disrupt the public brought into existence by the ECFR. There are only a limited number of ways through which the circulation of discourse in a given public can be disrupted. I suggest three such ways below: a denial of the public’s constitutive tension; an attempt to shift its idiom; and a misrecognition of the public.

If, as I have been suggesting, the public imagined by the ECFR is characterized by an acknowledgement of a field of tension between the impetus of the Islamic Revival, with its temporality geared towards Islamic

⁴²⁷ Lambek studies Muslims in a very different context (Mayotte, East Africa) but his point about the power relations between the imagined centre and the periphery of Islam seem applicable here too.

⁴²⁸ This is also what Stolow 2006 suggests in a different context.

futures, on the one hand, and the problematics of integration, with its underlying assumption of homogeneous space, on the other, then this public will not be significantly disrupted by discourses articulating different combinations of the two rationalities; rather, the public imagined brought into existence by the ECFR will be disrupted, and the underlying process of subject-formation interrupted, only by discursive interventions which deny outright the relevance of a public Islamic religiosity (as in the discourse of “liberal” Muslims, partly supported by non-Muslim civil society and by the state), or of the necessity to integrate (as in the discourse of “radical” Muslim organizations). Intermediate critiques, even virulent ones, can arguably be incorporated into the social imaginary of minority fiqh. These critiques certainly pose challenges to the religious authority of the ECFR, and have often been resented by the members as staging precisely such authority claims. However, given that one implication of the autotelic quality of the public (i.e., its self-organized character; Warner 2002: 50) is that the circulation of discourse cannot be monopolized by any single agency, such criticisms do not disrupt the public as such. If this is true, it would explain why Salafi or Hizb ut-Tahrir’s critiques of the Council are often perceived by the ECFR’s leadership as rather damaging and necessitating specific public responses, whereas the barely-hidden criticisms formulated by Tariq Ramadan – for example in Editions Tawhid’s critically-annotated French edition of the ECFR’s fatwas - can be incorporated into the internal discussions (and T. Ramadan himself be invited to join the Council): while Hizb ut-Tahrir and the Salafis force the ECFR to justify its call for integrating Muslims in “non-Islamic” societies,⁴²⁹ rather than for example urging them to migrate to dār al-islām,⁴³⁰ Tariq Ramadan’s vision seems to provide an alternative solution to the constitutive tension which, although quite different in its political implications, can be swiftly integrated by the members of the ECFR

⁴²⁹ Hizb ut-Tahrir, “Open Letter to the Muslims in Britain Regarding the Dangerous Call of Integration”, 17/05/2002.

⁴³⁰ This is precisely the suggestion made by Shaykh Mahmud b. Rida Murad (Saudi Arabia) in a letter published in the periodical *Al-Da’wa* on 2/12/1999. Arguing against the fatwa of the ECFR allowing the recourse to interest-bearing mortgages for home-purchase, Murad argues that the “so-called European Council” should stop considering economic prosperity to be one of the criteria for the best ummah and instead forbid Muslims from living in the West.

under a Muslim ethic of disagreement (*adab al-ikhtilaf*).⁴³¹ As mentioned previously, it is undoubtedly in response to the critiques formulated by Muslim intellectuals such as Ramadan that internal discussions within the ECFR about conceptualisations of a *fiqh* appropriate to the situation of European Muslims have recently started to move away from a stress on “minorityness” (*aqalliyya*) towards an emphasis on the notion of “citizenship” (*muwatana*) - as the title of a research presented by Yusuf al-Qaradawi himself at the ECFR’s 17th meeting in Sarajevo in May 2007, “*al-watan wa-l-muwatana fi daw’ al-usul al-‘aqadiyya wa-l-maqasid al-shar’iyya*”, seems to suggest (see also chapter two).

More disrupting to this public than Tariq Ramadan’s critiques of the ECFR’s fatwas, however, is the Swiss intellectual’s attempt to shift its idiom (and thus the competences required for public speaking) from what he calls “the spirit of the fatwa” to its “psychology”: the former designates a “dynamic” vision of the Islamic *shari’a* upheld by the members of the ECFR; but the latter constitutes a horizon not-yet-met, an additional condition for the muftiship which includes specific “habits”, “culture” and “sensibility” which muftis coming from the 1st generation of immigrants or visiting from the Muslim world need - but apparently, according to Ramadan, cannot - acquire, in order to issue fatwas

⁴³¹ This is by no means to suggest that all of Ramadan’s criticisms, voiced at various junctures of his work (Ramadan 2002; 2003), have been well-received within the ECFR. Many members have indeed resented his commentary to the ECFR’s fatwas as staging a competing claim to religious authority (a source within Editions Tawhid has even said that the tonality of Ramadan’s comments was at the basis of the UOIF’s refusal to grant Tawhid the rights to publish the translation of the ECFR’s Second Collection of Fatwas). My argument is simply that such critique does not significantly disrupt the terms of circulation of discourse in the minority *fiqh* public. Ramadan has not been the only voice arguing against the ECFR’s stress on minorityness; see also the critique of the Franco-Tunisian Mohammed Mestiri of the International Institute of Islamic Thought (IIIT, France), rehearsed since 2003 at AMSS conferences, in his paper entitled “From the *Fiqh* of Minorities to the *Fiqh* of Citizenship: Challenges of Conceptualisation and Implementation”.

Regarding Hizb ut-Tahrir, it is significant that an organisation which for many years vilified the ECFR – and Qaradawi - in the strongest terms (see Khan 2004), sometimes mimicking the ECFR’s actions (like sending a delegation to France in the wake of the proposal to ban the hijab in public schools), has recently changed policy and started addressing Qaradawi as...“our Noble Sheikh” – a move which has been interpreted as a strategic attempt by the Hizb ut-Tahrir’s leadership to broaden its support base, notably in the context of pressing discussions in the UK to outlaw the movement (Hamid 2007: 153).

appropriate for European Muslim audiences (Ramadan 2002: 10-17). Because the circulation of discourse within a public depends upon the existence of a shared idiom, attempts to shift this idiom affect it in significant ways. Even more fundamentally, therefore, the use of the term “fatwa” by young Muslims to designate authoritarian and undemocratic discourses, Islamic or otherwise, as 2nd generation Norwegian Muslims in Oslo appear to do (Jacobsen 2006: 135), or calls from Muslim voices to “abolish” fatwas altogether,⁴³² appear radically damaging to this public. In this regard, the ECFR’s mobilization of the fatwa genre is submitted to a number of *constraints of publicity* linked to the largely negative connotations that the term evokes in Europe after the Rushdie affair.⁴³³ The involvement of the FIOE itself, a decade after establishing the ECFR, in a number of alternative projects such as the “Charter for European Muslims” or the constitution of a “European Assembly of Imams and Spiritual Guides”⁴³⁴ seems to amount to an implicit acknowledgement of the difficulties posed by the language of the fatwa in contemporary Europe.⁴³⁵ These developments point towards the emergence of discursive languages other than fiqh, and promise to

⁴³² As Malek Chebel (2004: 45), a liberal Franco-Maghrebi intellectual states in his *Manifeste pour un islam de Lumières*, “Pour que l’islam trouve le chemin de la respectabilité et qu’il puisse devenir, comme par le passé, le garant de la promotion individuelle [sic], il faudrait idéalement abolir tout simplement la notion de *fatwa*, en tout cas celle qui consiste pour un leader, fût-il charismatique et infaillible, à mettre à mort un penseur ou un contradicteur de l’islam”. On Malek Chebel see Mas 2004.

⁴³³ This explains why a Franco-Maghrebi woman, in a recent TV show on French public television, asked a leader of the UOIF to justify the involvement of his organisation in a European Council of *Fatwas* “when we know what fatwas have done to women” (“Dieu, la France et la République”, Magazine 100 Minutes pour Comprendre presented by Olivier Mazerolle, France 2, 19/1/2004).

⁴³⁴ The Charter has started to receive some attention among Muslim and non-Muslim publics. An extended report about the foundation of the Assembly is available at http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-Euro-Muslims/EMELayout&cid=1203757502907. It is significant that even members of the ECFR (Ahmad Jaballah) are teaching the Charter to their students of knowledge (at the IESH Paris).

⁴³⁵ The relations between the FIOE and the ECFR have never been devoid of ambiguities: although the FIOE for many years portrayed the ECFR as one of its institutions, the two bodies issued separate statements on major events such as the headscarf ban in France, the invasion of Iraq, or the Danish Cartoons Crisis. The UOIF itself has often issued its own statements, rather than rely upon those of the FIOE or the ECFR.

redistribute Muslim authority accordingly - away from the ulama towards new types of religious spokespersons.

Finally, a public may be disrupted if it is misrecognized – that is to say, if the fiction of the public’s self-organization is exposed as ideological (Warner 2002: 82). An instance of this misrecognition (or unmasking) occurs when Muslims do not recognize themselves as addressees, for example by raising doubts about the legitimacy of the ECFR (as in the claim of a Muslim intellectual in the op-ed pages of a French liberal newspaper that the ECFR is a self-proclaimed body that needs to be rejected),⁴³⁶ or by implying that the public in question is in fact the manifestation of some un-avowed political project (as when a group of believers distribute leaflets outside the ECFR’s Dublin headquarters suggesting that its fatwas carry the misguided political project of the Muslim Brotherhood).⁴³⁷ A different expression of a similar misrecognition may be found in the indifference of the intended audience. If a public requires “mere attention” (Warner 2002: 60), attitudes of *neglect* by its anticipated readership can be seen as compromising it: an illustration of such an attitude appears to be the staging of an annual boxing exhibition between professional Muslim boxers in London by a British Muslim organization, Muslim Directory, invoking “the importance of health and fitness in Islam” –

⁴³⁶ In an open letter to the Presidential candidates of the French 2007 elections published by *Le Monde*, Abdennour Bidar asks: « Peut-on...continuer d’accepter ici en France que le CFCM fonctionne comme "pouvoir religieux", "gardien du culte", sur le modèle de toutes ces instances de domination théologico-politique qui dans l’ensemble du monde musulman persistent depuis des siècles à faire du spirituel la propriété d’une caste de religieux, théologiens, imams, prédicateurs, recteurs de mosquée ou d’université islamique ? En complet décalage avec l’évolution de l’islam européen, ces "maîtres de religion" veulent aujourd’hui s’importer en Europe, de façon très offensive, à travers par exemple l’autoproclamé Conseil européen de la fatwa (décision "juridico-religieuse" qui prétend fixer l’orthodoxie sur tel ou tel point du culte ou du dogme) basé à Londres, dont le but délirant est de fixer juridiquement les devoirs religieux des musulmans européens ! » (“Islam : questions aux candidats”, *Le Monde*, 8/2/2007)

⁴³⁷ The leaflet, distributed outside the Islamic Cultural Centre of Ireland while the ECFR was convening inside in 2002, contained a number of fatwas by a panel of Saudi scholars and concluded: “Brothers and sisters we have to warn you from the so called European committee for Fatwa since some of their Fatwas for example allow Riba (mortgage), inheritance of non muslims, mixing between male and female, masturbation, selling alcohol to non muslims. Most of the so called scholars in the committee are part of political groups that are innovated such as Ikwan al Muslimeen. So do not listen to their wrong Fatwa”. See the Appendices at the end.

seemingly with no attempt to engage, or even to acknowledge, a fatwa by the ECFR condemning boxing as harmful and un-Islamic.

CONCLUSION

I have tried to describe in this chapter how a specific vision of a European Islam seeks to institutionalize itself in a particular way, through the enactment of a public. Since the aim of the ECFR is to provide an authoritative reading of the Islamic tradition in a diasporic context, the authority of the minority fiqh project must be seen as a collaborative and unstable achievement that depends crucially on recognition from Muslim audiences (Asad 1993: 210). I considered three modes of disruption of this public by its intended audience, but I have so far left unaddressed a different set of questions: How does the counterpublic imagined by the ECFR stand in relation to the projects articulated in the various European public spheres? How do state policies and discourses expressed in the mainstream media contribute to authorize (or undermine) the dynamics of this Islamic counterpublic? And conversely, to what extent do the assumptions and orientations of the Islamic counterpublic reproduce (or alternatively re-shape) public policy and debate?

An exhaustive answer to these questions would require a separate article. In this conclusion I limit myself to a number of general remarks. Although national specificities remain important, as many studies have shown, I focus below on the post-9/11 relative convergence across Europe of policies and discourses geared towards the “integration” of Muslims. This seems a felicitous starting point because, as mentioned earlier, many of the ECFR’s fatwas presuppose precisely such discourses.

“Integration without assimilation” (*al-indimaj bi-la dhawaban*) is one of the leitmotifs of the ECFR’s discourse. The integration process envisaged by the members of the ECFR is understood mainly in legal terms: Law functions typically as a constraint limiting the ECFR’s claims-making. The mobilization of the shari‘a referent to call for abiding by European laws attempts to disrupt common understandings of the shari‘a as posing a legal challenge to European constitutional orders. However, in so far as current integration discourse works precisely in reference to the extra-legal domain – i.e., by making demands on (Muslim) citizens or foreigners that go beyond simply the

call to obey the law – the legal integration attempted by the ECFR often falls short of the expectations of many state and non-state actors. In this sense, the insistence in post-9/11 European public discourse on the necessity of varying degrees of cultural assimilation clearly limits the social relevance of the Islamic counterpublic imagined by the ECFR.

Despite this limitation, the injunction repeatedly made to Muslims in Europe today to “integrate” seems to authorize the ECFR’s project in important (if unintentional) ways. Like most contemporary public discourses in Europe, that of the ECFR implicitly assumes that Muslim immigrants must “adapt” to European host societies. The muftis thus seem to share with many European policy-makers and public intellectuals a common diagnosis of the current situation (“the failure of integration”), an understanding of Muslims as morally responsible for this failure (due to the “extremist” interpretations of Islam), and a vision of the conditions under which community cohesion becomes possible and social conflict is eliminated (the idea of Islam as a “civil religion” contributing to the common good). Based on the assumption that Europe is simply non-Muslim territory, the work of the ECFR consolidates the erasure of the colonial/postcolonial dynamics at work in contemporary European debates on Islam.⁴³⁸ In so far as the public imagined by the ECFR reinforces the tendency to view the postcolonial immigrant Muslim through the lenses of a racialized religious paradigm, it also appears to minimize the history and power relations (including issues of class and race) that shape the social conditions of existence of its rhetorical addressees. Despite its constitution of a distinctive Muslim political subjectivity (one paradoxically geared towards Europe but enabled through a particular transnationalism), therefore, the ECFR arguably contributes to de-politicizing the treatment of North African/South Asian/Turkish immigrants and their descendants in today’s Europe. Instances of this de-politicization are evident in the ways in which the ECFR becomes trapped, through its own regulatory impulse, to state what it wants to censor, conducting a “performative contradiction” that

⁴³⁸ For relevant discussions of Islam in Europe as a distinctive postcolonial phenomenon, see inter alia Ali, Kalra, and Sayyid 2006; Mas 2006 and Salvatore 2004.

undermines the explicit aims of the ECFR's ethical speech.⁴³⁹ A clear example of such a contradiction appears in a critique of the ECFR's *First Collection of Fatwas* by a group of French secular feminists. Referring to Qaradawi's justification of the ECFR in terms of the necessity to contest religious interpretations that allow stealing from non-Muslims and justify abusing the social security system, the group ironically asks if such suppositions are not Islamophobic rumblings in disguise, produced by the Far Right to "defame Islam."⁴⁴⁰

These brief remarks wish to underscore the need to place *fiqh al-aqalliyat* in wider context. The success of the construct—or any other vision of a European Islam for that matter—depends not only on its internal coherence and the recognition of its addressees. It also depends on the way it relates to other social powers that intervene – discursively and otherwise – in the fashioning and refashioning of Muslim selves. In today's Europe these powers, I have tried to imply here, cannot be adequately described simply as "secular" or "liberal." As the shifting emphases of current integration discourses attest, they are often messier and more contradictory than the categories of secularism and liberalism would suggest.

⁴³⁹ For the notion of performative contradiction, see Butler 1997: 130.

⁴⁴⁰ "Comment qualifier les fatwas que dénonce le conseil, sinon que de racistes ou de 'non-musulmano-phobes'? Est-il abusif de se demander pourquoi le conseil parle de ces fatwas et les présente comme une réalité qui aurait une importance sociale telle qu'elle ait poussé à une constitution d'une assemblée permanente de religieux venus de tous les continents? Nous estimons qu'à la lecture de ces deux passages sur les vols dans les pays d'accueil, qui ne font pas l'objet par les auteurs de plus amples commentaires sur l'estimation de l'importance de ces pratiques, certains lecteurs ne peuvent qu'être poussés à des idées racistes, à des généralisations abusives. Les auteurs peuvent-ils sérieusement soutenir qu'ils ignorent ce risque? Il nous semble qu'ils ne font rien pour le réduire." <http://www.c-e-r-f.org/fao-180bis.htm> (accessed 28 May 2008).

CONCLUSION

Conclusion

This dissertation has approached the Muslim debate on Islam in Europe known as *fiqh al-aqalliyyat* as a particular historical instantiation of Islam's "global space of normative reference and debate" (Bowen 2004b). It sought to historicize this global space by showing the specific ideas and networks that made *fiqh al-aqalliyyat* both possible and intelligible in a transnational "European" field encompassing actors rooted both in European territory and in the Arab world. In chapter two I looked at how Muslim states, networks of religious scholars, deterritorialized Islamist movements and the demands of settling immigrant communities contributed to the progressive institutionalization of a *fiqh* discourse in Europe over a period of roughly half a century (1960-2010). The borders of Islam in the religious imagination of Muslims shifted as "Islam in Europe" became the focus of competing visions, fashioned simultaneously by Muslim Brotherhood understandings of the comprehensiveness (*shumuliyya*) of Islam, Moroccan state officials' attachments to the Maliki school of jurisprudence, Saudi missionary efforts to spread Wahhabi teachings, ambivalent conceptions of moderation (*wasatiyya*) and the purposes (*maqasid*) of Islamic Law articulated by cosmopolitan intellectuals, and a plethora of other local and trans-local constructions of European Islam. The discourse relied upon – and adapted itself to – a rich variety of media forms, from the audio and video tapes of summer camps organized by Muslim student associations and the Arabic journals that emerged in the 1960s, to the rapid growth of the Islamic book market and the academic conferences that proliferated in the 1980s and 1990s, to the satellite TV shows and internet connections of the new millennium.

It was argued that the idea of *fiqh al-aqalliyyat*, clearly formulated in these terms, emerged at a critical historical juncture when the permanent character of the Muslim presence in Europe became evident, talk of civilisational clashes proliferated, and anti-terrorism agendas started to dominate public debate. *Fiqh al-aqalliyyat* was shaped by all of these discourses, illustrating how geopolitics and power relations impact on the politics of knowledge production (Mandaville 2007). Minority *fiqh* advocates, a rather heterogeneous

group comprising ulama and public intellectuals with somewhat different political commitments and intellectual trajectories, engaged in their writings debates in the Islamic legal tradition concerning territory, belonging, justice and salvation. These Muslim scholars (and their critics) were just as likely however to refer to the situation of religious minorities in the Arab world, post-bipolar politics, international regimes of human rights and – crucially – European discourses on the integration of Muslims.

I suggested that the Western European focus of minority fiqh discourse – despite the presence of sizeable Muslim minorities elsewhere - was related precisely to its indebtedness to the rationality of integration discourse that dominates public debate on Islam in contemporary Western Europe. A central thesis of the dissertation has thus been that proponents of fiqh al-aqalliyyat have offered a theory of Muslim integration based on a set of widely shared assumptions. Minority fiqh advocates seek to preserve the religious commitments of Muslim communities in the West based on an extensive conception of Muslim identity – one that includes belief, culture, and law. While fiqh is the terrain in which solutions to the problems of Muslims in Europe are sought, their engagements with the Islamic legal tradition are framed by an imaginary which is borrowed from mainstream European debates. The Islamic scholars considered here appear to agree with many European policy-makers and public intellectuals on a diagnosis of the current situation (“the failure of integration”), a particular distribution of moral responsibility for this state (the understanding of Muslims as morally responsible for the failure of integration due to their “extremist” interpretations of Islam), and a vision of the conditions under which community cohesion becomes possible and social conflict is eliminated (the idea of Islam as a “civil religion” contributing to the common good). I argued that it is precisely the interiorization of the rationality of integration discourses that has set in motion the fiqh al-aqalliyyat debate. In making this claim I do not wish to suggest that the minority fiqh project is somehow an “adequate” Muslim response to integration demands. Such a judgement would depend on how integration is defined, and on who is able to define it authoritatively. The definition would vary significantly if provided by an elected government, a public intellectual, a

far-right wing party, a Muslim immigrant, or a legal court - just as it changes across time (say the 1970s and the 2000s) and space (i.e., Britain versus France). What I am suggesting here is simply that orthodox Muslim scholars – including some based outside European territory – are now active participants in the process of defining integration, putting forward their own understandings and seeking to reshape the terms of public debate. Suspending the normativity often attached to integration talk has enabled a more open-ended exploration of integration sites and discourses – such as the ones explored here - that have been neglected in the literature.

The fatwa has been, and will likely remain, a crucial mechanism in the integration process envisaged by orthodox Islamic scholars. As a medium for the dissemination of normative rules, as well as a tool of moral cultivation, the fatwa has indeed been central to a variety of Islamic projects in the modern world, confounding earlier predictions of obsolescence. It often gives rise to debates saturated with questions of authenticity, legitimacy and authority (Hamzah 2005) – debates which should therefore be of particular interest to social scientists. Despite its ubiquity, the fatwa nevertheless seems to be poorly understood. In chapter one I sought to highlight the reflexivity inherent in the fatwa genre. I drew on the *adab al-mufti* literature to show how practitioners often related their own understandings of the fatwa and its functions to the shifting moral universes in which they operated. My reading of four key texts (Ibn al-Salah, Jamal al-Din al-Qasimi, Yusuf al-Qaradawi and Tareq Oubrou) suggested that the *adab al-fatwa* genre is animated with a sense of contemporaneity which – despite the pitfalls associated with any textual representation of a social practice – nevertheless yields insights into changing patterns of religious authority and moral agency in Muslim societies. My reading also suggested that the conventional boundary between the authority of the orthodox ‘alim and that of the Sufi shaykh should perhaps not be overdrawn – not least because a critique of “legalism” and “ritualism” is internal to the Islamic discursive tradition of the shari‘a, not external to it.

In chapter one I also argued that the public relevance of the fatwa in Europe could not be inferred simply from the secular nature of European states

attached to the separation of religion and politics. While it is often assumed that secular regimes relegate religion to the private sphere, the multiples uses of fatwas in contemporary Europe demonstrate that this is not always the case. In addition to being “procedures of authorization” (Salvatore 2004) in the elaboration of European Muslim identities, fatwas may also be relevant in the wider social, legal and political fields. The evidence presented suggests that state institutions in polities committed to the protection of religious freedoms seek to *engage* religious norms and institutions, not *withdraw* from them.

The second part of the dissertation dealt with constructions of religious authority articulated through the fatwa. Drawing on an often neglected part of the texts - the actual questions sent to the muftis - I first sought to investigate how Muslims in Europe engaged religious institutions such as the European Council for Fatwa and Research (chapter three). The content of the questions revealed a concentration on Muslim cultural politics, with a strong focus on family relations and morals. The minor focus on strictly legal questions suggested the inadequacy of the idea of shari’a posing a legal challenge to Western legal systems. For the diverse population of Muslim petitioners studied here, the stakes seemed to be placed on a higher level of normativity and morality. This may also help to explain why the literature on the “unofficial application of Islamic Law” in Europe has so rarely considered fatwas as source materials. The latter occupy intermediate spaces between the political, the legal and the ethical that cannot be easily incorporated into a narrative of legal pluralism without losing sight of its distinctive features.

I showed that petitioners display variable levels of religious practice, cut across gender and generational lines, and envisage the authority of the mufti in two rather different ways. Drawing a distinction between types of inquiries – generic questions versus personalized petitions – I argued that generic questions about “what does the shari’a say” are unpredictable in their outcome (i.e., they do not explicitly anticipate any particular response) and elicit *informative fatwas* that construct the relation between the mufti and the mustafti as one essentially marked by knowledge differentials. By contrast, personalized petitions that take the moral responsibility of the individual for

granted (“I have done so and so in the past, please tell me what to do now”) suggest that fatwas also have *therapeutic functions*. They cast the mufti in the role of a pastor who not only provides information but determines penitence and administers souls. The fatwa’s particular distribution of moral responsibility binds the mufti and the petitioner in specific ways, making the legal criteria of “detachment” and “objectivity” secondary in the mufti’s decision-making process.

My study of the muftis’ responses to the expectations of the petitioners sought to underscore the complexity of the fatwa-giving exercise. Rather than the product of a simple scripturalist reflex or of a timeless mindset, I tried to show that the production of a fatwa involves a subtle balancing act between principles and goals which may sometimes be mutually-conflicting. This process of issuing fatwa is further complicated in the case of a collective institution which is not bound by a madhhab and has to search for a consensus between its heterogeneous members. While the negotiations involved in the production of a collective fatwa are common to all international fiqh councils, in the case of the ECFR the deliberations also need to respond to a set of more specific demands. The fatwas must solve problems, make life easy, fall within Western legal frameworks, integrate Muslims into European societies, foster a sense of belonging to the ummah, and cultivate an attachment to Islamic piety and normativity. Traces of these overlapping projects are often found in the fatwas, creating indeterminacies that sometimes allow for multiple readings.

In chapter four I showed how the ECFR seeks to secure the regulatory power of its fatwas through an engagement with authoritative Islamic texts; the disclosure of the reasoning that underlies the opinion; the inscription of the specific issue in a broader narrative structure; and the invocation of a broader set of moral principles and juridical formulas (*al-qawa'id al-fiqhiyya*). I claimed that two of these formulas, lenience (*taysir*) and realism (*fiqh al-waqi'*), are central to the politics of authenticity enacted by the ECFR. The way these two principles were mobilized in the fatwas of the ECFR highlighted a movement between the emphasis on the relative powerlessness of Muslims in Europe,

on the one hand, and the stress upon their individual responsibility, on the other. The former founds a regime of exceptions which minimize or suspend traditional Islamic norms through concepts such as “necessity” and various emphases on contextualisation and the limits of the law. The latter purposively ignores the context (or minimizes its importance) in order to appeal to a more universal sense of individual moral responsibility. Beyond the particular case of the ECFR, the broad appeal of *taysir* and *fiqh al-waqi‘* in contemporary *fiqh* discourse seems to be part of an attempt by modern *ulama* to craft a new juridical language (Zaman 2005). Social responsiveness and historicization become new attributes of Islamic Law (or are invested with new meanings), promoting a kind of intelligibility for the *shari‘a* that seeks to cut across social groups and become the basis for a new Islamic cosmopolitanism.

Drawing closely on Michael Warner’s articulation of the concept of the “public” (2002), I suggested in chapter five that the minority *fiqh* project might perhaps be best understood as the result of a conjunction between a particular tension (the tension that arises from the attempt to forge a pious Muslim citizen in tune with the temporalities of the Islamic Revival and the problematics of integration), and a specific relation to public discourse. I suggested that the interpellation of Muslim subjects in Europe at regular intervals by the ECFR created a distinctive public (or counterpublic) of European Muslims precisely because of their internal differentiation in terms of nationality, ethnicity, class, political orientation, and level of religious commitment. I tried to show how this public was distinct (although not totally separate) from the logics of the market, and governed by a set of rationalities incommensurable (even if sometimes overlapping) with those of the state. I suggested that the paradigmatic figure of this public was that of the “Muslim reader”, where reading is culturally organized in specific ways. Given the features of the public as a social formation, characterized by the open-ended circulation of discourse, I tried to recast the (vexed) question of the authority of the ECFR in a new light. I argued that there are only a limited number of ways through which a public can be disrupted, and considered three such ways (a denial of the public’s constitutive tension, an attempt to shift its idiom, and a misrecognition of the public) in turn. My conclusion there sought to emphasize

that the authority of the minority fiqh project depended crucially upon two dynamics. As an attempt to provide an authoritative reading of the Islamic tradition in a context of migration and social change, minority fiqh requires recognition from its Muslim addressees to be effective. On the other hand, the social plausibility of fiqh al-aqalliyat is not indifferent to the policies adopted by European states or the integration demands formulated in the media by public intellectuals. The latter may authorize or undermine – even in unintended ways – the former.

