

Adjusting Islamic Law to Migration

ALEXANDRE CAEIRO

Modern migratory movements within religions often raise hopes of a brighter future. Intellectuals in new diasporas like to attribute to themselves the heroic mission of reforming their religion and the world. When Judaism settled in America in the mid-nineteenth century, the emerging Reform movement, initiated in Germany, was at its apogee. Leaders accordingly hoped that the new context would liberate Jews from 'the literal and metaphorical ghettos' of Europe.¹ In European Islam, this has been the case too. Very often, the continent is seen as fertile ground for the conceptualization of a new *ijtihad*. In France, in particular, the theme 'France, une chance de l'islam' dominates the public debate, but the idea finds many echoes in other countries as well.

Soheib Bencheikh, the 'mufti of Marseilles', Dalil Boubakeur, rector of the Mosquée de Paris and now president of the newly established Conseil français du culte musulman, and more recently Tariq Ramadan all share the claim that the Islamic Reform will be thought out here in Europe first and transposed to the Muslim world later.

The European Council for Fatwa and Research (ECFR), created in 1997, is one of the most remarkable initiatives in the developing field of jurisprudence for Muslim minorities living in the West. Unlike the Fiqh Council of North America, established a few years earlier, the ECFR includes scholars from the Middle East, a sign that this particular legal discourse also affects believers in Muslim majority countries. Many of the issues at hand go beyond the state of post-migration. Consequently, the ECFR has to find a balance amongst a variety of views and expectations in Europe and beyond.

ECFR

The European Council for Fatwa and Research (ECFR), created in London in 1997 to fill up the authority gap in the West, is an example of an institution that presents itself not as a 'competitor or alternative to the established councils of jurisprudence in the Islamic world', but rather as a complement, aiming to 'contribute to a reflection on the *fiqh* of minorities'.⁶ Members define the *fiqh* of minorities as twofold: a re-actualization of old juridical opinions (selective *ijtihad*) and the resolution of

the new problems arising from modern societies (new *ijtihad*). In practice, however, the ECFR undermines the authority of muftis in the Muslim world by giving different answers to old queries. The thirty member-strong Council issues rulings to questions that are characterized by eclecticism (*talfiq*), necessity (*darura*), and facility (*taysir*). Five years after its foundation, if the ECFR is still struggling to establish itself as an authority in Europe, it has succeeded in attracting much criticism from the Muslim world. The fatwa issued in 1999 allowing mortgages in certain conditions provoked fervent reactions throughout the Muslim world. Though not new, based on classical sources, and even conservative in regards to some previous rulings,⁷ the institutional framework provided by the ECFR disseminated the fatwa and weakened the interdiction stated by numerous imams throughout Europe and supported by prominent ulema abroad. The ruling issued concerned exclusively the West, but the rationalization of the idea that economic need renders licit previously forbidden practices became very controversial within Muslim communities, and the hint that bank interest was not a form of usury (*riba*), discussed in the sessions (though finally dropped from the text of the fatwa), raised concerns.

In 2001, another question raised in Europe gave the Council further world notoriety. In a typical procedure for a Western Muslim, a married woman in Ireland who had just converted to Islam went from one mufti to another asking about the status of her marriage (to a non-Muslim), not understanding why this was problematic with respect to Islamic law. The question arrived at the doorstep of the Council, which after intense debate issued a ruling giving the woman the choice to remain married or to divorce.⁸ Importantly, according to the members, this decision was made possible by European *urf*: since husbands respect their wives in the West, and since women have inalienable rights in these countries, they can remain married to a non-Muslim. In the internal discussions it was also argued that, since the Prophet himself did not remarry his Companions following their conversion, marriage in Islam is not a religious but a civil contract. The implications of this judgment are wide, but in the aftermath of the uproar that followed, notably from al-Azhar, the Council tried to minimize them. In public, all the members remain adamant against the possibility of a marriage between a Muslim woman and a non-Muslim man, and deny any possible repercussions for the Muslim world.⁹

It seems thus that the ECFR is playing a greater role in Islamic jurisprudential debates. In a globalized world, the members are deeply aware of the media impact of a fatwa, and very explicitly take it into consideration.¹⁰ The relations with the other, older councils of *fiqh* in Egypt and Saudi Arabia, mindfully established by the Council from the start, are already under strain.¹¹ According to one member, the Council is now receiving questions from the Muslim world and, along with that, warnings against issuing fatwas towards the East. In the composition of the ECFR itself, the pressure of the Islamic heartland is making an impact: the number of scholars from the Muslim world, initially conceived

to the Muslim world later. In Britain, the chairman of the Sharia College, Zaki Badawi, thinks the same. For some, this new ground offers an excellent opportunity to rid Islam of its juridical slant, and to free it from its old and inadequate reflexes. For others, it is an opportunity to develop a new Islamic jurisprudence, purified from centuries of corruption and traditions.²

