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Contemporary Jurisprudence for Muslim Minorities in Europe

Současná jurisprudence pro muslimské menšiny v Evropě

Diplomová práce

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Prohlašuji, že jsem diplomovou práci napsal samostatně s využitím pouze uvedených a řádně citovaných pramenů a literatury a že práce nebyla využita v rámci jiného vysokoškolského studia či k získání jiného nebo stejného titulu.

Abstract

This diploma thesis deals with the contemporary Islamic jurisprudence (*fiqh*) providing normative frameworks for Muslim minorities living in Europe. The Muslim minorities in Europe vary significantly in their ethnic, social, and religious background; yet in many cases they bring to Europe coherent system of ethical and legal rules. Nevertheless, these normative systems differ according to the country of origin and religious background of the respective minorities. Therefore, in Europe that is a constant struggle between the various interpretations of Islam and different Muslim authorities. The situation of Muslims living in the non-Muslim legal system is not regulated by the classical Islamic law and therefore jurisprudence is becoming the primary mechanism for dealing with normative issues. The key institute for contemporary Islamic jurisprudence is *iftā*, i.e. delivering fatwas in response to real or hypothetical individual inquiries. This diploma thesis argues that the traditional and established Muslim authorities, such as imams in mosques and muftis trained in the countries of origin, are increasingly being challenged by global Muslim authorities and individual interpretation of Islam. The ideological background of these newly established authorities range from the liberal Islam to fundamentalism and radical Islamism. Particularly the groups with broader ideological aspirations successfully use the Internet and other new media in order to establish themselves as interpretive authorities. Therefore, this thesis deals with the competing concepts of Islam in the European space and their various and oftentimes conflicting ideals on the problematics of the coexistence between Islamic law (*sharī'a*) and European legal systems. By doing so, this thesis analyzes the key fatwas of Muslim authorities producing the normative materials for Muslims living in Europe (e.g. European Council for Fatwa and Research,

Permanent Committee for Islamic Research and Fatawaa, Yūsuf al-Qaradāwī, etc.). It focuses mainly on fatwas issued in the field of matrimonial law, particularly those dealing with marriage and divorce. Drawing from analysis of more than 500 fatwas this thesis argues that among the various Muslim authorities in Europe prevails the pragmatic acceptance which strives for finding balance between the Islamic rules and the European legal systems. At the same time, this thesis deals with the emerging phenomenon of arbitration tribunals which are based on the principle of contractual freedom. These tribunals govern the cases between the disputing parties in accordance was the Islamic law yet fully within the framework laid down by the European legal systems. As a result, their decisions are integrated into the European law and enforceable by European civil courts.

Abstrakt

Předložená diplomová práce se zaměřuje na aktuální islámskou jurisprudenci (*fiqh*), která se vyjadřuje k situaci muslimů žijících v Evropě. Muslimské menšiny přinášejí do evropských států koherentní a vysoce propracovaný model sociálních, etických a právních norem. Konkrétní normativní rámce jednotlivých komunit se pak od sebe velmi liší, v závislosti na etnickém, geografickém a náboženském zázemí dané menšiny. Také v evropském prostoru spolu soupeří velmi různorodá pojetí islámu. Postavení muslimů žijících v nemuslimské zemi klasické islámské právo podrobně neřeší a jurisprudence se tak stává základním nástrojem normotvorby. Klíčovým institutem je pak udílení právních dobrozdání (*iftā*). Předložená diplomová práce demonstruje, že vlivu oficiálních či tradičních islámských autorit – jako je turecká síť *Diyanet* v Německu nebo imámové z al-Azharu v jiných zemích – v praxi úspěšně konkurují neformální autority z lokálních komunit, soukromých nadací nebo islámských hnutí. Profilace těchto skupin sahá od liberálního islámu až po fundamentalismus či radikální islamismus. Zvláště skupiny s širší ideologickou a politickou aspirací velmi účinným způsobem využívají elektronická média a internet pro vlastní propagaci jakožto náboženské a právní autority. Předložená diplomová práce se proto zabývá soupeřícími koncepcemi islámu v evropském prostoru a jejich rozdílnými názory na problematiku koexistence islámského práva (*šarī'a*) s evropskými právními systémy. Z tohoto důvodu předložená práce analyzuje fatwy hlavních islámských náboženských a právních autorit působících v evropském prostoru (např. European Council for Fatwa and Research, Permanent Committee for Islamic Research and Fatawaa, Yūsuf al-Qaradāwī, a další). Důraz je kladen na fatwy týkající se rodinného práva a zejména pak otázek souvisejících s uzavíráním manželství a rozvodem. Na základě analýzy více než 500

jednotlivých fatew tato práce demonstruje, že mezi evropskými muslimskými autoritami převládá spíše pragmatický přístup, usilující o nalezení souladu mezi islámskými právními příkazy a evropskými právními systémy. Tohoto souladu se v posledních letech dosahuje mimo jiné i prostřednictvím arbitrážních soudů, založených na principu smluvní volnosti, které rozhodují spory mezi jednotlivými stranami v zásadě podle principů islámského práva, nicméně pouze v mezích stanovených evropským právem. Rozhodnutí arbitrážních soudů je v takových případech z hlediska evropského práva závazné a s pomocí arbitrážní doložky vymahatelné před civilními soudy.

Contents

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Note on Transliteration

Within the main text of this thesis, all Arabic words found in an unabridged dictionary (e.g. Sunni, fatwa, hadith, hajj) are treated as English words Correspondingly, contemporary names and places are spelled as they are found in standard publications (e.g. Muhammad, Mecca). For other terms, I have opted for a transliteration based on the system used by the *International Journal of Middle East Studies (IJMES)*. For typographical purposes I have simplified the system used by IJMES in a way that *hamza*, representing the glottal stop, and *ayin*, representing the voiced pharyngeal fricative, are both transcribed by the same character, the apostrophe (’). Nevertheless, quotations from other sources retain their original transliteration.

1 Introduction

This diploma thesis deals with the problematics of Islamic jurisprudence for Muslim minorities in Europe. Specifically, it focuses on the jurisprudence produced by Sunni authorities providing normative content for Muslims living in Western Europe and analyzes their legal and religious recommendations issued in matters related to the questions of living as a minority in non-Muslim environments. Drawing from a textual analysis of these recommendations, this thesis presents the various ways, in which the above-mentioned authorities deal with the conflicting areas between Islamic law and European legal systems. Moreover, it discusses how these concepts are subsequently incorporated into existing European legal frameworks through the institutions of arbitration tribunals and contractual freedom.

By the term "Islamic jurisprudence" I mean a broad segment of the Islamic knowledge which is produced through the process of *iftā* and published and disseminated primarily in the form of fatwas. Fatwa is essentially an answer to a real or hypothetical inquiry reflecting a legal conviction of an individual scholar, based mainly on older rulings and/or his own interpretation of the religious texts. As such a fatwa is not legally binding, but the individual petitioner is advised to follow it. The persuasive power of the respective fatwa is thus based mainly on the authority of the scholar (*muftī*) who issued it. There are thousands of fatwas produced by respected committees of major Islamic scholars – or even just enthusiastic individuals – who issue legal opinions that range from questions of personal behavior to theoretical political dilemmas. This thesis explores how the fatwas originating in a Sunni legal and religious framework address the specific issues arising from living as a minority in a non-Muslim majority setting,

particularly in Western Europe. It stems from a broader research, during which more than five hundreds fatwas, among other materials, have been obtained, archived, and analyzed between 2005 and 2011. Among the primary sources of jurisprudence used for this thesis were the treaty *Fī fiqh al-aqallīyāt al-Muslima: hayāt al-Muslimīn wasta al-mujtama'āt al-ukhrá* (Jurisprudence of Muslim minorities: Life of Muslims among other Societies) written by Yūsuf al-Qaradāwī and published in 2005 by the Dār al-Shurūq in Cairo (Qaradāwī 2005), *Muslim Minorities: Fatawa Regarding Muslims Living as Minorities* written by Shaykh Ibn Bāz and Shaykh Uthaymīn and published in 1998 by Message of Islam in Hounslow (Ibn Bāz & Uthaymīn 1998), and *Qararāt wa fatāwā li-l majlis al-urubī li-l-iftā' wa-l-buhūth* (*First and Second Collection of Fatwas*) published by the European Council for Fatwa and Research in 2002. Other sources include fatwas issued by Omar Bakrī, disseminated on the website Islam4Uk.org, and various other fatwas issued by the above-mentioned authorities, i.e. European Council for Fatwa and Research and Yūsuf al-Qaradāwī, disseminated on the websites IslamOnline.net and OnIslam.net.[1] Finally, this thesis explores fatwas and other normative materials produced by the Islamic Sharia Council and Muslim Arbitration Tribunal in Birmingham.

It has to be emphasized that all the fatwas and other materials analyzed in this thesis were produced in Arabic and/or English, which ultimately defines the thesis' scope and to a large extent excludes Islamic normative materials produced in different language and ethnic groups, such as the Turkish *Diyanet İşleri Başkanlığı* (The Presidency of

[1] For the description of the IslamOnline crisis which resulted in substantial changes in the website's content and management see (Abdel-Fadil 2011).

Religious Affairs) and its affiliation *Diyanet İşleri Türk İslam Birliği*, which caters for the religious needs of the large Turkish minority in Germany.

In other words, this diploma thesis analyzes only a specific segment of the contemporary Islamic knowledge which is defined by a set of formal criteria. By no means shall be and could be the hypotheses and conclusions pronounced in this thesis generalized in order to describe all the various and multifaceted currents in the contemporary Islamic thought, particularly when related to the questions of Muslim minorities living in non-Muslim countries. Yet, the findings of this thesis to a large extent map the key possible approaches towards the problematics of jurisprudence of Muslim minorities and its relation to the secular legal systems which can be found, albeit in various forms, in the production of Islamic knowledge in different language settings and ethnic and religious backgrounds in Europe.

Bruinessen (2011, p. 1) defines the term "Islamic knowledge" as whatever Muslims consider to be correct or proper belief and practice – in the widest meaning of those words, and including non-discursive, embodied forms of knowledge. As he puts it

> Since Muslims hold different views of what is properly Islamic, there cannot be a single, unified and universal knowledge (though some Muslims make such claims for their particular conception of it), and Islamic knowledge is inherently contested. What makes it Islamic is not necessarily its congruence with some broadly accepted standard of orthodoxy and orthopraxy, but its reference to the ongoing series of debates that constitutes Islam as a living tradition.

Similarly, this thesis perceives Islamic jurisprudence not as a coherent and static corpus of definite rules of law but rather as a dynamic and multifaceted body of legal and religious opinions which react to particular demands and concerns of individual Muslims living in Europe and, therefore, naturally vary from one authority to another. In this respect, Küng (2007, p. 19) argues that the concept of Islam is determined by its concrete historical form at any one time, but by way of exaggeration, one could almost say that Islam has never anywhere been the same. In other words, each age has its own images and realizations of Islam, which have grown out of a particular historical situation, been lived out of and shaped by particular social and regional forces and Muslim communities, and formed both beforehand and afterwards by individual, intellectually stimulating, personalities (Küng 2007, p. 20). Therefore, this thesis lays emphasis not only on the textual analysis of the particular fatwas but also on the broader discussion on how the respective authorities, issuing the fatwas in question, establish themselves as the interpretive authority for the Muslim minorities in Europe and relate themselves to the existing European legal systems. The latter is particularly important in the case of Islamic Sharia Council and Muslim Arbitration Tribunal which aim either to establish a parallel legal framework, or integrate themselves into the European system of courts respectively.