This dissertation has thus provided what is essentially an interpretive account of the minority fiqh project. Although I cannot say for sure whether minority fiqh practitioners will recognize themselves in this account, I have attempted to do justice to their work by taking their claims seriously, instead of dismissing them – as so often is done – as mere fundamentalist rhetorics. I have tried to make some of the technical debates, which often strike others (including many Muslims) as obscure and archaic, more intelligible. Given my own background in the social sciences rather than Islamic studies, I have privileged what I perceived to be the “larger stakes” of the debates, rather than the nitty-gritty of the textual argumentation. There is work to do for scholars of Islamic Law interested in further exploring the ways in which the ECFR draws upon the Islamic legal tradition in their elaboration of a minority fiqh, the arguments they advance, the possibilities they foreclose. My focus here has also been decidedly European. While a European angle appeared justified in light of the object of study, future research might seek to explore differences across European countries, given the continuing importance – attested by a significant body of literature – of national specificities in shaping state policies on Islam, societal debates, and modes of Muslim self-understanding. Our understanding of fiqh al-aqalliyat would also benefit from a more sustained engagement with other sites of production of Islamic knowledge (including mosques, student associations, peer groups) which might further elucidate the extent to which fiqh debates impact on everyday life. I suggested throughout the dissertation various ways in which fatwas are used in Europe, but I have not provided a full account of how, and when, and by whom fatwas are invoked and for what purposes. Such an inquiry might

also allow us to explore, from a different theoretical perspective, how the religious capital implied in *fiqh al-aqalliyat* discourse might be converted into other kinds of capital, and how variables of class, race, and gender may shape this conversion process.

Returning to Bhikhu Parekh's engagement with "Europe's Muslim question" (introduction), I hope to have contributed here to familiarize readers with dimensions of the *shari'a* in Europe that are usually out of sight or misunderstood. Although this was not a comparative inquiry of the sort Parekh seems to be calling for, this dissertation has implied that "religious" reasons (the *shari'a*) can be permeable to "secular" rationalities (integration discourses) – and that the former may not be all that irrational in the first place. If this analysis is correct, might there be some normative implications that follow? From the vantage point of a particular Islamic case study, this work hopes to have raised some further questions about the adequacy of the "epistemic distinction" (Taylor 2011: 49) that is drawn between secular and religious languages. The works of Parekh and Taylor are part of a tentative exploration, in recent social theory, of postsecularism as a normative ideal (Braidotti 2008; Habermas 2007; de Vries and Sullivan 2006). The idea that life in a multicultural society requires a common language that transcends religious particularities has been around for a long time. It is part of a larger package that views religion as intrinsically irrational and therefore particularly dangerous. A complex set of deeply enshrined assumptions seem to be intertwined here. A study of European fatwas may appear to be an unlikely starting point for questioning these assumptions. After all, it has often been argued that Europe's constitutive Other is represented today not so much by Islam, or by Islamic fundamentalism, but by the "disquieting *shari'a*" (Charnay 2001). Public invocations of Islamic Law in the West give rise to passionate "emotion" (Césari 2009), "hysteria" (Bano 2008) and "dramatized fears" (Bader 2009). Yet it is not clear how these outbursts of condemnation should be understood. Rather than a sign of incommensurable difference, the shrill tone which characterizes some of the contemporary denunciations of the *shari'a* might just as well be the proof of collapsing boundaries and emerging

syntheses. If the latter is the case, Europe might truly be entering into a new, postsecular time.

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Appendices

1. Cover page of Mut‘ab al-Qahtani (2007) (ed.), *Is‘af al-Mughtaribin bi-Fatawa al-‘Ulama al-Rabbaniyyin. (The Urgent Need of the Immigrants for the Fatwas of the Pious Scholars)*.
2. NHS leaflet on “Islam and Organ Donation”.
3. Cover page of Mohamed Luizi, (2006) *Shuyukh al-istihlak/ Les mollahs de la consommation*. Lille: Grimbert Impression.
4. Poster advertising Dar al-Fatwa.
5. Advertisements of conferences on the role of the fatwa and the mufti in Europe.
6. Conference program “Religiosity in Europe” (Al-Tadayyun fi Urubba), event jointly organized by the ECFR and the IIIT in Paris on 11-12 July 2002.
7. Conference outline “Fiqh Today: Muslims as Minorities” by Anas S. Al-Sheikh Ali at AMMS-UK, London February 2004.
8. Transcript of the opening speech of the President of the FIOE Ahmad al-Rawi during the founding session of the European Council for Fatwa and Research, London 1997.
9. Brochure presenting the ECFR.
10. Leaflet presenting fatwas by a panel of Saudi scholars and warning against the ECFR.
11. Texts issued by the European Council for Fatwa and Research:
 - A) Preface to the First Collection of Fatwas (Islamic Cultural Centre Ireland)
 - B) Introduction to the First Collection of Fatwas (Yusuf al-Qaradawi)
 - C) Introduction to the ECFR (Hussein Halawa)
 - D) The Members of the ECFR
 - E) Recommendations of ECFR issued in its second and third Ordinary Sessions
 - E) Prominent Resolutions issued by the ECFR during its Third Ordinary Session
 - F) Selection of ECFR fatwas from First and Second Collections

إسعاف المغتربين

بفتاوى العلماء الريانيين

إعداد
نخبة من العلماء

جميع الإعداد

متعب بن عبد الله القحطاني

Muslim scholars of the most prestigious academies are unanimous in declaring that organ donation is an act of merit and in certain circumstances can be an obligation.

These institutes all call upon Muslims to donate organs for transplantation:

- the Shariah Academy of the Organisation of Islamic Conference (representing all Muslim countries)
- the Grand Ulema Council of Saudi Arabia
- the Iranian Religious Authority
- the Al-Azhar Academy of Egypt

Organ donation is a great gift but more donors are needed

Everyone can make a difference
Please

- Talk to your family
- Register your wishes
- Carry a donor card

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The Organ Donor Line
0845 60 60 400

www.uktransplant.org.uk

Information on Islam is available from:
www.bbc.co.uk/religion

Transplants save lives



Islam and Organ Donation

A guide to organ donation
and Muslim beliefs



Organ donation

Organ donation is the gift of an organ to help someone else who needs a transplant. Hundreds of people's lives are saved each year by organ transplants. Organs that can be donated by people who have died include the heart, lungs, kidneys, liver, pancreas and small bowel. Tissue such as skin, bone, heart valves and corneas can also be used to help others.

When can organ donation take place?

Doctors and nurses are committed to doing everything possible to save life. Organs are only removed for transplantation once all attempts to save life have failed and after death has been certified by a doctor or doctors who are entirely independent of the transplant team.

Most donated organs come from people who die from a severe brain injury and who receive treatment on a ventilator in an intensive care unit. The brain injury damages vital centres in the brain stem which are essential to maintain life. No one can live once these centres have been destroyed. Tests can show conclusively when this has happened.

In some circumstances, patients who die in hospital but are not on a ventilator may also donate. They are called non-heartbeating donors.

Sometimes people who do not die in hospital can become tissue donors.

Consent

The consent, or lack of objection, of those closest to the patient is always sought before organs can be donated. This is why it is so important for people to discuss their wishes with their loved ones. Donation is an individual choice and views differ even within the same religious groups. Many families who agree to organ donation have said that it helps to know some good has come from their loss.

Care and respect

The removal of organs is carried out with the greatest care and respect. The family can see the body afterwards and staff can contact a chaplain or local religious leader if the family wishes.

Islam and organ donation

One of the basic aims of the Muslim faith is the saving of life. This is a fundamental aim of the Shariah and Allah greatly rewards those who save others from death.

Violating the human body, whether living or dead, is normally forbidden in Islam. The Shariah, however, waives this prohibition in a number of instances: firstly in cases of necessity; and secondly in saving another person's life. It is this Islamic legal maxim *al-darurat tubih al-mahzurat* (necessities overrule prohibition) that has great relevance to organ donation.

"Whosoever saves the life of one person it would be as if he saved the life of all mankind."

Holy Qur'an, chapter 5 vs. 32

"If you happened to be ill and in need of a transplant, you certainly would wish that someone would help you by providing the needed organ."

Sheikh Dr MA Zaki Badawi, Principal, Muslim College, London

Summary of the life-saving Fatwa:

The Muslim Law (Shariah) Council of Great Britain resolved that:

- the medical profession is the proper authority to define signs of death
- current medical knowledge considers brain stem death to be a proper definition of death
- the council accepts brain stem death as constituting the end of life for the purpose of organ transplantation
- the council supports organ transplantation as a means of alleviating pain or saving life on the basis of the rules of the Shariah
- Muslims may carry donor cards
- the next of kin of a dead person, in the absence of a donor card or an expressed wish to donate their organs, may give permission to obtain organs from the body to save other people's lives
- organ donation must be given freely without reward
- trading in organs is prohibited

"Whosoever helps another will be granted help from Allah."

Prophet Muhammed (pbuh)

محمد اللوزي

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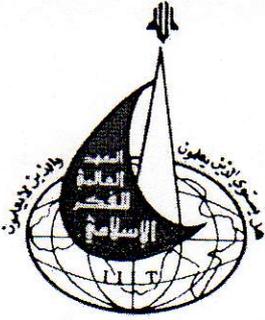
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المجلس الأوروبي للإفتاء والبحوث

European Council for Fatwa and Research

برنامج ندوة التدين في أوروبا

اليوم الأول : الخميس 11 يوليو 2002

- الساعة 9:00 صباحا استقبال وتسجيل
- الساعة 10:00 صباحا افتتاح : كلمة المجلس الأوروبي للبحوث والإفتاء وكلمة المعهد العالمي للفكر الإسلامي مكتب فرنسا وكلمة اتحاد المنظمات الإسلامية بفرنسا

الجلسة الأولى : واقع التدين الأوروبي والتصور الإسلامي

- من الساعة 10:15 إلى الساعة 12:15 مدير الجلسة : د. عبد المجيد النجار
- د. طه جابر العلواني : "واقع التدين بين التوجهات المنهجية والتطلعات الروحية"
- د. محمد الفاضل اللأفي : "في نقد الخطاب الديني : رؤية إسلامية جديدة"
- د. محمد المستيري : "تطور فكرة التدين المدني والروحانية الجديدة في الغرب وتحدي التصور الإسلامي"
- من الساعة 12:15 إلى الساعة 14:00 استراحة : غداء وصلاة

الجلسة الثانية : المشهد الديني بين أوروبا وأمريكا

- من الساعة 14:15 إلى الساعة 16:00 مدير الجلسة : د. محمد الهواري
- د. جمال البرزنجي : "المشهد الديني في أمريكا"
- د. كمال الهلباوي : "حالة التدين في بريطانيا وأثرها على الدعوة"
- أ. حسام شاكر : "النزعة الدينية في أوروبا: أي واقع وأي مستقبل؟"

الجلسة الثالثة : العقائد الدينية الأوروبية

- من الساعة 16:15 إلى الساعة 18:00 مدير الجلسة : د. العربي كشاط
- د. عبد الحليم هربير : "الهوية المسيحية للأوروبيين"
- د. محمد صديق : "لمحات ودروس من التدين في أوروبا"

- د. مولود عويمر : "فكرة الموت في الفكر الغربي الحديث"

■ الساعة 18:00 : استراحة وصلاة

الجلسة الرابعة : صورة التدين في المجتمع الأوروبي

■ من الساعة 18:30 إلى الساعة 20:30 مدير الجلسة : د. أنس الشيخ علي

- د. محمد الغمقي : "الإعلام والتدين في أوروبا"
- د. آن صوفي الأمين : "علاقة الأوروبيين مع الديانة المسيحية"
- أ. ضو مسكين : "ظاهرة التدين المسيحي بين العقيدة والتقليد"

■ الساعة 20:30 عشاء

اليوم الثاني : الجمعة 2 يوليو 2002

الجلسة الخامسة : التدين وتحديات الحداثة

■ من الساعة 10:00 إلى الساعة 12:15 مدير الجلسة : د. محمد المستيري

- د. عبد الحميد أبو سليمان : "التدين في الفكر الغربي والتصور الإسلامي"
- أ. منير شفيق : "التدين والعلمانية"
- د. رضا الشايبي : "الخلفية الفلسفية التاريخية للموقف الأوروبي من الدين"

■ الساعة 12:15 استراحة : صلاة الجمعة ثم غداء

الجلسة السادسة : العلاقة بين الأديان : تجاذب أم تعارف؟

■ من الساعة 15:30 إلى الساعة 17:30 مدير الجلسة : د. جمال البرزنجي

- د. عبد المجيد النجار : "استشراف مستقبلي للتعارف الديني في أوروبا"
- د. العربي كشاط : "التدين المشع"
- أ. محمد عادل : "تطلعات الأرثوذكسية في أوروبا الشرقية والموقف الإسلامي منها"

■ الساعة 17:30 : استراحة وصلاة

مائدة مستديرة : نحو رؤية فقهية للتدين في أوروبا

■ من الساعة 18:15 إلى الساعة 20:15 إدارة الحوار : د. كمال الهلباوي

- الشيخ فيصل مولوي - الشيخ يوسف القرضاوي - د. طه جابر العلواني
- الشيخ عبد الله بن بيبة - الشيخ زكرياء صديقي

■ من الساعة 20:15 إلى الساعة 20:30 : توصيات ختامية

■ الساعة 20:30 عشاء

FIQH TODAY

MUSLIMS AS MINORITIES

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Developing a fiqh for Muslim minorities living in the West has become essential for the well being of these communities. Because of the absence of credible alternatives and ijtiḥad Muslims are often forced to come up with their own “fiqh” answers to daily problems. The limited attempts to deal with many serious issues facing these communities have overlooked the views and contributions of Muslim social scientists who live in the West, speak its languages and have a comprehensive understanding of its social, political, religious and economic systems. The situation requires a new interpretation and ijtiḥad that respond to the multifaceted problems facing these communities in a way which is free of the negative effects that are associated with the fiqh of expediency or crisis. Therefore, a methodology for a collective approach to the development of a fiqh for minorities is urgently needed. The conference aims to bring Shariah scholars and social scientists together to discuss these issues.

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- Pluralism: Islamic and Non-Islamic Law
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- Islamic Juristic Views on the Political & Legal Status of Muslims in Non-Muslim Countries
- From Fiqh for Minorities to Fiqh of Citizenship
- Micro Mujtahids & Implementation of Fiqh al-Aqaliyyat
- The Role of Politics in Reinforcing Identity
- Fiqh for Minorities and Maqasid al-Shariah

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الكلمة الافتتاحية لرئيس الإتحاد في الملتقى التأسيسي للمجلس الأوروبي للإفتاء والبحوث

إن الحمد لله نحمده ونستعينه ونستعديه ونعوذ بالله من شرور أنفسنا وسيئات أعمالنا من يهده الله فهو المهتد ومن يضلل فلن تجد له ولياً مرشداً. وأشهد أن لا إله إلا الله وحده لا شريك له، وأشهد أن محمداً عبده ورسوله ﷺ بلغ الرسالة وأدى الأمانة فجزاه الله عنا خير الجزاء.

أساتذتي الأفاضل الإجلاء، إخواني الأحباب الكرام.

السلام عليكم ورحمة الله وبركاته، وبعد

فإن المرء ليستشعر بالسعادة تغمزه وهو يحيى لحظات مع أساتذة أجلاء، وأهل علم فضلاء من أمثالكم، يجلس إليهم ويأنس بهم ويغترف مما جباهم الله به من علم وفقه وفضل.

لا شك أساتذتي أنكم تعلمون أن الجالية المسلمة في أوروبا اليوم لم تعد قلة مهاجرة لإغراض مؤقتة، لكنها أصبحت وبحمد الله ونعمه جالية مستقرة منتشرة على ساحة أوروبا كلها حتى ينذر أن تجد مدينة كبيرة أو صغيرة إلا وفيها العدد الوفير من المسلمين. ولا أحسب أنني مبالغ إذا قلت أن عدد المسلمين في أوروبا الغربية وحدها يزيد على خمسة عشر مليوناً، يضاف إليهم أكثر من ثلاثين مليوناً آخرين في روسيا الاتحادية ودول أوروبا الشرقية ودول البلقان.

وإذا كان جيلنا يستشعر صعوبة الموازنة الدقيقة بين الحفاظ على هويته الإسلامية والمساهمة والمشاركة الفاعلة في مجتمع أصبح جزءاً لا يتجزأ منه، فلا ريب أنه أكثر استشعاراً وأحاساساً بالخطورة على الأجيال الجديدة التي ولدت وترعرعت وتشربت ثقافة وقيم مجتمع مختلف في جوانب عديدة عن قيمنا ومفاهيمنا الإسلامية. ولا أحسب أن أحداً يمكنه أن يدعي أن الحل يكمن في الإنعزال عن المجتمع والابتعاد عن مواقع الحياة فيه أو الهجرة ثانية إلى بلاد المسلمين. ولما كان الاختلاط والاندماج مع المجتمع الأوروبي أصبح لازماً خاصة بالنسبة لأجيالنا اللاحقة، فلا مناص من أن نعمل جاهدين وبكل الوسائل والسبل المشروعة ديناً من جهة

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والموافقة (غير المصادمة) للقوانين المرعية في هذه البلاد من جهة أخرى، لترسيخ قيم الإسلام الإنسانية الحضارية في نفوس أبنائنا والتعريف بها في المجتمع الأوروبي ومن ثم الإجابة على كثير من الأسئلة التي تبرز خلال عيشهم في هذا المجتمع، لتجعل من حياتهم حياة إيجابية فاعلة متجانسة.

ولئن كان الفقه الإسلامي وأنتم أعرف مني بذلك قد زخر بتفاصيل عن معاملة غير المسلمين في بلاد المسلمين إلا أنه بحاجة إلى تفصيل أكثر فيما يتعلق بتعامل المسلمين مع غيرهم في مجتمع هم فيه أقلية يتأثرون بل يخضعون لأعراف وقوانين تضعها الأكثرية.

ولقد حلّ بهذه البلاد مع قدوم المسلمين إليها وعآظ وأئمة وأهل علمٍ تتباين مشاربهم وتختلف مداركهم وخلفياتهم العرقية والاجتماعية والمذهبية وربما كان الكثير منهم لا يعرف من واقع الحياة في هذا المجتمع إلا الشيء القليل إضافة إلي جهلٍ شديدٍ بلغة القوم. كما أن المسافة بينهم وبين أجيالنا الجديدة على وجه الخصوص كبيرة في فهم وإدراك مجالات الحياة المختلفة. وخرجت من هؤلاء الفضلاء فتاوى في شتى مناحي الحياة متباينة بل ومتنافرة، وإذا أضفنا إلى ذلك ما تعرضه تجمعات وأحزاب (جاءت هي الأخرى من مشرقنا) من آراء وأفكار ومفاهيم هي مستنكرة مستهجنة هناك، فكيف بها في هذه البلاد ولقد أثر ذلك كله سلباً على وضع المسلمين في علاقتهم بعضهم ببعض وفي علاقتهم بغيرهم من أبناء المجتمع الأوروبي وتشوهت صورة الإسلام الناصعة في نفوس أبنائه وترسخت صورة أكثر تشوهاً في نفوس غير المسلمين.

وكان بعد ذلك كله وقبله على المؤسسات والمنظمات الإسلامية التي جعلت مهمتها الأولى التعريف بالإسلام وقيمه الفاضلة والدعوة إليها، أن تتداعى للعمل على معالجة هذا الوضع وبالتعاون مع أهل العلم والفضل من أمثالكم.

ولقد كان توجه اتحاد المنظمات الإسلامية في أوروبا وهو إتحاد يضم مؤسسات ومراكز على الساحة الأوروبية نحسبه واحد من أكثر المنظمات الإسلامية سعةً وانتشاراً ولا ندعي أنه الوحيد فهناك بحمد الله ونعمه وفضله مؤسسات ومنظمات أخرى تقدم خدمات جلى للمسلمين في هذه الديار، أقول كان التوجه في الإتحاد لإنشاء كلية شرعية تعمل على تخريج نفرٍ من أبناء المسلمين في أوروبا من الذين ولدوا ونشأوا في هذه البلاد لينهلوا من معين الشريعة الإسلامية الغراء ويغترفوا من علومها الواسعة وفي نفس الوقت ليكونوا أقرب بل وأقدر على معرفة واقع الحياة الأوروبية فتأتي آراؤهم وتوجيهاتهم وفتاويهم أقرب إلى الصواب بإذن الله وأكثر ملائمة لظروف وأعراف مجتمع فيه يعيشون، ولقد استعان الإتحاد بأساتذة إجلاء وعلماء أفاضل لوضع برنامج هذه الكلية التي أصبحت اليوم حقيقة واقعة رغم كل الصعوبات والعوائق واستقرت في فرنسا البلد الذي يضم أكبر جالية إسلامية في أوروبا الغربية ويدرس في الكلية اليوم أكثر من (١٠٠) طالب إضافة إلى أكثر من (٢٥٠) طالباً يدرسون بالانتساب .

ولكن حتى يتخرج هؤلاء ومن ثم تنبثق منهم ثلة تواصل تحصيلها في العلوم الشرعية

وتخصصها وتفقيها في مجالات الحياة المختلفة ليكونوا من أهل الذكر الذين تستجيب لهم النفوس وتطمئن وينحاز إليهم المسلمون في هذه الديار، فلا بد من وجود هيئة أو مجلس أو مجمع من أهل العلم ممن يشار إليهم بالبنان ويُركن إلى ورعهم وتقواهم وممن لهم معرفة أو إطلالة واسعة على واقع الحياة في المجتمع الأوروبي من داخل أوروبا وخارجها ليساهموا في توجيه المسلمين نحو الخير ويتصدّوا للكثير من القضايا التي تواجههم على هذه الساحة والتي تتعلق إضافة إلى الأمور التعبدية اليومية وبطبيعة علاقاتهم بغير المسلمين أفراد ومؤسسات وفي مقدمة ذلك الحوار والاندماج والمواطنة والعلاقات الإجتماعية والثقافية والاقتصادية والمشاركة السياسية، ومساعدتهم في التغلب على صعوبات يواجهونها وفي مقدمتها قضية الحجاب على سبيل المثال لا الحصر.

كما ونأمل أن يتحول هذا التجمع إلى مرجعية دينية للمسلمين في أوروبا تمثلهم وتمثل آمالهم وتطلعاتهم أمام المؤسسات الرسمية والدينية الأخرى في هذه البلاد فتساعدهم على حلّ مشكلاتهم وتساهم مع المؤسسات والمنظمات الإسلامية الأخرى على ترسيخ قيم الإسلام العظيمة والتعريف بها في المجتمع بل وتساهم في تحقيق انسجام المسلمين مع أبناء مجتمعهم الأوروبي من غير المسلمين.

وصولاً إلى توطيد عرى الأمن والاستقرار في مجتمع أصبحوا جزءاً لا يتجزأ منه يفرحهم تقدمه وتطوره وانحيازه للقيم الفاضلة الهادفة قيم الإيمان والعدل والحرية والنظام ويسوؤهم انتشار المعاني الهابطة والتفكك الأسري الذي ينخر في أوصال المجتمع، لأن ذلك كله سيؤثر عليهم وعلى أجيالهم اللاحقة أصلاً، إضافة إلى مبدأ حب الخير للناس كل الناس مصداقاً لقوله عز وجل لرسوله الكريم ﷺ: « وما أرسلناك إلا رحمة للعالمين ».

ادعوا الله عز وجل لكم أيها الإجماع الفضلاء في لقاءكم هذا أن يحفظكم ويرعاكم ويسدّد خطاكم ويكلّل مؤتمركم بالنجاح وأن يوفّقكم لما يحب ويرضى فأنتم أهل لكل معروف وجزاكم الله خيراً.

ودمتم في رعاية اله وحفظه
والسلام عليكم ورحمة الله وبركاته

أحمد الراوي



رئيس الإتحاد

الإسلام سؤال وجواب

European Council for Fatwa and Research

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اللجان الفرعية التابعة للمجلس

نظراً لتباعد انعقاد الاجتماع الدوري للمجلس، وانشغاله في اجتماعاته بمناقشة القضايا الأكثر أهمية، ورضية منه في تلبية حاجة عموم المسلمين في أوروبا والتعجيل بإجابة استفتاءاتهم، فقد اعتمد في دورته الثانية تأسيس لجنتين فرعيتين للفتوى:

إحداهما في فرنسا والأخرى في بريطانيا، بإشرافنا وعملهما منذ ذلك الحين، كما شكلت لجنة للبحوث لتعين المجلس على أداء رسالته، وعاوین اللجان هي:

لجنة الفتوى بفرنسا

Tel: 00333366794602

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لجنة الفتوى في بريطانيا

Tel: 00441132301514

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من الاثنين إلى الخميس من الساعة
الرابعة إلى الخامسة مساءً

لجنة البحوث

Tel: 0033662583233 (فرنسا)

أسماء أصحاب التفضيلة أعضاء المجلس الأوروبي للإفتاء والبحوث

- 1- الشيخ الدكتور يوسف القرضاوي - رئيس المجلس (قطر).
 - 2- الشيخ القاضي فيميل مولوى - نائب رئيس المجلس (لبنان).
 - 3- الشيخ حسين محمد حلوة - الأمين العام للمجلس (إيرلندا).
 - 4- الشيخ الدكتور أحمد جاء بالله (فرنسا).
 - 5- الشيخ الدكتور أحمد على الأمام (السودان).
 - 6- الشيخ المفتي إسماعيل كحوقفي (بريطانيا).
 - 7- الأستاذ أحمد كاظم الراوي (بريطانيا).
 - 8- الشيخ أنيس قرقاح (فرنسا).
 - 9- الشيخ راشد العفوشي (بريطانيا).
 - 10- الشيخ عبد الله بن بيه (السعودية).
 - 11- الشيخ عبد الرحيم الطويل (اسبانيا).
 - 12- الشيخ القاضي عبد الله بن علي سالم (موريتانيا).
 - 13- الشيخ عبد الله بن يوسف الجبج (بريطانيا).
 - 14- الشيخ الدكتور عبد المجيد النجار (فرنسا).
 - 15- الشيخ عبد الله بن سليمان المنيع (السعودية).
 - 16- الشيخ الدكتور عبد الستار أبو غدة (السعودية).
 - 17- الشيخ الدكتور عجيل التمشي (الكويت).
 - 18- الشيخ العربي الشبلي (فرنسا).
 - 19- الشيخ الدكتور عصام البشير (السودان).
 - 20- الشيخ الدكتور علي القراه داغي (قطر).
 - 21- الشيخ الدكتور صهيب حسن (بريطانيا).
 - 22- الشيخ طاهر مهدي (فرنسا).
 - 23- الشيخ محبوب الرحمن (الترونج).
 - 24- الشيخ محمد تقي عفتلي (باكستان).
 - 25- الشيخ محمد صديق (المانيا).
 - 26- الشيخ محمد علي صالح المنصور (بريطانيا).
 - 27- الشيخ الدكتور محمد الهواري (المانيا).
 - 28- الشيخ محمود مجاهد (بلجيكا).
 - 29- الشيخ الدكتور مصطفى سيريتش (الوسنة).
 - 30- الشيخ نهاد عبد القوس سقنسي (المانيا).
 - 31- الشيخ الدكتور ناصر بن عبد الله اليمان (السعودية).
 - 32- الشيخ يوسف إبرام (موريس).
- * الترتيب من اليمين وحتى الأخير حسب الحروف الأبجدية.

