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Electronic version

URL: <http://journals.openedition.org/assr/23312>

DOI: 10.4000/assr.23312

ISBN: 978-2-7132-2303-7

ISSN: 1777-5825

Publisher

Éditions de l'EHESS

Printed version

Date of publication: 30 September 2011

Number of pages: 81-100

ISSN: 0335-5985

Electronic reference

Alexandre Caeiro, « The making of the fatwa », *Archives de sciences sociales des religions* [Online], 155 | juillet-septembre 2011, Online since 09 November 2011, connection on 01 May 2019. URL : <http://journals.openedition.org/assr/23312> ; DOI : 10.4000/assr.23312

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The making of the fatwa

The production of Islamic legal expertise in Europe

This article examines the kind of expertise that is provided by Muslim actors specialized in Islamic Law (muftis) to their coreligionists in Europe. It seeks to understand how the production of this expertise (the fatwa) is organized and managed, and to what extent it is shaped by policy discourses in the West. Social scientists working on Islam in Europe seem to have by and large neglected the genre of fatwas.¹ Although there may be a variety of reasons for this, including those related to the conventional disciplinary boundaries, this neglect is unfortunate given that the fatwa provides unique windows into the projects, desires, and fears of Muslim individuals and communities living in specific contexts. In the current context of institutionalization of Muslim authority in Europe and a growing interest and concern for Muslim minorities in the Islamic heartlands, fatwas are also an adequate place to explore the links between the production of local Islamic discourses and the circulation of transnational ones. They often give rise to heated debates within the Muslim communities of Europe, in peer study groups as in Internet fora, in mosques as in printed magazines—debates which, like their equivalents in the Arab world, are saturated with questions of authenticity, legitimacy and authority (Hamzah, 2005: 183), and which should particularly interest social scientists.²

1. In his 1994 study Philip Lewis noted that muftis “have remained largely invisible in studies on Muslim communities in Britain” (1994: 115). Despite some notable exceptions the observation is still largely valid today across Europe. A similar assessment has repeatedly been made by one of the pioneers in this field, P. S. van Koningsveld (2006). See also Rohe (2007).

2. To compound the problem the few studies that have dealt with fatwas have often been marred by a number of problematic assumptions. Jytte Klausen, in her celebrated study *The Islamic Challenge. Politics and Religion in Western Europe*, provocatively titled one of the sub-chapters “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” (2005: 156)—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 (Hallaq, 1994; Johansen, 1999).

Although individual muftis continue to issue fatwas, the production of Islamic legal expertise is increasingly becoming a collective process. The institutionalization of collective *ijtihad*—as the practice is known—has been seen as an acknowledgement of the complexity of the modern world, where no single individual is able to master all the relevant branches of knowledge (Masud, Messick & Powers, 1996). It is also sometimes portrayed as a realistic response to the current shortage of absolute mujtahids (*Al-Sharq al-Awsat*, 2009). The institutionalization of collective fatwa bodies can therefore be said to constitute one of the strategies through which the ulama have attempted to remain relevant in the face of the challenges of modernity (Zaman, 2002).

The focus of this study is the European Council for Fatwa and Research (hereby ECFR). Established in London in March 1997 by the Federation of Islamic Organizations in Europe (FIOE),³ the ECFR is committed to the elaboration of a Muslim jurisprudence for minorities (*fiqh al-'aqqalliyyat*) through the production and dissemination of contextualized religious advice for Muslims living in Europe. Its fatwas aim at “protecting the identity” of European Muslims while “facilitating their integration”. Whether the ECFR succeeds in this project depends, of course, on the way *integration* is defined—and on who defines it—at any particular juncture.

In this article I offer an account of the fatwa’s universe by exploring ethnographically the spaces, persons and processes involved in its production in Europe.⁴ The paper is based primarily on participant observation of four sessions of the ECFR—in Paris in July 2002, Dublin in January 2003, Stockholm in July 2003, and London in July 2004. These observations are complemented by readings of the texts issued by the ECFR and over twenty interviews conducted with members and close observers.