Essentially, this thesis argues that the contemporary Islamic jurisprudence for Muslim minorities in Europe, circulating widely in the forms of books, satellite TV programs, and online forums, constitutes a specific public sphere where different, and oftentimes conflicting, concepts of coexistence between Islam and the State are negotiated, rather than a parallel legal framework *per se*. Within this public sphere, largely enhanced by the emergence of the Internet and satellite TV (Khamis & Sisler 2010), the various

concepts of Muslim identities are shaped, discussed, and performed, revolving around the central question on how to live as a Muslim in a Western globalized society. As this thesis demonstrates, among the various Muslim authorities in Europe generally prevails the pragmatic approach which strives for finding balance between the Islamic rules and the European legal systems, although this pragmatic acceptance is not necessarily verbalized. At the same time, the underlying logic behind the jurisprudence for Muslim minorities emphasizes the role of the Self, the privatization of faith, and the increasing insistence on religion as a system of values and ethics. This is to a large extent given by the non-existence of enforcing legal mechanisms, which stems from the newly found position of *sharī'a* in Europe and which leaves adherence to its rules as a matter of voluntarily adherence and personal choice. Yet, as this thesis demonstrates, despite the new social and economic realities, significantly shaping the content of the contemporary Islamic jurisprudence for minorities, the former maintains a strong link with its classical predecessor, particularly in its emphasis on the role of human agency and multifaceted individual approaches. As An-Na'im (2002, p. 4) notes, there is generally lack of appreciation of the critical role of human agency in the conception and development of any normative system of Islam. Moreover, there is also a grossly exaggerated sense of the practical application of *sharī'a* as a comprehensive, self-contained, and immutable normative system. By exploring the broad array of multifaceted legal and religious advices, issued as a response to concrete individual inquiries, this thesis on a general level aims to contribute to our understanding of contemporary Islam in the variety of its forms, as well as its possible interactions with non-Muslim societies.

2 Muslim Minorities in Western Europe

The term "Muslim minorities" does not refer to a homogeneous entity in the European context, nor can it be easily outlined and utilized in a discourse regarding religious and legal practices. Muslims in Europe vary greatly in their nationality, ethnicity, and beliefs; and may consist of converts, immigrants, as well as genuine minorities settled on the continent for centuries. Yet, the larger Muslim presence in Western Europe is mostly related to immigration that began after the Second World War. As Fetzer and Soper (2005, p. 2) describe it, Muslims were part of a broader wave that brought workers from the former colonies and elsewhere to the industrialized states of the West that were trying to rebuild in the war's aftermath. Private employers and governments across Western Europe actively recruited foreign workers to provide the labor necessary to continue economic expansion. For example, in the case of the UK there was a significant influx of Muslims from 1950s to 1970s who migrated mostly from Asia to complement to labor shortage in industrial cities like the Midlands, London, Lancashire, and Yorkshire (Ali et al. 2009).

In the face of the economic recession of the early 1970s European states gradually closed their borders to low-skilled workers but allowed for the possibility of family reunification and political asylum (Fetzer and Soper 2005, p. 2). Thus, immigrants, who were supposed to stay in Europe temporarily and return to their home countries afterwards, opted instead to bring their families to the continent and accepted Europe as their new homeland. This was partly due to their fear that they would be prevented

from re-entering Europe, were they to have left at that time. They were also afraid of the worsening economic situation in their home countries.

The transition from the status of *gastarbeiters* to residents brought about a fundamental shift in the self-perception of the Muslim minorities and the expectations they have associated with the State. The religious beliefs and practices of the immigrant workers, who were mostly men, were confined to the private sphere outlined by sub-urban dormitories and provisionary prayer rooms. After the reunion of families and setting up of normal life, the question of accommodation of broader religious needs appeared. This included various issues ranging from Islamic education in public schools, through the permissibility of ritual slaughter, on to the role of Islamic law in family matters. Since classical Islamic jurisprudence does not provide a theoretical framework for such conditions (Lewis 1994, p. 16) – and it is questionable what relevance this would have for contemporary European Muslims – the key issues of relationship between Islam and the State are being defined and negotiated on an everyday basis by the agency of particular social actors.

Existing research on the production of Islamic knowledge in Europe (Nielsen 1992; Metcalf 1996; Bruinessen 2003; Caeiro 2004; Roy 2004; Peter 2006) indicates a few key factors that have to be taken into account when analyzing the fatwas for Muslim minorities in Europe. First, the very existence of a Muslim minority in a non-Muslim society implies that there are no Muslim authorities appointed by the State and that *sharī'a* is not officially recognized as a source of law. The former strengthens the fragmentation of religious authority, individualization and privatization of Islam (Peter 2006), whereas the latter transforms the observance of Islamic rules into a matter of

individual choice. Without the enforceable legal and social framework of the majority Muslim society, the role of personal and voluntarily adherence becomes more important in following Islamic law. Correspondingly – particularly in Western Europe – where Muslim minorities come from diverse backgrounds and lack common cultural or linguistical heritage, the Muslim identity has to be reinvented and recast in terms of codes of comportment, values and beliefs. As Roy (2004, p. 23) argues, this identity, self-evident so long as it belonged to an inherited cultural legacy, has to express itself explicitly in a non-Muslim or Western context.

In this respect, Ali *et al.* (2009, p. 7) argues that among Muslim minorities in Europe religious identity appears to create formidable networks of multiple identities with members willing to abandon their ethnicity for religious solidarity. This is particularly observed in relation to the second generation of Muslims in the United Kingdom who prefer to be addressed as British Muslims as opposed to say Arabs, Pakistanis, etc. (Leweling 2005).

On the contrary, Rohe (2007, p. 15) suggests that one should avoid to consider Muslims as well as non-Muslims to be groups of a unique mind. There is a lot of pluralism inside these groups, and a lot of conflicts as well, which mostly are not rooted in religious grounds. According to Rohe, the Muslim communities in Western Europe are not unified at all; still there are "Turkish", "Arab", or "Bosnian" mosques to be found, where only believers of a certain ethnic background used to pray.

The existing discrepancy between the two above-mentioned statements brings us to the discussion of the related and similarly contested concept of *umma*. Throughout this

thesis I utilize the term broadly to mean Muslim community; i.e. as an operational term as it generally used by many Muslim authors (e.g. Qaradāwī 2005; El-Nawawy & Khamis 2009). As the textual analyses of fatwas demonstrate, the concept of *umma* is regularly promoted by the authorities delivering these fatwas. Yet as the empirical research of Bunt (2009) suggests that what is emerging within the discursive space of fatwas concerning Muslim minorities in Europe, particularly on various websites and online forums, is not necessarily a single Islamic *umma*, but rather a network of parallel, yet interconnected, public spheres organized primarily along the lines of belief, language, nationality and citizenship. As a result, the Muslim *umma* in Western Europe is characterized by both feelings of uniformity, as well as diversity and plurality among its members; a topic discussed in the case studies provided below.

As Rohe (2007, p. 15) argues, as it comes to the situation of Muslims in Europe, one has to keep in mind that the major problems concerning the life of these Muslim minorities are not related to their belief as such or their religious needs. These problems are linked with issues such as the lack of knowledge of the dominant language, a widespread lack of higher education and comparatively high degrees of unemployment. Another problem especially among the less educated sections of the European population is a certain suspicion against foreigners who are supposed to threaten the ruling culture of the land – despite the fact that this culture intrinsically consists of a far ranging degree of pluralism.

Many Muslims in Europe still tend to seek practical solutions for organizing their lives in accordance with the demands of European legal orders and Islamic religious commands. It is only within the last few years that Muslims have also tried to formulate

theoretical statements to clarify their positions and possible conflicts between legal and religious rules, and to find adequate solutions for such conflicts. Furthermore, a considerable number of Muslims are not particularly interested in performing religious practices, while not denying their Muslim identity as such. Others are attached to Sufi (mystic) beliefs and practices, considering the "superficial" rules of *fiqh* (Islamic jurisprudence) to deserve little importance (Rohe 2007, p. 15).

Nevertheless, and obviously increasing number of Muslims is eager to achieve more certainty in defining their position as European Muslims. The crucial question for them is to define Muslim identity – including the practical fulfillment of Islamic rules – within the framework of European legal orders and societal needs (Rohe 2007, p. 15). The issue of identity construction relates closely to what Eickelman and Piscatori (2004, p. 38) call the "objectification of Islam", i.e. "the process by which basic questions come to the fore in the consciousness of large numbers of believers: 'What is my religion?' 'Why is it important in my life?' and 'How do my beliefs guide my conduct?'". In the Western Europe this process also appears connected to larger processes of social change and intergenerational shift (Caeiro 2010). This shift from the first generation of Muslim immigrants to subsequent generations of European Muslim citizens can be broadly described as a shift from a "lived Islam" to a "constructed Islam" (Babès 2004) and it inevitably encompasses the search for religious authority and "true" Islamic identity. As this thesis demonstrates, the question of specific, Muslim identity is crucial to the existing Islamic jurisprudence for Muslims in Europe; probably more so than the possible conflicts of law and the contestations of the European legal systems and courts.

3 Sharī'a and European Legal Systems

The term *sharī'a* refers to the general normative system of Islam as historically understood and developed by Muslim jurists, especially during the first three centuries of Islam. In this commonly used sense, *sharī'a* includes a much broader set of principles and norms than legal subject matter as such (An-Na'im 2002, p. 1). In other words, *sharī'a* covers issues of legal, ritual and ethical nature, which are not necessarily regulated by law in the European sense of the word. As Kropáček (2003, p. 117) puts it, *sharī'a* represents the complete summary of God's order to humankind and the unchangeable moral Law in the structure of Islam. It is, similarly to the Qur'ān, perceived as eternal and uncreated. It characterizes Islam more profoundly than the system of dogmatic theology; it is indeed its core. Therefore, as Schacht (1964) argues, Islam is to a large extent a religion of *orthopraxy* and as such provides believers with a set of relatively concrete norms governing all aspects of human existence.

Sharī'a in theory expresses the Law of God as directly revealed in the Qur'ān and manifested by the deeds and sayings of the prophet Muhammad and his companions, as recorded in the *hadīth*. As such *sharī'a* is in principle eternal and unchangeable. Yet we have to distinguish between *sharī'a* as a concept and as the concrete rules of law, determined by particular methodologies and interpretations of the sacred texts. Thus the normative content of *sharī'a* necessarily evolves and undergoes changes in order to comply with new social and economic realities. This is done through constant re-interpretation and social re-integration of the Quranic verses and the *hadīth* by

jurisprudence (Khalidi 1992, p. 28). Islamic law represents an extreme case of a "jurists' law," as it was created and further developed by private specialists (Schacht 1964, p. 209). Yet, instead of disengaging the legally relevant elements of each case and subsuming it under general rules, Muslim jurists concentrated on establishing graded series of cases (Schacht 1964, p. 205). This casuistical method in particular is one of the most striking features of traditional Islamic law and reinforces the position of fatwas and *muftīs*.

At the same time, Islamic law remains to a large degree a religious ideal which has never been applied in its full extent (Schacht 1964; Mozaffari 1987; Roy 2004). Existing legislation in Muslim countries is typically based on a combination of *sharī'a*, applied mostly in family matters, and foreign legal systems; although the former is often referred to as the main source of legislation in the constitution. As An-Na'im (2002, p. 1) notes, while the term Islamic law is generally used to refer to the legal aspects of *sharī'a*, it should be noted that Muslims tend to believe that the legal quality of those principles and norms derives from the above-mentioned assumed religious authority. As such, *sharī'a* constitutes more a set of values and a normative framework than a positive law framework in the European sense (Roy 2004, p. 197).

In this respect, Kropáček (2002, p. 70) argues that legal systems and institutions in the Muslim world have been profoundly reformed by European colonization, particularly by English colonization of India and French colonization of Algiers. *Sharī'a* was generally recognized only in the questions of personal status (*ahwāl shahsīyya*), i.e. matrimonial law, law of inheritance, religious foundations (*waqf*, in Maghreb *hubs*) and donations. Other legal issues have been regulated in accordance with the normative

frameworks of English Common Law, French Code Napoléon, and other European legal systems. As a result, the legal systems in the Muslim world to a large extent preserve a multifaceted and versatile character and provide for a parallel existence of overlapping legal frameworks. Nevertheless, whenever enforced or applied by the state, *sharī'a* principles are legally binding by a virtue of state action, through either enactment as law by the legislative organs of the state or enforcement by its courts (An-Na'im 2002, p. 2).

The above-mentioned asymmetry has to be kept in mind when exploring the conflicting areas between Islamic law and European legal systems. We have, on the one hand, a multi-faceted corpus of constantly negotiated and re-interpreted norms and positive, codified rules of law sanctioned by the State on the other. It is particularly due to this asymmetrical nature of both systems that the existing research on the relationship between Islam and European law is mostly concerned with the Islamic norms and their recognition and application by European courts (Potz & Wieshaider 2004; Fetzer & Soper 2005; Rohe 2007). The opposite, i.e. the acceptance of particular European provisions by Islamic law, has been far less discussed; and if so, then mainly by Muslim scholars (Ibn Baz & Uthaymeen 1998; Qaradāwī 2005).