المصوِّرة

نص دستور المجلس على أنه يجب أن تجتمع في المصوِّرة الشروط التالية:

- 1- أن يكون حاضراً على موهل شرعي جامعي ، أو ممن أزم مجالس العلماء وتخرج على أيديهم ، وله معرفة بـ اللغة العربية.
- 2- أن يكون معروفاً بحسن السيرة والالتزام بأحكام الإسلام وآدابه.
- 3- أن يكون مقيماً على الساحة الأوروبية.
- 4- أن يكون جامعاً بين فقه الشرح ومعرفة الواقع.
- 5- أن توافق عليه الأكثرية المطلقة لأعضاء.

كما نص على أنه يحق لأعضاء المجلس اختيار بعض العلماء لمصوِّرة المجلس من خارج الساحة الأوروبية ممن تجتمع فيهم شروط المصوِّرة السابقة ما عدا الشرط الثالث ، إذا وافقت عليهم الأغلبية المطلقة للأعضاء ، على أن لا يتجاوز عددهم (ربح) أعضاء المجلس وبراغي في اختيار الأعضاء تمثيل الدول الأوروبية التي للمسلمين فيها وجود ظاهر.

كما يراعى تشكيل المدارس الفقهية المختلفة. ويعتمد في التشريع لمصوِّرة المجلس تركيزية ثلاثة من أهل العلم الثقات المعروفين.

اللقاء الدوري للمجلس

ينص (النظام الأساسي) للمجلس على اجتماع دوري سنوي تقفه هيئته العامة. تتخذه مناقشة الأبحاث المقدمة إليه في الموضوعات المختلفة التي تمس إليها حاجة الجالية المسلمة في أوروبا ، مع تولي الإجابة عما يرد عليه من استفسارات تتطلب الجواب الجماعي ويجوز (النظام الأساسي) للمجلس الاستعانة بأهل الخبرة ، ودعوتهم لحضور دورة الإيجاد التي يبرض فيها ما يتفق بشأن اختصاصاتهم من غير أن يكون لهم حقوق التصويت. ومنذ التأسيس إلى تاريخ إعداد هذا التعريف عكف المجلس شاملة دورات.

- **الدورة الأولى: في مدينة سرييفو بجولة البوسنة والهرسك.**
- **والدورة الثانية: في مدينة دبلن بجولة أيرلندا.**
- **الدورة الثالثة: في مدينة كولون بجولة ألمانيا.**
- **وباقى الدورات من الرابعة إلى السابعة: في مدينة دبلن بأيرلندا.**
- **الدورة الثامنة: في مدينة فنتسيا بإيطاليا.**

وقد أصدر المجلس المصوِّرة الأولى من الفتاوى وهي تتضمن جزءاً من القرارات والفتاوى التي صدرت عن المجلس وذلك باللغتين العربية والإنجليزية وجرى ترجمة المجموعة التي بعض اللغات الأخرى مثل الألمانية والفرنسية والأبناية والأسبانية كما أن المجموعة الثانية للفتاوى تحت الطبع وستصن قريباً إن شاء الله تعالى.

• الاعتماد على المراجع الفقهية الموثوق بها ، وخصوصاً تلك التي تستند إلى الأئمة الصحيحة.

• الاستفادة من الفتاوى والبحوث الصادرة عن الجامعات الفقهية والمؤسسات العلمية الأخرى.

• بطل المساعي الحديثة لدى الجهات الرسمية في الدول الأوروبية للاعتراف بالمجلس رسمياً، والرجوع إليه لمعرفة أحكام الشريعة الإسلامية.

• إقامة دورات شرعية لتأهيل العلماء والدعاة.

• عقد ندوات لدراسة بعض الموضوعات الفقهية.

• إصدار مجلة باسم المجلس تنشر فيها مختارات من الفتاوى والبحوث والدراسات التي يباقتها المجلس أو التي تحقق أهدافه.

مصادر الفتوى وضوابطها

يعتمد المجلس في إصدار الفتوى على:

- 1- مصادر التشريع الإسلامي المتفق عليها بين جمهور الأمة وهي: القرآن ، والسنة ، والإجماع ، والقياس ،
- 2- مصادر التشريع المختلف فيها كالاستحسان والمصلحة المرسلة ، وسد الثرائع ، والاستصحاب ، والعرف ، ومذهب الصحابة ، وشرح ما قبلنا ، وذلك بشرطها وضوابطها المعروفة عند أهل العلم ، ولا سيما إذا كان في الإختابها مصلحة للأمة.

منهجية المجلس في إصدار الفتوى

- اعتبار المذاهب الأربعة وغيرها من مذاهب أهل العلم شرعية فقهية عظيمة ويقتل منها ما صح دليله وظهرت مصالحتها.
- مراعاة الاستدلال الصحيح في الفتوى ، والعزو إلى المصادر المعتمدة ، ومعرفة الواقع ومراعاة التيسير.
- وجوب مراعاة مقاصد الشرح واجتناب الحيل المحظورة المتفاقية لتحقيق المقاصد.

طريقة إصدار الفتاوى والقرارات

تصدر الفتاوى والقرارات باسم المجلس في الدورات العادية أو الطارئة بالجماع الحاضرين إن أمكن ، أو بأغلبية ثلثي الأعضاء الحاضرين ، ويحقق للمخالف من الأعضاء آليات مخالفته ، حسب الأصول المعمول بها في المجالس الفقهية.

وينص (النظام الأساسي) على أنه لا يحق لرئيس المجلس ولا لعضو من أعضائه إصدار الفتاوى باسم المجلس ما لم يكن موافقاً عليها من قبل المجلس نفسه ، وكل منهم أن يقتل بصفته الشخصية ، من غير أن يبدل قواه بصفة عضويته في المجلس ، أو أن يكتبها على أوراق المجلس الرسمية.

الحمد لله رب العالمين والصلاة والسلام على إمام المتقين وخاتم المرسلين قدسوة الدعاة إلى رب العالمين وعلى آله وصحبه ومن سار على نهجه إلى يوم الدين وبعد:

فهذا تعريف مبسط بالمجلس الأوروبي للإفتاء والبحوث.

اسم المجلس وصفته

المجلس الأوروبي للإفتاء والبحوث هيئة علمية إسلامية متخصصة مستقلة ، يضم عدداً من العلماء المتخصصين الذين يتصدون للفتوى في أوروبا إلى جوار عدد من العلماء الذين يعيشون داخل الوطن الإسلامي ولكنهم مهتمون بأمر المسلمين في الغرب ويشتركون عليهم ويعرفون ظروفهم وأحوالهم.

اللقاء التأسيسي

عقد اللقاء التأسيسي للمجلس في مدينة لندن في بريطانيا في الفترة: ٢٠٢١ - ٢٠٢٢ من ذي القعدة ١٤١٧ هـ الموافق ٢٩ - ٣٠ من شهر مارس ١٩٩٧م بحضور ما يزيد عن خمسة عشر عالماً. وكان ذلك نتيجة دعوة من قبل (اتحاد المنظمات الإسلامية في أوروبا) وفي هذا اللقاء تم إقرار مسودة الدستور لهذا المجلس.

(النظام الأساسي).

أهدافه

يتوخى المجلس الأوروبي للإفتاء والبحوث تحقيق الأهداف التالية:

- 1- إيجاد التقارب بين علماء الساحة الأوروبية ، والعمل على توحيد الآراء الفقهية فيما بينهم ، حول القضايا الفقهية المهمة.
- 2- إصدار فتاوى جماعية تسد حاجة المسلمين في أوروبا وتحل مشكلاتهم ، وتنظم تعاملهم مع المجتمعات الأوروبية ، في ضوء أحكام الشريعة الإسلامية.

3- إصدار البحوث والدراسات الشرعية ، التي تعالج الأمور المستجدة على الساحة الأوروبية بما يحقق مقاصد الشريعة ومصالح الخلق.

4- ترشيد المسلمين في أوروبا عامة وشباب الصوِّرة خاصة ، وذلك عن طريق نشر المفاهيم الإسلامية الأصلية والفتاوى الشرعية القويمة.

وسائل تحقيق الأهداف

يسعى المجلس لتحقيق أهدافه من خلال اعتماد الوسائل التالية:

- تشكيل لجان متخصصة من بين أعضائه وغيرهم ذات مهمة دائمة أو مؤقتة ويعهد إليها بإنتاج الأعمال التي تساعد على تحقيق أهداف المجلس.

Fatwa by panel of scholars in Saudi Arabia (Ibn Baz – Ibn Otameen – Ibn Jebreen) in addition to other Ahlu AlSunna Wa AlJamaa scholars (Salafis cholars) including Sk Naser aldeen Alalbani, Sk Moqubil AlWadie....(4)

Shaykh Muhammad Naasiruddeen al-Albaanee

He was born in the city of Ashkoderia, then the capital of Albania in the year 1332 H (1914 CE.) into a poor family. His father al-Haaj Nooh Najjaatee al-Albaanee had completed Sharee'ah studies in Istanbul and returned a scholar to Albania. After Albania was taken over by atheism the family made Hijrah to Damascus. In Damascus Shaykh al-Albaanee completed his initial education and was then taught the Qur.aan, Tajweed, sciences of Arabic language, fiqh of the Hanafee madhab and further branches of the Deen by various Shaykhs and friends of his father.

He began to work in this field by transcribing al-Haafiz al-Iraaqee's monumental "alMughnee 'an-hamilil-Asfaar fil-Asfaar fee takhreej maa fil-lhyaa minal-Akhbaar" and adding notes to it. He delved further into the field of Hadeeth and its various sciences despite discouragement from his father. Furthermore, the books he needed were not to be found in his father's library which was composed mainly of various works of Hanafee Fiqh - and since he could not afford many of the books he required he would borrow them from the famous library of Damascus - "al-Maktabah adth-Dthaahiriyyah" or sometimes from book sellers. He became engrossed with the science of Hadeeth to the extent that he would sometimes close up his shop and remain in the library for up to twelve hours - breaking off his work only for prayer - he would not even leave to eat, but would take two light snacks with him.

Eventually the library authorities granted him a special room to himself for his study and his own key for access to the library before normal opening time. Often he would remain at work from early morning until after 'Ishaa. During this time he produced many useful works - many of which are still waiting to be printed.

The Shaykh faced much opposition in his efforts to promote Tawheed and the Sunnah but he bore this with patient perseverance. He was encouraged by some of the noble Shaykhs of Damascus who urged him to continue, amongst them Shaykh Bahjatul Bayjaar, Shaykh 'Abdul-Fattaah -the imam, and Towfeeq al-Barzah-rahimahumullaah.

After some time he started giving two weekly classes attended by students of knowledge and university teachers - in which he taught various books of 'Aqeedah, Fiqh, Usool and Hadeeth sciences. He also began organised monthly journeys for

Da'wah to the various cities of Syria and then Jordan. After a number of his works appeared in print the Shaykh was chosen to teach Hadeeth in the new University in Madeenah, Saudi Arabia, for three years from 1381 to 1383H where he was also a member of the University board.

After this he returned to his former studies and work in "al-Maktabah adth-Dthaahiriyyah" leaving his shop in the hands of one of his brothers.

He visited various countries for Da'wah and lectures - amongst them Qatar, Egypt, Kuwait, the Emirates, Spain and England. He was forced to emigrate a number of times moving from Syria to Jordan, then Syria again, then Beirut, then the Emirates, then again to 'Ammaan, Jordan. His works - mainly in the field of Hadeeth and its sciences number over 100. His students are many and include many Shaykhs of the present day amongst them:

Shaykh Hamdee 'Abdul-Majeed, Shaykh Muhammad 'Eed 'Abbaasee, Dr. 'Umar Sulaymaan al-Ashqar, Shaykh Muhammad Ibraheem Shaqrah, Shaykh Muqbil ibn Haadee al-Waadi'ee, Shaykh 'Alee Khushshaan, Shaykh Muhammad Jameel Zaynoo, Shaykh 'Abdur-Rahmaan Abdus-Samad, Shaykh 'Alee Hasan 'Abdul-Hameed al-Halabee, Shaykh Saleem al-Hilaalee.

The Shaykh passed away on Saturday 22 Jumaadaa ath-Thaaniyah 1420/2 October 1999. He was 87 years of age. May Allaah (subhaanahu wa ta'aala) have Mercy upon his soul, Aameen.

A woman embracing Islaam whilst her husband does not

Question: Sometimes women embrace Islaam while their husbands do not. It is well known that a Muslim woman is not lawful for a non-Muslim man. However, for a woman to separate from the husband she loves and on whom she may depend for material support and in the breakup of her family is a great trial for her. It might even be a cause for her to hesitate about embracing Islaam. It also often happens that the husband embraces Islaam after a year or so. The wife hopes to attract her husband to Islaam while remaining in the same house as him after she has embraced Islaam. Is there any room in this matter for new independent reasoning, taking into consideration changing circumstances, benefit and the rule "the lesser of two evils"? Or is this matter something decided with no room for independent reasoning and so a woman entering Islaam must separate from her husband and perhaps even from her children?

Response: This question contains in fact two questions, one of which is more important than the other. The first and most important of them, is whether there can be new independent reasoning to solve this problem. The answer to this is that rulings in Islaamic law are of two kinds. The first are those where there is no room

for independent reasoning but rather that these rulings are beneficial at every time and in every place. The benefit therein might be clear, apparent and immediate or, alternatively, it might not be. Allaah, the Exalted says: {And Allaah knows while you know not.}, [Soorah an-Noor, Aayah 19]. It might appear to some people that to implement Islaamic law is difficult and sever in this matter and that it causes problems, while the truth of the matter is quite the opposite to what they imagine. Here, in this issue Islaamic law must be applied and there is no room for independent reasoning.

The second kind of ruling in Islaamic law, are those that are general and dependent upon circumstance. The circumstances, meaning or wisdom might be relevant and applicable at one time but not at another. If the ruling is relevant then it is established and applied and if it is no longer relevant then it is annulled. The issue of a Muslim woman staying with a disbeliever is a matter in which there is no room for independent reasoning because Allaah, the Exalted says: {O you who believe! When believing women come to you as emigrants, examine them. Allaah knows best as to their faith. If you are sure that they are true believers do not send them back to the disbelievers. They are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them.}, [Soorah al-Mumtahinah, Aayah 10].

Also, a person is not concerned about losing his son, husband or father if it is necessary in order to establish his or her faith and religion. If we consider our righteous predecessors we find that a man might kill his own father or son because they opposed him and stood in his way, in the matter of Allaah's religion. Accordingly, if a woman embraces Islaam and her husband persists in disbelief, most scholars say that one should wait until the 'iddah has ended. If the husband embraces Islaam during the period of the 'iddah, the marriage contract remains valid and they do not separate. However, if the period of the 'iddah ends before the husband has embraced Islaam, then the marriage is recorded as having ended at the time the woman embraced Islaam. She is then no longer lawful for him until she embraces Islaam and remarries her with a new contract (of marriage).

Some scholars say that a woman who embraces Islaam is tied to her husband until the 'iddah comes to an end. During this time it is not possible for her to remarry and if he embraces Islaam she remains his wife. If, on the other hand, the period of the 'iddah has ended and he then embraces Islaam, she has no choice between returning to him, should she so wish, or not. This opinion is the most correct because the

Prophet (sal-Allaahu `alayhe wa sallam) sent his daughter, Zaynab, back to 'Abu al-'Aas Ibn Rabee' after six years. Therefore, if a woman embraces Islaam and her husband remains a disbeliever, they must separate. If he enters Islaam before her 'iddah has ended, then she is still his husband and does not have a choice of returning to him or not. However, if the period of the 'iddah has ended and she wishes to marry someone else, she has the right to do so. If she remains unmarried and her husband embraces Islaam, even after a long period of time has elapsed, if she so wishes she can go back to him. Shaykh Ibn al-'Uthaymeen / (al-Aqalliyat al-Islaamiyyah, Page 69 Fatwa No.9)

Uniting upon correct belief

Question: It is noticeable that most Muslim minorities around the world concentrate on uniting the Muslims while neglecting to establish pure and correct Islaamic belief. What, your Eminence, do you have to say about this manhaj? **Response:** The call to unite the Muslims is, whichever way you look at it, a good thing and very important and there is a pressing need for it. However, if knowledge and correct understanding of religion and the tenets of faith accompany it, then this is more complete and more obligatory. This is because their uniting upon incorrect tenets of belief does not satisfy, nor fulfil what is required and does benefit them greatly. It is therefore necessary that the method of inviting is complete. It should be to unity and to holding firmly to the Rope of Allaah and adherence to His Religion while stressing the importance of correct belief. This is how the Messenger, prayers and peace be upon him, and his noble companions (radhi-yallaahu 'anhum) proceeded so that the method of inviting might be comprehensive and complete. Shaykh Ibn Baaz / (al-Aqalliyat al-Islaamiyyah, Page 34 Fatwa No.8)

Study and work in mixed-sex-environments

Question: Muslim women and their daughters in western countries where there are Muslim minorities face very difficult circumstances in that education and work are mixed environments. We are caught between two possibilities. Either we cut-off our provision, stay at home and beg and as a result sink to a very desperate material condition, or, alternatively, wear our Islaamic hijaab and study and work in those societies which do not differentiate between mixing and separation. What is your esteemed opinion concerning this matter?

Response: Concerning this very crucial issue, I believe that it is obligatory for a Muslim to

patiently adhere to and persevere with Allaah's religion and not to be of those whom Allaah describes, saying: {And of mankind are those that say, "We believe in Allaah." But if they are made to suffer for the Sake of Allaah, they consider the persecution of mankind as Allaah's punishment...}, [Soorah al-'Ankaboot, Aayah 10]. A Muslim must be patient and if it is not possible to gain a livelihood except by what Allaah has forbidden, namely through the mixing of men and women, then this livelihood must be abandoned and another sought from another direction or from another country. Was Allaah's land not vast enough for you to emigrate therein? This is also true with respect to seeking knowledge. How good it would be if the Muslim minorities could establish their own schools based on the religion of Islaam, where boys and girls are taught separately. If that could be achieved it would be a great blessing. It is not possible, however, for us to permit the mixing of the sexes because of the seriousness of the issue and the level of temptation contained therein. Shaykh Ibn al-'Uthaymeen / (al-Aqalliyat al-Islaamiyyah, Page 74 Fatwa No. 14)

Marrying non-Muslim Women

Question: What is your advice concerning some Muslim minorities marrying disbelieving women who do not believe in the existence of a Creator and what is the effect of that upon the children?

Response: My advice to all Muslims is that they should not marry anyone who is not a Muslim. A Muslim man should do his utmost to marry a Muslim woman because that will be good for him, both in the life of this world and in the Hereafter and good for his children as well. With regards to marrying kuffaar, if they are not from the People of the Book, the Jews and Christians, then, according to clear text and consensus of the scholars, it is forbidden. According to a consensus of the scholars, it is not permitted for a Muslim to marry Buddhists, communists, atheists and so forth. Allaah (Subhaanahu wa Ta'aala) says: {And do not marry idolatresses until they believe.} [Soorah al-Baqarah, Aayah 221] Concerning the Settlement of Hudaibiyah, Allaah (Subhaanahu wa Ta'aala) ordered that the believing women, who came seeking emigration to the Prophet (sal-Allaahu `alayhe wa sallam) should not be returned to their disbelieving husbands. He (Subhaanahu wa Ta'aala) says: {They are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them.} [Soorah al-Mumtahinah, Aayah 10]

It is, therefore, not permitted for a Muslim to ever marry a kaafir woman unless she is from the People of the Book and they are the Jews and

Christians only. They are considered the People of the Book if they have remained upon the teachings of their Book. However, if they have become communists or deny the existence of a Creator, they are no longer People of the Book, but rather they have become atheists. If, however, they are from the People of the Book, adhere to the teachings of Christianity or Judaism and believe in Allaah and the Resurrection, then they can be married. This is provided that they are known to be chaste and it is known that they do not commit adultery or fornication. Allaah has made lawful for us chaste women from the People of the Book. He (Subhaanahu wa Ta'aala) says: {All good things are made lawful for you this day. The food of the People of the Book is lawful to you and your food is lawful to them. (Lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the Scripture (Jews and Christians) before you, provided that you give them their dowries and live in honour with them, neither committing fornication nor taking them as mistresses... } [Soorah al-Maa'idah, Aayah 5]

Allaah has made lawful for Muslims chaste and virtuous women who are free and not slaves. There is no harm, therefore, in marrying women from the People of the Book, if the need arises. However, to refrain from doing so and to marry Muslim women is preferable and advisable, especially nowadays.

The risk involved in marrying them these days is greater because they have control and power over husbands and might, therefore, lead their husbands or their children to kufr in Allaah. My advice to all my brothers everywhere is, that they should not marry non-Muslim women and that they should be aware of the risks and end result of doing so. Rather, they should do their utmost to marry Muslim women and to educate and guide them to what is good. This is safer, especially at this time when evil and wickedness has increased. The kuffaar have today gained the upper hand over the Muslims, and women in the countries of the kuffaar have power and authority and dominate their Muslim husbands and try to attract them and their children to their false religion, And there is no power, no strength except with Allaah! Shaykh Ibn Baaz / (al-Aqalliyat al-Islaamiyyah, Page 29 Fatwa No.5)

Difference of religion and its effect on inheritance. Q. Can a Muslim inherit from a kaafir relative when he dies, or vice-versa? What do the Muslims say about people of different religions (other than Islam) inheriting from one another? **Praise be to Allaah.** Difference of

religion is one of the factors which prevent inheritance. A kaafir cannot inherit from a Muslim, according to scholarly consensus, and a Muslim cannot inherit from a kaafir, because the Prophet ﷺ (peace and blessings of Allaah be upon him) said: "A Muslim does not inherit from a kaafir and a kaafir does not inherit from a Muslim." (Reported by al-Bukhaari, 6262). If a kaafir becomes Muslim before the legacy is shared out, then according to Imaam Ahmad he is allowed to inherit, to encourage him in his Islam. As regards the kuffaar inheriting from one another, according to Imaam Abu Haneefah and Imaam al-Shaafa'i, and according to one opinion narrated from Ahmad, they can inherit from one another even if they belong to different religions, because Allaah says (interpretation of the meaning): "And those who disbelieve are allies to one another..." [al-Anfaal 8:73], and because despite the differences in their religions and sects, they are as one in their enmity towards the Muslims.

If a Muslim says the name of Allaah over the meat of the People of the Book, does this mean that it is permissible for him to eat it? Q.I

very doubtfull about the fact that many muslims say that if a christian or a jew give you meat to eat, we must say basmala to make it halal. But the islam teaches us that what is haraam is still haraam, even there is a good intention (i.e. to say basmala)

Praise be to Allaah. The scholars agree unanimously that it is permissible to eat the meat of the People of the Book, Jews and Christians, if the name of Allaah is mentioned at the time of slaughter, as Allaah says (interpretation of the meaning): "Eat not of that (meat) on which Allaah's Name has not been pronounced (at the time of slaughtering of the animal)..." [al-An'aam 6:121]. If the person mentioned a name other than that of Allaah, such as the name of 'Uzayr or of the Messiah, then it is not permissible to eat of it, because of the general meaning of the aayah (interpretation of the meaning): "He has forbidden you... that which is slaughtered as a sacrifice for others than Allaah." [al-Baqarah 2:173]. It is also a condition that the meat should be slaughtered in the manner prescribed by sharee'ah. If it is known that the slaughter was not done in the proper Islamic manner, e.g., by strangulation or electric shock and so on, then it is haraam. (al-Mawsoo'ah al-Fiqhiyyah, 2/308)

Q.What should a person who borrowed with interest(Ribba) do?

A.It is wajib that you repent for each loan involving interest you took. The Prophet ﷺ (peace and blessings of Allah be upon him) cursed all involved in the interest, the recipient, the sponsor, and the one eating and the feeding it, as stated in the authentic hadith. The Prophet ﷺ (peace and blessings of Allah be upon him) said, " *The gold for the gold, the silver for the silver, wheat for wheat, barley for barley, date for date, salt for salt, similar for the like, and hand in hand. So whoever adds or seeks to add, then he has used riba. The recipient and the giver of the transaction are the same*

may Allah be pleased) On the authority of Jabir with him) who said that the Messenger of Allah (peace and blessings of Allah be upon him) ﷺ consumes interest, the one "cursed the one who giving it, the one bearing scroll; and the two " witnesses to it. peace and blessings) ﷺ He said are all equal. Muslim of Allah be upon him)," narrated it.)

If a Muslim wants to partake in a specific affair and he doesn't know it's ruling, then it is upon him to ask before he gets involved in it. every Ignorance isn't an excuse for each and situation. As far as the loans you borrowed, you the initial money are obligated to return borrowed only. If you are forced to pay riba, and added amount with no way out, then that is the we hope that you do your best in repenting to Allah to pardon you. We also hope that you and give remain consistent in your business sadaqa with what you are able to, in order to purify yourself and you wealth.**Almunajed**

Brothers and sisters we have to warn you from the so called European committee for Fatwa since some of their Fatwas for example : they allow Riba (mortgage), inheritance of non muslims, mixing between male and female, masturbation, selling alcohol to non muslims. most of the so called scholars in the committee are part of political groups that are innovated such as Ikwam alMuslimeen. So do not listen to their wrong Fatwa.

Texts issued by the European Council for Fatwa and Research

First Collection of Fatwas

Translated by Anas Osama Altikriti

SOURCE: www-e.cfr.org

A) Preface

Praise be to Allah, the Lord of the Worlds, and prayers and peace be upon the Seal of messengers and prophets, our Master; Mohammed, his descendants, companions and all those who follow his guidance.

It gives the Islamic Cultural Centre in Ireland great pleasure to present to the Muslim World and the Muslim minorities in the West particularly, the first collection of Fatwas issued by the European Council for Fatwa and Research. This publication has been long awaited by Muslims due to the important and vital rulings which carry solutions to many day to day problems facing Muslims, especially those living in the West.

Needless to say that these Fatwas represent the essence of efforts and expertise of a number of honourable Islamic scholars lead by His Eminence Shaykh Yusuf Al-Qaradawi, President of the Council. These scholars investigated thoroughly the Book of Allah, the Sunna of the Prophet Mohammed Peace and Prayers be upon Him as well the heritage of the good predecessors (Al-Salaf Al-Salih). In addition, and equally vital, they also experienced and examined the conditions of Muslims living in the West. Therefore, the Fatwas contained in this first volume were issued depending upon the Holy Quran, the Prophetic Sunna as well as the efforts and opinions of scholars, and were a culmination of the appreciation of time, place and situation, as prescribed by Imam Ibnul Qayyim.

We ask Allah Subhanahu Wa Ta'ala to make this a beneficial production and to reward our honourable scholars, on behalf of Islam and Muslims, many folds and to bless their efforts always. *Our final prayer is to praise Allah, the Lord of the Worlds.*

Islamic Cultural Centre Ireland

B) Introduction By His Eminence Shaykh Yusuf Al-Qaradawi

President of the European Council for Fatwa and Research

Praise be to Allah alone and Peace be upon all the messengers whom He chose, and upon their honourable seal; Mohammed, and upon his descendants, companions and all who followed their footsteps and were thus guided.

It is a great bounty of Allah upon the Muslims that they have awoken after a lengthy sleep and that they have been affected by the blessed Islamic resurgence which has touched all corners of the world. This resurgence resulted in hearts revitalised with faith, minds enlightened by knowledge, souls being strengthened by absolute belief and in manners being straightened and perfected by discipline.

The effects of this resurgence did not stop at the boundaries of the Islamic World, but indeed reached all lands which are considered home to Islamic communities and minorities. This was particularly true in regards with Muslims living in the West, especially in Europe, where millions of native Europeans lived in almost complete isolation of their Muslim Umma, and many lived in repressive conditions behind the Iron Curtain under the oppressive rule of Communism.

Many, from amongst the first wave of migrants who left their Muslim homelands seeking a better and more comfortable life, lost their way and completely dissolved in their newly adopted societies. Migration subsequently became much more extensive and the numbers of newcomers to the Western shores increased considerably, but for a variety of diverse reasons. Some came seeking security and safe refuge from oppression in their homelands. Others came seeking knowledge and academic degrees, others sought employment and so on. This resulted in the total number of Muslims, both native and migrants, living in Eastern and Western Europe reaching 50 million. Therefore, it was not surprising that the effects of the Islamic resurgence eventually arrived at their doorsteps and touched their lives in one way or another, as it did their brothers and sisters in the Islamic World. This made them regain pride in their Islamic identity, realise that they were an integral part of the Islamic Umma, and appreciate that they were indeed followers of Mohammed peace and prayers be upon Him in all sense of the word. This had an unquestionable effect on their awareness and behaviour and they eventually started to flock back to their Umma and to their message.