Embodied in the ideology of the Muslim Brotherhood, which sees Islamic law as evolving, the elaboration of a jurisprudence of minorities (*fiqh al-aqalliyyat*) underscores one such tendency. Promoted by authoritative figures such as Taha J. Alwani,³ president of the Fiqh Council of North America, and Yusuf Qaradawi,⁴ this *fiqh* is nevertheless controversial even among the ulema. For Said Ramadan al-

Bouti, it is an effort to split the community, and create *fitna*.⁵ According to the members of Hizb-ut-Tahrir, it is an undisguised attempt to change the basics of Islam. Despite repeated claims by Qaradawi that it is 'just another branch', there are signs that this new jurisprudence may yet have an impact far beyond the minority populations. Struggling to integrate the European context into Islamic normativity, scholars engaged in this reflection are forced to search for the elusive distinction between tradition and religion, and risk in turn further destabilizing the edifice of Islamic *fiqh*, already under pressure in the Muslim world.



PHOTO: ALEXANDRE CAEIRO, 2003

Tenth session of the European Council for Fatwa and Research, Dublin, January 2003.

as temporary, then limited by the constitution to one-fourth and later increased to one-third of the total number, is now about to reach 50 per cent: in a deal to appease the muftis of the Muslim countries who had been left out, the leadership of the ECFR has pursued – not without some internal opposition – a policy of inclusion to reduce criticism and give the Council weight, in particular in the Muslim world. For the time being, this policy translates into conservatism in the fatwas, and renders the ECFR somewhat ineffective in dealing with European issues. But led by conservative Muslim figures with credibility both in the Muslim world and in Muslim communities in the West, the *fiqh* of minorities could yet be an opportunity to free Islamic jurisprudence from some of the constraints of the East. This is, for some, its true meaning: the *fiqh* of minorities, Alwani unashamedly concedes, is in fact a 'political concept', aiming at 'clearing the road' and creating a space for reflection in the West based purely on the Qur'an and *sunna*, which he hopes will one day be transposable to the East.¹² Whether the short-circuiting of tradition is possible remains to be proven. The debate, however, is open.

Alexandre Caeiro is a Ph.D. candidate at the Ecole des Hautes Etudes en Sciences Sociales (EHESS) in Paris, France. His current research focuses on 'Muftis and Their Fatwas: Authority and Individualization in European Islam'.
E-mail: caeiroa@yahoo.com

Notes

1. The influential Rabbi Isaac Mayer Wise went as far as writing a new prayer book, *Minhag America*, aiming to reconcile the diverse European practices and to create a Judaism 'suited to the New World'. See Robinson, *Essential Judaism* (New York: Pocket Books, 2000).
2. For these two perspectives in dialogue, see L. Babès and T. Oubrou, *Loi d'Allah, loi des hommes: liberté, égalité et femmes en Islam* (Paris: Albin Michel, 2002).
3. *Fiqh al-Aqalliyyat, Islamiyat al-ma'rifah* (Washington, Spring 2000).
4. *Fiqh al-Aqalliyyat al-Muslimin* (Cairo: Dar al Shuruq, 2001).
5. For an exposition of this and other views, see Khalid Masud, 'Islamic Law and Muslim Minorities', *ISIM Newsletter* 11 (December 2002).
6. European Council for Fatwa and Research, introduction by Yusuf al-Qaradawi to the *First Collection of Fatwas* (Egypt: Islamic Inc. for Publishing & Distribution, n.d.).
7. In 1992, at a *fiqh* seminar held in France, a ruling was issued permitting mortgages as a necessity in Europe and, significantly, in 'poor Muslim countries' too (Darsh, 'Muslim in the West – A Fiqh Seminar in France', manuscript, 1992).
8. The Council was divided: those that were pro-choice, led by Qaradawi, cited similar opinions of Omar Ibn Khattab and Ali Ibn Abi Talib. Those that were against, like the Council's vice president, Faysal Mawlawi, claimed that these opinions have never been followed by the *fuqaha*.
9. In an interview, Yusuf Qaradawi denied the possibility of this judgment being used in the 'completely different' case of Nasr Abu Zaid, divorced from his wife in 1996 after being accused of apostasy by the Egyptian Court of Cassation; a verdict upheld by the Court of Appeals before a last-minute decision nullified the decision.
10. In a subsequent question from Norway on the permissibility of buying an Islamic centre with a mortgage, the Council refrained from issuing a public fatwa altogether, in order to prevent further criticism. See my *La normativité islamique à l'épreuve de l'Occident: le cas du Conseil européen de la fatwa et de la recherche* (Paris: l'Harmattan, forthcoming 2003).
11. In a recent visit to France, the secretary general of the Muslim World League, Abdallah Turki, refrained from commenting directly on the ECFR, but warned that all European fatwas must be 'legal', and offered to answer all questions relating to Muslim minorities through the League's Council on *fiqh*. See 'Interview exclusive du cheikh Abdallah Ben Turki, secrétaire générale de la LIM' (www.oumma.com), 2003.
12. Personal interview, Paris, July 2002.