Another fundamental feature of Islamic law, which has to be taken into account, is its adherence to *the principle of the personality of law*. Essentially, according to this principle, the legal status of an individual is governed by his or her religious affiliation: particularly in issues pertaining to matrimonial law and inheritance law. This principle derives from the *dhimmī* law, i.e. the traditional institution of Islamic law regulating the position of non-Muslims living in Islamic territory; and from the concept of *millets*,

which were the ethno-religious communities recognized by the Ottoman Empire (Evstatiev 2006). These communities have been granted substantial autonomy in governing their internal affairs as well as in matrimonial and family law issues; a state which actually remains in existence in many Ottoman Empire successor countries in the Middle East still today (An-Na'im 2002). Given the persistence of *sharī'a* principles in family matters, most conflicts between Islamic law and European legal systems revolve around these issues (Rohe 2007, p. 23).

As Ali *et al.* (2009, p. 12) argue, unlike public law, Islamic personal law does not necessarily require the state to function. The practices covered by it have all along been practices among the Muslim diasporic communities. European legal systems may provide for these practices at a general level but this does not exclude the application of Islamic injunctions on them. Thus while the Muslims apply the religio-legal dictates on one hand, they also comply with European secular laws on the other hand. This has made the Muslim diaspora subject to dual laws, a situation described in the UK as *Angrezi Shariat* (Yilmaz 2004; see also below).

With regard to the question "What is the legal framework which enables as well as limits the application of Islamic rules in Europe?" we have to differentiate between religious and legal issues. The former are regulated by the European and national constitutional provisions. It is mainly in the sphere of religious rules – concerning the *'ibādāt* (dealing with the relations between God and human beings) and the non-legal aspects of the *mu'āmalāt* (concerning the relations between human beings) – where a European *fiqh* (Islamic jurisprudence) is possibly developing. In the field of law, the principle of legal territoriality is dominant all over the world. Therefore, the application

of foreign legal provisions – including Islamic ones – is an exceptional case for non-Muslim countries (Rohe 2007, p. 18).

These legal provisions can be applied on three different legal levels. As Rohe (2007, p. 18) points out, common to all three levels is the fact that the relevant legislator of the state of domicile reserves the alternate right to decide whether and to what extent "foreign" legal provisions can be applied. A strict principle of territoriality is applicable in this respect. According to Rohe (ibid.) these three levels include:

a) Private international law (Conflict of laws)

Private International Law is one possible level of application. Today, there is no legal system in Europe which refuses the application of foreign legal rules in general. In the area of civil law, which essentially regulates the legal relations between private persons, the welfare of those persons is of prime importance. If someone has organized his or her life in accordance with the certain legal system, this should be protected even if the person in question changes his or her place of residence. Accordingly, the law of the state of origin should continue to be applied even if the person crosses the border. Therefore, *sharī'a* is applicable in civil law matters in most European states within the framework of private international law, when the chosen *lex causae* is that of a foreign state applying Islamic law.

b) Specific legal provisions

Another possible level of application emerges in the legislator makes specific legal

provisions for defined groups of citizens. As an example, Rohe (2007, p. 20) refers to the special provisions for Quakers and Jews introduced in England in the 18th century. Similarly, and contrary to the popular notion, *sharī'a* is already officially applied in Europe today. It is explicitly recognized in several member states of the European Union, namely in Greece and Spain, as a formal way of contracting a marriage. Spain recognized the Islamic formal way of contracting a marriage as an option in its Personal Status Law in 1992, although in order to ensure necessary legal protections there are still compulsory provisions for the registration of these marriages (ibid.). In Greece, as a religious minority, Muslims of Western Thrace have – since the Lausanne Treaty of 1923 – enjoyed the right to solve their legal issues through the muftis. There are two jurisdictions, one based on Islamic Law and the other on civil Greek Code. This in EU context rather unique system of "concurrent jurisdiction" is today subject to debate among a number of Greek legal experts and human rights advocates (Alev 2010, p. 2).

As Rohe (2007, p. 21) notes, this option is not very likely to be chosen in France or Germany, due to the fear that a "parallel society" of Muslims may arise from such an optional legal segregation. Moreover, taking religious affiliation is the basis for civil legal relations would raise other serious questions. Clearly, several aspects of Islamic law – in its various existing forms – would not be acceptable reading the European legal political context. Rohe (ibid.) names mainly the following

> For example, polygamous marriages contracted in Europe, the guardianship powers of male legal representatives of the bride, the husband's unilateral right to divorce, the general assignment of the statutory duty of care for a minor's property and the relatively strict

> assignment of custody of minor children to the father or the mother according to the child's age, and the legal inequality of male and female heirs (corresponding with different maintenance obligations within a social framework of a relatively strict separation of sexes in all spheres of life) conflict with the principles of European legal systems. It would simply be unacceptable to implement such rules into the existing systems.

Instead of that, as we will demonstrate below, Muslims in Europe are entitled to create legal relations according to their religious intentions within the framework of optional civil law.

c) Optional civil law

A third area of application opens up within the framework of the so-called "optional" civil law. An example of law influenced by Islam existing within the scope of the legal system of the place of abode is emerging in England, where "angrezi shariat" (English *sharī'a*) is developing. Similar approaches can also be identified in Germany in connection with, for example, matrimonial contracts and commercial law. Civil law mainly regulates the legal relations between autonomous private persons. Thus, in matters exclusively concerning the private interests of the parties involved, these parties are entitled to create and to arrange their legal relations according to their preferences. Legal rules regulating such matters only serve as a "model" which might be chosen or applied in cases where the parties are satisfied with them. In other words, they are "optional" within a certain framework. Such optional rules are especially found in the

sphere of contract law including matrimonial contracts (Rohe 2007, p. 22). As we will demonstrate below, it is precisely the framework of optional civil law where the various Islamic sharia councils, including the Muslim Arbitration Tribunal, operate.

4 The Role of Muftis and their Fatwas

As Caeiro (2011, p. 121) notes, in Islam the law is a privileged means of access to the sacred. For many believers, adherence to Islamic normativity is an essential part of being a Muslim. The passage to Europe has produced many discontinuities, but normative concerns (even when the norms are not strictly followed) seem to remain an integral part of Muslim life in non-Muslim lands. One mode of social expression of normative Islam occurs in the form of fatwas, the demand and production of authoritative opinions. As I have mentioned above, fatwa is an answer to a real or hypothetical inquiry and reflects a legal conviction of an individual scholar, based mainly on older rulings and/or his own interpretation of the religious texts. As such it is not legally binding, but the individual petitioner is advised to follow it. The persuasive power of the respective fatwa is thus based mainly on the authority of the scholar (*muftī*) who issued it. The relationship between the *muftī* (the person who issues a fatwa) and the *mustaftī* (the person who requests one) is one of authority: in the eyes of many questioners, the mufti speaks in God's name (Abou El Fadl 2002), acting as the "heir of the Prophets". The questioner is therefore highly encouraged to follow the fatwa, even if she or he will not be punished for ignoring the answer, for fatwas, unlike the judgments delivered by the *qādī*, are not legally binding.

In the past, traditional constituencies of Islamic authorities competent for such inquiries were delimited by geographical and social factors that were much harder to contravene than they are today. Not only can every Muslim with access to the Internet send his or

her inquiries to even the most geographically remote *muftī*, but with the aid of online legal sources even individuals who lack a long-lasting and demanding official education can establish counseling sites for their peers if their answers are valid and convincing enough.

Moreover, in Western Europe, where Islam is disconnected from both the state and mainstream society, the institution of the fatwa has been considered the only useful mechanism in dealing with issues related to Islamic normativity (Caeiro 2011, p. 121). In other words, in the absence of institutionalized Islamic authorities, the muftis and their fatwas play a key role in the construction of Islamic knowledge. Perhaps more so than elsewhere, the fatwas enforcement depends on the charisma and authority socially conferred upon the *muftī*.

It would be naïve to presume that all fatwas issued by various authorities play a determining role in social behavior. Nevertheless, they constitute an Islamic discourse which Muslims living in Diaspora use to legitimize behaviors that have already been developed in new social contexts (Caeiro 2003, p. 2; Mandaville 2003, p. 130).

Skovgaard-Petersen (1997, p. 13) has argued that fatwas "circumscribe the mental and moral universe of their day, always balancing around the boundaries of what is conceivable, legitimate, and right". They are thus particularly useful instruments for studying social dynamics in Muslim communities. A variety of Islamic authorities in Western Europe disseminate or issue fatwas. The inquiries sent to them range from everyday issues to topical questions of Muslims living in non-Muslim society, from the mundane to the sacred, as we will demonstrate in the case studies provided below.

5 Muslim Authorities in Western Europe

5.1 Mosques and Imams

The mosque is the most visible Muslim institution, and the imam officiating in the mosque the most easily visible Muslim authority in Western Europe. Yet, as Bruinessen (2011, p. 5) argues, the real importance and influence of imams has been much exaggerated, especially in the perception of European authorities. The very fact that European governments and nongovernmental institutions took the imams more seriously than their societies of origin appears to have given the imams some extra leverage (Landmann 1992; cited in Bruinessen 2011, p. 6). The research on the construction of Islamic authority in Europe indicates that many Muslims hold the average imam here in low esteem, much like the position of the average imam in Muslim countries. They expected him to perform the necessary ritual functions and teach children the basics of Islam, and they may ask his opinion in simple matters of belief and practice, but if they don't like his answers, they are likely to look for a more respected authority (Bruinessen 2011, p. 7).

In many cases, the imams have been trained and educated in their countries of origin and then, after few weeks or months of preparation, have been sent to Europe to perform their expected duties. As a result, a number of them hold academic degrees from faculties of theology in their home countries, yet they possess only a limited insight into the peculiarities of life in the western secularized society. Reeber (2000, p.

197) interviewed imams and mosque communities in France and notes that his questions about the minimum requirements of an imam almost invariably yielded the same five quantities: "a certain distance from worldly life, knowledge of the Qur'ān and its interpretation, availability and approachability, skills as an orator, and juridical and spiritual insight." As Bruinessen (2011, p. 7) notes in this respect, an academic degree from a theological faculty clearly lends credibility to one's claims to knowledge of the Qur'ān and Islamic legal and doctrinal thought. However, it is no guarantee for insight in the dilemmas faced by young Western educated Muslims or for the ability to adapt Islamic thought the new and unknown conditions. Nor is there a guarantee that an academically trained imam will be capable of acting as the interface between European authorities and his most community or do Muslims in general, as those authorities would like him to.

Therefore, several member states of the European Union, for example France and the United Kingdom, have recently started instructional and educational programs aimed at training local Muslim imams, versed in traditional Islamic religious disciplines and familiar with local laws and regulations, e.g. the Muslim College in London.[2] Yet, as Bruinessen (2011, p. 9) argues, so far, few graduates of these various institutes appear to have become imams, though several have become chaplains in hospitals, prisons, and the armed forces. The reasons he mentions include the fact that chaplains, like religious teachers in schools, are civil servants with more security of tenure and better pay than the average imam. Seminaries and "imam training" courses therefore vie for the official recognition of their diplomas that opens this segment of the labor market to their

[2] Muslim College, London. [online]. [cit. 2010-11-24]. Available online: <http://www.muslimcollege.ac.uk >.

graduates. The quest for recognition has opened up another important area of negotiation over what constitutes Islamic knowledge.

5.2 Transnational Muslim Authorities

In his numerous research, Mandaville (2003; 2005) reconsiders the larger question of how Islamic religious authority functions in a globalized world. As he argues (2005), historically, Muslim states and dynasties have often relied on cadres of co-opted religious scholars for political legitimacy. At other times, religious scholars have played important civil societal roles in checking the excesses of state power. Until 1924, there was in the Sunni tradition a nominal global figurehead in the person and office of the caliphate. The caliph ("successor" to the Prophet Muhammad) was understood to be the worldly guardian of a divine moral order. Mandaville suggests that the office of the caliph – whose theoretical jurisdiction extended to all lands under Muslim rule – has to be understood as fulfilling the executive branch function of implementing and preserving the law.

As he continues, in today globalized world emerged a diverse body of "superstar" religious scholars whose efforts might serve as a more metaphorical embodiment of the former caliphate. For this group, the caliphate is not so much a political institution attached to sovereign territory, but rather an ideal of pan-Islamic ecumenicism – a moderate and relatively inclusive form of lowest-common-denominator orthodoxy. In their minds, according to Mandaville (2005), this community of shared knowledge and religious interpretation might perhaps best be thought of as a "virtual caliphate."