Then, a number of those Muslims who were blessed with enlightened minds, pure hearts and sincere enthusiasm, began to gather their efforts and co-operate in order to build the basic facilities needed by the Muslim community to retain its identity and character without having to isolate itself from the rest of society in which they lived. Thus, Mosques were opened for worship, schools for education and social clubs for leisure and teaching discipline. In addition, camps and conferences were held, seminars and courses were organised, books were published, articles were distributed, lectures and speeches were delivered and individuals of ability in Da'wa and education were recruited on a full-time basis.

In recent years, a number of determined brothers decided to complete the chain of facilities and establishments which the Islamic community simply could not do without. They therefore established the Federation of Islamic Organisation in Europe, which was instrumental in finding the European Institute for Humanitarian and Islamic Studies in France and which, in turn, saw its first wave of graduates last year and has since opened a new branch in Britain.

In addition, the European Council for Fatwa and Research was also established consisting of a number of respectable scholars, who work to deliver Fatwas and guidance in some of the most prominent Islamic centres throughout Europe, along with a number of scholars who live in the Islamic World, but carry the worries and anxieties of their fellow Muslims in Europe,

visit them on a frequent basis and appreciate their conditions and living situations.

The objective of this Council is to promote a uniform Fatwa in Europe and to prevent controversy and intellectual conflicts regarding the respective issues wherever possible. In its endeavour to achieve this objective, it will use means of consultation, joint research as well as group Ijtihad, which has today become an Islamic obligation and necessity. The Council is also designed to become an approved religious authority before local governments and private establishments, which will undoubtedly strengthen and reinforce local Islamic communities.

It is important to note that this Council does not seek to become a competitor against the grand Islamic Fiqh councils in the Islamic World, such as the Research Council of Al-Azhar, the Fiqh Council of the Islamic World League or the Islamic Fiqh Council of the Organisation of Islamic Conference. In fact, it aims to become a complimentary body of these esteemed organisations, specialising in critical issues related to the "Fiqh of Minorities" and Muslims who live outside the Islamic World. The Council also actively pursues and examines the rulings, resolutions and studies of these respectable organisations, from which it will gain great benefit, no doubt.

Our fore-scholars, may Allah bestow His mercy upon them all, have agreed that Fatwa changes according to time and location, and what greater change of place than the difference between the land of Islam and any other? This is because whoever lives in an Islamic country finds mainly support and encouragement to perform Islam and abide by its principles, whilst the case is entirely different for whoever lives in a non-Muslim society.

Therefore, the message of this Council is to bring ease to its Fatwa for those Muslims, rather than difficulty and hardship, to bring glad tidings of Islam rather than bad tidings and ill-fate and to include people in the circle of Islam rather than exclude and alienate them, even if they practiced no more than the absolute minimum of obligations. The Council aims to give Fatwa which seek ease and convenience, rather than strictness in search for staying on the safe side, taking heed in the statement of Sufyan Al-Thawri: "Fiqh is when a trustworthy person offers ease in Fatwa, as for difficulty and strictness; all people perform this well".

The importance of establishing the ECFR was further enhanced by the presence of some self-acclaimed so-called scholars, who have imposed themselves upon the circle of true and fit scholars. Those individuals found it appropriate to issue their own Fatwas which were misguided and led to many people losing the way as a result. Such Fatwas included the permissibility for Muslims to steal from and cheat on the authorities under which they live, despite these countries receiving them, feeding them and providing them with a safe refuge and shelter. Such Fatwas encouraged Muslims to thieve, embezzle, forge, cheat and practice all that allows them to gain from these lands. Therefore, some Muslims found it appropriate to take things which they hadn't paid for, to utilise services without giving the fair fee, to receive benefits which they are not entitled to, to cheat upon whoever they dealt with and deceive whenever possible. Those Muslims became a disgrace to Islam and have acted similarly to the Jews who decreed it was correct to steal from others and were thus described in the Holy Quran as saying: "*They say: there is no call on us with these ignorant Pagans*" (2:75).

Such Fatwas bring harm and shame to Islam and Muslims and affect the Muslim communities considerably. They also transmit an image that Muslims are merely gangsters who cannot be trusted, who carry no morals or discipline, who do not honour any contract or agreement. Those individuals, who pose as scholars, are in fact are the heads of ignorance described in the Hadith: "*They gave Fatwa without proper knowledge and were misguided and caused others to lose the path*". Indeed, such ignorant Fatwas lead to many Muslims entering prison for acts of theft, fraud and various other crimes.

The most dangerous matter of all, however, is their Fatwa that a Muslim may kill natives of the country which provides them with peace and security and which helps them and gives them money whenever they claim to be unemployed or in need. We recall in this regard, the Holy verse: "*Is there any reward for Good, other than Good?*" (55:69).

Therefore, it is imperative that the ECFR fulfils its role and duty to guide and correct the path of Islamic progress in the West, to silence those ignorant and vile voices and to solve the problems faced by Muslims in the light of the pristine Islamic Shari'a.

I call upon all Muslims, and particularly those who are known to constantly do good, to actively support the European Council for Fatwa and Research, so that it may fulfil its role in serving Islam, educating Muslims and preserving their Islamic identity.

Indeed Allah states all that is truth and guides to the best path.

C) Introduction to the ECFR

English Translations of Arabic Texts provided by the ECFR (www.e-cfr.org)

European Council for Fatwa and Research

In the Name of Allah, The Most Gracious, The Most Merciful

- **Title, Description and Headquarters** "The European Council for Fatwa and Research" is an Islamic, specialised and independent entity which comprises of a number of scholars. Its current headquarters is in the Republic of Ireland.

- **The Inaugural Meeting** The Inaugural Meeting of the European Council for Fatwa and Research was held in London, UK, on 21-22 Dhul Qi'da 1417AH, 29-30 March 1997. The meeting was attended by more than 15 scholars who responded to the invitation of the Federation of Islamic Organisations in Europe. This meeting saw the endorsement of the Draft Constitution of the ECFR.

- **Objectives** The Council shall attempt to achieve the following aims and objectives:

- 1- Achieving proximity and bringing together the scholars who live in Europe, and attempting to unify the jurisprudence views between them in regards with the main Fiqh issues.
- 2- Issuing collective fatwas which meet the needs of Muslims in Europe, solve their problems and regulate their interaction with the European communities, all within the regulations and objectives of Shari'a.
- 3- Publishing legal studies and research, which resolve the arising issues in Europe in a manner which realises the objectives of Sharia and the interests of people.
- 4- Guiding Muslims in Europe generally and those working for Islam particularly, through spreading the proper Islamic concepts and decisive legal fatwas.

- **Means and Methods**

- 1- Forming specialized committees from among the Council members, which may carry a temporary or permanent mandate, and to which specific tasks which fall within the scope of the Council aims and objectives, will be assigned
- 2- Relying upon the sound and appropriate fiqh resources particularly those which are based upon sound evidence.
- 3- Taking full advantage of the fatwas and research which have been issued from the various fiqh establishments and other scientific and academic bodies.
- 4- Making relentless efforts with the official authorities in European countries to acknowledge and officially recognise the Council, and to refer to the Council in reference to Islamic judgements.
- 5- Holding Shari'a courses which would qualify and rehabilitate scholars and workers for Islamic Da'wa.
- 6- Holding seminars to discuss various fiqh issues.
- 7- Publishing information and periodical and non-periodical fatwas and translating Fatwas, studies and research to the various European languages.
- 8- Publishing a periodical which contains selected Fatwas issued by the Council as well as various papers and issues discussed and debated therein.

- **Source and Conditions of Fatwa** In issuing a Fatwa, the following shall be observed:

- 1- Sources of Islamic legislation agreed upon by the majority of the Ummah, which are: Quran, Sunna, Consensus (Ijma'a) and Analogy (Qiyas).
- 2- The various other sources of legislation which are not entirely agreed upon such as preference (Istihsan), public interest (Maslaha Mursala), disadvantage prevention (Sad al-Thara'i), relativity (Istishab), tradition or custom (Urf), companions school (Mathab Sahabi),

and the legislation of those before us (Shar'u man Qablana), considering the necessary conditions and regulations stated by the people of knowledge, particularly if the interest of the Ummah would be realised by considering these sources.

- **The ECFR bases its methodology upon:**

1- The four schools of Fiqh (mathahib) as well as all other schools of the people of Fiqh knowledge are regarded as a resource of immense wealth, from which is chosen whatever is supported by the correct and sound evidence and achieves the best interest.

2- In making a Fatwa, the Council shall offer the correct evidence in support and shall refer to the authorised and accredited source along with full awareness of the current situation and provide the option which does not create difficulty or inconvenience.

3- The aims and objectives of Shari'a must be taken into consideration, whilst the outlawed deceptions and crooked solutions which contradict the aims of Shari'a, are to be avoided in all cases.

- **Manner of Issuing a Fatwa** Fatwas and resolutions are issued in the name of the Council during its Ordinary or Emergency sessions, by virtue of a consensus where possible, or by absolute majority. A member who has objections or reservations to the Fatwa has the right to record his reservation according to what is customary practice in Fiqh councils.

According to the Constitution, the President and members of the Council may not issue fatwas in the name of the Council without its approval. However, each member may issue a fatwa with his personal endorsement without mentioning his status within the Council nor using the official letterhead of the Council.

- **Membership of the Council** The Constitution decreed that the following conditions must be fulfilled by each member:

1- To be of appropriate legal (sharia) qualification at university level, or to have been committed to the meetings and circles of scholars and subsequently licensed by them, and to be of sound Arabic language.

2- To be of good conduct and commitment to the regulations and manners of Islamic Sharia.

3- To be resident of the European continent.

4- To enjoy the knowledge of legal jurisprudence (fiqh) as well as awareness of current environment.

5- To be approved by the absolute majority of members.

The Constitution also stated that the members of the Council may select a number of scholars who do not normally reside in Europe but who otherwise fulfill the conditions of membership, to become members of the Council, given that their selection is approved by the absolute majority of members. Such members must not constitute more than 25% of the total members of the Council at any one time.

In selecting members to the Council, the representation of European countries with significant Islamic presence is to be taken into consideration as well as their representation of the various jurisprudence schools (mathahib). In approving a nomination for new membership, the recommendation of three trusted scholars is to be sought.

- **Periodical Meetings of the Council** The Constitution states that the Council shall hold an Ordinary session once every year to discuss the studies and research presented in relation to various matters of concern to the Muslim community in Europe. The Council shall also endeavour to answer any questions which have been submitted and require collective deliberations. The Constitution also gives permission to invite the expert contribution of various specialized individuals, and request their attendance of the sessions in which their field of expertise is discussed, without having the right of voting.

Since it was established and up to the date of publishing this Introduction, the ECFR has

convened three sessions:

The First Session, in Sarajevo, Bosnia between 24-26 Rabi'i Al-Thani 1418AH, 28-30 August 1997. This session was hosted by the Honourable Mustafa Cerić, Head of Bosnian Scholars.

The Second Session, in Dublin, Ireland, between 19-21 Jumada Al-Akhira 1419AH, 9-11 October 1998, hosted by Al-Maktoum Charity Organisation in the Islamic Cultural Centre.

The Third Session, in Cologne, Germany between 4-7 Safar 1420AH, 19-22 May 1999, hosted by Milli Gurus.

The Fourth Session, in Dublin, Ireland between 18-22 Rajab 1420 AH, 27-31 October 1999, hosted by Al-Maktoum Charity Organisation in the Islamic Cultural Centre.

The Fifth Session, in Dublin, Ireland between 30 Muharram – 3 Safar 1421AH, 4-7 May, 2000, hosted by Al-Maktoum Charity Organisation in the Islamic Cultural Centre.

The Sixth Session, at the newly approved Council Head Quarters in Dublin, Ireland between 18 Jumada Al-Ula and 3 Jumada Al-Akhir 1421 AH, 18 August and 1 September 2000.

The Seventh Session, at the Council Head Quarters in Dublin, Ireland between 29 Shawwal and 4 Dhul Qi'da 1421AH, 24-28 January 2001.

The Eighth Session, in Valencia, Spain between 26 Rabi' Thani to 1 Jumada Al-Awwal 1422AH, 18-22 July 2001.

The Council, during these sessions, discussed a number of major issues and matters of concern to Muslims in Europe, and also responded to a number of questions which had arrived to the Council.

- **Sub-Committees for Fatwa in France and Britain:**

Due to the lengthy recess of the Council, as well as its heavy workload during sessions, and due to its desire to respond to as many questions submitted as possible, it agreed in its Second Session, to establish 2 sub-committees for Fatwa; one in France and another in the UK. Both Committees have started practicing their respective responsibilities since then. The Council also established a Research and Studies Committee which was assigned the task of publishing the Council periodical and also collects and submits all studies and papers relevant to the issues being deliberated by the Council in order to assist it in reaching the most appropriate resolutions.

Allah alone is the provider of success and support.

Sheikh Hussein Mohammed Halawa General Secretary of ECFR

D) The Members of the European Council for Fatwa and Research

Source: www.e-cfr.org

1. Professor Yusuf Al-Qaradawi, President of ECFR (Egypt, Qatar)
2. Judge Sheikh Faisal Maulawi, Vice-President (Lebanon)
3. Sheikh Hussein Mohammed Halawa, General Secretary (Ireland)
4. Sheikh Dr. Ahmad Jaballah (France)
5. Sheikh Dr. Ahmed Ali Al-Imam (Sudan)
6. Sheikh Mufti Ismail Kashoufi (UK)
7. Ustadh Ahmed Kadhemi Al-Rawi (UK)
8. Sheikh Ounis Qurqah (France)
9. Sheikh Rashid Al-Ghanouchi (UK)
10. Sheikh Dr. Abdullah Ibn Bayya (Saudi Arabia)
11. Sheikh Abdul Raheem Al-Taweel (Spain)
12. Judge Sheikh Abdullah Ibn Ali Salem (Mauritania)
13. Sheikh Abdullah Ibn Yusuf Al-Judai, (UK)
14. Sheikh Abdul Majeed Al-Najjar
15. Sheikh Abdullah ibn Sulayman Al-Manee' (Saudi Arabia)
16. Sheikh Dr. Abdul Sattar Abu Ghudda (Saudi Arabia)
17. Sheikh Dr. Ajeel Al-Nashmi (Kuwait)
18. Sheikh Al-Arabi Al-Bichri (France)
19. Sheikh Dr. Issam Al-Bashir (Sudan)
20. Sheikh Ali Qaradaghi (Qatar)
21. Sheikh Dr. Suhaib Hasan Ahmed (UK)
22. Sheikh Tahir Mahdi (France)
23. Sheikh Mahboub-ul-Rahman (Norway)
24. Sheikh Muhammed Taqi Othmani (Pakistan)
25. Sheikh Muhammed Siddique (Germany)
26. Sheikh Muhammed Ali Saleh Al-Mansour (UAE)
27. Sheikh Dr. Muhammed Al-Hawari (Germany)
28. Sheikh Mahumoud Mujahed (Belguim)
29. Sheikh Dr. Mustafa Ciric (Bosnia)
30. Sheikh Nihad Abdul Quddous Ciftci (Germany)
31. Sheikh Dr. Naser Ibn Abdullah Al-Mayman (Saudi Arabia)
32. Sheikh Yusf Ibram (Switzerland)

E) Recommendations of ECFR issued in its second and third Ordinary Sessions

English Translations of Arabic Texts provided by the ECFR (www.e-cfr.org)

The Final Statement of the Council's second ordinary session, which was held in Dublin, Ireland, contained a number of recommendations and advice which are of concern to Muslims living in the West. These were reaffirmed and reiterated in the Final Statement of the third ordinary session which was held in Cologne, Germany. The text of these recommendations is as follows:

The Council wishes to take this opportunity to confirm to all Muslims its advice issued in its previous session and to forward the following recommendations:

- To preserve their Islamic identity and Character by abiding by the laws of their Lord in terms of what He Almighty, has commanded and prohibited and in terms of what He Almighty allowed and what He Almighty deemed forbidden, regarding all matters of worship, dealings, mannerisms, food and drink, family and social relationships and beautiful dealing with others.
- The Council encourages the Muslim community in Europe to exercise every possible effort to secure recognition for Islam. Muslims are also encouraged to seek their rights to arrange their affairs in compliance with their faith. For this very reason, the Council urges Muslims in the West to establish judicial bodies to preside over their personal status and religious affairs. Due respect, however, should be paid to the host European nations' laws and regulations.
- The Council urges Muslims to hold tight to Qura'n and Sunnah as well as the general consensus in all aspects of their lives. Conscious attention should be made to Quranic and prophetic texts which make it obligatory on Muslims to respect and fulfil the pledges they made on their entry to the respective European countries, as Allah (SWT) says: "*And fulfil (every) engagement for (every) engagement will be enquired into (on the Day of Reckoning)*" (17:34)

Amongst the pledges and promises that should never be broken are the following:

- The belief that the lives and properties of non-Muslims are haram (sacred) and therefore must not be abused, violated or breached.
- Laws and regulations of the hosting countries should be abided by since these countries have been in fact providing shelter, protection and sustenance to all those who live on their lands. Allah (SWT) says: "*Is there any Reward for Good other than Good*" (55:60).
- Muslims must not, under any circumstances, abuse the respective social benefit systems, nor should they apply for benefits for which they do not qualify.
- Muslims are advised to spend their utmost to raise their children in an Islamic environment by means of establishing Islamic schools, educational and recreational centres where youngsters can meet and where their unique, independent character can grow safely and properly.
- Muslims are urged to hold steadfast to the rope of Allah and show tolerance and acknowledgement to others. However, whenever an issue of contention is debated or discussed, genuine understanding, moderation and self-restraint should always be practiced and implemented.
- Fanatic allegiance to one opinion and the total rejection of others does no good to the cause of Islam other than to portray Muslims as uncivilised bigots. This misrepresents the pristine image of Muslims and supplies others with live ammunition to attack Islam, heighten their hatred, and enhance, substantiate and justify their prejudices.

F) The most prominent resolutions issued by the ECFR during its Third Ordinary Session

English Translations of Arabic Texts provided by the ECFR (www.e-cfr.org)

1- The appointment of lunar months, particularly Ramadhan for the benefit of fasting and Shawwal for the benefit of break-fast, and whether Astronomy has any say in this matter.

The Council, having examined the forwarded papers and debated this matter at length and in great detail, reached the following resolution: The beginning of Ramadhan and Shawwal is decided as a result of viewing, either by the naked eye or by means of observatories, when made in any Islamic country by sound legal means, in accordance to the holy prophetic saying in the authentic hadith: "*When you see the crescent begin your fasting and when you see it again break your fasting*", and in another: "*Fast when you see it (the crescent) and break your fast when you see it (the crescent)*". This is on condition that the firm scientific astronomical calculations do not contradict the possibility of such sighting in any country. If these calculations rule out the possibility of sighting, however, the sightings of individuals are rejected and refused as they may have occurred out of mistake, imagination or even a false and untrue claim. Moreover, the testimonies of individual witnesses constantly carry the element of imperfection, whilst astronomical calculations are sound and unequivocal, and the scholars have agreed that what is imperfect does not stand up to nor overtake what is deemed firm and sound.

The Council also affirms that by astronomical calculations, by no means is it referring to the prohibited and outlawed astrology, nor is it referring to the various calendars which have become widespread throughout Islamic countries, as many may believe. Rather, we mean by astronomical calculations, the fruits of the modern science of astronomy which is built upon sound arithmetic and scientific bases, which has advanced enormously and helped man to reach the moon and other planets, and in which Muslim scientists all over the world, have excelled.

2- The legal decision in regards with meat and poultry products sold by non-Muslims in Europe.

The Council discussed this matter at great length acknowledging that it is a matter which has created great concern and debate amongst Muslims. The Council concluded that it is necessary for Muslims to abide by the conditions of slaughtering according to the Islamic Shari'a, so that they please their Lord and that they protect their identity from compromise and external threats as well as to protect themselves from consuming what is illegal and forbidden.

Having examined the various methods of slaughter, many of which consist of various illegal acts which lead to the death of a large proportion of animals, particularly chicken, The Council decided the illegality of consuming the meat of chicken and cows, whilst the meat of lamb, sheep and calves is allowed as the method of slaughtering these in many countries does not contradict the methods decided by the Islamic Shari'a. The Council hereby recommends to all Muslims that they establish their own slaughter houses so that they may fulfill this important need whilst protecting their religious and cultural identity. The Council also calls upon the Western governments to recognise the religious aspects of Muslims, including enabling them to slaughter according to Islamic Shari'a, similar to other religious communities and groups such as the Jews. The Council also calls upon the Islamic countries to import meat which has been slaughtered according to the Shari'a and which are supervised and administered by the trusted Islamic centres throughout the West.

3- The Combination of Maghrib and Isha'a prayers due to the belated entry of Isha'a time or the disappearance of its legal signs in some countries.

The Council concluded that it is permitted to combine these two prayers in Europe during Summer when Isha'a enters around midnight, or the signs of Isha'a disappear totally, so that Muslims do not face difficulty which was lifted from upon them by virtue of the Holy Quran. This permission is also due to the hadith of Ibn Abbas in Sahih Muslim: " The Prophet peace be upon him, combined the Dhuhr and Asr prayers and Maghrib and Isha'a prayers when he was not in a state of danger and when there was no rain. Ibn Abbas was asked: Why did he do so? He replied: He wanted to lift the difficulty from upon his Umma".

In the same respect, it is also permitted for a Muslim to combine Dhuhr and Asr prayers in these countries during Winter when the day is very short and it becomes increasingly difficult for employees to pray each in its own time. The Council, however, warns Muslims against combining the said prayers without the actual need to and against making this permission a constant habit.

4- Performing Friday prayer before Dhuhr (zawal) or after the entry of Asr.

The Council concluded that the correct and agreed upon time for Friday prayer (Juma'a) is after the entrance of Dhuhr (zawal) and before Asr, and it is upon the Imams to leave the controversial rulings to what is agreed upon whenever possible. However, should this contradict the circumstances of Muslims in some areas or at certain times or in certain circumstances, it is permissible to take the opinion of the Hanbali school that Friday prayer may be performed before Dhuhr (zawal). Alternatively, one may take the opinion of the Maliki school that Friday prayer may be performed during Asr, considering the difficulty to perform it during its proper time.

5- The collection and distribution of Zakat by the various charity organisations.

The Council examined this issue and concluded that it is allowed for charity organisations to collect Zakat from its holders and subsequently distribute it amongst the eight ways of spending zakat, or those available at least. This is further emphasised due to the need for Muslims to organise their lives even if they were only three, as mentioned in the Hadith: "If you were three in travel, choose one of you to become your leader". Moreover, this act is an implementation of the order of Allah that Muslims co-operate in all that is good and pious. The action of collecting and distributing Zakat is also one that enforces a major pillar of Islam which is not restricted in any way by the presence or absence of a Caliph, in accordance with the statement of Allah Almighty in the Holy Quran: "and fear Allah to the extent of your ability", and the hadith: "If I order you to something, do as much of it as possible". Therefore, if we find ourselves unable to establish the Caliphate whilst managing to perform other obligations and duties, we must do so as commanded by Allah Almighty and his Prophet peace be upon him, as it is also important to realise that the lifting of some obligations does not mean the lifting of all.

It is also significant to note that the Muslims during the Meccan era, were obliged to pay Zakat, as testified by the various verses in the Meccan chapters of the Holy Quran, despite the fact that the Islamic state of Madinah was yet to be established (The precise amounts and measures of Zakat as we know it today was established and decreed in Madinah).

G) SELECTION OF ECFR FATWAS FROM FIRST AND SECOND COLLECTIONS

English Translations provided by the ECFR (www.e-cfr.org)

Non-edited by the author

FIRST COLLECTION OF FATWAS

Fatwa (1)

Q) Could the Honourable scholars, members of the ECFR give us their Fatwa on whether it is permissible for a Muslim to settle and reside permanently in non-Muslim countries. We would be grateful if the answer was supported by evidence from the Holy Quran, the Prophetic heritage (Sunna) and the statements of scholars and individuals of knowledge.

A) The issue of a Muslim's permanent residence in non-Muslim countries is one which has been discussed and debated at length. We have heard extremely strict views which call for all Muslims to leave these countries immediately, based upon a Hadith which decrees the disownment of all Muslims who live amongst non-Muslims (Mushriks), the meaning and degree of authenticity of which will be discussed later. However, it remains that these views caused great difficulty and inconvenience for many Muslims.

Our opinion is that a Muslim must never live amongst non-Muslims whilst compromising or even discarding his or her Islamic identity, unless that individual is one who is entirely overpowered and has no other option to choose. The reason for this is based upon the issue of whether or not the Muslim individual is able to protect himself, his religion and that of whomever he is responsible for, i.e. his wife and children. Therefore, if the environment in which the Muslim finds himself is one which threatens his life, religion and those for whom he is responsible for; it is upon him to migrate to a land which does not pose such a threat, as it is unlawful for him to remain in an environment which threatens his life and religion.

Allah (swt) states in the Holy Quran:

"When angels take the souls of those who die in sin against their souls, they say: In what plight were you? They replied: Weak and oppressed were we in the earth. They say: Was not the earth of God spacious enough for you to move yourselves away from evil? Such men will find their abode in Hell; what an evil refuge! Except those who are really weak and oppressed - men, women and children, who have no means in their power, nor a guide-post to direct their way. For these, there is hope that God will forgive: For God does blot out sins and forgive again and again. He who forsakes his home in the cause of God, finds in the earth many a refuge; wide and spacious: should he die as a refugee from home for God and His apostle, his reward becomes due and sure with God: and God is oft-forgiving, Most merciful" (4:97-100).

This verse clearly states that it is an injustice for one to accept living under conditions of humiliation, whilst possessing the ability to move to another land which offers freedom, security and means of a dignified life. The only group of people excused from this judgement are those who possess no such power nor means of deciding such matters. Thus, a migration is correct, in fact compulsory, if the destination allows the Muslim more means of performing religion than the land of origin. The migration of the weaker Muslims of Mekka to Abassynia (Al-Habasha) with the permission of the Prophet (peace and prayers of Allah be upon him), is a worthy example. Those Muslims were told to migrate from an environment of infidelity and injustice to another non-Muslim land, but which offered those who lived on it justice and security. The Muslims lived among Christians who treated them well and therefore managed to preserve their religion and to save their lives, until the day came when Allah (swt) supported his Prophet and bestowed upon the Muslims victory over the enemies of Islam. Only then did they migrate to Madina, and when they did so, they did it by virtue of their own will and not by any command or order of the Prophet (ppbuh).

Therefore, the issue here is the ability to maintain one's religion as well as to preserve and protect lives from death, injustice and oppression. It is lawful for one to find such a safe refuge in non-Muslim countries, as did the earlier Muslims who migrated to Abassynia (Al-

Habasha). As for the Hadith used by those who adopt strict views in this regard; it is the one narrated by Jareer Ibn Abdillah Al-Bojali, who stated that : "The Messenger of Allah (ppbuh) sent a battalion to the tribe of Khuth'um. Some members of the tribe sought salvation in performing prostration (Sujood). However, the battalion rapidly killed them. When the Messenger of Allah heard of the news, he ordered their families to be paid half the amount of blood money (Diyya) and said: I disown all Muslims who live amongst Mushriks. His companions asked: Why is that, O Messenger of Allah? He replied: You could not distinguish the Muslim from the non-Muslim".