The Setting

Meetings between Islamic scholars to discuss the issues related to Muslims in the West have been taking place irregularly since at least the 1970s. Although it has not always been the ground on which Muslim discussions on their presence in Europe have taken place, *fiqh* seems to have become in the context of the global Islamic Revival an increasingly important discursive constraint. Established in 1983, the Union des organisations islamiques de France (UOIF) organized two

3. The Federation of Islamic Organizations in Europe is an umbrella body based in Brussels and comprising Muslim associations in Western and Eastern Europe, including the Union des organisations islamiques de France (UOIF) and the Muslim Association of Britain (MAB). It is linked to the ethos of the Muslim Brotherhood.

4. For inspirational ethnographies of the fatwa in different contexts see Agrama 2010 and Messick 1993. For a different, “praxiological” approach to Islamic legal debates which is also relevant here see Dupret, 2007.

scholarly gatherings in the first half of the 1990s in its newly formed imam-training institute, the Institut européen de sciences humaines (IESH) set in the rural site of Château-Chinon (Nièvre). The discussions and decisions reached at those meetings—on issues of Muslim settlement in Europe, citizenship, interest-bearing transactions, the headscarf, and others—were not widely publicized. By establishing the ECFR, the leaders of the FIOE (of which the UOIF is one of the main members) sought to institutionalize these ad hoc reflections and provide the necessary framework for disseminating the collective opinions.

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, reflecting the geographical distribution of the Muslim diasporic communities. 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. The Egyptian state provides religious expertise: the ICCI is staffed with Azharis paid by the Egyptian Ministry of Religious Endowments, including the imam of the Centre—and the ECFR's current secretary-general—Shaykh Hussein Halawa.⁵ 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, to minimize perhaps the effects of a potential clampdown (in memory 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 specter of illegality, travel restrictions and other bans which hovers over the constellation of actors and institutions involved in the *fiqh al-'aqqaliyyat* 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

5. Hussain Halawa replaced Abd Allah al-Judai 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).

meet local Muslim communities, interact with state authorities, and expand its audience—in other words, to fulfill the aim of becoming a “recognized religious authority” in the European continent. From 1997 to 2011 the ECFR convened 21 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 2004.⁶ On other 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 Salafi groups 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. The homogeneity of the setting—a 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. *Fiqh al-aqalliyyat* 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, perhaps the most prominent Islamic portal on the Internet;⁷ parts of the discussions and interviews with the scholars are sometimes shown at the satellite TV station *Al-Jazeera*;

6. Qaradawi was criticized in the British media for his positions regarding women, homosexuality and suicide-bombing. For details of the controversy, and how it reshaped the subsequent reception of Qaradawi in Western Europe, see Caeiro, Saify, 2009.

7. A disagreement in March 2010 between the Qatari board of Islamonline and its Egyptian staff led to the establishment of a new website, www.onislam.net, where much of the original content has now moved. See for details Abdel-Fadil, 2011.

the meeting's resolutions are published and discussed in fora such as the daily newspaper *Al-Sharq al-Awsat*, the Kuwaiti periodicals *Al-Mujtama'* and *Al-Wa'i al-Islami*, and the (recently-discontinued) magazine of the FIOE *Al-Urubiyya*—not to mention a plethora of other locations on the Internet. Although the primary discursive field in which the ECFR operates is arguably located in the Muslim world, and particularly the dynamics of the Islamic Revival, 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

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), two “qadis” (the Lebanese scholar Faysal Mawlawi and the Mauritanian judge Ali Salim), a dozen “doctors” (the scholars with a PhD) and many “shaykhs”—the basic expression of scholarly status.⁸ 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:

- 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;
- be of good conduct and commitment to the regulations and manners of Islamic shari'a;
- be a resident of the European continent;
- be knowledgeable in Islamic jurisprudence (*fiqh*) as well as being aware of the current social surroundings;
- 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 in 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