There are many prominent figures aspiring for the above-mentioned status of transnational Muslim authority. Perhaps the most prominent are Yūsuf al-Qaradāwī, a Qatar-based Egyptian religious scholar who trained at the venerable institution of Al-Azhar in Cairo, and Amr Khāled, a "self-made religious man" with a large popular following who originally completed a degree in accountancy at the University of Cairo and currently resides in London (Mariani 2006).

Yūsuf al-Qaradāwī has in the recent years sought to articulate a cosmopolitan understanding of Islam that speaks to the unique problems of the modern world while remaining firmly grounded in the traditions of Islamic law. Qaradāwī became a household name in the Arabic-speaking world during the 1990s through his popular al-Jazīra program "Islamic Law & Life," in which he directly engaged issues such as medical technology and sexuality. His approach also gained him a strong constituency outside the Arab world; in the last five years, translations of his books have consistently been top sellers in Islamic bookstores around the world (Mandaville 2005). Moreover, he has fostered cross-national collaborations among Islamic scholars and helped to develop an infrastructure for the growth and propagation of cosmopolitan traditionalism through a global network of influential websites (such as the former IslamOnline.net or today's OnIslam.net) and regionally based research centers (e.g. the European Council for Fatwa and Research).

A broad range of transnational Muslim authorities, beyond the ones mentioned above, participates directly on the production of Islamic knowledge for Muslim minorities, including issuing fatwas to individual inquiries. In this thesis I will specifically focus

on the jurisprudence produced by Yūsuf al-Qaradāwī and the European Council for Fatwa and Research in the respective sections listed below.

5.3 Islamic Sharia Councils and Arbitration Tribunals

As Ali *et al.* (2009, p. 33) state, a new trend about dispute resolution has emerged during last decade and a half in Western Europe to react to the failure of various legal systems in providing equal access to justice. The key characteristic of this movement is an emphasis on human rights values, social justice and interdisciplinary approach to legal system. A specific manifestation of the dispute resolution related to the Muslim minorities in Europe is the existence of various Islamic *sharī'a* councils and arbitration tribunals. Essentially, these tribunals operate either outside the legal framework of the respective State, such as the Islamic Sharia Council in Birmingham, or are fully integrated into this legal framework through the above-mentioned concept of optional civil law as described by Rohe (2007), such as the Muslim Arbitration Tribunal.

Essentially, in both cases the Islamic dispute settlement methods are driven from Quranic values and the *sunna*. Islamic dispute resolution which shares similar idea of Western alternative dispute resolution's debate has been practiced by Islamic legal tradition and now widely rules Muslims disputes within the formal justice system of Muslim countries. Through this resolution, particularly in matters pertaining to personal law and law of contract, *sharī'a* is incorporated into European legal systems through the institutions of mediation and arbitration. In this case the disputing parties present their dispute to a Muslim arbiter and stipulate in a civil law contract that they

will follow his decision. The arbiter thereafter judges the case according to *sharī'a*; yet, his decision is enforceable through civil law and courts.

Although the *sharī'a* councils and arbitration tribunals settle primarily local disputes and cases, their decisions are oftentimes published and circulate e.g. on the Internet, effectively contributing to the production of Islamic knowledge. In some cases, such as the Islamic Sharia Council, the muftis associated with these tribunals also publish traditional fatwas beyond the individual dispute resolution.

5.4 Self-interpretation and Fragmentation of Religious Authority

Babes (1997), Khosrokhavar (1997), Roy (2000), and Cesari (2003; 2006) have written extensively on the emergence of a young generation of Muslims in Western Europe, particularly in France and Germany, who take their Islam seriously but demand an autonomous space for themselves, outside the sphere of the mosque as well as that of the State. Most of them have little or no formal education in Islamic knowledge but they absorb some from their peers. Students from Arab countries have often helped the locally born young Muslims in setting up associations and acted as mediators of Islamic knowledge. Roy (2000) and Cesari (2006) have emphasized the selective adoption of elements of Islamic teaching by the current generation of young Muslims and the eclectic and individualized nature of their Islamic belief and practice.

The individualization of religious beliefs is particularly central to Cesari's (2003; 2006) studies; it is one of her primary research results and it is a key argument in her engagement with public debates about Muslims in the West. In her study, the thesis of

individualization is a symbolic manifestation of the fundamental ruptures which supposedly characterize the relationship between Muslim beliefs and practices in Western Europe and those in the migrants' countries of origin (Peter 2006). It is in the West, Cesari (2003, p. 259) insists, that the normative Islamic tradition transforms and dissolves as Muslim minorities settle and "a Muslim individual" emerges. Cesari (1998, p. 14; cited in Peter 2006, p. 2) argues that the grafting of Islam into "the French democratic environment" has set in motion a "cultural revolution which is linked to the minority experience in a pluralist context and which introduces [Islam] . . . in these postmodern transformations which have not yet reached Muslim countries".

However, as Bruinessen (2011, p. 19) argues, although there is no doubt that peer learning is an important part of the acquisition of Islamic knowledge, it has not replaced the various forms of established religious authority. According to him, authority may have become fragmented in the sense that an individual may have access to a wider range of authorities then one or two generations before and thereby theoretically can choose the opinion that is most convincing (or convenient) on any specific issue, but the status of these authorities has not declined.

In this respect, as I will demonstrate in the case studies provided below, the mechanism of the Islamic knowledge production, allowing the communications between individual petitioners and religious scholars, indeed seems to favor a bottom-up approach, since the fatwas issued depend upon the petitions the authority or institution have aggregated. In other words it is the petitioners, not the muftis, who set the agenda for the issues to be discussed in most of the fatwas analyzed. By the same token, Ali *et al.* (2009, p. 50) suggest that fatwa represents a bottom-up approach "to informing and influencing the

formal legal system and is representative of the ordinary Muslim's concern regarding 'Islamicness' of actions and issues around her/him."

Nevertheless, despite the agenda being set by the individual petitioners, it is the traditional established authority – oftentimes closely linked to existing religious institutions – that issues the fatwa or gives the advice. Therefore, as I argue below, the mechanism of the Islamic knowledge production in the West, although fueling the individualization and privatization of faith, simultaneously asserts conformity and compliance with established religious structures.

6 Jurisprudence for Muslim Minorities in Europe: Case Studies

6.1 Omar Bakrī: Rejection of the Secular State

Sheikh Omar Bakrī Muhammad is a radical Islamist preacher who was born in 1958 to a large and wealthy family of Aleppo. Up until the age of 17 he studied Islam in Syria, but because of his religious and political ideals he was forced to move to Lebanon, where he continued to study privately and also joined the Hizb al-Tahrīr al-Islāmī movement. In 1976, following the Syrian intervention in the Lebanese war, he went to Egypt, where he came into contact with the Muslim Brotherhood, although he was not an active participant in the movement (Mariani 2011, p. 152). Later he moved to Mecca in Saudi Arabia, where he continued his studies. In March 1983 he founded his own organization, al-Muhājirūn, which was initially associated with Hizb al-Tahrīr al-Islāmī.

Because of his political activities, he was arrested and expelled from Saudi Arabia in 1985. Finally, he arrived in London where he lived until August 2005, being granted political asylum on the grounds of his involvement with Islamist opposition to the authoritarian Syrian regime in the 1980s. In the UK, he has played a significant role in the development of the Hizb al-Tahrīr al-Islāmī movement between 1986 and 1996. Later on, he dedicated himself exclusively to his own transnational Islamist organization, al-Muhājirūn, until its disbandment in 2004. He is currently residing in

Lebanon and banned from entering the United Kingdom.[3] Nevertheless, he continues to play a role in European Muslim affairs through lectures, texts and videos, disseminated via the Internet with the help of his followers and students.[4]

Omar Bakrī's theological position defies definition, for even during his lectures on Islamic law he spent more time discussing international and local politics rather than doctrinal issues. But when asked about his ideological affiliation he would affirm clearly that he followed the Salafi tradition (Mariani 2011, p. 153). Al-Muhajiroun then coordinated various political, cultural, and economic activities aimed at the restoration of the Muslim Caliphate.

Bakrī has appointed himself a "Judge of the Shari'ah Court of the UK,"[5] and from this largely self-proclaimed position he has issued several fatwas discussing the co-existence of *sharī'a* and European legal systems. Generally speaking, central to his theoretical framework is the notion of complete and radical refusal of all non-Islamic and man-made laws. According to Bakrī, the only solution capable of bringing justice to mankind is the installment of the Islamic state (Edwards 2009). Since, in his view, the last "lawful" Islamic state ceased to exist in 1924 with the abolishment of the Ottoman Caliphate, he claims that a believer living today in a non-Muslim society has to strive to

[3] Banned cleric barred from rescue ship. *Guardian.co.uk* [online]. 21 July 2006, [cit. 2010-11-14]. Available online: <http://www.guardian.co.uk/world/2006/jul/21/syria.immigrationpolicy>.

[4] Covert preaching of banned cleric. *BBC News* [online]. 14 November 2006, [cit. 2010-11-10]. Available online: <http://news.bbc.co.uk/2/hi/uk_news/6143632.stm>.

[5] *Moon Research Centre* [online]. [cit. 2010-11-20]. Available online: <http://mrc.org.uk/marriage_2.html>.

follow the laws of God only and should not resort to secular law. The following emblematic fatwa was issued in 2000

> Question: What is the Islamic verdict on Civil/Registered Marriages? Are Muslims allowed to marry in registry offices?
>
> Answer [excerpt]: Marriage in Islam is a divine bond between two legitimate parties. […] It is one of the most sacred divine contracts because the subject matter is a human being i.e. the would-be wife. [...] A civil marriage is a contract registered in the local council in order for a man and a woman to have a relationship governed by the marriage laws of the state. Any man can marry any woman, whether they are boyfriend or girlfriend, fornicator or "fornicatress", pregnant or having had previous sexual relations. [...] The fact of the matter is that the Civil Marriage is a complete non-Islamic social system and man-made way of life which contradicts the Islamic marriage and way of life in all its details. [...] We therefore call upon all Muslims to refrain from marrying in accordance to the civil law, any marriage based upon this law is considered to be invalid in Islam. Any children from such a marriage would also be considered illegitimate in Islam.[6]

[6] *Islam4UK* [online]. [cit. 2009-4-20]. Available online: <http://www.islam4uk.com/current-affairs/latest-news/44-latest/195-the-islamic-verdict-on-civilregistered-marriages>. The website is no longer available since it has been banned by the UK authorities. The content is nevertheless still accessible through the Web Cite service with the following statement: "Islam 4 UK has been contacted by authorities to (force) shut down its operations, we stress this domain name will no longer be used by us, but the struggle for Khilafah will continue regardless of what the disbelievers plot against the Muslims. It is the duty of all

First, it should be noted that not only does Omar Bakrī's fatwa forbid Muslims to resort to civil law, but it implicitly invalidates any marriage concluded in accordance with such law and proclaims offspring resulting from those marriages to be illegitimate. Such an approach directly challenges the authority of the State and echoes the Islamists' notion of the divine law as the only legitimate source of authority. Moreover, such law is perceived as unchangeable and eternal – i.e. valid and directly applicable in all times and places. Any regime that claims a legislative sovereignty which goes beyond enforcement of the law laid down by God – in the words of Qur'ān beyond merely "enjoining what is right and forbidding what is wrong"[7] – is considered oppressive and unlawful.[8] These and other statements of Omar Bakrī, including support of international *jihād* (Bunt 2000, p. 101), eventually led to his ban from entering the United Kingdom.[9]

Yet, when we closely examine the *ratio decidendi* of the above-mentioned fatwa, we discover that the main concern of Omar Bakrī lies not only in the fact that the State contests the authority of God, but, more precisely, that its law allows indecency and contradicts the Islamic way of life. In other words, the underlying rationale for the decision is primarily moral and not political. This is reflected as well in Bakrī's above-

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Muslims to rise up and call for the Khilafah wherever they may be." *WebCite* [online]. [cit. 2011-4-9]. Available online: < http://www.webcitation.org/5mjjwYVAA>.

[7] Qur'ān, sūra al-'Imrān, verse 104.