This is a false Hadith.¹ However, even if it was actually proved to have been stated by the Prophet (ppbuh); its context explains the judgement given by the Prophet, i.e. that people who had declared Islam chose to remain amongst their non-Muslim tribe rather than migrate to the land of Islam. When battle broke out between the Muslims and their tribe, the battalion could not tell the Muslims from the non-Muslims. Therefore, the disownment declared by the Prophet of these people comes due to the fact that if they were killed, it was simply because they couldn't be distinguished from the non-Muslims, and that the battalion did nothing wrong. This issue does not exist in our time and therefore, applying this Hadith is entirely inappropriate. It is also a grave distortion of proper understanding to use a segment of the Hadith rather than mention the entire Hadith and appreciate its full meaning and implications. We ask Allah Almighty to guide us to the truth and perfection.

Fatwa (3)

Q) I am a young Muslim who arrived in Germany as an obedient Muslim and remained so for many years. However, I then strayed from the pure path and committed adultery many times with a girlfriend. I kept descending down the path of immorality and wrong-doing until I drank alcohol. However, since the beginning of the month of Ramadhan, I have made a decision to repent and to return to the ways approved by Allah (swt). Till now, Allah has helped me to remain obedient and I ask Him that my repentance is pure and sincere. I now wish to cleanse myself from the filthiness which I indulged into, and I only wish for a Muslim Caliph to perform the punishment decreed by Allah (swt) upon me, so that my body and soul may be truly cleansed and purified. I feel anxious that I have committed adultery many times and I do not know how to cleanse myself from this sin.

A) We commend your enthusiasm to return to the straight path and pray that Allah accepts your repentance which is, Allah willing, suffice to cleanse you from your sins. Make a resolution not to return to your old ways and Allah will help you to succeed and prosper. However, the punishment is not an obligation upon you and it is enough for you to conceal yourself with the cover offered to you by Allah, so do not talk to anyone about your sins and remain determined to abide by your repentance and return to Allah (swt).

[Second Session]

Fatwa (4)

Q) A newly converted Polish Muslim was asked by a devious atheist about the punishment of whoever reverts from Islam (Al-Murtad), according to Islamic Shari'a. How should he respond, in the light of the common belief that execution in this case represents a clear breach of the freedom to belief and expression?

A) Executing whoever reverts from Islam is the responsibility of the state and is to be decided by Islamic governments alone. Islamic organisations and establishments cannot make such rulings nor can they carry them out. In any case, a considerable number of our predecessors (Salaf) agreed that not all who revert from Islam are to be executed, but rather those who declare their action in public and may cause Fitna by bringing down the name of Allah (swt), His prophet (ppbuh) or the Muslims. The punishment of execution in this case is to protect

¹ Narrated by Abu Dawood (No.2645) and Al-Tirmithi (No. 1604) from the narration of Qais Ibnu Abi Hazem

and preserve the entire nation from the evil that this individual will undoubtedly bring, and is not a case of confiscating his or her rights to expression and belief. Indeed, by committing such an act, the individual has transgressed upon the rights of others as well as the entire state and nation, which come before anyone's individual rights. Modern legislation uses the term "Grand Treason" for crimes similar to the act of one who reverts from Islam then announces this in public and wages a campaign against Islam and the entire nation.

Fatwa (5)

Q) Is it obligatory upon a Muslim to follow a particular Fiqh school (Mathab) and to become Hanafi, Shafi'i, Hanbali or Maliki? If so, can one freely chose which school he or she wishes to follow? And what about a woman who is married to a man from a different school; must she follow his school?

A) Following a particular Fiqh Mathab (the famous four or others) is not obligatory from the Shari'a point of view. Indeed any matter is not obligatory unless clearly stated by the Quran or the Sunna, and Allah (swt) and His Prophet (ppbuh) certainly did not command Muslims to follow Imam Abu Hanifa or Malik or any others. The only obligation upon each and every Muslim is to follow the Quran and the Sunna which are the only two false-proof sources which do not err nor misguide. Any other source is subject to debate and discussion.

Indeed, the Imams themselves were reported to have advised their students not to imitate them. However, it is agreed that whoever possesses insufficient knowledge, does not have a Mathab, but rather follows whoever gives him or her the Fatwa and knowledge. Therefore, an individual who has not reached a level of knowledge which allows him or her to evaluate and weigh the evidence of rulings and to compare between them to find the stronger and more solid, does not have a Mathab. This is because choosing a particular Mathab implies that one has compared its principles with the principles of others and has come to the decision that it is stronger than others. This can only be done by a scholar who possesses sufficient knowledge to compare between various rulings and principles, whilst all others follow the Mathab of their scholar. So whenever a matter arises which people do not know the ruling of, the Scholar would tell them what to do according to his knowledge (if he was a scholar) or according to his Mathab if he was a follower of a particular school. The individual who posed the question must then accept the ruling of this scholar, as Allah (swt) stated in the Holy Quran:

"If you realise not, ask of those who possess the Message" (16:43). The Prophet Muhammad (ppbuh) also stated in a Hadith regarding certain people who faced a problem: "Why did they not ask when they failed to know? Indeed the cure of an ignorant person is to ask".² If a Muslim lives in a country where all the scholars follow a particular Mathab, then it is permissible for him or her to follow the common Mathab of the country, as in this case, they would actually be following the Mathab of their scholars as described above. However, it is wrong for one to become fanatical about his or her Mathab and criticise others. One must also desert his or her Mathab in regards with any particular matter, if it becomes clear that the view of their Mathab is weaker, in terms of evidence, than that of others regarding the same matter. This is because a Muslim must always follow the stronger evidence. Imam Abu Hanifa once said: "This is our opinion, but whoever comes with a better opinion, we shall accept that from him". Imam Malik also stated: "Every one says true and false apart from he who is lying in this grave (and he pointed to the grave of the Prophet Muhammad ppbuh)". Imam Shafi'i once stated: "If a Hadith proves to be correct, then take it and discard my opinion". Each Muslim is free to choose any Mathab, which they are convinced is more solid, and it is not obligatory for a son to follow his father nor for a wife to follow her husband in this regard. It is our belief, particularly in regards with new Muslims, that it is much better that they do not follow a particular Fiqh school, as this would cause them great difficulties, whilst Allah has decreed Islam a religion of simplicity. It is sufficient that they have been guided to Islam in all its openness and warmth and there is no sense in leading them to the

² Hadith Hassan (Good Hadith), narrated by Abu Dawood (No. 336,337) Ibnu Maja (No. 572) and others.

tightness and strictness of a particular Mathab. In summary, a new Muslim is not obliged to follow a particular Mathab, but if they do so for one reason or another, then a wife is under no obligation to follow her husband's Mathab.

[First Session]

Fatwa (7)

Q) We are constantly criticised by the Europeans when we demonstrate our loathing of dogs due to their uncleanness and due to our fear that they may touch our clothes. Is there a Fiqh school (Mathab) which states that dogs are clean, so that this difficulty may be lifted from upon us?

A) Yes. The Mathab of Imam Malik Ibnu Anas states that dogs are clean. Hanafis believe that a dog's body is clean and that the uncleanness is restricted to the saliva and its bodily waste.

[Second Session]

Fatwa (9)

Q) We often hear of the death of someone who lives in another country and we are asked to pray Janaza in absentia, seeking the reward of Allah (swt). This used to occur frequently until some brothers objected to this practice stating that the demised had been prayed upon in his country and that the Prophet Muhammad (ppbuh) did not pray twice upon a dead person. Is it acceptable for us to pray Janaza in absentia upon a person who was prayed upon in his own country?

A) All scholars agree that Janaza prayer is to be performed upon a present dead person and that the coffin is to be laid before the Imam and the Muslims present. This was supported by the statements, actions and approvals of the Prophet Muhammad (ppbuh). As for praying upon a dead person who is absent; this is affirmed by virtue of a number of famous authentic Hadiths, such as: "The Prophet (ppbuh) prayed upon Al-Najashi (King of Abassynia) when he died. The Prophet (ppbuh) said: "Today a good man has died in the land of Abassynia, so stand up and pray upon him". Jaber ibnu Abdillah said: "We then stood in lines and the Prophet Muhammad (ppbuh) prayed upon him with us standing behind in lines". In another narration, the Prophet Muhammad (ppbuh) stated: "A brother of yours has died, so stand up and pray upon him".³ The prayer upon the dead is ultimately a supplication and mercy which benefits the demised as well as those still alive, and that is the reason for the Prophet praying upon Al-Najashi. This agrees with the view of the Shafi'is and Hanbalis.

It is wrong to say that the Prophet prayed upon Al-Najashi because no one else did so, because the Hadiths do not state that no one prayed upon him. Indeed the Hadiths clearly stated that the reason for the prayer was that he was a "good man" and no other. It is also correct to pray upon someone who had already been prayed upon. In the authentic Hadith narrated by Yazeed Ibnu Thabit, the brother of Zaid, who said: "We went with the Prophet Muhammad (ppbuh) and when we passed by Al-Baqee' (the graveyard), we saw a new grave had been dug and someone had been buried. The Prophet asked who it was. He was told: a Muslim women called so and so. The Prophet recognised her and said: "Why did you not tell me about her death?". They said: "O Messenger of Allah, you were resting and fasting and we did not wish to trouble you". He (ppbuh) said: "Do not repeat this again. If any one dies whilst I am among you, you must tell me, because my prayer upon them is mercy". He then approached the grave and we lined behind him and then he made four Takbeers (i.e. he performed Janaza prayer)".⁴

Thus, Prophet Muhammad (ppbuh) repeated the prayer upon a Muslim after she had been prayed upon and buried. In summary, it is our view that it is permissible to pray Janaza in

³ Narrated by Al-Bukhari (No. 1257 & 3664) and the first narration is his. Muslim (No.952) and the second narration is his, from the Hadith of Jabir Ibnu Abdillah.

⁴ Narrated by Al-Nasa'I (No.2022) and Ibnu Maja (No.1528) from the Hadith of Yazeed ibnu Thabit, the brother of Zaid ibnu Thabit.

absentia unless it becomes an unbroken habit, which then deems it unacceptable. This is because the Muslim Umma never prayed upon each and every absent person who had passed away, rather they did it when the person was of a certain status and respect in the eyes of the Muslims, such as Al-Najashi who supported and protected the Muslims and the black woman who used to clean the Mosque of the Prophet Muhammad (ppbuh).⁵

We finally, wish to remind all the brothers and sisters that this remains a controversial matter and thus we should refrain from criticising anyone who wishes to choose one view or another. [Second Session]

Fatwa (10)

Q) Are we allowed to collect the Zakat from Muslims residing in these countries and then distribute the money to those in need in the form of regular monthly instalments over the course of the year, rather than as one payment which may probably run out after a short while? In some cases the needy requires the money more urgently in specific seasons rather than equally around the year.

A) Yes, it is permissible to collect Zakat and then give out the collected money in the form of regular installments to those who are eligible, so that these installments are proportionate to their actual needs. Indeed the payer of Zakat himself may do the same if he saw an overall benefit for the person in need. However, in this case, the payer of Zakat must put aside the Zakat money and must not make any personal benefit or gain from it.

Fatwa (15)

Q) A Muslim has recently opened a restaurant in this country and requests to know the following: 1- He noticed that his restaurant had a low turnover due to the fact that he does not sell alcohol. Is it permissible for him to sell these forbidden drinks and then donate its entire revenue? 2- Some customers ask to hire his restaurant to hold parties. The customers then bring their own alcoholic drinks to the party. They do not use any equipment of the restaurant and the owner does not participate in the party. Is this permissible? 3- We heard of a type of Beer which does not contain any alcohol and is sold in some Islamic countries. Are we allowed to buy these drinks? Is it permissible to sell these drinks in this restaurant?

A) 1- Selling alcohol, as well as any other outlawed food or drink, is totally forbidden, even if the merchant refrained from benefiting from their revenue or gave it in donation. One must always fear Allah (swt) in his work and the manner in which he makes his living. Allah (swt) stated in the Holy Quran: *"And for those who fear God, He (ever) prepares a way out. And He provides for him from sources he never could imagine"* (65:2-3). One must also firmly believe that Halal income is blessed, even if small in amount and Haram is cursed. Whoever gains in Haram lives in constant sin unless Allah (swt) chooses to forgive him. 2- There is no objection to hiring your premises as described in the question, as the owner is not responsible for the actions of those who are holding the party. As long as the contract of hire or lease does not involve any Haram in itself, it is not the responsibility of the owner to bear the burden of what the hirer does. 3- All drinks that do not intoxicate are Halal. Therefore, since the drink described in the question does not intoxicate then it is deemed Halal. It has only been given a despised name which is usually used in reference to alcoholic drinks. However, the ultimate decision is not tied to names, but to the essence of matters. Further, what is deemed Halal to drink, is Halal to trade with and sell.

⁵ According to the Hadith of Abu Hureira: "There was a black woman who used to lean the mosque. The Prophet (ppbuh) once noticed that she was absent and asked about her. He was told that she had died. He (ppbuh) said: "Why did you not tell me?". They responded in a way which conveyed that she was of little importance. The Prophet Muhammed said: "Show me her grave", and he prayed upon her. He (ppbuh) then said: "These graves are full of darkness upon those who inhabit them and Allah enlightens them by virtue of my prayer upon them". This Hadith which also came stating that the person who used to clean the mosque and died was a young boy, is agreed upon. Narrated by Al-Bukhari (No. 446,448, 1272) and Muslim (No.956).

[Second Session]

Fatwa (18)

Q) A man used to have a sexual relationship with a woman (either Christian or Jew) without being bound by an Islamic marriage contract. He later entered into marriage with her by virtue of a civil marriage contract, after which they had a baby daughter. He now wishes to ratify an Islamically legal marriage contract. May we write such a contract for this couple? If the answer is yes, what must we do prior to the ratification of the contract?

A) Yes, you may write such a contract that will act as an accreditation to the civil marriage contract which was previously ratified, on condition that the civil contract has fulfilled all legal requirements. The contract that you will write, must be dated similarly to the civil contract. It is preferable to have witnesses to testify to the correctness and authenticity of the contract. There is no need to renew the civil contract of marriage if it has fulfilled all legal requirements. Before the contract is made, you only have to remind the couple of Allah (swt) and to ask for His forgiveness for what they committed prior to the civil marriage contract being ratified.

Fatwa (21)

Q) If a woman wanted to cut her hair, should she seek the permission of her husband?

A) There are types of hair trimming which the woman does from time to time and which a husband may not even notice due to the very slight alteration being made. Women usually do this so that their hair does not become so lengthy as to become difficult to manage. This form of hair shortening does not usually require the permission of the husband. However, there are forms of hair shortening and alteration, which completely change the appearance of the woman, which may surprise the husband if he wasn't consulted. This form of alteration requires the agreement of the husband and wife so that their relationship is not affected by this radical change in the woman's appearance. Due to the fact that a Muslim woman does not show her hair in public nor in front of foreign men, it becomes true that the husband has the foremost right to enjoy his wife's hair. A wise woman would make sure to pursue all means of maintaining love and affection between herself and her husband, ultimately leading to good Muslim households becoming the real basis of good Muslim societies.

[First Session]

Fatwa (22)

Q) I would like to know how much money I should pay for the abortion of an unborn baby before it became 120 days old. The reason for the abortion was because it was causing tremendous psychological pressure upon the mother who is a medical student, and who felt that she would never be able to cope with her studies whilst bringing up a child. The abortion was done because we felt that this was sufficient justification. However, the mother now feels great regret, particularly since she learnt that Islamic Shari'a forbids abortion even at the very early stages of pregnancy.

A) Indeed, abortion is forbidden in Islam Whether it be in the earlier stages of pregnancy or otherwise. The extent of sin incurred varies according to the stage of pregnancy, so that less sin would incur if the abortion took place during the early stages, whilst it becomes increasingly Haram as the pregnancy advances. When the pregnancy reaches 120 days old, abortion becomes totally forbidden and is deemed a form of murder that results in compensation becoming liable. This compensation is equal in value to 213 grams of gold, and is given to the inheritor who did not participate in the abortion. The only condition where abortion is allowed, is when there is an actual threat to the life of the mother confirmed by an official medical report that if the pregnancy advances any further, the mother may die.

Returning to the question: since the abortion was done before the pregnancy was 120 days

old, then no compensation is liable. However, it remains a sin which one should ask forgiveness for and promise never to commit again. If the mother wishes to give in charity besides all this, then that is even better. Allah (swt) said in the Holy Quran:

"Verily, the good deeds omit the bad deeds" (11:114).

[Second Session]

Fatwa (23)

Q) Does the woman have the right to rest for a period of time after giving birth (postpartum period), or is she also obliged to carry out the duties of receiving guests who come to congratulate on the birth of the new baby?

A) Allah Almighty knew beforehand that labour is a tiring and exhausting experience for the woman. He (swt) stated in the Chapter of Ahqaf:

"His mother bears him with hardship and she brings him forth with hardship" (46:15). For this, Allah (swt) excused the woman during this period from performing two main pillars of Islam: Prayer and Fasting, the difference between them being that prayers are not to be compensated whilst fasting must be compensated after this period passes by. The postpartum period (Al-Nifas) is that during which the woman bleeds as a result of giving birth and its rulings are identical to that of menstruation. From this we deduce that Allah Almighty considered the woman to be in a condition which requires rest and exemption and we see that Allah (swt), by His grace and mercy, treated this condition as though a form of illness. It is natural to let the woman rest during this period and to relieve her from all duties and responsibilities which cause her difficulty. Indeed, the custom in Islamic countries is for the woman who has just given birth to be served and looked after until her full health returns to her and she is fully recovered. However, a woman who lives in a foreign country finds herself in a position where she must help herself and look after her children and household. In this situation, her duties must be reasonably set and guests and well-wishers must not over-burden such woman by compelling her to serve them beyond her ability, as Allah (swt) does not compel a soul but with what is within its ability. In addition, husbands must not force their wives, who are going through such a period, to perform difficult and exhausting duties. Allah Almighty stated: *"Allah intends for you ease, and He does not want to make things difficult for you"* (2:185).

The Prophet Mohammed (ppbuh) stated: "Makes things easy and do not make them difficult and bring glad tidings and do not be deterrents".⁶ He (ppbuh) also stated in another Hadith: "Verily, you have been sent to bring ease and have not been sent to bring difficulty"⁷. Finally, this matter is governed by good taste, beautiful behaviour and fine mannerisms.

[First Session]

Fatwa (25)

Q) Can a husband prevent his wife from attending Islamic women gatherings?

A) The problem with many Muslims who lack sufficient Islamic knowledge is that they impose their own moods, mentalities and personal views upon Islam. Therefore, we often find someone who is rough and merciless, treating those around him; including his wife and children, in a very aggressive and rough manner and may go to lengths of claiming that this is part of Islam.

This also includes the view of some men towards women. This view is often very radical and narrow and is characterised by the man's wish to control his wife as well as his ill-perception of her. Those men may come from environments which look down upon women and believe that they were created for the sole purpose of serving man and fulfilling his sexual needs. It is unfortunate that many of those men have had the opportunity to observe other societies and

⁶ Agreed upon, from the Hadith of Anas ibnu Malik, Narrated by Al-Bukhari (No.69 & 5774) and Muslim (No. 1734)

⁷ Narrated by Al-Bukhari (No.217 & 5777) from the Hadith of Abu Hureira.

cultures and have gained in knowledge; many may hold Masters and Doctorate degrees, others may be scientists, engineers, economists or administrators, yet they fail to change and they fail to advance in that respect. It is a fact that no religion honoured women as Islam did. Islam honoured and elevated the status of the woman as a human being; as a female; as a daughter; as a wife; as a mother and as a member of society. Is it not suffice that Allah (swt) stated in the Holy Quran:

"So their Lord accepted of them their supplication: Never will I allow to be lost the work of any of you, be he male or female; You are one of another" (3:195)? The meaning of "one of another" is that the man complements the woman and the woman complements the man, and that one cannot do without the other and therefore, they equally carry the burden of duties and responsibilities. Allah Almighty Stated in the Holy Quran:

"Verily the Muslims, men and women, the believers, men and women, the men and the women who are obedient to Allah, the men and the women who are truthful, the men and the women who are patient, the men and the women who are humble, the men and the women who give in charity, the men and the women who observe fasting, the men and the women who guard their chastity and the men and the women who remember Allah much with their hearts and tongues; Allah has prepared for them forgiveness and a great reward" (33:35).

This also implies that man and woman are partners in critical social duties and obligations such as enjoining good and forbidding evil. Allah (swt) stated: *"The believers, men and women, are supporters and protectors of each other: they enjoin good and forbid evil" (9:71).* The Prophet Mohammed (ppbuh) said: "Women are the complimentary halves of men".⁸ He (ppbuh) also said: "Do not prevent women from attending mosques"⁹, as mosques were the only means of the time of the Prophet Mohammed (ppbuh) for women to learn, increase their knowledge in Islam and to observe the congregational (Jama'a) and Friday prayers, as well as to get to know their good sisters. The example of the mosque in our days is the Islamic meetings which give women the chance to increase their Islamic knowledge and awareness, to participate in active Islamic work and to get to know and co-operate with the sisters who work for Islam. All this are compulsory activities upon all Muslims, whether they be men or women, otherwise, Islam would definitely recede and go into decline. This becomes more of an obligation when we learn that enemies of Islam work day and night and employ men and women of all sorts to isolate Islam from the reality of society and to promote ill-thoughts, views, cultures and ideas within the Muslim society.

However, this woman's activity must never transgress over the rights of her husband and children, as it is only fair that each receive their due attention. In addition, whilst Islam gave the husband the right to govern and rule the household; he must not abuse this authority and prevent members of his family from exercising their respective rights and freedoms, as Islam prevents harm to be caused or to become.

[First Session]

Fatwa (30)

Q) Is it compulsory upon a husband (father) to attend educational courses which teach how to solve children's problems?

A) Such matter is not compulsory from the Islamic point of view, especially that such courses or seminars are countless and vary in topic. For example a course may be held to solve the problem of arrogance and another to solve speech problems and a third to deal with late walking and so on. However, both mother and father are obliged to seek answers to the problems which their children suffer from, whether this be through attending courses or otherwise, such as reading and learning by various means. They may choose to do so by listening to radio or TV programs, by attending lectures and speeches or by gaining

⁸ A good Hadith, narrated by Ahmed (6/256), Abu Dawood (No.236) and Al-Tirmithi (No.113) from the Hadith of Aisha. Ahmed also narrated (6/377) from the Hadith of Ummu Suleim. Addarmi (No.764) narrated from the Hadith of Anas ibnu Malik.

⁹ Agreed upon from the Hadith of Abdullah ibnu Omar, narrated by Al-Bukhari (No.858) and Muslim (No.442).

experience from experienced mothers and fathers. The parents must also co-operate to bring up their children in a good manner, in order to fulfil their trust in this respect. Allah (swt) stated:

"O you who believe! Ward off from yourselves and your families a fire whose fuel is men and stones" (66:6). The Prophet Mohammed (ppbuh) stated: "All of you are shepherds and are responsible for your herds...and a man is a shepherd in his household and is responsible for his herd and the woman is a shepherd in her husband's house and is responsible for her herd".¹⁰

[First Session]

Fatwa (31)

Q) Is it permissible for a Muslim husband to completely prevent his Muslim Western wife from visiting her Christian parents? Is he allowed to allow her to visit them sparingly? Does Islam prefer for one who embraces it to sever ties with his or her family and blood relations?

A) It is unlawful for a Muslim husband to prevent his wife from visiting her Christian parents, because as a Muslim, she is commanded to be devoted and of good company to them. Indeed this matter was mentioned immediately after the command to worship Allah Almighty alone and none other (monotheism). He (swt) stated: *"And your Lord has decreed that you worship none but him, and that you be dutiful to your parents" (17:23).*

This verse clearly affirms that the greatest rights of human beings after the right of Allah (swt) is that of the parents. Islam did not prevent Muslims from being dutiful to their non-Muslim parents even if they practised polytheism (Shirk). Islam didn't prevent Muslims from doing so even if the parents tried to force their children to leave Islam and enter into ignorance and Shirk. Allah (swt) stated:

"And We have enjoined on man to be dutiful and good to his parents. His mother bore him in weakness and hardship upon weakness and hardship, and his weaning is in two years - give thanks to Me and to your parents; unto Me is the final destination. But if they strive with you to make you join in worship with Me others that of which you have no knowledge, then obey them not, but behave with them in the world kindly" (31: 13-14).

In this verse, Allah (swt) ordered that their call to polytheism be rejected, but also ordered that one behaves kindly with his or her parents at all times. It is also narrated that Asma'a, the daughter of Abi Bakr, came to the Prophet Mohammed (ppbuh) after the Treaty of Hudaibiyah and asked him: O Messenger of Allah! My mother has come to visit me and she is a Mushrik; shall I make contact with her, be kind to her and give her some money? He (ppbuh) said: Yes. Be dutiful to your mother"¹¹. Some scholars said that this incident was the reason for the revelation of the Quranic verse:

"Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily Allah loves those who deal with equity" (60:8). Islam also decreed also that the non-Muslim parents actually receive a bequest (a will) from their Muslim children, as appears from the verse:

"It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents and next of kin, according to reasonable manners. This is a duty upon the pious" (2:180). It is well known that a bequest cannot be made for the Muslim parents, because they are actual inheritors and an inheritor must not be left a bequest. Therefore, the reference in this verse is to the non-Muslim parents and next of kin, because their status as non-Muslims does not annul their status nor their rights as parents or relatives. Allah (swt) stated:

"And fear Allah through Whom you demand your mutual rights and do not sever the relations of the wombs" (4:1). Islam considered relationship by marriages one of two natural forms of relationship between people; the other being natural blood descendants. Allah (swt) stated:

¹⁰ The profile of the Hadith was mentioned in the commentary to Fatwa (26)

¹¹ Agreed upon. Narrated by Al-Bukhari (No.2477) and Muslim (No.1003)

"And it is He Who created man from water, and has appointed for him kindred by blood and kindred by marriage" (25:54). Thus, it would be unlawful to reject or disregard such instinctive relationship. It is upon the husband to strengthen his ties with his wife's relatives, particularly her parents. He must do his best to be good to them and to become close to them even if they were non-Muslims, as this will make him in a position to bring them closer to Islam. Indeed, Islam spread by virtue of good mannerisms and dealings with others. A husband must never prevent his wife from being good to her parents, whether Muslims or otherwise. In fact he must encourage her to visit them and should accompany her as well as invite them to visit his house, as all this fulfils the requirements of kinship decreed by Allah (swt). The husband must also remember that his wife's parents are his children's grandparents and her brothers and sisters are their uncles and aunts, and that all of them have rights of kinship. It is often that we see the effects of good manners and behaviour on others. Indeed many embraced Islam simply because of the beautiful way in which true Muslims treated them. We unfortunately, also see how ill-treatment and bad manners cause people to hate Islam and Muslims. What great reward will come unto he or she who cause good and prevent evil, and what great punishment will come unto he or she who cause evil and prevent good.
[First Session]

Fatwa (38)

Q) Is a woman allowed to ride a bicycle? What about teenage girls who may lose their hymen in the process?

A) Riding a bicycle or car or any other form of transportation is permissible in itself. The Arab woman during the days of ignorance as well as Islam used to ride camels. The Prophet Mohammed (ppbuh) said: The best of women who rode camels are the women of Qureish; they are the most merciful with their children and the most considerate with their husbands' wealth"³⁰.

However, a woman must abide by Islamic mannerisms when riding a bicycle, such as wearing appropriate Islamic dress and avoiding physical contact with men. As for the possibility of teenage girls losing their hymen; it is important to examine such possibility. If it remains a rare occurring, then Islam has decided that a rule cannot be based upon a rarity.

However, if it is likely that the girl will indeed lose her hymen if she rides a bicycle and no measures can prevent her from doing so, then the Muslim girl ought to be stopped from this, so that people do not think ill of her and that she is not accused of what she has not committed. However, if riding a bicycle is an actual need for the girl, for instance to get to her school or important work, etc., then it remains that necessities make prohibitions permissible. Allah (swt) stated:

"But if one is forced by necessity without wilful disobedience nor transgressing due limits, then there is no sin on him. Truly, Allah is Oft-Forgiving, Most Merciful" (2:173)

[First Session]

Fatwa (41)

Q) What is the legal (Shari'a) ruling on masturbation as an act which prevents one from falling into and committing fornication (Zina)?