8. “Professor” (*ustadh*) is used here as an honorific term and reserved to the chairman of the ECFR. In its more common acception, the title of professor would apply to many other members (Ujayl al-Nashmi, Abd Allah Bin Bayyah, Abd al-Sattar Abu Ghudda) who teach in the shari'a faculties of universities in the Arab World. The complete list of ECFR members is available at www.e-cfr.org

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 criticism from other Islamic institutions), the policy seems to have been reversed since the establishment of the International Union of Muslim Scholars in London in July 2004.⁹ Advocates of minority *fiqh* currently 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 commitment to setting symbolic boundaries (designing a *fiqh* for minorities), on the other.

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.¹⁰ 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-Judai), 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). Milli Görüs 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.¹¹ There are also three members from the Fiqh

9. The International Union of Muslim Scholars is a large association of Muslim scholars headed by Yusuf al-Qaradawi and Abd Allah Bin Bayyah. Officially based in Dublin, it operates mostly from its Cairo branch, where the Egyptian lawyer Muhammad Salim al-Awwa acts as secretary-general.

10. 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-juridical 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.

11. 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.

Council of North America (Taha Jabir al-Alwani, Jamal Badawi and Salah Sultan) sitting in the ECFR. Despite the 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.

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 all have relatively acute senses of a particular geopolitical location, envisaging their role as one of "building bridges" between Islam and the West in a time dominated by clash-of-civilization talk. The cosmopolitanism and heterogeneity of the group are nevertheless 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 digitization of Islamic knowledge, and imams with very limited levels of cyber-literacy; muf-tis 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 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, 2004: 880) that 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 Kuwaiti Ministry of Religious Endowments (and its newly established Global Centre for Wasatiyya), 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. They publish in the prestigious Islamic legal periodicals that have sprung up in the Muslim world since the 1970s. Many sit in the shari'a boards of Islamic banks (Uthmani, Qaradawi, Bin Bayyah) and have developed extensive media networks: Qaradawi, Mawlawi, Bin Bayyah, Ajil Nashmi and others have their own personal websites; Qaradaghi is currently 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 organised by the UOIF in France, the annual conference of the Muslim Association of Britain, etc). In the internal discussions they speak with the self-confidence of men supported by a vibrant historical tradition. They deliver the opening speeches and chair the sessions, which do not start before they arrive, moderating and often setting the tone of the collective discussions.

Although the ethos of *ijtihād*, the language of *wasatiyya* and the invocation of the *maqāṣid* which characterize this group of scholars have become increasingly widespread, Yusuf al-Qaradawi and his peers occupy a position of dominance within the ECFR that they do not have in other international *fiqh* councils. This seems to explain why Qaradawi himself has regularly lauded the ECFR's work,¹² and why he has been keen to reproduce the experiment at a larger level through the recently-established International Union of Muslim Scholars (IUMS). The collective fatwas borrow extensively from their individual fatwas—especially those of Qaradawi. 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.

In contrast to this 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, preferring a Western suit-and-tie outfit (perhaps as a sign of modesty?) 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

12. *Al Sharq al-Awsat*, “A Talk with Sheikh Yusuf al-Qaradawi”, 8/4/2008, available at <http://www.asharqalawsat.com/english/news.asp?section=3&id=12353>

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 a denial in the ECFR's own periodical. If they are referred to as the "non-specialists" in critiques of the ECFR, 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 that they are able to invoke to push their points of view in the collective discussions.

Other 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 (Milli Görüş, Ahl al-Hadith). They 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,¹³ there are therefore several factors which contribute to internally differentiate its members, including age, charisma, mother language, country of residence, disciplinary training, formal membership in other Muslim organizations, and hermeneutical approaches. The ability to cultivate a space of scholarly debate that cuts across these boundaries depends upon the success of the deliberative process to establish a form of consensus.