[8] Covert preaching of banned cleric. *BBC News* [online]. 14 November 2006, [cit. 2010-11-10]. Available online: <http://news.bbc.co.uk/2/hi/uk_news/6143632.stm>.

[9] Banned cleric barred from rescue ship. *Guardian.co.uk* [online]. 21 July 2006, [cit. 2010-11-14]. Available online: <http://www.guardian.co.uk/world/2006/jul/21/syria.immigrationpolicy>.

mentioned call for the installment of the Islamic state, which he perceives as "a necessity for the people in order to keep [them] away from personal desire and greed" (Edwards 2009).

From a broader perspective, this emphasis on moral principles follows an emerging shift within contemporary Islamist movements, a phenomenon which Roy (2004) calls "neofundamentalism" or "post-Islamism." Essentially, neofundamentalism shifts the focus from the creation of an Islamic state to the promotion of Islamic piety and implementation of *sharī'a* on a daily basis of personal adherence. As Roy (1994) points out, the conceptual framework of Islamist parties was unable to provide an effective blueprint for an Islamic state. Conversely, the contemporary religious revival in Islam is targeting society more than the State and calling to the individual's spiritual needs (Roy 2004, p. 3). Neofundamentalism appeals to Muslims living as a minority and has gained some ground among rootless Muslim youth, particularly among second- and third-generation migrants in the West, who have experienced the deterritorialisation of Islam (Roy 2004, p. 2). Yet, the emphasis on individual piety and the endeavor to adhere strictly to Islamic laws can take many different forms, as we will see below. In fact, the number of actual followers of Bakrī's radical concept is estimated to be relatively low (Wiktorowicz 2005), despite his prominent media coverage (Poole 2002, Mariani 2011).

6.2 Shaykh Ibn Bāz and Shaykh Uthaymīn: The Oneness of Sharī'a

Shaykh Abdulazīz Ibn Abdullāh Ibn Abdurrahmān Ibn Bāz was born in the city of Riyādh in 1909. He allegedly memorized the Qur'ān in his early age and then he

acquired knowledge from many of the prominent scholars of the Kingdom of Saudi Arabia. Among his teachers were Shaykh Muhammad ibn Abdullatīf al-Shaykh, Shaykh Sālih ibn Abdulazīz al-Shaykh and the eminent Shaykh Muhammad ibn Ibrahīm al-Shaykh who, in his time, was the Muftī of Saudi Arabia. Shaykh Ibn Bāz accompanied this eminent Shaykh and learned from him for about ten years. Thus he gained his religious education from the family of Imām Muhammad ibn Abdul-Wahhāb (Fatwa Online).

Afterwards Shaykh Ibn Bāz worked for fourteen years in the judiciary until he was deputed to the education faculty. He remained engaged in teaching for nine years at Riyadh Islamic Law College. Then he was appointed Vice-Chancellor of the Islamic University, Medina; but shortly afterwards, he was made the Chancellor with all the administrative powers. Later he was appointed President of the General Presidency of Islamic Research, Ifta, Call and Propagation, Kingdom of Saudi Arabia.

He held the position of Grand Muftī of Saudi Arabia, the Presidency of many Islamic Committees and Councils, the prominent among these being: Senior Scholars Committee of the Kingdom, Permanent Committee for Islamic Research and Fatwa, the Founding Committee of Muslim World League, World Supreme Council for Mosques, Islamic Jurisprudence Assembly Mecca; and the member of the Supreme Council of the Islamic University at Medina, and the Supreme Committee for Islamic Propagation, until he passed away in 1999.[10]

[10] *Fatwa-Online* [online]. [cit. 2011-4-9]. Available online: <http://www.fatwa-online.com/scholarsbiographies/15thcentury/ibnbaaz.htm>.

Shaykh Muhammad Ibn Sālih Ibn Uthaymīn was born in the city of Unayzah in 1926. Similarly to Ibn Bāz, he received his education from many prominent scholars like Shaykh Abdurrahmān al-Sa'īd, Shaykh Muhammad Amīn al-Shanqītī and Shaykh Abdulazīz ibn Bāz himself.

Shaykh Uthaymīn taught Islam at the Sharī'a Faculty of Imam Muhammad ibn Sa'ūd Islamic University. He was also a member of the Council of Senior Scholars of the Kingdom, and the *imām* and *khatīb* of the Great Mosque of Unayzah city. He passed away in 2001.[11]

The fatwas and teaching of Shaykh Ibn Bāz and Ibn Uthaymīn circulate widely in Salafi circles. The term s*alafīyya* originally designated the followers of the ideas and practices of the so-called "righteous ancestors" (*al-salaf al-sālih*). The approach of *salafīyya* generally rejects later traditions and schools of thought, calling for a return to the Qur'ān and the *sunna* as the authentic basis for Muslim life. By the end of the twentieth century, however, the term *salafī* came to be applied to different variants of Islamic revivalism.[12]

Shaykh Ibn Bāz and Ibn Uthaymīn devoted a whole treaty to the problematics of Muslim minorities living in the West (Ibn Baz & Uthaymeen 1998). Similarly, their fatwas related to this topic are disseminated by an array of influential *salafī* Internet websites, e.g. Fatwa-Online (Sisler 2009).

[11] *Fatwa-Online* [online]. [cit. 2011-4-9]. Available online: <http://www.fatwa-online.com/scholarsbiographies/15thcentury/ibnuthaymeen.htm>.

[12] See the entry *salafī* in *Encyclopedia of Islam and the Muslim World*. Editor in chief, Richard C. Martin. New York : Macmillan Reference USA, 2004, p. 608-610.

Essentially, their fatwas follow a conservative form of Sunni Islam associated with the teachings of an 18th century scholar, Muhammad ibn Abd al-Wahhāb, which later became the official interpretation of Islam in Saudi Arabia. On the theoretical level, Shaykh Ibn Bāz and Ibn Uthaymīn claim the validity of Islamic law for all Muslims, regardless their place of residence, and its superiority over man-made laws. The fundamental rationale of their argumentation is formulated as follows

> It is incumbent upon the whole Muslim community to adhere to the Book of their Lord and to the authentic Sunnah of their Prophet, prayers and peace be upon him, and to constantly practice it in their speech, action and belief as well as encouraging others to so (Ibn Baz & Uthaymeen 1998, p. 11).

> It should be stressed that one of the most important matters concerning Muslim minorities is, that they adhere to Allaah's Religion, understand it well and cling to it whatever their situation; in times of difficulty and ease, health and sickness, travel and residence. Every Muslim man and woman, wherever they might be, must hold firmly to Allaah's Religion while being patient with it. This is especially so in this time of banishment and exile when Islaam itself has been exiled, has many enemies, the righteous are few in number and there are not many people promoting the truth. It is, therefore, incumbent upon every Muslim, and especially Muslim minorities, to adhere and hold firmly to Allaah's Religion and to understand it well in order that they might act with knowledge, carry out

> what is obligatory upon them with knowledge and leave what is forbidden according to knowledge. This must also be achieved in order that they become a good model for their enemies around them and a living example of Islaam in their behavior, speech and deeds. Thus, their enemies will see them and understand from their behavior and character the greatness and virtue of Islaam and that it is the religion of truth, the religion of a person's natural disposition, the religion of justice, compassion, forgiveness, kindness and mercy (Ibn Baz & Uthaymeen 1998, p. 15).

The principle of the oneness of *sharī'a*, valid for all Muslims in all places and societies, is particularly stressed in fatwas regarding marriage and divorce in the West

> Question [excerpt]: If a man living within a Muslim minority community in a non-Muslim country wants to divorce his wife, should he follow the divorce procedures of that country, which controls and enforces its own law […], or should he follow divorce proceedings laid down in Islaamic law?
>
> Response [excerpt]: It is not permissible for a Muslim to follow, either in his worship or in his dealings with others, other than what is laid down in Islaamic law. Divorce is one of those issues which is dealt with by Islaamic law in the most complete manner. It is, therefore not permitted for anyone to go beyond or transgress the limits set by Allaah (Subhaanahu wa Ta'aala) concerning divorce. [...] It is, therefore not permitted for a

> Muslim to transgress those limits set by Allaah and he should divorce according to the stipulations of Islaamic law.[13]

Moreover, in another fatwa Shaykh Ibn Uthaymīn urges Muslims living in a non-Muslim society to appoint an arbitrator who will judge among them according to *sharī'a*. This in fact promotes establishment of a parallel legal framework, based on a voluntarily adherence, informal authority of the judge and compulsory social mechanisms of the community

> It is obligatory for the Muslims to appoint a judge to pass judgment between them according to Islamic law. It is not permissible for them to take as arbitrators those who do not judge according to Islamic law. If a group or society agree[s] upon him being appointed as arbitrator between them, then his judgment should be enforced in all matters in which they have asked him to arbitrate.[14]

Another fatwa declares void any marriage in which the wife converts to Islam while the husband does not.[15] This follows the strict interpretation of Islamic law, according to which such marriage is considered void after passing a specified "waiting period" (*'idda*). Addressing this fatwa to Muslim minorities living in a non-Muslim society in

[13] *Fatwa-Online* [online]. [cit. 2009-4-20]. Available online: <http://www.fatwa-online.com/fataawa/muslimminorities/0000920_2.htm>.

[14] *Fatwa-Online* [online]. [cit. 2009-4-20]. Available online: <http://www.fatwa-online.com/fataawa/muslimminorities/0000903_4.htm>.

[15] *Fatwa-Online* [online]. [cit. 2009-4-20]. Available online: <http://www.fatwa-online.com/fataawa/muslimminorities/0000324_2.htm>.

fact directly challenges the family laws of the particular states. Yet, the authority of the State is recognized and Muslims can resort to its laws when these do not contradict *sharī'a* and their acceptance eases bureaucratic and formal obligations

> Question: If it is necessary by law to register a divorce or to follow registration procedures with the official authorities in the country where he is living, then, after he has divorced according to Islamic law, should he go and formally register it with those authorities?
>
> Response: There is no objection to him registering it but it should be done according to Islaamic law. He should say that he has divorced his wife so and so, the daughter of so and so, according to Islaamic law and then it can be entered in the register of those people.[16]

As we have mentioned above, the underlying logic behind the fatwas of Shaykh Ibn Bāz and Shaykh Ibn Uthaymīn resonates with the notion of oneness and the unchangeability of *sharī'a*, that is valid for Muslims at all times and in all places. They also urge believers to adhere to the strict interpretation of Islamic Law, particularly in matters related to practices defining visible and audible Muslim identity. Such approach directly contradicts the concept of jurisprudence of minorities (*fiqh al-aqalliyyāt*) promoted by Yūsuf al-Qaradāwī and other, mainly European and North American, Muslim scholars (see below). Thus, the translation of originally Saudi Arabian fatwas into English and their agile dissemination through various media outlets reflect a

[16] *Fatwa-Online* [online]. [cit. 2009-4-20]. Available online: <http://www.fatwa-online.com/fataawa/muslimminorities/0000920_3.htm>.

broader struggle over interpretive authority in Sunni Islam. In the context of European Muslim minorities, however, this struggle also inevitably involves foreign policy issues.

Generally speaking, many Muslim states provide their former citizens and their descendants with religious and cultural support, including educating and sending imams to European mosques, establishing cultural centers, and funding satellite TV broadcasting. The Turkish, Algerian and Moroccan governments in particular are very actively involved in Europe in retaining control over their emigrants (Roy 2004, p. 137). However, as Roy argues, "Saudi Arabia claims to represent all Muslims in the West and has created an array of institutions to spread Salafism and foster non-assimilation" (ibid.). The above mentioned fatwas of prominent Saudi Arabian scholars in fact emphasize religiously-based neo-ethnicity and promote *communitarisation*, i.e. the trend of identifying people primarily as an ethno-cultural or religious group and only secondarily as individual citizens (Roy 2004, p. 20). Although the direct impact of the fatwas of Ibn Bāz and Ibn Uthaymīn on individual behavior of believers is questionable, their ideas circulate broadly within Muslim minority settings (Sisler 2009).

6.3 Yūsuf al-Qaradāwī: Jurisprudence of Minorities

Yūsuf al-Qaradāwī was born in a small Egyptian village in 1926 and received traditional religious training at al-Azhar, one of the most important Islamic educational institutions in the world. Later on, he worked for the Egyptian Ministry of Religious Endowments (*awqāf*) and founded and presided over the Department of Islamic Studies at the University of Qatar. Qaradāwī owes his international "fame" mainly to his

program *al-Sharī'a wa-l-Hayāt* (Sharī'a and Life) aired for the first time in September 1997 by the Qatari satellite television station, Al-Jazeera (Mariani 2006, p. 134).