A) Masturbation is an unpleasant action and contradicts good and proper taste and manners. Scholars differed over the ruling on masturbation, as some said it was entirely forbidden (Haram), others said it was detestable (Makrooh) entirely without any sin being born by the person whilst others said that it is Halal when one fears that he may fall into fornication otherwise. Indeed some said that it is obligatory if one felt that it stops from committing Zina, according to the principle of preventing the greatest harm with the least.

We are of the opinion that it is detestable without any sin being born by the person, particularly in the case of those who live in immoral and promiscuous countries. We base our opinion of it being detestable (Makrooh) that Islam guided us to ways to protect ourselves from Zina, i.e. marriage, fasting or patience and forsaking for Allah (swt). Islam did not

mention masturbation as a proper form of prevention from Zina. As for our opinion that the person committing this act does not bear any sin; because the legal evidence did not clearly state it being Haram. This was merely understood from the verse in the Holy Quran:

"who abstain from sex" to the verse: "But those whose desires exceed those limits are transgressors" (23:5-7). This verse does not offer a clear ruling that masturbation is Haram, and all Hadiths that are related to this effect are inauthentic, especially that a number of great scholars stated that it was permissible, such as Ibnu Abbas, Al-Hassan Al-Basri, Ahmed Ibnu Hanbal, Ibnu Hazm and others³¹.

However, if the person's sexual arousal became so great as to prevent him from thinking of anything else and made him anxious, whilst being unmarried or away from his wife, and felt that masturbation would allay these anxieties, then he may do so without it being a detestable act. However, one must never make this a habit which may then become an illness to the extent where he would even refrain from approaching his own wife. One must also remember the importance of seeking the legal methods of alleviating this problem, such as marriage, fasting or patience in the way of Allah (swt).

[Second Session]

Fatwa (42)

Q) Is it permissible for a Muslim to participate in the council elections in a European country, or to vote for a non-Muslim party which may not serve the interests of Muslims?

A) This matter is to be decided by Islamic organisations and establishments. If these see that the interests of Muslims can only be served by this participation, then it is permissible on condition that it does not involve the Muslims making more concessions or losses than gains.

[Second Session]

Fatwa (43)

Q) I work as a Doctor in a British hospital. I am often asked to sign a declaration stating the absence of any radio-active matters in the bodies of deceased, so that their families may cremate (burn) them. I am paid for such an endorsement, but I can live without this extra money which I gain, by the grace of Allah Almighty. It is also easy for me to transfer this task to any other doctor who would be more than happy to make this declaration for some extra money. Does Islam prohibit me from signing this declaration?

A) If the Muslim doctor realised after examining the body, that it contains no radio-active matters, he or she may sign such a declaration. This is because it is merely a statement to a true fact and because one should not refrain from making a testimony if he or she were invited to do so. This is even more emphasised due to the fact that other doctors may race to make such declarations for financial gain even without making due investigations.

We do not see any sin being born by the Muslim doctor in such case, because it is not his or her responsibility what the family of the deceased do with this declaration, nor are they responsible for the actions or beliefs of others. Indeed, the Muslims ruled India for a long time, but we do not hear that they prevented the Hindus from burning the bodies of their dead. This is similar to the status of Jews and Christians who lived within the Islamic state and practised their religion in their places of worship without the Muslims forcing them to abandon their rituals, despite being very much able to do so. Therefore, the Muslim doctor is not responsible for the manner in which this declaration is used, as is the Muslim fruit vendor who sells grapes to a Christian who may go on to make wine from them. In addition, being paid for doing so is also permissible, because the action itself is Halal.

[Second Session]

SECOND COLLECTION OF FATWAS

Fatwa (1²)

Inter-Faith Dialogue

Many use phrases such as ‘narrowing gaps between religions’ to describe inter-faith dialogue. However, the right way to describe these dialogues is to use terms like co-operation, dialogue, participation or the like. In this regard, the Council wishes to draw attention to the fact that if what is meant by the above phrase is to dilute or eradicate essential differences between Islam and other faiths, then this call is rejected. Allah (swt) says in the Holy Quran: *"And argue with them in a way that is better"* (16:125)

Allah (swt) also states: *"And so judge (O Muhammad) among them by what Allah has revealed and follow not their vain desires, but beware of them lest they turn you far away from some of that which Allah sent down to you"* (5:49)

However, dialogue and co-operation between Islam and other faiths can be acceptable for Allah (swt) says: *"Say (O Muhammad): O people of the Scripture (Jews and Christians): come to a word that is just between us and you, that we worship none but Allah (alone), and that we associate no partners with Him, and that none of us shall take others as lords besides Allah"* (3:64)

Following the example of our beloved Prophet Muhammad (ppbuh) who held a dialogue with Christians of Najran¹², dialogues can be held with peoples of other faiths on basis of the oneness of God, prophets and the origin of mankind. These dialogues should, however, be conducted in a healthy atmosphere, and they should be free from coercion, patronising others or offending them .

Despite the fact that Islam is different from other heavenly faiths, there is an area where Islam and the other heavenly faiths can meet. For instance, all divine faiths acknowledge the concept of deity, prophethood and the hereafter. They accept the principles of good manners and the social structure of family. They hold similar views on environmental issues, human rights, rights of oppressed peoples, confronting despotism and injustice, rejecting genocide, aggression and fanaticism, disseminating tolerance, etc .

What emphasises dialogue and stresses co-operation is the dominance of the materialistic, permissive and atheist culture, and the crumbling of social order at a time where the entire world is connected to each other through the communication revolution which turned the world into a small village. The Holy Quran states: *"O mankind! We have created you from a male and female, and made you into nations and tribes, that you know one another. Verily, the most honourable of you with Allah is that (believer) who has piety (Taqwa)"* (49:13). The Prophet Mohammed (ppbuh) testified to the fact that all human beings are brothers¹³ and the Holy Quran states: *"Help one another in Al-birr (all that is good) and Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression"* (5:2).

[Resolution 1/4]

¹² The story of the Prophet Mohammed (ppbuh) with the Christians from Najran is well known throughout the book of Seera. The narration of which was reported by Abdullah ibn Abbas and relayed by Ibn Jareer Al-Tabari in his "Tafseer" (3/305), Al-Bayhaqi in "Dala'il Al-Nubuwwa" (5:384). Also the story was reported by Kurz ibn Alqama and relayed by Al-Tabarani in "Al-Mu'jam Al-Awsat" (No.3918) and Al-Bayhaqi in "Al-Dala'il" (5/382). The story was also reported by Jaber ibn Abdullah and relayed by Al-Hakim in "Al-Mustadrak" (2:593). The collation of all these narrations implies the authenticity of the story, and the story itself is reported "Sahih Al-Bukhari" (No.4110) on the authority of Ibn Mas'ood in brief.

¹³This is in reference to the Hadith reported by Zaid ibn Arqam, whom said: The Prophet (ppbuh) used to say after the end of each prayer: "O Allah, our Lord and the Lord of all things, I bear witness that you are the Lord, with no associate..." and within those words: "I bear witness that all servants are brothers of one another". Narrated by Ahmed (No.19293) and Abu Dawood (No.1508) with a weak chain of narration. However, the brotherhood of humanity is a concept emphasized and stipulated by numerous Quranic verses in addressing the stories of messengers and prophets with their people and tribes.

Fatwa (4²)

The Combination of Maghrib and Isha'a prayers due to the extremely late entrance of Isha'a time or the disappearance of its legal signs in some countries

The Council concluded that it is permitted to combine these two prayers in Europe during Summer when Isha'a enters around midnight, or the signs of Isha'a disappear totally, so that Muslims do not face difficulty which was lifted from upon them by virtue of the Holy Quran. This permission is also due to the hadith of Ibn Abbas in Sahih Muslim: "*The Prophet peace be upon him, combined the Zuhr and Asr prayers and Maghrib and Isha'a prayers when he was not in a state of danger and when there was no rain. Ibn Abbas was asked: Why did he do so? He replied: He wanted to lift the difficulty from upon his Umma*"¹⁴.

In the same respect, it is also permitted for a Muslim to combine Zuhr and Asr prayers in these countries during Winter when the day is very short and it becomes increasingly difficult for employees to pray each in its own time. The Council, however, warns Muslims against combining the said prayers without the actual need to and against making this permission a constant habit.

[Third Session]

Fatwa (5²)

The collection and distribution of Zakat by charity organizations

Q) Is it permissible for non-Governmental charitable organisations to collect Zakat money and subsequently distribute it according to the legal specifications of Shari'a? May such organisations spend part of the Zakat money they have collected to cover the administrative expenses which they incur as a result of their efforts? Some claim that due to the absence of the Khilafa, such organisations may not collect Zakat, as this is the sole right and responsibility of the Caliph. Is this true?

A) *Zakat* is the third pillar of Islam, and is the pillar which upholds the financial and social basis of the society. Indeed, it is *Zakat* that treats poverty, deprivation, and homelessness, and contributes towards raising the word of Islam in the way of Allah Almighty. Thus, *Zakat* is intended for the needy amongst Muslims, and for those who assist and help those needy Muslims in various manners and methods.

Zakat was declared comparable to the pillar of Prayer, and indeed closely associated thereto in precisely 28 instances of the Holy Quran, as well as in numerous hadiths of the Prophet (ppbuh). Therefore, Anas (ra) said: "May Allah bestow his mercy upon Abu Bakr, as he was of great knowledge"¹⁵, referring to Abu Bakr's insistence that both *Zakat* and prayer go equally in terms of their uncompromising status for a Muslim. He, may Allah Be pleased with him, told those who said after the death of the Prophet Mohammed (ppbuh) "We shall pray, but shall not perform *Zakat*", he told them: "By Allah, I shall fight those who separate between prayer and *Zakat*".¹⁶ Thus, if prayer is obligatory at all times and in all places, whether the Caliph is present or not, *Zakat* is also obligatory during all times and in any places.

There are three guardians of *Zakat*:

First: The Sultan, or the ruler, who must take *Zakat* from the wealthy and give it to the poor.

Second: The social conscience of the Muslim *Umma*, which is manifested by its obligation to give advice and to uphold religion, and to enjoin what is good and forbid what is evil.

Third: The inner guard of *Iman* within the Muslim heart. Thus, even if the first guardian is absent, the other two remain strong. Should the first and second guardians become absent,

¹⁴ Sahih Muslim (The Chapter of Prayer for travelers and the shortening thereof – Section of Combination between two prayers without being on travels 1/490-491 No.705)

¹⁵ This was relayed by Al-Qurtubi in his commentary (8/74) from the narration of Ibn Abbas> Al-Tabari also relayed this statement in his commentary (10/87) from the narration of Abdul Rahman ibn Zaid ibn Aslam.

¹⁶ Agreed upon, narrated by Al-Bukhari (No.1335) and other instances, and Muslim (No.20) from the narration of Abu Hurayra.

then the guardian of *Iman* remains prominent and alert and motivates the Muslim to carry out his duties, even if no one forced him to do so.

In the event that a Muslim Caliph, ruler or regional authority is absent from the helm of the *Umma*, the Muslim group ought to organize its affairs in manner which facilitates the collection of *Zakat* from those who are under obligation to perform this pillar, and to distribute these monies amongst the eight channels stipulated by *Shari'a*, or those present from the eight. For instance, should the channel 'Slaves' or *fil Riqab* not be present, then the monies are to be distributed amongst the seven remaining channels, and should the 'Administrators of *Zakat*' or 'Muslims of weak hearts who are desired to be strengthened and motivated, i.e. '*Al-Mu'allafati Qulubuhum*' not be present, then the monies are to be distributed amongst the remaining channels, each according to its size and actual need. This was the opinion of the vast majority of scholars.

This is further emphasised due to the need for Muslims to organise their lives even if they were only three, as mentioned in the hadith: "*If you were three in travel, choose one of you to become your leader*"¹⁷, so that their affairs do not become chaotic and haphazard. Therefore, the claim that *Zakat* ought to be deserted due to the absence of *Khilapha*, i.e. Caliphate, hence, allowing people to starve to death, is on which has no basis of truth nor reason, and leads only to our desertion of the pillars of Islam without evidence. Allah Almighty stated in the Holy Quran: "*and fear Allah to the extent of your ability*" (64:16), the hadith of the Prophet (ppbuh) stipulated: "*If I order you to do something, do as much of it as possible*"¹⁸. Thus, if we failed in establishing the *Khilapha* and managed to perform our personal duties, then we must do those according to the command of Allah Almighty and His Prophet Mohammed (ppbuh) realising that the lifting of some obligations or the partial lifting thereof, does not imply nor result in the lifting of all obligations, or the lifting of such obligations partially. It is also significant to note that the Muslims during the Makkan era, were obliged to pay *Zakat*, as testified by the various verses in the Makkan chapters of the Holy Quran, despite the fact that the Islamic state of Madinah was yet to be established (The precise amounts and measures of *Zakat* as we know it today were established and decreed in Madinah). Indeed we find in the verses that were revealed in Makkah prior to the establishment of the Islamic state, a grave warning to those who left feeding the poor, attributing this characteristic to the non-believers and declaring that this is indeed a reason for one being lead to hell fire

Therefore, the presence of these charitable organizations is permissible and the work they perform in collecting *Zakat* money is also permissible. Also, these organizations are allowed to deduct from the monies which they collect to cover their administrative expenses on condition that this does exceed one eighth of the money collected, as they are considered "*Administrators of Zakat*" or *Qa'imeen A'layha*.

[Third Session]

Fatwa (8²)

The appointment of lunar months, particularly Ramadhan for the benefit of fasting and Shawwal for the benefit of break-fast, and whether Astronomy has any say in this matter.

Resolution

The Council, having examined the forwarded papers and debated this matter at length and in great detail, reached the following resolution:

The beginning of Ramadhan and Shawwal is decided as a result of viewing, either by the naked eye or by means of astronomy, when made in any Islamic country by sound legal means, in accordance to the holy prophetic saying in the authentic hadith: "*When you see the*

¹⁷ Authentic Hadith (Sahih), narrated by Abu Dawood (No.2608, 2609) from the Hadiths of Abu Saeed Al-Khudri and Abu Hurayra. This is also emphasised by a Hadith narrated by Omar ibn Al-Khattab in the Musnad of Al-Bazzar (No.329) which is a good narration.

¹⁸ Narrated by Al-Bukhari (No.6858) and Muslim (No.1337) on the authority of Abu Hurayra.

crescent begin your fasting and when you see it again break your fasting"¹⁹, and in another: *"Fast when you see it (the crescent) and break your fast when you see it (the crescent)"*²⁰.

This is on condition that the firm scientific astronomical calculations do not contradict the possibility of such sighting in any country. If these calculations rule out the possibility of sighting, however, the sightings of individuals are rejected and refused as they may have occurred out of mistake, imagination or even a false and untrue claim. Moreover, the testimonies of individual witnesses constantly carry the element of imperfection, whilst astronomical calculations are sound and unequivocal, and the scholars have agreed that what is imperfect does not stand up to nor overtake what is deemed firm and sound.

The Council also affirms that by astronomical calculations, by no means is it referring to the prohibited and outlawed astrology, nor is it referring to the various calendars which have become widespread throughout Islamic countries, as many may believe. Rather, we mean by astronomical calculations, the fruits of the modern science of astronomy which is built upon sound arithmetic and scientific bases, which has advanced enormously and helped man to reach the moon and other planets, and in which Muslim scientists all over the world, have excelled.

[Third Session]

Fatwa (12²)

A Woman ratifying her own marriage contract without the intervention of her legal guardian 'Wali'

Resolution

Marriage is one of the most important contracts due to the fact that it signals the creation of a new family within society; the birth of new individuals into the world and the duties and responsibilities which fall unto each of the two partners.

As a result of marriage being a contract between the two spouses as partners to the contract, the full consent of whom is deemed vital for the ratification to proceed, the Legislator; Allah (swt), did not allow for the guardianship of the father of the bride or any one else to become one by which the guardian forces or compels the woman to marry to a man whom she does not want. Indeed Islam granted the woman full rights to accept or reject whomever proposes to her in marriage.

Ibn Abbas (ra) that a small girl came to the Prophet Mohammed (ppbuh) and told him that her father had forced her to marry against her will. The Prophet gave her the right to choose either to stay married or to annul the marriage contract.²¹ The prophetic texts all came to affirm this right for women. The Prophet (ppbuh) stated that "*the virgin shall not be married until her permission is given neither a previously married woman until she overtly states her acceptance*"²², he (ppbuh) added: "*and the virgin shall be asked her permission by her father*"²³. By this, Islam decreed that marriage be built upon a basis of love, desire and mercy. Allah (swt) stated: "*And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts*". (30:21)

It is usually impossible to attain these beautiful aims and objectives within a marriage which was established with force and compulsion. However, since the woman, despite her

¹⁹ Narrated by Muslim (Chapter of Fasting – Section of the Compulsion of Fasting Ramadhan when the new moon is witnessed 2/760) on the authority of Abdullah ibn Omar and 2/762 from the Hadith of Abu Hurayra.

²⁰ Agreed Upon: Narrated by Al-Bukhari (No.1810) and Muslim (No.1081/18) from the Hadith of Abu Hurayra.

²¹ Authentic Hadith, ascribed by Imam Ahmed (No. 2469), Abu Dawood (No.2096), Al-Nasa'I in "Al-Sunan Al-Kubra" (No.5387) and Ibn Maja (No.1875) from the Hadith of Abdullah ibn Abbas. Ibn Al-Qattan and Ibn Hazm considered the Hadith sahih, and it was strengthened by Al-Khatib Al-Baghdadi, Ibn Al-Qayyim and Ibn Hajar.

²² Agreed upon. Narrated by Al-Bukhari (No.4843, 6567, 6569) and Muslim (No.1419) from the Hadith of Abu Hurayra.

²³ Narrated by Muslim in his Sahih (No.1421/68) and Al-Bayhaqi in Al-Sunan Al-Kubra (7/115) from the Hadith of Ibn Abbas. This is one of the manners in which the Hadith was narrated.

Islamically granted independence, was always subject to the desires of the ill-hearted and evil opportunists; Islam decreed legislations which would maintain her rights and deter those whom carry ill-aims and desires. Therefore, Islam gave great importance to the approval of the woman's guardian in a manner which reflects the significance of the marriage contract. This also adds another dimension to the beautiful state of tranquility and love in which the entire family will find themselves, as the woman will remain on good terms with her parents or guardians, in contrast to what would happen if she went against their wish. In this case the opposite of what Islam aimed to achieve would undoubtedly prevail. Despite the general consensus among scholars that the approval of the woman's guardian is preferable and much more favourable, they differed regarding whether it is actually a condition for the correctness of the marriage contract:

1- The majority of scholars agreed that the approval of the guardian is a condition, without which the contract would be incorrect, based upon the statement of the Prophet Mohammed (ppbuh): "*The marriage of any woman married without the permission of her guardian is false*"²⁴. He (ppbuh) also stated: "*No marriage is to take place without the guardian*".²⁵

2- The followers of Imam Abu Hanifa stated that the permission of the guardian is not a condition, and they based their conclusion upon many evidences, such as the Hadith narrated by Muslim and the Four Narrators of Hadith, that the Prophet (ppbuh) stated " :*The previously married woman shall have the right to decide for herself, whilst the virgin shall be asked permission to be married, and a sign of her permission being granted is her keeping silent*"²⁶. They added that that the permission of the guardian only becomes a condition if the girl is under the age of puberty. They also said that: "if the adult sound minded woman married herself (without the interference of her guardian), her marriage would be correct given all other conditions are fulfilled. Her guardian maintains the right to appeal to the Judge and request the annulment of the contract is her partner is not equal to her, in which case the Judge, having confirmed the truth of this, must accept his appeal. The European Council for Fatwa and Research advises women not to disregard their guardians, whom wish only for their best interest and that they marry good men rather than deceitful and ill-heart suitors.

The Council also advises fathers to facilitate the marriage of their daughters and to consult with them in regards with those whom propose to them in marriage, without transgressing in using the rights that Islam granted to them. The Council also reminds them of the saying of the Prophet Mohammed (ppbuh): "*If someone comes to propose in marriage and he is of acceptable religion and behaviour, then accept his proposal, otherwise and great turbulence and corruption will spread on earth*"²⁷. Fathers must also realise that preventing their daughters from getting married is a great injustice which is outlawed and prohibited by Islam. The Council also advises Islamic Centres to take the aforementioned into consideration, as it is safest and best. However, if the woman does not have a legal guardian, then the Islamic Centre itself must act as her guardian in countries lacking an Islamic legal system. The Council finally affirms that it believes that if a mature and sound-minded woman was to marry herself (without the interference of her guardian) then her marriage would be correct .

[Resolution 3/4]

Fatwa (13²)

²⁴ Narrated by Ahmed (6/47, 66, 165), Abu Dawood (No. 2083), Al-Tirmithi (No.1102) and Ibn Maja (No. 1879) from the Hadith of Aisha. Al-Tirmithi deemed the hadith good, whilst Ibn Maja (No.4074) and Al-Hakim (No.2/168) considered it authentic.

²⁵ Narrated by Ahmed (19518, 19710, 19746), Abu Dawood (No.2085), Al-Tirmithi (No. 1101) and Ibn Maja (No.1881) from the Hadith of Abu Musa Al-Ash'ari. The Hadith was deemed authentic by Ali ibn Al-Madini, the Shaykh of Al-Bukhari, whilst Al-Bukhari, Al-Tirmithi, Al-Hakim and Al-Bayhaqi strengthened its narration.

⁸ Narrated by Malik in his Muwatta' (No.1493), Ahmed (No. 1888 and others), Muslim (No.1421), Abu Dawood (2098), Al-Tirmithi (No.6/84-85) and Ibn Maja (No. 1870) from the Hadith of Ibn Abbas.

²⁷ Narrated by Yehia ibn Ma'een in his "Tareekh" (3/40), Al-Bukhari in "Al-Kuna" (p.26), Al-Tirmithi (No. 1085) and others from the Hadith of Abu Hatim Al-Muzani. Al-Tirmithi considered it a good Hadith.

The allowance of marriage to 4 women and the abuse of this allowance

Prior to Islam, men used to marry as many women as they wished without any limits nor conditions. When Islam was revealed, it prescribed a limit to the number of women one may marry and also placed conditions for this to take place.

As for the limit, Islam prescribed that the maximum number of women a man can marry is four, as stated in the Quran: "*Marry women of your choice, two or three or four*" (4:3). When a man from the tribe of *Thaqeef* who was married to ten women, embraced Islam the Prophet Mohammed (ppbuh) commanded him to choose four from amongst them and to divorce the rest²⁸.

As for the condition, it is the confidence of the man that he can actually be totally just and fair between his wives, otherwise he is not allowed to re-marry. The Quran stated: "*but if you fear that you will not be able to deal justly (with them), then only one*" (4:3). In addition, the other conditions of any marriage must also be present, such as the ability to provide for the family and the ability to satisfy the sexual needs of the woman. The reason for the allowance for a man to marry more than one woman is because Islam is a realistic religion and one which is not based upon idealistic notions which would cause real problems of everyday life without solution or treatment. It is very probable that a man marrying a second wife could be solving a problem, in that his first wife is incapable of bearing children or has extended menstruation cycles which result in his sexual needs being unsatisfied. The first wife could be ill and thus, instead of divorcing her and leaving her alone, could marry a second wife and remain next to his first wife, and so on. This allowance also solves the problem of a widow who needs a husband to care for her but does not wish for an unmarried young man, similar to a divorced woman with children. Indeed this allowance may solve a social problem which arises from the high proportion of good women who want to marry in comparison to able men. This is a common problem which increases particularly in the aftermath of wars and the such. The fact, in this case, is that the extra women do one of three following options:

- 1) That they remain unmarried for the rest of their lives, and are thus deprived from being a wife and a mother, which is a great injustice .
- 2) That they fulfill their sexual needs regardless of decrees of religion and acceptable behaviour, which will result in a tragic loss in this life and the hereafter.
- 3) That they agree to marry an already married man who is capable of meeting their living and sexual needs and who is confident in his ability to deal fairly and justly between his wives.

As for those who say that this allowance is often abused by some men, it is an unfortunate fact that many rights are abused or are used in inappropriate manners. This does not mean that we must cancel these rights. Indeed, there are many men who abuse their first and only wives, so does this lead us to cancel marriage in its entirety? Freedoms are often abused. Should we cancel freedoms? We see that states and governments abuse elections; would it be right to cancel these processes? In fact we find that authority and government is frequently abused, so would it be acceptable to cancel authority and let society decline into a state of chaos? It would be better, instead of calling for the cancellation of these rights, to set up boundaries and regulations which would limit the possibility of such rights being abused .

[Resolution 4/4]

Fatwa (15²)

Equality between the husband and wife in a marital relationship

The wife is equal to her husband within a marital relationship. The Holy Quran called each "one half of a pair", as each, bears responsibility for the worries and feelings of the other half and thus they both form a complete pair. We also observe from the statement of Allah (swt):

²⁸ Narrated by Ahmed (No. 4609, 4631, 5027 and 5558), Al-Tirmithi (No. 1128) and Ibn Maja (No.1953) from the Hadith of Abdullah ibn Omar. The Hadith was authenticated by Ibn Hibban (No. 4156-4158), Al-Hakim (No.2/192) and Ibn Hazm in "Al-Muhalla". Some from amongst the scholars of Hadith considered there to be a discrepancy from the narration aspect. However, there is no question as to the correctness of the meaning.

"And among His signs is this, that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your hearts" (30:21) and from His statement: *"And Allah has made for you mates of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best"* (16:72), we observe that the address in both verses is to both men and women alike, as there is no evidence that there is an exclusive address to men in these two cases.

Meanwhile, the verse in which Allah (swt) addressed men alone, was directly followed by a statement that men and women are equal within a marital relationship. Allah (swt) stated: *"Permitted to you on the night of the fasts, is the approach to your wives, they are your garments and you are their garments"* (2:187), in which we see how immaculately Allah (swt) described the relationship of men and women to each other, as being "garments " to one another, which reflects closeness, warmth, proximity and adornment. However, this equality in principle, does not contradict the fact that there are duties and responsibilities unique and specific to each part of this relationship, such as the responsibility of the man to protect and maintain his wife and family, which is termed *Qawama*. Allah stated in the Quran: *"Men are the protectors and maintainers of women, because Allah has given each preference over the other, and because they support them from their means"* (4:34). The beauty of the Quranic expression is illustrated in the statement that *"Allah has given each preference over the other"* and not merely that Allah gave preference to men over women. This is because men are preferred in some aspects and women are preferred in others; particular the emotional aspect of life, whilst the man is obliged to pay the marital gift or which is known today as Dowry or 'Mahar', to establish the marital house and support it. Therefore, if a man ever attempts to harm this family; he will be the very first victim of this act of destruction.

The Quran also emphasised that duties and obligations of both parties are perfectly equal apart from a few exceptions. Allah (swt) stated: *"And women shall have the rights similar to the rights against them, according to what is equitable; but men have a degree over them"* (2:228). It was narrated that Ibn Abbas (ra) stated: "I make myself beautiful for my wife such as she does for me"²⁹, and then gave in evidence the previous verse. Imam Al-Tabari explained the term *Daraja* or (degree) which occurred in the verse, as being extra marital duties and responsibilities. Others explained it to be equal to the term *Qawama* previously illustrated, and both explanations are correct. The Prophet Mohammed (ppbuh) placed the responsibility upon each partner within a marriage, as in the Hadith of Ibn Omar (ra): *"Each of you is a shepherd and you are each responsible for your herd and the man is a shepherd amongst the members of his family and he is responsible for them and the woman is a shepherd in her husband's house and she is responsible for it"*³⁰.