The Deliberation

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*).¹⁴ The fatwa is seen here as a "craft"

13. Muslim and non-Muslim critics of the ECFR often present the fatwa body as an institution tied to the Ikhwani ideology (in particular, the understanding of Islam as a "comprehensive system" promoted by the Muslim Brothers or *al-ihwān al-muslimūn*). 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 referred to as a "Wahhabi institution" based on the idea that Ikhwani and Wahhabi groups are part of the same broad ideological configuration—the *salafiyya*—that has displaced the traditional authority of the *madhhab*.

14. 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.

(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.

Many of the issues that are collectively discussed in the ECFR meetings come in the form of questions from Muslims living in Europe. 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.¹⁵ 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.¹⁶ 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 is 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 *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?

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. 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

15. 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.

16. 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.

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.¹⁷ 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 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.

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 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. Hence, the answer to 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 *zakāt* by Muslim NGOs in the West elicits an exposition of the functions of alimony in Muslim society (ECFR 2002: 116).

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. The fatwa's own distribution of moral responsibility explains why the

17. 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).

conventional legal criteria of “detachment” and “objectivity” (Latour 2004) do not seem to arise in this setting.¹⁸ 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 (Ibrahim 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 on issues that do not necessarily originate in questions from Muslim communities. These 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 (Caeiro, 2010). 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. 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. 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 involved myriad forms of forbidden usury (*ribā*) 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 (*qarār*) 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

18. In his rich ethnographic study of the workings of the Conseil d’État in France, Bruno Latour often contrasts the legal institution with the scientific laboratory. His study however also offers interesting points of comparison with the universe of the fatwa.

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. 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 Fiqh Academy of the Organization of the Islamic Conference in Jeddah), and a variety of fatwa bodies 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 disagree on whether the ECFR should try to revise these fatwas or simply endorse them. The main thrust of the ECFR's approach is 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 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”.

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 constitutional 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. In one instance 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 (Caeiro, 2004). But consensus sometimes is difficult to reach; many issues (including 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) have to be adjourned once, or twice. Some—like the status of meat products slaughtered by non-Muslims—have been indefinitely postponed. When a consensual answer appears impossible, the leadership of the ECFR may decide to produce the fatwa of one of its leading scholars instead: if the members cannot agree on whether 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 may be sent to the petitioner in order to remove his burden...

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 Qaradawi calls a *fiqh* of balances and priorities (*fiqh al-muwazanat wa fiqh al-awlawiyyat*). They discuss the following questions: 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? 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? And what criteria should one use to determine these goals (*maqāṣid al-shari'a*)? Furthermore, if the role of the mufti is to "make life easy" (ECFR 2002: XI), where should the line between facility (*taysir*) and negligence (*tasāhul*) 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?

During the internal discussions scholars take a variety of positions on these issues, sometimes change their mind, and (usually) eventually settle on a compromise. Since the Prophet forbade interfaith inheritance in an authentic hadith, but also stated that Islam does not harm the believer, should European converts to Islam be allowed to inherit from their non-Muslim relatives? What is the level of benefit that can outweigh such a Prophetic narration (and should benefit be measured exclusively in material terms, or should it also include conformity to the shari'a)? Furthermore, if Muslims can be in a state of necessity for such funds, does one measure the necessity in individual, regional, or global terms? (*Al shari'a wa-l-hayat*, 2001).¹⁹

The Islamic normative tradition of *fiqh* has well-established methods for resolving such conflicts of interest, providing standards for drawing analogies,

19. In the end the fatwa issued by the ECFR allows a Muslim to inherit from a non-Muslim on grounds that the prohibition relates only to the "*kāfir*", defined here as the one who is in a state of war with Muslims (Resolution 1/5).