As a well-known and regarded scholar, Yūsuf al-Qaradāwī is highly influential in the production of global Islamic knowledge. He is particularly active in the affairs of European Muslim communities. In 1997, together with Faysal Mawlawi, he initiated the creation of the European Council for Fatwa and Research, a private body of muftis issuing fatwas specifically dealing with the conditions of Muslim minorities in Europe (Caeiro 2003; see below). Yūsuf al-Qaradāwī coined the concept of *fiqh al-aqalliyyāt* (jurisprudence of minorities) and dedicated a whole legal treaty to this topic (Qaradāwī 2005). Essentially, he argues that Islamic law is valid for all Muslims regardless of their country of residence; nevertheless, the jurisprudence of minorities should take into account such minorities' respective place, time, and conditions. The overall main aim of *fiqh al-aqalliyyāt* is to help Muslim minorities lead wholesome Islamic lives according to *sharī'a* while maintaining positive interactions with the non-Muslim majority (Qaradāwī 2005, p. 23). The main rationale of the development of the *fiqh al-aqalliyyāt* is summarized as follows

> [The] Muslim minorities require a specific branch of *fiqh* that should be based on sound *sharī'a* personal reasoning. It should also take into account such minorities' respective places, times and conditions. They are not authorized in these countries to implement the Islamic *sharī'a*. Thus they become liable to non-Muslim laws, that may contradict the Islamic *sharī'a* (Qaradāwī 2005, p. 1).

According to Qaradāwī (2005, p. 3), a Muslim minority is an "integral and inseparable part of the whole Muslim nation as well as being a part of its indigenous non-Muslim community." Thus, both aspects should be taken into account so that none of them overstep the other. At the same time, Qaradāwī (2005, p. 4) firmly holds the position that the Muslim presence in the West is in full accordance with Islamic law and its principles, i.e.

> If there is no Islamic presence in the West, Muslims are entitled to work together to establish this presence in order to preserve the identity of Muslims living there, support their moral and spiritual entity and take care of those who embrace Islam, and to receive migrating Muslims and provide them with good admonition, training, education, as well as a help them propagate the Islamic call among non-Muslims.

This view contradicts with the few *ahādīth*, allegedly attributed to the Prophet (Qaradāwī 2005, p. 4), urging Muslims living in a non-Muslim country to move and seek protection in the *dār al-Islam*. The main objectives of the *fiqh* of minorities are therefore formulated, within the framework of the maxims and rules of the *sharī'a* as Qaradāwī perceives it, as follows

> 1. To help Muslim minorities; individuals, families and communities, lead a wholesome Islamic life.
>
> 2. To help them maintain the essence of their Islamic identity known for its principles, obligations, values, morals, manners and common concepts,

so much that all aspects of his life should be devoted to the Almighty and foster these precepts in forthcoming generations.

3. To enable the Muslim community to convey the universe of the Islamic message to their fellow citizens in their language.

4. To enhance their disciplined flexibility, so that they should not become isolated. They should interact with their communities positively, providing them with the best ideas and vice versa. Accordingly, they achieve the delicate balance, i.e. open conservation and integration without assimilation.

5. To contribute to educating and awakening these Muslim communities in order to maintain their religious, cultural, social, economic and political rights guaranteed by the constitution. Thus, they can practice such rights freely without pressure or concessions.

6. To assist Muslim communities in fulfilling their various obligations, be they religious, cultural or social, without their being hindered by a religious extravagance, negligence or indulgence. In this way, religion becomes an incentive and a guide rather than a chain or a fetter.

7. This prospective *fiqh* should provide answers to their questions and deal with their problems in a non-Muslim community, with its dissimilar principles, values, concepts and customs, according to a modern *sharī'*

ijtihād (personal reasoning) exerted by eligible jurists (Qaradāwī 2005, pp. 5-7).

These fundamental objectives of the jurisprudence of minorities requires a specific set of interpretive rules which should be taken into account while deciding particular cases and issuing fatwas for the Muslims living in the West. These rules are otlined as follows

1. The jurisprudence of minorities takes into account both the heritage of Islamic *fiqh* and modern circumstances, trends, and problems.

2. It correlates the universality of Islam with local communities and examines and treats its problems.

3. It keeps the balance between partial texts of the sharī‘a and its collective objectives. None is given priority over the other.

4. If refers subsidiary issues to their main origin. It also examines partial issues in the light of collective ones, maintaining a stable balance between the interests and evils respectively, as well as collectively, in case of contradiction, according to *fiqh al-muwāzanāt* (drawing balance) and *fiqh al-awlawiyyāt* (priorities).

5. It bears in mind the fact that fatwas changed according to time, place, circumstances, and *‘urf* (custom). Thus, it takes into account the

> disgraceful difference between our present time and the past; between a Muslim country where all Islamic obligations are freely observed and a non-Muslim land where Islamic faith, values, rights and conventions are visibly absent.
>
> 6. It considers a very difficult parallel, i.e. to maintain the Muslim identity while positively interacting with non-Muslim communities (Qaradāwī, 2005, p. 7-8).

The jurisprudence of minorities depends on the same sources as a general fiqh, i.e. Qur'ān, Sunna, *idjmā* (consensus) and *qiyās* (analogy). However, the jurisprudence of minorities should be, according to Qaradāwī (2005, p. 8), afforded renewable considerations of such sources. Most notably, all the sources and principles, including the Sunna of the Prophet, should be referred to the Qur'ān and be understood in the light of the Qur'ān. In other words, the Qur'ān forms the "constitution" for the legislative body. Yet, in the words of Qaradāwī, it lays down the general principles, rather than frequently handling minor detail issues.

The general principles of the jurisprudence of minorities are then detailed in a more casuistic way through the particular fatwas Qaradāwī has issued responding to questions from Muslims living in the West, such as

> Question: Could you please give me a detailed response concerning the duties of Muslims who live in the West?

Answer [excerpt]: There are many religious duties for a Muslim who lives in the West. Some of those religious duties may be classified as follows:

The Duty to Keep One's Muslim Identity:

This can be achieved by sticking to Islamic commands, trying to understand the tenets of faith, showing keenness on performing daily prayers in the *masjid*, cooperating with fellow Muslim brothers on that which is good and righteous, and seeking religious knowledge from reliable scholars regarding new problematic issues.

The Duty towards One's Family:

Although every Muslim is obliged to take care of his family, such an obligation is stressed in the West because when the Muslim lacks the watchful eye, this rings alarm for family disintegration that may ensue, in addition to children lacking the proper Islamic care.

If they [Muslims in the West] find it extremely difficult to bring up their children Islamically, they should go back to their countries of origin, as staying in the west in this case will cause an irreparable harm to the whole family. […]

Duty of Muslims towards One Another:

With Muslims being a minority in those non-Muslim countries, they ought to unite together as one man. […] Hence, Muslims in those countries have to unite and to reject any form of division that is capable of turning them to an easy prey for others.

Duty of Muslims towards the Society Where They Reside:

Muslims in the West ought to be sincere callers to their religion. They should keep in mind that calling others to Islam is not only restricted to scholars and Sheikhs, but it goes far to encompass every committed Muslim. As we see scholars and Sheikhs delivering khutbas and lectures, writing books to defend Islam, it is no wonder to find lay Muslims practicing da'wah while employing wisdom and fair exhortation.

Duty to Adopt and Champion the Rights of the Muslim Ummah:

Such kind of duty involves championing the Cause of Palestine, Iraq, Kosova, Chechnya (and other places where Muslims are facing great ordeals) with the sincere intention to return back the usurped rights to their legitimate owners.[17]

[17] *Islam Online* [online]. [cit. 2009-4-20]. Available online: <http://www.islamonline.net/servlet/Satellite?cid=1119503544980&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar>.

The last above-mentioned duty, i.e. to support Muslim communities struggling all over the world, particularly manifests the Qaradāwī's aim to reach a global Muslim audience and simultaneously emphasize the notion of a single Muslim *umma*, i.e. the global Islamic community. He issued several fatwas specifically laying down the guidelines for Muslims living in the West on how to support the Muslim communities in other countries, such as

> Question: How can Muslims living in the West support the oppressed Muslims all over the world?
>
> Answer [excerpt]: A Muslim who wants to back his fellow Muslims who are oppressed everywhere should firstly try his best to reform his own self and stand firm on the straight path. His first concern should be drawing near to Almighty Allah and observing the rulings of His religion and avoiding the traps of the accursed Satan. […]
>
> Secondly, let every Muslim try to make da'wah in his surroundings and call others to have a better and true understanding of Islam. In doing so, a Muslim should offer the best example of abiding by the teachings of Islam, because example is better than word. […]
>
> People in the West generally have higher incomes than those in undeveloped countries. Muslims living in the West should have no qualms about earning large salaries as long as the money is made in a halal manner. However, they should have qualms about spending that money to

> live ostentatiously. It would be far better for the Ummah if well-to-do Muslims lived a simpler life and used the money thus saved to help their fellow Muslims — in the West or elsewhere — by giving to individuals in need or to charitable organizations.
>
> Furthermore, Muslims living in the West should take advantage of their civil liberties and freedom of speech to give a political voice to their own communities and to advocate for their Muslim brothers and sisters abroad.[18]

As was the case with the above-mentioned fatwas of the Shaykh Ibn Bāz and Shaykh Uthaymīn, many of the questions revolve around a pressing issue of marriage and divorce in front of the civil court and the permissibility of Muslim women to turn to these courts for help. In a way similar to the *salafī* scholars Qaradāwī recommends the Muslims living in the West to appoint an arbiter to judge the family matters arising amongst them; yet, his fatwa seems to be more concerned with family counseling and informal reconciliation then with establishing a parallel legal network.

> Question: To whom should Muslim women living in the West resort to in case she has a problem with her husband?

[18] *Islam Online* [online]. [cit. 2009-4-20]. Available online: <http://www.islamonline.net/servlet/Satellite?cid=1119503547070&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar>.

> Answer [excerpt]: The essence of the Muslim society is that it is based on solidarity in all aspects of life. […] In case of family dissension, when the husband and wife fail to solve their differences amicably, it is up to the Muslim community to intervene and appoint two arbitrators known for their good character and knowledge of Islam, to try to reconcile the differences between the husband and wife by all possible means. If the two arbitrators find no option but to separate them, this verdict is upheld as it was done during the days of the Companions (may Allah be pleased with them). […]
>
> If the couple is living in a non-Muslim country, it is the duty of the local Muslim community to form a council of three members for arbitration and reconciliation. These men should be known for their fairness, good character, religiousness, trustworthiness and knowledge of Islam. The problem should be put forward to them and it is up to this council to set the rules that should be made binding. The council should have the support of the whole community.[19]

Most of the above mentioned fatwas adhere to the main principles of the *fiqh al-aqalliyyāt*. In comparison with the previously-described Muslim authorities, the concept of the jurisprudence of minorities as a whole presents a more "moderate" approach towards Islamic law. Qaradāwī has coined the concept of "balance and moderation"

[19] *Islam Online* [online]. [cit. 2009-4-20]. Available online: <http://www.islamonline.net/servlet/Satellite?cid=1119503548182&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar>.

(*al-wasātiyya wa-l-i'tidāl*). It refers to the maintenance of balance between old and new as well as between the different Islamic legal schools and doctrines. Moderation then means opposition to extremism, which, according to Qaradāwī, can include both secular and radical trends (Gräf 2007, p. 3). Essentially, the concept of the jurisprudence of minorities could be labeled as a post-Islamist project, using Roy's terminology, in the sense that it strives to promote *sharī'a* on a basis of daily adherence and behavior. Yet, in contrast with Ibn Bāz and Uthaymīn's legalistic interpretation of *sharī'a*, Qaradāwī tries to reconcile Islamic law with contemporary conditions. As such, it could be perceived as part of what Baker (2003, p. 111) calls "an Islamist project of peaceful resistance, intellectual reform, and gradual, social transformation in the unprecedented conditions of a globalized world".