The responsibility of the woman within her marital home obliges her to play an educational and advisory role towards her husband, as she extends advice to him and wishes him the best at all times. She must call him to do good whenever he falls short of doing so, and must prohibit him for indulging into wrong-doing, as this is the obligation upon each and every Muslim towards the other, such as a son towards his father, a student towards his or her teacher, and a citizen towards his or her ruler. However, this commanding good and prohibiting evil must be within the regulations and boundaries mentioned by the Scholars in sound books and references. Allah (swt) states: *"The believers, men and women, are protectors one of another: they enjoin what is just and forbid what is evil"* (9:71). Thus, the marital relationship does not by any means, annul the act of enjoining good and forbidding evil, but rather emphasises and stresses it. We learn that the wives of the good predecessors would remind them before they left their homes to work, trade or travel: "Beware of bringing back what is Haram, as we would be happy to tolerate hunger and the cold, but we would never be able to withstand the heat of Hellfire and the wrath of the Almighty"! Therefore, if a

²⁹ This meaning was narrated from Ibn Abbas, and was abrogated by Ibn Jareer in his "Tafsir" (2/453) and Ibn Abi Hatim (No.2196) from the said Hadith of Ibn Abbas.

³⁰ Narrated by Al-Bukhari (No.853 and other locations) and Muslim (No.1829).

woman found her husband falling short in fulfilling his obligatory prayers, she must advise him in a beautiful way to maintain his prayers, and if she found him consuming alcohol, she must advise him to refrain from drinking what is considered the mother of all evil. She must also advise him to maintain his religion, faith, wealth, children and family and not to agree with Satan in his words and actions.

As for the question: Does the husband enjoy any authority over his wife, and to what extent? The answer would be: the husband enjoys the *Qawama* explained above, but it is not by any means, an absolute and infinite authority. Rather it is an authority which is restricted by the regulations of the Shari'a and the considerations of the society within which one lives. The regulations of the family are restricted by two matters in the Holy Quran:

First: A divine restriction, i.e. from Allah (swt). This is referred to in the Quran as "the boundaries of Allah" and occurred many times regarding the context of family.

Second: A human restriction, which is referred to in the Quran as "Ma'arof" or good, i.e. what is appreciated and acknowledged by people of sound minds, good tastes and people of wisdom.

As for the first restriction, we read from the Quran in relation to divorce: "*These are the limits ordained by Allah, so do not transgress them, if any do transgress the limits ordained by Allah, such persons wrong themselves as well as others*" (2:229). In another verse, Allah (swt) stated: "*these are the limits of Allah which he has illustrated to people who know*" (2:230) and in another: "*those are the limits set by Allah, and any who transgresses the limits of Allah does verily wrong his own soul*" (65:1).

As for the second human restriction, Allah (swt) states: "*Live with them on a footing of kindness and equality*" (4:19) and "*But he shall bear the cost of their food and clothing on equitable terms*" (2:233) and "*either take them back on equitable terms or set them free on equitable terms*" (2:231) and "For divorced women is a suitable gift" (2:241).

Thus and in principle, the affairs of the marital home and the family must be done in consultation between the husband and wife, as consultation can only bring good. The Holy Quran stressed this in the context of weaning the child: "*If they both decide on weaning by mutual consent and after due consultation, there is no blame on them*" (2:233).

However, if they fail to reach an agreement, then the husband shall have the authority to decide, but within the boundaries of *Ma'arof* explained. It is not for the husband to force his wife to do anything, merely to fulfill his desires under the pretence of 'obedience of the husband', as any obedience must be within the boundaries of *Ma'arof*. It is correct to say: that the wife must obey her husband within the limits of *Ma'arof* alone, according to the Quran when addressing the oath of allegiance given by women to the Prophet (ppbuh): "*and they will not disobey you in any just matter*" (60:12). The authentic Hadith also stated: "*Obedience is verily in just matters*"³¹.

[Resolution 6/4]

Fatwa (16²)

The ruling on a Woman divorcing herself

Having discussed this issue at considerable length, The Council reached the following:

First: As a point of principle, Islam granted the right of divorce to the man.

Second: A woman may divorce herself, if she had stipulated that she has this as her right as a condition in her marital contract, or if she received such authority or was granted such a right by her husband afterwards.

Third: A woman may request that her marriage be terminated '*Khulu*' before a Judge, who should in turn make every attempt to reconcile the couple. If this proved futile, then he is to grant the woman her wish and to rule the marriage terminated.

Fourth: A woman may agree with her husband to divorce under any conditions which are acceptable from the Islamic perspective and which they mutually approve to.

³¹ Narrated by Al-Bukhari (No. 4085, 6726, 6830) and Muslim (No.1840) from the Hadith of Ali ibn Abi Talib.

Fifth: The woman may request from the judge to rule that they be separated and the marriage terminated, due to harm being inflicted upon her. The Judge may then grant her request, if she proved her claim, having spent every effort in reaching a reconciliation between the man and woman, including assigning two arbitrators to help him in his task.

[Resolution 2/5]

Fatwa (17²)

Ruling on a divorce issued a non-Muslim judge

Resolution:

The principle is that a Muslim only resorts to a Muslim Judge or any suitable deputy in the event of a conflict. However, and due to the absence of an Islamic judicial system in non-Muslim countries, it is imperative that a Muslim who conducted his Marriage by virtue of those countries' respective laws, to comply with the rulings of a non-Muslim judge in the event of a divorce. Since, the laws were accepted as governing the marriage contract, then it is as though one has implicitly accepted all consequences, including that the marriage may not be terminated without the consent of a judge. This case is similar to that in which the husband gives authority to the judge to do so, even if he did so implicitly, and which is considered acceptable by the vast majority of scholars. The jurisprudence '*Fiqh*' principle applicable in this case is that whatever is normal practice is similar to a contractual agreement. Also, implementing the rulings of a non-Muslim judiciary is an acceptable matter, as it falls under the bringing about of what is considered to be of interest and to deter what is considered to be of harm and may cause chaos, as stipulated by more than one of the most prominent Islamic scholars, such as Al-I'zz ibn Abdul Salam, Ibn Taymiyyah and Al-Shatibi.

[Resolution 3/5]

Fatwa (18²)

Ruling on a wife's request to be divorced from her sinning (*Fasiq*) husband

Resolution:

Marriage is indeed a sacred bond which brings together a man and a woman by virtue of the teachings of the Quran and the *Sunna*. Indeed, the manner in which Allah Almighty described this relationship is as though one constitutes a garment to the other; "*they are a Libas (i.e. body cover) for you and you are the same for them*" (2:187), thus illustrating the closeness, affection, warmth and love of one for the other.

Thus, each partner in this sacred relationship must treat the other beautifully and properly. A man must not divorce his wife to bring harm upon her, as this constitutes an act which demolishes this noble establishment, breaks the woman's heart and possibly separates between the woman and her children without any reason. Thus, the separation between man and his wife was considered as one of the major and grave sins, and one of the most beloved actions of Satan, as was narrated in a number of Hadiths.³²

And since, the man must never divorce his wife in order to bring harm upon her without reason, it is also forbidden for a women to ask for a divorce without a sensible reason. In the Hadith narrated by Ahmed and Al-Tirmithi, who declared it a good Hadith, that Thowban, May Allah be Pleased with Him, stated that the Prophet (ppbuh) said: "*Any woman who asks*

³² Such as the Hadith narrated by Jaber ibn Abdullah, who stated: "The Messenger of Allah (ppbuh) said: 'Iblees places his throne upon water, then sends his groups. The closest to him are the those who commit the most grievous of sins (Fitna). One of them would approach him and say: I did so and so. Iblees would reply: You have done nothing. Another would approach and say: I did not leave him until I caused him to leave his wife and for them to be separated. Iblees would bring him close to his throne and would say: How good you are!'" Narrated by Muslim (No.2813/67).

her husband to divorce her without an acceptable reason, shall never smell the scent of Paradise”³³.

The obvious implication of the Hadith, is that if she asked for a divorce with an acceptable reason, than she is allowed to do so.

Thus the question is: Is the husband’s dissipation or sinfulness considered a reasonable justification for the woman requesting a divorce?

It is without doubt that sinners vary in the manner and extent to which they sin, and also vary in their relationship with their wives. Some force their wives to assist them in committing their sinful acts, such as to serve him alcohol, which is an act deemed forbidden for her, and thus she has the right to request a divorce in avoidance to any punishment that may come her way as a result of committing what is essentially Haram.

Others, mistreat and abuse their wives, which gives the woman the right to request a divorce, specially should the husband continue to abuse her, and she holds no hope of him repenting and correcting his ways. There are also those who neither force their wives to assist them in committing their sinful acts nor do they abuse and mistreat them. Some, although sinners, may be good to their wives and do not force them to do what they wish not to. This case is obviously different to the first two.

The majority of scholars, for instance, stipulated that a man who does not pray out of laziness, rather than denial of the obligation of prayer, is a wayward *Fasiq* and not a reverted *Kafir*, and thus he is not to be separated from his wife.

Thus, the Council sees in this case that should the woman hold hope in her husband’s repentance and that she may have a role in offering him advice which could lead him to a better state of conduct, then she ought to be tolerant, even if he did not pray or if he drank alcohol. This tolerance becomes more of an obligation should the couple have children, whom may go astray or be negatively affected by any separation.

However, the Council emphasizes that this does not include a husband who believes that it is permissible to desert mandatory prayers or to consume alcohol, as he would then have reverted to clear and overt *Kufr*, which deems the separation between him and his wife mandatory.

[Resolution 8/6]

Fatwa (19²)

The Ruling on a Muslim inheriting his non-Muslim Relatives

Resolution:

The Council sees that Muslims must not be prohibited from inheriting their non-Muslim relatives, or receiving their bequeaths. Indeed, the Council does not find any contradiction with the authentic Hadith: “A Muslim does not inherit a *Kafir*, nor a *Kafir* a Muslim”³⁴, which implies the *Kafir* who is in a state of battle with Muslims. It is also important to note that in the initial stages of Islam, Muslims were not prohibited from inheriting their non-Muslim relatives. This was the line followed by Companions such as Muath ibn Jabal³⁵ and Mu’awiya ibn Abi Sufyan³⁶ and Followers including Sa’eed ibn Al-Musayyab, Mohammed ibn Al-Hanafiyya, Abu Ja’far Al-Baqer, Masrooq ibn Al-Ajda’ and which was preferred by Ibn Taymiyya and his student Ibn-ul Qayyim.

[Resolution 1/5]

³³ Musnad Ahmed (5/277) and Jami’ Al-Tirmizi (No. 1187). Abu Dawood (No. 2226) and Ibn Maja (No. 2055) also narrated the Hadith.

³⁴ Narrated by Al-Bukhari (No.6383) and Muslim (No.1614) from the Hadith of Osama ibn Zaid.

³⁵ Narrated by Abu Dawood (No.2912) and Al-Bayhaqi (6/205, 254-255)

³⁶ Narrated by Abu Shayba (11/374) from Abdullah ibn Ma’qal, who said: “ I have seen no better judgment after that of the Messenger of Allah (ppbuh) than that of Mu’awiya in respect of the People of the Book. He said: “We inherit them and they do not inherit us, as it is permissible for us to marry from them whilst they may not marry from us”. Correct narration.

Fatwa (20²)

The Ruling of participating in the funeral of a non-Muslim relative

Resolution

Islam orders that parents be treated kindly and graciously even if they are non-Muslims. Allah (swt) says: “*Your Lord has decreed that you worship Him and that you be kind to parents*” (17:23). Allah Almighty also says: “*But behave with them in this life kindly*” (31:15). Islam also exhorts people to observe and maintain good relationship with kith and kin.

The obligation of kindness and good relationship is emphasized on the occasions of joy and merriment as well as on the occasions of difficulties and afflictions, the greatest of which is death that brings relatives together when they are bereaved of one of them. Man intrinsically tends to express his feelings towards the deceased, whether a relative or a close acquaintance. Therefore, we read in the authentic hadith on the authority of Abu Hurayrah (May Allah be pleased with him): “*The Prophet (Peace be upon him) visited the grave of his mother and wept and caused those who were with him to weep, and said: ‘I asked my Lord to allow me to ask forgiveness for her, but He refused to give me permission. Then I asked Him to permit me to visit her grave and he gave me leave. So, visit graves for they remind one of death’*”. Narrated by Muslim and Ahmad and the Compilers of *Sunan* except al-Tirmidhi³⁷.

Moreover, Islam calls for respecting man, whether a believer or a disbeliever, in his lifetime and posthumously. It is reported by Al-Bukhari and Muslim in an authentic hadith that the Prophet (ppbuh) stood up when a Jewish funeral proceeded in front of him. Somebody informed him that the dead person was a Jew. The Prophet replied: “*Is it not a soul?*”³⁸

Now, the soul of a father, a mother or a close relative is entitled to more respect. Therefore a Muslim may attend the funeral of his non-Muslim parents or one of his non-Muslim relatives. He may attend the religious ceremonies held for the deceased in churches and synagogues, provided that he should not participate in the prayers, rites and other religious activities. He may also attend the burial process. In all that his intention should be to do the duty of kindness (to parents) and good relationship with kith and kin, and sharing the misfortune with the family and strengthening the relationship with relatives and avoiding what may lead to estrangement if he fails to attend such occasions.

[Resolution 4/6]

Fatwa (21²)

Ruling of burying a Muslim in the cemeteries of non-Muslims

Resolution

There are certain determined legal Rulings concerning the Muslim on his death, such as washing him, wrapping him with a shroud, performing the *Janazah* prayer for him, in addition to burying him in Muslims’ cemeteries; that is because Muslims have their own way of burying the dead and preparing graves, such as simplicity, facing *qibla* and avoiding the imitation of polytheists, the affluent, and the like.

It is known that every religious community have their own cemeteries; Jews have their own cemeteries; as do the Christians and the pagans, therefore, it is natural that Muslims have their own cemeteries too. Muslims living in non-Muslim countries should try, through approved channels, to have their own cemeteries whenever possible, for that would enhance their presence and preserve their personality. If they fail to have their own separate cemetery, they should at least have a specific and exclusive spot within the cemetery of non-Muslims wherein they could bury their dead.

If even both alternatives are not available and a Muslim dies, he may be buried anywhere possible, even if in the cemetery of non-Muslims, for Allah does not burden a person beyond his ability. Burying the Muslim, in this case, in the cemeteries of non-Muslims would not cause him any harm, for what will benefit the Muslim in the Hereafter will be his endeavor

³⁷ Ahmad in his “Musnad” (no. 9688); Muslim (no. 976); Abu Dawud (no. 3234); Al-Nasa’i (no. 2034); Ibn Majah (no. 1572)

³⁸ Al-Bukhari (no. 1250); Muslim (no. 916) from the hadith of Qays ibn Sa’ad and Sahl ibn Hanif.

and righteous deeds, and not the spot where he is buried. *“And man can have nothing but what he strives for”* (53:39) And as Salman al-Farisi (May Allah be pleased with him) said: *“Land does not sanctify anybody, but a person’s own deeds sanctify him”*.³⁹

Besides, burying the deceased in the place where he or she dies is the practice primarily recommended by Sharia, and it is easier than transferring the dead to Muslim countries as do some Muslims, for that causes difficulties and costs a lot of money needlessly.

If the Islamic cemetery is far from the residence of the deceased’s family, it will not be an acceptable excuse to bury him in a (nearby) non-Muslim cemetery, for visiting cemeteries is primarily recommended for the benefit of the visitor, to receive admonition and learn a lesson, as is confirmed in the hadith: *“I commanded you not to visit graves, but now I strongly recommend visiting them, for that makes the heart tender and the eye shed tears and it reminds of the Hereafter”*. (Narrated by Ahmad and al-Hakim on the authority of Anas)⁴⁰.

A Muslim can pray for the dead person and ask forgiveness for him, and, by the Grace of Allah, the reward thereof will reach him wherever the supplicant or the seeker of forgiveness for him may be⁴¹.

[Resolution 5/6]

Fatwa (24²)

The Ruling regarding boxing as a profession

Resolution

Taking boxing as a hobby, not by beating a human-being, but by practicing it by beating at inanimate objects is permissible and not risky. But taking it as a profession is unlawful, for it may harm the one being beaten. It may cause death or permanent physical disability. Such mischief is not allowed by the Islamic Sharia even for a non-Muslim in the light of the actual practice of this sport, and the legal ruling states: *“No mischief nor mutual harming”*.

Boxing is also based on directing a hit against the head and face. Allah’s Messenger (Peace be upon him) said: *“If any of you fight (or hit, in another version), he shall avoid the face”* (Agreed upon).⁴²

[Fifth Session]

Fatwa (25²)

The right of an employee to use his work equipment for private purposes

Resolution

The basic principle in regards with public funds, i.e. that of government or private establishments, is that they are not to be infringed upon, particularly that the Qur’an and authentic hadiths emphasised the severe punishment awaiting those who indulge into such funds without due right. Indeed, Scholars considered these funds similar in status to the money of an orphan, and is thus to be maintained and preserved and not to be touched. However, the exception in this case is that which has become customary practice widely acknowledged and accepted by society, as this implies that there is an implicit and underlying permission. In any case, one must not use this permission extensively, as the basic principle aforementioned stands and remains valid. In addition, a Muslim, who seeks perfection in his religion, ought to refrain from such practices in accordance with the hadith: *“...and whoever*

³⁹ Mentioned by Malik in Al-Muwatta (no. 2232) with the word “man” instead of “person”.

⁴⁰ It is a hasan hadith; Ahmad (no. 13487); Al-Hakim in Al-Mustadrak (1/376) through two routes on the authority of Anas.

⁴¹ Dr Muhammad Fuad al-Birazi, member of the Council disagrees by saying: “I see that in the case of the non-existence of an Islamic cemetery, the heirs of the deceased are to be allowed to transfer him to his country if they can afford that; otherwise, he may be buried in the part allotted for Muslims in Christian cemeteries.”

⁴² Al-Bukhari (2420); Muslim (no. 2612) from Abu Hurayrah’s hadith.

remains away from controversial matters, has indeed perfected his religion and reputation".⁴³

[Seventh Session]

Fatwa (26²)

Purchasing houses with an usurious loan for Muslims living in non-Muslim countries, i.e. taking up a mortgage to buy a house

The Council discussed in detail several papers concerning the purchasing of mortgaged houses and came to the following conclusion:

- The Council stresses what had been agreed upon by the Muslim *Umma* that usury is forbidden. It is a major sin and is one of the seven gravest ones. Those who commit it are considered as being waging war against Allah (swt) and His Prophet (ppbuh). In this vein, the Council supports what has been decided by *Fiqh* Councils throughout the Muslim World that bank interests are usury.
- The Council, therefore, invites the Muslim community to do its utmost to seek Islamic alternatives such as *Murabaha* (sale at a profit), which is practiced by Islamic Banks. They should avoid doubtful matters to the furthest extent possible. It encourages them to establish their own construction companies that can build houses and sell them to Muslims with relaxed, less strict lawful ways of payments.
- The Council calls upon Islamic organisations throughout Europe to enter into negotiations with European banks to find formulas that are acceptable to the Muslim buyer. Formulas like *Bei Al-Taqsit*, (sale for deferred payment), where the buyer is required to pay more money due to the fact that payment is not immediate. This formula will help both banks as well as the Muslim community. This formula is in operation in some European banks. In addition to this, some European banks opened branches in some Muslim countries, where transactions are run according to the *Shari'a* as in Bahrain. In this regard, the Council would send appeals to European bank to observe the needs of the Muslim community .

If all the above suggestions are un-available, the Council, in the light of evidence and juristic considerations, see no harm in buying mortgaged houses if the following restrictions are strictly observed:

- a) The house to be bought must be for the buyer and his household .
- b) The buyer must not have another house .
- c) The buyer must not have any surplus of assets that can help him buy a house by means other than mortgage.

This Fatwa is based on the following two major juristic considerations:

First: The agreed upon Juristic Rule which states that extreme necessities turn unlawful matters lawful. This Rule is derived from five Quranic texts, amongst them : “*He (Allah) has explained to you in detail what is forbidden to you, except under compulsion or necessity*” (6:119), and “*But whosoever is forced by necessity without willful disobedience, nor transgressing due limits; (for him) certainly, your Lord is oft-Forgiving, most merciful*” (6:145) .

Moreover, Jurists have established that *Hajah*, i.e. need or necessity, whether for an individual or a group, can be treated in equal terms like *Darurah*, i.e. extreme necessity. *Hajah* or need is defined as those things which put the Muslim in a difficulty, if not fulfilled, even if he or she can do without. *Darurah* or extreme necessity, on the other hand, is that which the Muslim cannot manage without. Allah (swt) has lifted difficulty as stated in Sura Al-Hajj and Al-Ma'idah : “*And He has not laid upon you in religion any hardship*” (22:78), and “*Allah does not want to place you in difficulty, but He wants to purify you, and to complete His Favour to you that you may be thankful*” (5:6).

⁴³ Excerpt from the hadith of Al-Nu'man ibn Bashir in which the Prophet (ppbuh) states: “Halal is clear and Haram is clear”. Agreed upon, narrated by Al-Bukhari (No.52, 1946) and Muslim (No.1599).

The house that can satisfy the criteria set up by the definitions of *Hajah* i.e. need and *Darurah* i.e. extreme necessity above is the one that is suitable for the Muslim family in terms of size, location, locality and amenities.

But as the fatwa is built on the Rule of *Darurah* i.e. extreme necessity or *hajah*, i.e. the need (which is treated in a similar manner like *Darurah*), the Council stresses that there is another Rule which governs and complements the rule of extreme necessity and need. This rule reads what has been made permissible due to extreme necessity must be dealt with great care and taken in measure. It should be restricted to those who are in real need for a house. However, the fatwa does not cover taking up mortgage to buy a house for commercial reasons or for purposes other than buying an own house for those who do not have one.

Undoubtedly, accommodation is necessary for individuals as well as families. Allah (swt) has granted His favours upon His servants and showed them His bounties, amongst these is their houses: "*And Allah has made for you in your home an abode*" (16:80). The Prophet (ppbuh) has explained that a spacious house is one element of three or four elements that constitute the concept of happiness. Rented houses do not fulfill all that the Muslim normally needs. They do not give him the sense of security, as he or she keeps paying towards rent for long periods of time. The tenant might be asked to evacuate their rented accommodation for reasons like size of the family, or the number of guests whom visit. When getting older or have his or her benefit suspended they might even be thrown out of the house. Buying one's own house discharges Muslims from all these discomforts and helps them settle closer to mosques, Islamic centres or schools as it helps them build up their smaller Muslim community within host countries where families get to know each other and work to establish their cultural identity .

Buying an own house also helps the Muslim family to modify it to accommodate their social and religious needs. Besides all these individual benefits, it helps the Muslim community, being a minority, to free themselves from the financial pressure that renting accommodation often causes, and focus their attention to the call to Islam and help the host community wherever possible and permissible. This cannot in fact be possible if the Muslim family works all the time just to pay towards the costs of their rented accommodations as well as their living costs .

Second: The juristic verdict which claims that it is permissible for Muslims to trade with usury and other invalid contracts in countries other than Islamic countries. This opinion is held by a number of renowned scholars such Abu-Hanifah, his colleague Muhammad Al-Shaybani, Sufayn Al-Thawri, Ibrahim Al-Nakha'i, and according to one opinion of Ahmad Ibn Hanbal which was declared as true by Ibn Taymiah, according to some Hanbalite sources. It is also the declared opinion of the Hanafi school of jurisprudence. What makes this last criterion accommodate our fatwa is a number of considerations, amongst which are the following:

- 1) According to Sharia, Muslims are not obliged to establish the civil, financial and political status of Shari'a in non-Muslim countries, as these lie beyond their capabilities. Allah (swt) does not require people to do things that are beyond their capacity.
- 2) Prohibiting usury is a matter that concerns the host non-Muslim countries, and which Muslim communities can do nothing about. It has many things to do with the socio-economic philosophies of the host countries. However, in these countries what is required of the Muslim is to establish the Shari'a rulings in matters that concerns him in person such as the rules that govern acts of worship, food, drink and clothes, marriage, divorce, inheritance and so on. If Muslims choose not to deal with these invalid contracts, including contracts involving usury in non-Muslim countries, this would weaken them financially. Islam is, however, supposed to strengthen Muslims not weaken them, increase rather than diminish them, benefit and not to harm them. Some Salafi scholars claimed that Muslims could inherit non-Muslims as this goes in

line with the hadith which says: "*Islam increases and does not decrease*"⁴⁴, i.e. increases Muslims in power, wealth, etc. Similar in content is the other hadith which states: "*Islam is superior and none can excel it*"⁴⁵. Therefore, if Muslims are not to trade with these invalid contracts and transactions (where extreme necessity and urgent need is involved), then they will end up paying what is required from them (in transactions that involve usury) without receiving any benefit in return. They will be losers as they will be obliged to honour these transactions, and in return they will get nothing. This way Muslims will be financially deprived and suppressed. Islam never punishes Muslims for their Islam nor abandons them in countries other than their own Muslim countries. Islam never means to let unbelievers abuse Muslims financially or otherwise, at a time where it prohibits them from getting any benefit in return.

Concerning the claim that the Hanafi Madhab allows usury in cases where the Muslim is the recipient, i.e. the beneficiary, and that the Madhab permits invalid contracts only if two conditions are satisfied :

First: Where the Muslim is the beneficiary, and

Second: Where deception -involving non-Muslims- is not involved .

Arguing against this claim, first we would maintain that in our case, the benefit has not been realised. The second is the claim has not been authenticated as this has been affirmed by Muhammad Al-Shaibani; one the chief scholars of the Hanafi Madhab and a student of Abu-Hanifah, in his book "Al-Siyar Al-Kabir". Moreover, earlier scholars of the Madhab did not set up any conditions (regarding trading with usurious contracts in non-Muslim lands). However, in our case even if the Muslim is the giver (of usury) he or she is still the beneficiary as he or she will gain an owned house after a number of years.

Furthermore, statements forwarded by Muslims living in Europe to the Council through correspondence and/or direct contacts inform that payments made towards a mortgage are equal, and sometimes lower, than those paid as mere rent mortgage. It follows that if we are to forbid usurious transactions, Muslims will be impeded from securing their own house, despite it being one of *Al-Hajat Al-Asliyyah* i.e. the essential and basic necessities, according to jurists' terminology. Hence, Muslims will end up paying towards rents for a number of years without owning their houses, while they can own them if these payments are to be made towards mortgages .

Finally, even if this transaction is declared as invalid by the Hanafi School of jurisprudence, and those who hold a similar view, it will certainly be permitted where *Hajah* (i.e. the need that is treated by jurists on similar grounds like *Darurah*, i.e. extreme necessity, which makes impermissible things permissible) comes into consideration .

What makes our argument sound and valid is that Muslims are compelled to take usury, i.e. they do not deal with it on purpose or by their free choice. The prime criterion for forbidding usury, according to a number of Quranic verses, revolves essentially around taking usury (not giving it). However, giving usury was forbidden only to obstruct pretext, i.e. ways leading to

⁴⁴ Abu Dawood narrated (No.2912) as did Al-Bayhaqi, through the same channel (6/205, 254-255) from Abdullah ibn Burayda, "That two brothers; a Jew and Muslim, fell into a conflict and asked Yehia ibn Ma'een to arbitrate between them, whom went on to award the Muslim the inheritance. He, i.e. Yehia, said: Abul Aswad informed me that a man told him that Mu'ath had told him: "I heard the Prophet Mohammed (ppbuh) say: "Islam increases and does not decrease", and upon this he awarded the inheritance to the Muslim. The chain of narration to Abul Aswad is correct, however this chain is disconnected between Muath and Abul Aswad, as the narrator who made the narrated connection is unknown, however it is linked to the hadith of A'ith ibn Amr, with which it becomes a Good narration.

⁴⁵ A Good Hadith due to another. Narrated by Al-Rawyani in his 'Musnad' (No.783), Abu Nu'aym in "Akhbar Asbahan" (1/65) and Al-Bayhaqi (6/205), where two narrators are unknown. However, the previously mentioned hadith of Mu'ath ibn Jabal testifies to its authenticity, in addition to the fact that this hadith also came with a correct chain of narration that links it to Ibn Abbas, and which is relayed by Al-Tahawi in "Sharh Ma'ani Al-Athar" (3/257) and which Al-Bukhari considered as suspended (1/454) in "Kitab Al-Jana'iz" and authenticated by Ibn Hajar in "Al-Fath" (9/421). This Hadith and the one previously mentioned are both supported by the Quranic verse: "*It is He Who sent His Messenger with Guidance and the True Religion to make it prevail over all religions*" (**:33) and (**:9).

usury, which is termed by jurists as '*Sad Athara'i*'. On similar grounds, notaries and witnessing usurious transactions was prohibited. They were made as such to check the means that lead to usury .