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 *dīn* (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 (ECFR 2002: VIII). In order to do so the muftis sometimes draw flattering comparisons between Islamic norms and positive laws, or try to show how the former are in conformity with human nature. But 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 Christians or Jews is licit for Muslims in the self-avowedly secular contexts of Europe²⁰—particularly when Milli 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. Furthermore, since the fatwa must not “destabilize” the society (Ibram n/d), the production of a *pan-European fatwa* also requires an assessment of the shifting moods of European audiences regarding public religion in general, and Islam 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-urubī li-l-iftā’ wa-l-buḥūth* 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

20. 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?

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).

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*”. Under these conditions, what position should the ECFR adopt in relation to the lunar calendar? 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 their awareness that some will 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? These and other questions are the object of intense debate within a collective *fiqh* council committed to a range of different projects.

Conclusion

Fiqh al-aqalliyyat has become an important topic for a large spectrum of state and non-state actors of contemporary Islam. It connects variously with the logic of integration discourses and the anti-terrorism agendas, providing an example of how “the penetration of geopolitics into religious discourse impacts the politics of knowledge production in the Muslim world” (Mandaville, 2007:

112), including its Diaspora in the West. Attempts to lay out the principles of minority *fiqh*, and to establish its relation to mainstream *fiqh*, have been produced in Britain, Egypt, France, Morocco, Qatar, Saudi Arabia and the USA. The institution most closely associated with the concept of minority *fiqh* is the European Council for Fatwa and Research, a body which aims at providing an authoritative reading of the Islamic tradition in a context of migration and social change. The complex deliberative process that I have described above suggests that one can speak of minority *fiqh* only as an evolving project, diversely understood and variously implemented, by the heterogeneous group of scholars that sit in the ECFR.

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 ontological 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; it may be incomplete and sometimes even (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.²¹ 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.

Alexandre CAEIRO

EZIRE, Friedrich-Alexander Universität, Erlangen-Nürnberg
caeiroa@yahoo.com

21. 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.

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Abstract

This article examines the kind of expertise that is provided by Muslim actors specialized in Islamic Law (muftis) to their coreligionists in Europe. It seeks to understand how the production of this expertise (the fatwa) is organized and managed, and to what extent it is shaped by policy discourses in the West. The article thus seeks to fill a relative gap in the scholarship on Islam in Europe which has often reduced fatwas to ahistorical and fundamentalist rhetorics. Taking the European Council for Fatwa and Research as a case study, the author describes the settings, actors and logics of the production of fatwas in the European context.

Key words: Islam, Europe, fatwa, jurisprudence of minorities, European Council for Fatwa and Research.

Résumé

Cet article examine le type d'expertise publique produite en Europe par des acteurs musulmans spécialisés dans le droit musulman (muftis). Il explore la façon dont la production d'une fatwa est organisée dans un contexte (post-)migratoire, et l'impact que le discours politique et médiatique à propos de l'islam a sur cette production. Il cherche à combler un vide relatif dans la recherche sur l'islam en Europe qui a souvent réduit la fatwa à une rhétorique a-historique et fondamentaliste. En prenant le Conseil européen de la fatwa et de la recherche comme exemple, l'auteur décrit ainsi les cadres, les acteurs et les logiques de production de la fatwa dans le contexte européen.

Mots-clés : islam, Europe, fatwa, jurisprudence des minorités, Conseil européen de la fatwa et de la recherche.

Resumen

Este artículo examina el tipo de pericias públicas producidas en Europa por actores musulmanes especializados en el derecho musulmán (muftis). Se explora la manera en que la producción de una fatwa se organiza en un contexto (post-)migratorio, y el impacto que el discurso político y mediático a propósito del Islam tiene sobre esta producción. El artículo intenta llenar un vacío relativo en la investigación sobre el Islam en Europa, que ha reducido a menudo la fatwa a una retórica a-histórica y fundamentalista. Tomando el Consejo europeo de la fatwa y de la investigación como ejemplo, el autor describe así los marcos, los actores y las lógicas de producción de la fatwa en el contexto europeo.

Palabras clave: Islam, Europa, fatwa, jurisprudencia de las minorías, Consejo europeo de la fatwa y de la investigación.