As Caeiro (2011, p. 124) argues Qaradāwī's personal investment in the issues of Muslim minorities in Europe and North America highlights the symbolic – and, in numerical terms, quite disproportionate – importance of Muslims in the West in the religious imagination of contemporary Islam. By a different tack, many of the Qaradāwī's fatwas, originally issued for petitioners living in the West, have been later on adopted by Islamic authorities in the Muslim world. This was the case of the fatwa concerning the permissibility of using a loan in order to solve one's housing situation which was issued in 1999 (Caeiro 2004, p. 374). This particular fatwa has radically reshaped the prohibition of *ribā'* (usury) – imposed by traditional interpretation of Islamic law – by the mean of *hāja* (need) in which the European Muslims potentially find themselves when trying to find housing. The fatwa was disseminated on the Internet and it has quickly triggered a global debate. Moreover, it has clearly influenced subsequent fatwas, for example one issued later by Al-Azhar (Caeiro 2004, p. 371).

This constitutes a unique and in our modern history quite new situation, in which the jurisprudence of Muslim minorities is, at least in some cases, becoming an interpretative framework for the Islamic world.

6.4 European Council for Fatwa and Research: Integration without Assimilation

The European Council for Fatwa and Research was formed in London in March 1997 at the initiative of the Federation of Islamic Organizations in Europe (FIOE). The Council's annual meetings are funded by the Maktoum Charity Foundation of Shaykh Rashid Hamdan Al-Maktoum of Dubai, a foundation based in Dublin's Islamic Cultural Center of Ireland where the headquarters of the ECFR are also set. According to the president of the FIOE, Ahmed Rawi, the ECFR was conceived as an interrim stage to fill the authority gap until muftis trained in Europe, fluent in the native languages and knowledgeable of the local contexts, could take over (Caeiro 2011, p. 123).

The reasons behind the formation of the ECFR have been outlined by Ahmed Rawi in his opening speech delivered in London in 1997

> Having 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 [older] generation increased the conflicts with the newer generations raised in the vast and 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 (cited in Caeiro 2011, p. 123).

Therefore, the main aim of the ECFR is to help European Muslim communities to overcome the above-mentioned difficulties in order to maintain the cohesion of the Muslim minority and positive coexistence with the non-Muslim majority

> These scholars [of the ECFR] have the mission of orienting and counseling 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 to solve difficult 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 organizations in the promotion and dissemination of Islamic values in Western societies. Only in this way can we pretend to truly integrate Muslims in Europe, grouping the culture of social peace and the necessity of single security in the society to which they belong (cited in Caeiro 2011, p. 123).

The formation of the ECFR was also the materialization of an aspiration formulated by Qaradāwī and Mawlawi, respectively chosen as the ECFR's president and vice president. We have detailed Qaradāwī's history, theoretical approach, and fatwas in the previous chapter. Mawlawi was a popular preacher in France during the early 1980s where he helped form the Union des Organisations Islamiques de France (UOIF). On his return to Lebanon in 1985 he remained unofficially one of the spiritual guides of the French Muslim organization (Caeiro 2011, p. 123).

The ECFR lays down precise conditions upon which an individual can become its member and issue fatwas on a regular basis. These conditions include both formal requirements, such as having a sharī'a degree at university level, as well as material, such as being resident of a European country. In the volume *First and Second Collection of Fatwas* (ECFR 2002, pp. 4-5, cited in Caeiro 2011, p. 124) the conditions that the European mufti must fulfill are summarized as follows

1. Possess the appropriate legal (*sharī'a*) qualifications at university level, or have been committed to the meetings and circles of scholars and subsequently licensed by them, and have a good command of the Arabic language;
2. be of good conduct and committed to the regulations and manners of Islamic *sharī'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.

As Caeiro (2011, p. 125) points out, despite the FIOE's professed effort to include the diversity of Islamic tendencies present in Europe, the all-male ECFR remains exclusively Sunni, overwhelmingly Arab in ethnicity, and close to the above-mentioned "moderation" (*wasātiyya*) ethos of Yūsuf al-Qaradāwī. These factors significantly shape the fatwas and recommendations issued by the ECFR as we will demonstrate below.

Among the fundamental issues of the integration of Muslims in Europe which the ECFR deals with is the question of political participation of Muslims in non-Muslim countries. The following fatwa illuminate the ECFR's stand on that matter

> Question: Is it permissible for Muslims living in non-Muslim countries to take part in elections held in those countries? Keeping in mind that such elections may make Muslims be members of the legislative organs in countries where there is no any consideration for the Shari'ah, is that permissible?
>
> Answer [excerpt]: There's nothing wrong Islamically in having some sort of such cooperation between Muslims and non-Muslim as regards worldly affairs. Besides, the Prophetic Biography is abound with fine examples of how the Prophet, peace and blessings be upon him, dealt amicably with non-Muslims, both in the Makkan and Madinan societies. He shared in many pacts and alliances aiming at eliminating injustice and aggression, in addition, he shared in relieving the impact of adversities and famines. […]

> So it's clear that mutual cooperation in worldly affairs goes far to encompass all citizens who share a common destiny, neighborhood and sometimes kinship. This may be extended to include economic and commercial fields. […]
>
> Furthermore, elections in the modern world systems have become a means through which peoples choose candidates and judge the programs they adopt. Muslims living in such societies enjoy rights and are bound to do some duties. If they fail to meet the duties obligated on them, they are no more entitled to receive the rights, for the rights meet the duties.[…]
>
> Therefore, we can say that Muslim's participating in elections held in non-Muslim societies is Islamically permissible and there is nothing wrong in doing so. Besides, it is a kind of mutual cooperation with those whom Muslims think as potential candidates who, if they win the elections, will bring benefits for the society in general and Muslims in particular.[20]

This fatwa in particular demonstrates the inner development and tensions within the ECFR legislative sessions, as well as. In October 1998, during the second session of the

[20] *Islam Online* [online]. [cit. 2009-4-20]. Available online: <http://www.islamonline.net/servlet/Satellite?cid=1119503545732&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar>.

ECFR, the issue was not straightforward and a significantly different fatwa was delivered in a response to very similar question (Caeiro 2011, p. 133)

> 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.

By this original fatwa, i.e. by delegating the decision to local Islamic institutions, the ECFR deferred the authority and undoubtedly sought to avoid criticism (Caeiro 2011, p. 133.) The above-mentioned, newer fatwa instead takes a clear stand and directly encourages outright political participation to Muslims living in Europe. In fact, this development documents not only the changing point of view of the individual ECFR muftis to the questions of political participation but, perhaps more importantly, the growing importance and self-esteem of the ECFR itself.

The following fatwa then directly deals with the issue of marriage and divorce, the possible overlaps between the Islamic law and civil legal systems, and the question of authority of the civil jurisdiction

> Question: I have a Muslim English friend who is married to a Muslim English man. They got married in the Islamic way but this marriage has not been registered in the registrar's office. Her husband has an Arab friend who wants to live in England. He has no other alternative to get permission to remain in England but to marry an English woman. The

husband suggested that his wife marry his friend in the registrar's office. This has been done and witnessed. Is this marriage Islamically valid? Does it affect her first husband?

Answer [excerpt]: Regarding your question, it should be clear that Muslims living in non-Muslim countries should abide by the laws of their countries. They should be good ambassadors of their religion and set examples for others in loyalty, honesty, truthfulness, etc. What those people have done is unacceptable and sinful. This marriage is void. Partners concerned should correct the situation and stop violating Shari`ah and laws of their countries.

The marriage contract entered into in the registrar's office is void. Consequently none of the rights of marriage can be based on it. All the results of it are null and those who entered into this marriage are delinquent and they have committed a sin. Whoever participated in facilitating or accomplishing this contract, while knowing that this lady is married, has taken part in this sin and violated the laws Allah has set. […]

Some people, due to their misunderstanding that a marriage contract entered into in the registrar's office is not valid, are negligent regarding this contract. They think that the marriage is only valid if entered into in a mosque or an Islamic center. This is wrong. Apart from the place, the marriage contract is valid provided the pillars and conditions are

> fulfilled. Had this woman not been married, that marriage contract entered into in the registrar's office would have been valid.
>
> Since this contract is void, it should be canceled as soon as possible. Again it should be canceled as, since it is legitimate according to the civil laws, it may result in prohibited issues according to Islam. According to the civil laws this marriage is binding.
>
> Needing permission to stay in a country cannot be used as an excuse to commit what is prohibited and violate the Shari`ah and the rights of others. Muslims are obliged to shun such issues based on deception and lies.[21]

This fatwa postulates two important imperatives, which we can find in the recent production of the ECFR. First, it is the imperative that "Muslims living in non-Muslim countries should abide by the laws of their countries" which significantly contradicts the ideological standpoint of the above-mentioned Omar Bakrī and Shaykh Ibn Bāz. Second, it is the implicit recognition of the European legislation as *'urf* (custom) which in fact makes the latter an integral part of the Islamic decision making process and has arguably a decisive impact on the ECFR scholars' understanding of Islamic law.

[21] *Islam Online* [online]. [cit. 2009-4-20]. Available online: <http://www.islamonline.net/servlet/Satellite?cid=1156077799781&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar>.

Finally, the ECFR, although in theory acknowledging the imperative for Muslims to strive to resort to Islamic law, in fact recognizes the authority of secular civil law and its courts based on principles of choosing lesser harm and preventing chaos

> Question: What is the Islamic ruling regarding the divorce issued by a non-Muslim judge?
>
> Answer [excerpt]: 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. […] 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.[22]

[22] *Islam Online* [online]. [cit. 2009-4-20]. Available online: <http://www.islamonline.net/servlet/Satellite?cid=1119503544364&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar>.

We can conclude that ECFR represent one of the up-today most successful attempt to institucionalize Islamic law and the process of *iftā* as a regular tool for settling the disputes in matters regarding the Muslim minorities in Europe. At the same time, ECFR as a legislative body operates on a voluntary basis outside the European legal systems. Its authority and, so to speak, "legislative power" thus depend greatly on the use of media and avid dissemination of its fatwas by various media professionals, operating broadly in the Islamic public sphere in Europe.

6.5 Islamic Sharia Council: Parallel Legal Framework

The Islamic Sharia Council is a quasi-Islamic Court founded in 1982 in Birmingham, UK. It strives to represent an "authoritative body" consisting of a panel of scholars from many established institutions in the UK, including London Central Mosque and Islamic Cultural Centre in London, Jamia Mosque and Islamic Centre in Birmingham, and Islamic Centre in Glasgow. According to its mission statement

> The Council considers itself to be a stabilising influence within the UK Muslim community. Outside of Muslim countries, Islamic institutions are essential for the survival of Muslim communities. Other establishments such as mosques, schools, universities and banks preserve the Muslim identity of a community and create a protective environment for young and old alike.[23]

[23] *Islamic Sharia* [online]. [cit. 2009-4-20]. Available online: <http://www.islamic-sharia.org/about-us/about-us-10.html>.

The Council issues fatwas, provides mediation, and judges cases presented to it by individual petitioners. It primarily deals with issues pertaining to family and matrimonial law, namely with divorces granted by civil courts in the UK which are not necessarily considered valid in the eyes of the Islamic law. Divorce in Islamic law can take many forms, the most common cases being the repudiation (*talāq*) of the wife by the husband, the dissolution of marriage (*tafrīk*) pronounced by a judge, and the *khul'*, by which the wife redeems herself from a marriage for a consideration. Also, as we have demonstrated in the previous case studies, according to some Muslim scholars, namely the Shaykh Ibn 'Uthaymīn, a divorce granted by a non-Muslim court is not valid at all in the eyes of Islamic law.[24] According to many others it is not valid if the wife was the petitioner.[25] In all these case the Islamic Sharia Council enables the parties to obtain an Islamic divorce.

The Council is not legally recognized in the UK. Rather it represents an informal parallel court which supplements the State's legal system and its institutions in cases where these, according to the Council's members, fail to meet the necessary requirements laid down by the Law of God. At the same time, as its website states

> The fact that it is already established, and is gradually gaining ground among the Muslim community, and the satisfaction attained by those who seek its ruling, are all preparatory steps towards the final goal of gaining the confidence of the host community in the soundness of the Islamic legal

[24] *Fatwa-Online* [online]. [cit. 2009-4-20]. Available online: <http://www.fatwa-online.com/fataawa/muslimminorities/0000920_2.htm>.

[25] *Ask Imam* [online]. [cit. 2009-4-20]. Available online: <http://www.askimam.org/fatwa/fatwa.php?askid=e90e87e526e4c18a78197dbb7012c408>.