While taking usurious loan is categorically forbidden, paying interest towards a loan is permitted if there is *Hajah* i.e., an urgent need as maintained by a number of jurists. It has also been maintained that taking a usurious loan is permitted if there is no other way available. A famous rule that we could put forward in this regard is what has been made forbidden for an essential reason within the transaction can only be made permissible for cases where *Darurah* i.e. extreme necessity, is involved, and what has been made forbidden to obstruct further ways that lead to usury can be made permissible for *Hajah*, i.e. need .

[Resolution 2/4]

Fatwa (27²)

Insurance and Reinsurance

Resolution

The Council discussed the research and the papers presented to it concerning the issue of insurance and how it is dealt with in Europe and reviewed the publications of the Fiqh Academies, conferences and scientific forums on this matter, and has arrived at the following:

First: Taking into consideration the resolutions issued by some *Fiqh* Academies that prohibit business insurance (which is based on fixed premiums without giving the insured any of the profits of the company or charging him any of its losses) and the lawfulness of cooperative insurance (which is based on regular cooperation among the insured and distributing the surplus, if any, among them – the role of the company being confined to running the budget of insurance and investing its assets), there are cases and environments that require solutions to deal with special situations and meet their needs, particularly the case of Muslims in Europe where business insurance is prevalent and where people are badly in need of benefiting by it to ward off the risks they are largely exposed to in daily life in all its forms, and in the absence of the Islamic alternative (i.e. the cooperative insurance) and the difficulty to find it nowadays. Therefore, the Council gives the *fatwa* permitting business insurance in the following and similar cases:

- 1- The cases of legal compulsion, such as insurance on cars, machinery and equipment, for employees and officials (social security and pension), and some cases of health insurance, study insurance, etc.
- 2- Cases where insurance is required to ward off critical situations and severe difficulty and where the risk in the system of business insurance is excused. Following are some examples:
 - a) Insurance on Islamic institutions such as mosques, centers and schools, etc.
 - b) Insurance on cars, machinery, equipment, houses, professional and commercial establishment, to avoid the perils that are difficult to cover such as fires, theft and the impairment of various facilities.
 - c) Health insurance to avoid the high costs which the insured and the members of his family may have to pay, in the absence of free, slow, or technically low level health coverage.

Second: Postponing the subject of life insurance in all its forms to another session to complete its study.

Third: The Council recommends that wealthy and intellectual figures try hard to establish financial Islamic establishments, such as Islamic banks, and Islamic cooperative insurance companies as much as possible.⁴⁶

[Resolution 7/6]

⁴⁶ Dr Muhammad Fuad al-Birazi, member of the Council, disagreed by saying: "I see that insurance is permissible if it compulsory by law, in addition to cooperative insurance if it is available. Otherwise, it is prohibited."

Fatwa (29²)

The legal decision in regards with meat and poultry products sold by non-Muslims in Europe.

The Council discussed this matter at great length acknowledging that it is a matter which has created great concern and debate amongst Muslims. The Council concluded that it is necessary for Muslims to abide by the conditions of slaughtering according to the Islamic Shari'a, so that they please their Lord and protect their identity from compromise and external threats as well as to protect themselves from consuming what is illegal and forbidden.

Having examined the various methods of slaughter, many of which consist of various illegal acts which lead to the death of a large proportion of animals, particularly chicken, The Council decided the illegality of consuming the meat of chicken and cows, whilst the meat of lamb, sheep and calves is allowed as the method of slaughtering these in many countries does not contradict the methods decided by the Islamic Shari'a. The Council hereby recommends to all Muslims that they establish their own slaughter houses so that they may fulfill this important need whilst protecting their religious and cultural identity. The Council also calls upon the Western governments to recognise the religious aspects of Muslims, including enabling them to slaughter according to Islamic Shari'a, similar to other religious communities and groups such as the Jews. The Council also calls upon the Islamic countries to import meat which has been slaughtered according to the Shari'a and which are supervised and administered by the trusted Islamic centres throughout the West.

[Third Session]

Fatwa (31²)

Q) If a woman fell in love with a man, is she considered to have sinned?

A) Whatever feelings overcome one's heart without his or her choice, then no sin is deemed to have been committed. Indeed, feelings of love and hate which overcome one's emotions inadvertently are not considered sins, unless they drive that person to act upon those feelings in an unlawful manner. Allah (swt) said in the Holy Quran: "*Allah does not overburden a soul with what it cannot bear*" (2:286). The Prophet Mohammed (ppbuh) stated in the authentic Hadith: "*Allah Almighty has forgiven for my Umma what they have concealed in their hearts, unless they act accordingly or speak aloud*". Agreed upon; narrated by Abu Huraira⁴⁷.

However, a man and woman must not indulge in any acts which would cause such emotions to overcome their hearts, as this may lead to sinful acts being committed. Also, they must consider the best of solutions in such circumstances, namely; marriage. The Prophet (ppbuh) said: "*We have seen no better solution for those in love than marriage*", narrated Ibn Maja from the Hadith of Ibn Abbas, may Allah be pleased with him and his father⁴⁸.

[Fifth Session]

Fatwa (33²)

Ruling on offering congratulations to non-Muslims on their festive occasions
Resolution

There can be no doubt as to the importance and the sensitivity of this issue, specially to Muslims residing in the West. The Council received numerous questions and queries whom live in these countries and interact with the non-Muslims thereof. Indeed, between the Muslims and the non-Muslims are strong and integral links stipulated and deemed necessary by the means and manner of life itself, such as neighbourly relations, friendship at work or study. In fact, a Muslim may actually feel in debt toward the non-Muslim in particular circumstances, such as towards the hard-working and selfless supervisor or lecturer, a sincere

⁴⁷ Narrated by Al-Bukhari (No. 2391, 4968, 6287) and Muslim (No.127)

⁴⁸ Ibn Maja (No.1847)

and skilful doctor and others. A famous Arab said what implies the meaning that one is enslaved by others' favours.

Thus, what is the position of the Muslim as to such people who are non-Muslims, who do not actually hold any animosity towards Muslims, do not fight them due to their religion and did not actively seek to expel Muslims from their homes and lands?

The Holy Quran stipulated regulations as to how relationships between Muslim and non-Muslim are to be governed and carried out, in the chapter of 'Al-Mumtahina', which was essentially revealed to address the pagan polytheists. Allah (swt) said: "*Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity. It is only as regards those who fought against you on account of religion, and have driven you out of your homes, and helped to drive you out, that Allah forbids you to befriend them. And whosoever will befriend them, then such are the wrong-doers*" (60:8-9).

Thus the verse stipulated that there is a clear difference between those who fight Muslims and treat them as enemies, and those who interact and deal with Muslims in peace.

The latter, were commanded to be treated well and in a just and beautiful manner, more so than to merely give them what is duly theirs in rights and to take from them what is duly your. Indeed, the command is to treat them beyond those mannerism and to deal with them in beautiful and ideal ways.

As for the other group, which the verse clearly forbid any allegiance to them or support offered in their favour, they are those who chose to become enemies of Islam and Muslims and worked actively to expel them from their homes and lands for no reason other than that they proclaim that Allah Almighty is their Lord, as did Quraish and the infidels of Makkah in respect to the Prophet Mohammed (ppbuh) and his Companions.

Al-Bukhari and Muslim both narrated from the Hadith of Asma'a bint Abi Bakr (ra), that she came to the Prophet Mohammed (ppbuh) and said: O Messenger of Allah! My mother, who is a *Mushrik* i.e. a polytheist, has come to visit me and she desires to be close to me and to give me gifts,. Shall I greet her and treat her well? The Prophet (ppbuh) stated: "Greet your mother and treat her well".⁴⁹

This, whilst the woman was a *Mushrik*, and the Quran clearly stipulates that the People of the Script, i.e. Jews and Christians, are far closer to Islam and Muslims than *Mushriks*. Indeed, the Quran gave allowance to eat from the food of the People of the Script and to marry from them. Allah (swt) stated in the Chapter of Al-Ma'ida: "*..The food of the People of the Scripture is lawful to you and your is lawful to them, lawful to you in marriage are chaste women from the believers and chaste women from those who were given the scripture before your time*" (5:5) Also, if a marriage is permissible from them, then it goes without saying that marriage implicitly and necessarily decrees love and closeness; Allah (swt) stated: "*And amongst His signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy*" (30:21). Indeed, how can a man despise his wife, who is ultimately his partner in life, his spouse, the mother of his children? Allah (swt) stated: "*..they are body cover for you and you are the same for them*" (2:187). Moreover, an important consequence and result of marriage is the coming together of two families, to form blood bonds and relationships, a form of natural human form of relating to one another. Allah (swt) stated "*And it is He Who has created man from water, and has appointed for him kindred by blood, and kindred by marriage*" (25:54).

Also, the feelings and affections of maternity, and the clearly stipulated and emphasized rights of a mother upon her children in Islam. One asks in this context: is it an acceptable act according to these stipulations that one does not greet or congratulate his or her non-Muslim mother on a day of festivity which she celebrates? What about relatives from his mother's side, such as grandparents, uncles, aunts and cousins? All those have rights upon a Muslim clearly stated in the Holy Quran, where Allah (swt) states: "*But kindred by blood are nearer to one another regarding to inheritance in the decree ordained by Allah*" (8:76), and also: "*Verily, Allah enjoins justice and perfect mannerisms and giving to kith and kin*" (16:91).

⁴⁹ Narrated by Al-Bukhari (No.2477, 3012, 5633, 5634) and Muslim (No.1003)

Thus, if maternity and blood relation rights are obligatory upon a Muslim, in a way that exemplifies the beautiful mannerisms of Islam and Muslims, it is also obligatory upon a Muslim to pay the due rights which work towards showing Muslims as people of beautiful character. The Prophet Mohammed (ppbuh) advised Abu Thar (ra) saying: *“Be aware of Allah wherever you are, and follow up a sin that you have committed with a good deed, so that sin may be erased, and treat people with beautiful mannerisms”*.⁵⁰ As is evident, the emphasis is upon “...and treat *people* with beautiful mannerism” not “...treat Muslims”. The Prophet Mohammed (ppbuh) also advised strongly to deal with non-Muslims in a mild and delicate manner, away from using terrorising and stern methods. It was reported that when a group of Jews approached the Prophet (ppbuh) and greeted him with twisted pronunciation, and thus uttered ‘Assam Alaykum O Mohammed!’ instead of ‘Assalamu Alaykum’, the former meaning: ‘death and destruction become upon you’. Aisha (ra) heard them and responded by saying: ‘Assamu Alaykum also and the curse and wrath of Allah’! The Prophet rebuked Aisha for what she had said. She told him: ‘Did you not hear what they said?’ He said: “I did; and I responded by saying: and upon you”, i.e. that death will come upon you as it will come upon me. He went on to say: “O Aisha! Allah (swt) loves gentleness in all matters”.⁵¹

Indeed the permissibility of congratulating non-Muslims on their festive days becomes more of an obligation if they were to offer their greetings on Islamic festive occasions, as we were commanded to return good treatment with similar treatment, and to return the greeting with a better one, or at least with the same greeting. Allah (swt) stated: *“When you are greeted with a greeting, greet in return with what is better than it, or at least return it equally”* (4:86).

A Muslim must never be less charitable or pleasant or indeed of lesser mannerisms than any other, as the Prophet Mohammed (ppbuh) stated in the hadith: *“The most perfect believers in terms of their Iman are those who possess the most beautiful mannerisms”*⁵², and he (ppbuh) also stated: *“Very I have been but sent to perfect the most noble of mannerisms”*.⁵³

The significance of this increases dramatically if we are interested in inviting them to Islam and to liken Muslims to them, which is an obligation upon us all, as this cannot be achieved by treating them roughly, sternly and violently, but rather by beautiful mannerisms and sublime ethics. The Prophet Mohammed (ppbuh) dealt with the polytheists of Qureish in the most beautiful of ways and manners, throughout his life in Makkah despite their animosity, persecution, oppression and extreme insult of him (ppbuh) and his companions. This was epitomized by the fact that due to the incredible trust they had in him (ppbuh), they deposited their wealth and possessions with him, in fear that they may be lost or stolen. When the Prophet went on Al-Hijra (emigration) to Madina, he left behind Ali (ra), whom he commanded to return the deposits and trusts that were with him (ppbuh).

Thus, there is nothing to prevent a Muslim or an Islamic centre from congratulating non-Muslims, either verbally or by sending a card, which contains no symbols or icons of religious implications which may contradict Islamic faith and principles, such as the crucifix; a concept totally outlawed and denied by Islam. Allah (swt) stated in the Holy Quran: *“...but they killed him not, nor crucified him, but the resemblance of Jesus was put over another man”* (4:156).

Indeed, one finds in the customary words of congratulations, nothing which carries any explicit nor implicit recognition of any aspects of their faith or belief, nor any condoning thereof.

⁵⁰ Narrated by Ahmed (5/153, 158, 177), Al-Tirmithi (No.1987), Al-Darmi (No.2688), and Al-Hakim (No.178) on the authority of Abu Thar.

⁵¹ Agreed upon. Narrated by Al-Bukhari (No.2777 and other locations) and Muslim (No.2165) on the authority of Aisha.

⁵² Authentic Hadith, narrated by Ahmed (No.7402, 10106, 10817), Abu Dawood (No.4682), Al-Tirmithi (No.1162) and Al-Darmi (No.2689) on the authority of Abu Huraira. Al-Tirmithi commented: “A good authentic hadith”.

⁵³ Authentic Hadith. Narrated by Ahmed (No.8952), Al-Bukhari in ‘Al-Adab Al-Mufrad’ (No.273) and Al-Bazzar (No.2470 – Kashful Astar) and the hadith was narrated according to his narrated wording. The narration chain is authentic, i.e. Sahih. Abdul Barr also deemed the hadith authentic in “Al-Tamheed” (24/333).

There is also no objection to accepting gifts and presents from them, and to return their gifts in kind. The Prophet Mohammed (ppbuh) accepted the gift of the King of Egypt and several others⁵⁴, on condition that these gifts are not unlawful in themselves, such as being alcohol or pork.

We also wish to mention that some jurists, such as Shaykh-ul-Islam Ibn Taymiyya and his student the great scholar Ibn-ul-Qayyim adopted stringent measures and restricted the permissibility of this issue and the participation of Muslims in the celebrations of non-Muslims. We adopt this same stance, advising Muslims not to celebrate the festivities of non-Muslims, whether Mushriks or People of the Script, as we find some ignorant Muslims celebrating Christmas as they would normally celebrate Eid-ul-Fitr and Al-Adha, and maybe even more so. This is unlawful, as we Muslims have our unique festivities, but see no objection to congratulating others on their festivities, if there is some relationship or fellowship links which deem positive social interaction and beautiful exchange a must according to our sublime and noble Islamic Shari'a.

As for patriotic or national celebrations and festivities, such as Independence Day, Union Day, Mother's Day, Childhood Day and the such; there is no objection whatsoever to a Muslim congratulating others in those regards, and indeed to participate therein as citizen of those lands, whilst observing Islamic mannerisms and controls in all matters.

[Resolution 3/6]

Fatwa (35²)

The Ruling concerning the woman's taking leave (of the husband) if she wants to leave house; and her travel without a Mahram i.e. Cheperon.

1) The Ruling concerning the woman's taking leave on leaving home:

It is incumbent on the woman to inform her husband when she wants to go outside her home. However, the woman's leaving her house to work, study or run errands for the home and the children, will not require but a general consent on the part of the husband, and the wife is not to ask leave every time. The matter is subjected to common tradition. If the wife's going out of the house is to visit a family not known to the husband, or if her going out entails staying overnight outside the house, the leave and consent of the husband become necessary. If the husband refuses, the woman shall not go out. Muslim morality also requires that the husband should tell his wife if he wants to travel or stay overnight outside the house, for she has the right to know her husband's whereabouts when he is absent from home.

2) The Ruling regarding a woman's travel without a Mahram

This is primarily unlawful according to the hadith of the Prophet (ppbuh): "*A woman who believes in Allah and the Hereafter shall not travel for (a period of) a day and a night unless accompanied by a Mahram of hers*"⁵⁵. Depending on this general text some scholars are of the opinion that a woman should not travel by herself. Other scholars stipulate that her travel is permissible in the company of a trustworthy group of men or men and women. The prohibition conveyed by the hadith is justified by fearing that the woman may be exposed to mischief or temptation if she travels alone, bearing in mind that the dangers of travel were numerous in the past. Caliph Omar ibn Al-Khattab (ppbuh) allowed the Prophet's wives to travel for *Hajj* with a group of believers and sent with them Othman ibn 'Affan and 'Abdul-Rahman ibn 'Auf.⁵⁶

In the hadith of the Prophet (ppbuh) to 'Adiy ibn Hatim we read: "*If you live long, you will see the woman travel from Heerah⁵⁷ to circumambulate Ka'ba fearing none but Allah*"⁵⁸. This confirms that the cause (of the prohibition) is fear (of insecurity). If security is guaranteed and fear is no more present, a woman may travel, particularly nowadays when

⁵⁴ Reports thereof are plentiful and their implications are authentic and approved, relayed by Al-Tahawi in "Sharh Mushkil Al-Athar" in an appropriate and comprehensive manner in both (6/399) and (11/128).

⁵⁵ Narrated by both al-Bukhari (no. 1038) and Muslim (no. 1339) on the authority of Abu Hurayrah.

⁵⁶ Al-Bukhari (no. 1761) and Al-Bayhaqi (4/326-327)

⁵⁷ Heerah is a city in Iraq.

⁵⁸ Al-Bukhari (no. 3400) from the hadith of 'Adiy ibn Hatim.

travel has become easy, whether by air, train or coach. In all these means of transportation, company is available and security is realized for the Muslim woman.

This is in respect of the woman's travel from one town to another or from one country to another and her arrival on the same day of her travel whereupon she finds company providing security. If the journey requires staying overnight in a hotel on the way, or the journey is intended to perform a certain task that requires residence for a certain period, the woman, in this case, is supposed primarily to travel with a *Mahram* of hers, or reside for the required period with a Muslim family in that country to evade the likelihood of temptation or mischief the woman may face.

Finally, the Council urges parents to bring up their daughters and the husbands to educate their wives according to the guidance of Allah (swt), for a Muslim woman will certainly follow the guidance of Allah (swt) steadfastly if she has received her due amount of education and instruction and has learned the rulings and rules of Sharia and has comprehended her religion.

[Fifth Session]

Fatwa (36²)

Giving up Jerusalem is a betrayal of Allah, His Messenger and the Believers

It is unlawful to surrender any part of Islamic land, for Islamic land is not the right of a president, a prince, a minister or of a group of people to surrender it under the event of exerted pressure or difficult circumstances. Rather, individuals and communities should try to use all means to withstand occupation, free the Holy Jerusalem and restore it to the Muslim territory.

If one of the *Umma's* generations proves unable or unwilling to do so, it does not have the right to impose its disability or unwillingness on the future generations of the *Umma* till the Day of Judgment by surrendering what it is not entitled to surrender. Therefore, the Council's *Fatwa* is that it is prohibited and unlawful to sell land in Jerusalem or in any other location in Palestine to the enemies or accept compensation for it by the homeless refugees, for Muslim lands are not to be given up or compensated for in any case, and whoever does so betrays Allah, His Messenger and the Muslim society.

If this ruling applies to any Muslim land, it should be more strict concerning the land in Holy Jerusalem, the first of the two *qiblas*, the city of Al-Aqsa Mosque, and the third of the most venerated cities to Muslims next to Makkah and Medina, and the land that was the destination of *Isra'* (night travel) and the starting point of *Mi'ra* (ascendancy to Heaven). It is enough that Allah (swt) praised it in His Saying: "*Glorified (and Exalted) is He who took His Slave for a journey by night from Al- Masjid al-Haram (at Makkah) to Al-Masjid Al-Aqsa (in Jerusalem), the neighborhood whereof we have blessed in order that we might show him of Our Signs*" (17:1) Therefore, Jerusalem has its place in the heart of every Muslim, whether east or west. It touches its membrane and goes deep in it, out of sincere love of it, eagerness to keep it intact, and defending its sanctified features and taking care of its affairs. Because of it, the Palestinian issue has become the first issue of Muslims. They hurry to protect it and they fight in its cause and offer their souls and valuable property for its sake.

Jerusalem is not for the Palestinians alone; it is for the whole Muslims, Arabs and non-Arabs. It is also for all Arabs, both Muslim and Christian.

The Palestinians are not entitled to decide by themselves the fate of Jerusalem and ignore the right of the Muslims all over the world. Consequently, Muslims, wherever they may be, should do their duty and do their utmost to defend Jerusalem and Al- Aqsa Mosque. It is a common obligation. All Muslims should work together to defend them with their souls and property and whatever they possess. Otherwise, they would incur the punishment of Allah (swt).

Allah (swt) says: "*O you who believe! What is the matter with you, that, when you are asked to march forth in the Cause of Allah, you cling heavily to the earth? Are you pleased with the life of this world rather the Hereafter? But little is the enjoyment of the life of this world as compared to the Hereafter. Unless you march forth, He will punish you with a grievous*

penalty and replace you by another people; but Him you will not harm in the least, for Allah has power over all things” (9:38-39).

When the crusaders occupied Jerusalem in the past, the people who tried hard to free it were non-Arab Muslims, such as the Turk ‘Imad-ud-Din Zinki, his son Nur-ud-Din Mahmud, known as the Martyr, and his student the Kurdish Salah-ud-Din Al-Ayyubi, who Allah (swt) chose to free Jerusalem.

Muslims numbering over 1.3 billion are still everywhere ready to sacrifice and expend everything for the sake of their dear Jerusalem. This is perceived by every individual among the Muslim nations from Philippine and Indonesia in the East till Mauritania in the Arabian West, although this is not manifested strongly and clearly by some Muslim rulers, unfortunately.

Jerusalem is a dear part of Islamic home and Islamic land. Muslims have been in it for 14 centuries. They did not usurp it from the Jews. Indeed, Jews ceased to live in it for hundreds of years. Their state had come to an end hundreds of years before; a state which lasted for no more than a few hundred years. Arabs and others lived in it for thousands of years. When the Caliph Omar ibn Al-Khattab (ra) received Jerusalem from its Christian Patriarch Sapharnius, one of the conditions agreed upon with him stipulates: “The Jews shall not live with them”.

The sovereignty over Jerusalem should be Islamic – Arabian - Palestinian. This does not prevent Christians or Jews from practicing their religious rites with the freedom and tolerance characteristic of Islam through the ages: “*And Allah has full power and control over His Affairs, but most of men know not*” (12:21).

[Resolution 1/6]

Samenvatting

Dit proefschrift analyseert islamitische discussies over het minderhedenvraagstuk. Discussies over de noodzaak om een “Europese islam” te creëren worden vandaag overal gevoerd. Volksvertegenwoordigers en intellectuelen vanuit het hele politieke spectrum benadrukken dikwijls de noodzaak om de islam aan te passen aan het westen om “de dreiging van terrorisme tegen te gaan”, “de radicalisering van moslimjongeren te voorkomen”, en “de integratie van immigranten te vergemakkelijken”.

Ofschoon zij zelden deelnemen aan deze publieke debatten, hebben orthodoxe moslimgeleerden die vasthouden aan de islamitische rechtstraditie gedurende de laatste decennia soortgelijke vraagstukken besproken binnen het wereldwijde domein waarin zij hun islamitisch-normatieve *fiqh*-discours voeren. Een breed scala van moslimactoren - zowel in Europa als in de islamitische wereld – spreekt zich uit vóór de “integratie” van moslims in Europa en tégen aanzetten tot “assimilatie” en (zelf-)“segregatie”. Ik tracht het specifieke jargon te begrijpen van deze integratiedebatten, en hoe zich dit vertaalt naar een *fiqh*-discours en fatwa’s.

Mijn betoog begint met het theoretische discours omtrent het idee van een islamitische rechtsleer betreffende minderheden (*fiqh al-aqalliyyat*), een enigszins omstreden denkbeeld dat gezien kan worden als een islamitische integratie-theorie. Moslims uit verschillende delen van de wereld en met verschillende aspiraties hebben sinds de jaren negentig opgeroepen tot het ontwikkelen van een *fiqh* afgestemd op de specifieke behoeften van moslims die leven in het westen.

Eerst schets ik de historische context waarin dit debat ontstond. Vervolgens onderzoek ik welke opvattingen over het westen als een politieke ruimte, en over de islam als een religieuze traditie, ten grondslag liggen aan deze oproepen. Gezien de onderlinge verscheidenheid tussen voorstanders van een minderheden-*fiqh*, en hun individuele positionering met betrekking tot dit concept, hoe zouden we het begrip *fiqh al-aqalliyyat* zelfs ook maar kunnen

definiëren? Wat verbindt de voorstanders van een *fiqh al-aqalliyat*, anders dan een toewijding aan de islamitische rechtstraditie in algemene zin en een gedeelde opvatting dat het westen die tradities op een of andere manier zou bedreigen?

Maar als we anderzijds constateren dat minderheden-*fiqh* soms een nogal kneedbaar begrip blijkt te zijn, hoe kunnen we dan het verzet - en vaak zelfs hevig verzet - verklaren, dat de constructie van een *fiqh al-aqalliyat* heeft opgeroepen binnen moslimkringen? Middels lezing van geselecteerde teksten die vóór dan wel tegen het idee van een minderheden-*fiqh* betogen, probeer ik te verklaren waar het in dit debat wezenlijk om draait, anders dan de tegenstelling tussen hervormers versus conservatieve geleerden.

In het tweede deel van deze dissertatie ga ik in op de 'vertaling' van het minderheden-*fiqh* discours naar religieuze opinies (fatwa's). Ik concentreer me hierbij op de Europese Raad voor Fatwa en Onderzoek, een transnationale *fiqh*-raad die een belangrijke rol vervult in het minderheden-*fiqh* debat. Ik bespreek eerst de vragen die worden voorgelegd aan de Raad, en wat deze vragen ons kunnen vertellen over de zorgen en aspiraties van de Europese moslimgemeenschappen. Daarna verken ik de kenmerken van een collectieve *fiqh*-raad die gelijktijdig verschillende projecten tracht te verwezenlijken - de integratie van moslims in Europa en het vergemakkelijken van hun leven, alsook het verbinden van deze moslims met de islamitische *ummah* en het herbevestigen van de relevantie van islamitische normen in hun dagelijkse bestaan. Ik tracht te begrijpen hoe deze verschillende ambities worden uitgedrukt in de fatwa's die de Raad produceert, en de spanningen en ongewisheden die kunnen ontstaan gedurende dit proces.

Ik concludeer met de vraag hoe men het succes (of anderszins) van dit minderheden-*fiqh*-project dient te interpreteren en te meten, hoe succes gerelateerd is aan erkenning door de moslims zelf - individueel en collectief - en hoe dit project zich verhoudt tot bredere discussies in het Europese publieke domein over de islam en de integratie van moslims.

Curriculum Vitae

Alexandre Vasconcelos Caeiro was born in Lisbon, Portugal, in 1978. He studied Sociology and Economics at Trinity College Dublin in Ireland (BA, 2001). He got his Masters in Sociology from the Ecole des hautes études en sciences sociales (EHESS), Paris, in 2002. From 2004-2008 he was a PhD Fellow at the International Institute for the Study of Islam in the Modern World (ISIM) in Leiden. Since 2009 Caeiro has been a Research Fellow at the Erlanger Zentrum für Islam und Recht in Europa (EZIRE) at the Friedrich-Alexander-Universität Erlangen-Nürnberg. He is currently based in Cairo, Egypt, where he is conducting research on the Arabic transnational spaces of normative fiqh debate.