> system and the help and insight they could gain from it. The experience gained by the scholars taking part in its procedures make them more prepared for the eventuality of recognition for Islamic law.[26]

As such, the Islamic Sharia Council exemplifies the "arbitration tribunals" as envisioned in the fatwa by Shaykh Ibn Uthaymīn which urges Muslims living in a non-Muslim society to appoint an arbitrator who will judge among them according to *sharī'a*.[27] This, in turn, promotes establishment of a parallel legal framework, based on a voluntarily adherence, informal authority of the judges and compulsory social mechanisms of the community. Simultaneously, the broader mission of the Council to gain recognition of *sharī'a* in the UK enters another, political sphere where the very concepts of coexistence between Islam and the State are negotiated.

In many of their fatwas, the muftis of the Islamic Sharia Council in fact deal with the issue of parallel existence of *sharī'a* and the UK legal system. For example, the following fatwa answers the question on the validity of the divorce certificates issued by the Council outside and in the UK

> In the UK
>
> The Islamic Sharia Council deals with the Islamic divorce only and Islamic divorce certificate issued by it has neither any association with

[26] *Islamic Sharia* [online]. [cit. 2009-4-20]. Available online: <http://www.islamic-sharia.org/about-us/about-us-7.html>.

[27] *Ask Imam* [online]. [cit. 2009-4-20]. Available online: <http://www.fatwa-online.com/fataawa/muslimminorities/0000903_4.htm>.

> the civil divorce nor has any bearing on it. If the couple had an Islamic marriage only and did not have a civil registration, civil divorce is not required and Islamic divorce certificate will suffice them. Otherwise both are required to conclude the divorce.
>
> Outside the UK
>
> If the couple married outside U.K. then both divorces are necessary to finalize the matter i.e. Civil and Islamic divorce. It does not matter whether the spouse was sponsored to UK or not as the marriage is legally valid as long as it is recognised by the country it takes place in. For details please see Foreign Marriage Act 1892.[28]

Similarly, in another fatwa dealing with the formal procedures of the *khul'* divorce, the muftis of Islamic Sharia Council directly encourage the petitioners to contact civil courts in order to fulfill all the legal obligations laid down by the UK laws. At the same time, this fatwa simultaneously asserts the legal and religious capacity of the Council to act as an Islamic court

> Question: What are the factors taken into consideration to decide a *khul'* case?
>
> Answer [excerpt]:

[28] *Islamic Sharia* [online]. [cit. 2011-7-27]. Available online: <http://www.islamic-sharia.org/divorce-talaq/what-is-the-validity-of-the-divorce-certificate-outside-and-in-18.html>.

1. In a *khul'* case, the wife is required to return the dowry (money, jewelry, land etc.) to the husband. If the husband agrees to divorce in exchange of dowry, the Khul'a divorce is deemed to be completed. If he does not agree the Council may issue divorce as an authoritative body work in the capacity of an Islamic Court.

2. Whether it is a *khul'* case or divorce, certain conditions are required to be met by both parties:

a. The custody of the child: Normally a minor child remains with the mother until the age of 7 when the child is given the option to remain either with the mother or father. In some cases in particular the judge can use his discretion to allow one of the spouses to have custody. The spouses are required to accept the Islamic ruling in the matter of custody as long as they accept the Islamic ruling on divorce.

b. If the divorced woman remarries while the child is still under 7, the custody of the child goes to the next close relative to the woman like her mother or her sister and if no such relations are found or compatible then the custody goes to the women on the father's side.

c. Whether the child stays with the mother or the father the other party must have a full right to see the child on agrees terms. If any of the parties is reluctant for the other party to see the child on a regular basis the council regrets not to proceed with the application of divorce.

d. In *khul'* cases the woman should accede the Council decisions about returning the dowry as explained above, but the matter related to the division of the property or any other assets are not taken by the Council. The parties can refer to the Civil Courts to get their rights.

e. The husband is required to pay the full dowry to the woman if he is the one who initiated the divorce proceeding.[29]

Finally, the last fatwa of the Council we present here deals with the thorny issue of polygamy and its permissibility within a non-Muslim legal system

Question: Would you mind to tell me that if someone got married in Muslim countries, in where he can legally marry more than one wife and he did it. Then he plans to emmigrate to UK. Will his polygynous marriage be still valid? Or he needs to divorce some of his wives and remains only one wife?

Answer: He should try to keep both wives. Either visiting the one, in her Muslim homeland from time to time if he can afford to do so or to bring one of them to U.K. through a valid visa. Just emigration to U.K., is not a valid reason to divorce one of them.[30]

[29] *Islamic Sharia* [online]. [cit. 2011-7-27]. Available online: <http://www.islamic-sharia.org/divorce-khula/khula-case-what-are-the-factors-taken-into-consideration-to-decide-a-2.html>.
[30] *Islamic Sharia* [online]. [cit. 2011-7-27]. Available online: <http://www.islamic-sharia.org/marriage-fatwas-related-to-women/validity-of-polygynous-marriage.html>.

As we see, the Islamic Sharia Court adheres to a rather strict and legalistic interpretation of *sharī'a*. However, it explicitly recognizes the institute of *khul'*, essentially easing the divorce procedures for women, and encourages the litigants to settle their disputes according to civil law as well whenever applicable.

When compared with the above-mentioned global Islamic authorities, such as Yūsuf al-Qaradāwī and Shaykh Ibn Bāz, it should be noted that the Council is firmly linked to its local UK Muslim community. The primary difference between other European fatwa-issuing bodies, such as the ECFR, and the Council lies in the personal and individual approach, where the muftis of the Council directly communicate with the petitioners, seek to be informed about particular details of each respective case, and offer a possibility of face-to-face meeting. These activities of the Council to a large extend transcend the depersonalization usually associated with international fatwa-issuing bodies and seek to create a bond of trust between the petitioners and the muftis, which, in turn, reaffirms the Council's authority as a religious and quasi-legal body. The Islamic Sharia Council, although not legally recognized in the UK constitutes a successful example of establishing arbitration and reconciliation council for local community while exemplifying the idea of parallel semi-legal framework, based on Islamic ethical principles and voluntarily adherence to them.

6.6 Muslim Arbitration Tribunal: Integration of Sharī'a

The Muslim Arbitration Tribunal (MAT) was established in 2007 in Birmingham in order to "provide a viable alternative for the Muslim community seeking to resolve disputes in accordance with Islamic Sacred Law and without having to resort to costly

and time consuming litigation."[31] As the website of MAT states, the establishment of MAT is an "important and significant step towards providing the Muslim community with a real opportunity to self determine disputes in accordance with Islamic Sacred Law."[32]

Unlike the Islamic Sharia Council mentioned above, the Muslim Arbitration Tribunal operates within the legal framework of England and Wales thereby ensuring that any determination reached by it can be enforced through existing means of enforcement open to normal litigants. Yet, as the website states, the principles of Islamic law would not be compromised by this fact

> Although MAT must operate within the legal framework of England and Wales, this does not prevent or impede MAT from ensuring that all determinations reached by it are in accordance with one of the recognised Schools of Islamic Sacred Law. MAT will therefore, for the first time, offer the Muslim community a real and true opportunity to settle disputes in accordance with Islamic Sacred Law with the knowledge that the outcome as determined by MAT will be binding and enforceable.[33]

[31] *Muslim Arbitration Tribunal* [online]. [cit. 2009-4-20]. Available online: <http://www.matribunal.com/>.

[32] Ibid.

[33] Ibid.

MAT operates under the Arbitration Act 1996.[34] The section labeled General principles of this Act lays down the fundamental legal framework for individual disputes as well as for the constitution of arbitration tribunals

> The provisions of this Part are founded on the following principles, and shall be construed accordingly
>
> (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
>
> (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
>
> (c) in matters governed by this Part the court should not intervene except as provided by this Part (Arbitration Act 1996).

The essential legal principle formulated by this Act is that the parties of any civil law dispute should be free to agree how their disputes are resolved, and, simultaneously, subject only to such safeguards as are necessary in the public interest. This legal maxim in fact opens the litigation according to sharī'a principles under the institute of contractual freedom.

At the same time, the procedural rules of MAT require that each tribunal must consist of at least two members, one a scholar of *sharī'a* and the other a solicitor or barrister registered to practice in England or Wales. The following statement summarizes the MAT opinion regarding the coexistence of *sharī'a* and non-Islamic legal systems

[34] *Arbitration Act 1996* [online]. [cit. 2009-4-20]. Available online: <http://www.opsi.gov.uk/acts/acts1996/ukpga_19960023_en_1>.

> We believe in the co-existence of both English law and personal religious laws. We believe that the law of the land in which we live is binding upon each citizen, and we are not attempting to impose Shariah upon anyone. Shariah does however have its place in this society where it is our personal and religious law. What a great achievement it will be if we can produce a result to the satisfaction of both English and Islamic law![35]

As Ali *et al.* (2009, p. 16) have argued, female Muslims in the UK oftentimes express dissatisfaction with the manner in which the *khul'* divorce is treated and the lack of impartiality in typical *sharī'a* councils which are presided by men. This, among other factors, could probably have led MAT to stress that it has "young qualified people, male and female, sitting as members of the Arbitration Tribunal" and that "there will be no race or sex discrimination in this organisation."[36] This statement can in fact resonate with feelings of many young Muslim women who feel that although "English courts do not have the competency to discuss issues of Islamic law," (Ali *et al*. 2009, p. 17) they, particularly in issues regarding divorce and matrimony related problems, provide Muslim women with more protection than traditional Islamic *sharī'a* councils (ibid.). Perhaps as a mean of differentiation of the MAT towards the transnational Muslim authoritites, which are often supervised by scholars from Arab Muslim countries such as

[35] *Muslim Arbitration Tribunal* [online]. [cit. 2009-4-20]. Available online: <http://www.matribunal.com/values.html>.

[36] Ibid.

Egypt or Saudi Arabia (Caeiro 2011, p. 125), the MAT emphasizes that the its scholars or lawyers are not from abroad but from within the UK.[37]

In contradiction to the all above-mentioned Muslim authorities, the Tribunal successfully integrates its rulings into the enforceable framework of the English legal system. By doing so, it transcends the limitations of most of the *sharī'a* councils and fatwa-issuing bodies by enabling the litigants to legally follow the provisions of both the Islamic as well as civil law. This is done through arbitration and the principles of contractual freedom, which open up a space within the boundaries of civil law which can be, after the consent of both participants, filled up with Islamic legal provisions. Therefore, the Muslim Arbitration Tribunal arguably represents one of the possible future scenarios of the integration of Islamic law into the European legal systems.

[37] Ibid.

7 Conclusions

As Caeiro (2011, p. 136) states, it is now widely recognized that fatwas have been a productive instrument in the development of Islamic law, allowing the *fuqahā'* to Islamize, regulate, and incorporate in the legal corpus new developments occurring in the wider society. This diploma has particularly looked at how the *'ulamā* have responded to the challenges of Muslim migration to Europe through the institute of *iftā'*.

The case studies provided in this thesis have explored six distinct authorities providing normative content in English and/or Arabic for European Muslim minorities. As has been stated above, by no means should this list be considered as an exhaustive one, since there are many other authorities with significant influence, oftentimes aimed at Turkish, French, or German speaking audience, such as the already mentioned *Diyanet İşleri Başkanlığı* or *Diyanet İşleri Türk İslam Birliği*. At the same time, the examples quoted in the case studies stem from a broader corpus of more than five hundreds analyzed fatwas. For the sake of brevity only a portion of the fatwas has been reproduced in this thesis. Nevertheless, most of the fatwas collected and archived in the corpus could actually be generally subsumed under one of the six patterns explored in this chapter, ranging from radical denial of State law to its pragmatic acceptance.

What again has to be emphasized here is the predominantly declarative and symbolic value of a fatwa (Mozaffari 1987, p. 44). Especially in the European context and without any legally-enforceable framework, following a fatwa remains completely deliberate and the latter constitutes more of a legitimization of existing social practice

than a normative act *per se* (Caeiro 2004). Moreover, a substantial amount of believers do not perceive Islam primarily as a legal framework, nor do they resort to an Internet *muftī*. Furthermore, a considerable number of Muslims are not particularly interested in performing religious practices, while not denying their Muslim identity as such (Rohe 2007, p. 16).

This being said, we have to critically evaluate the impact of the above-mentioned authorities and their fatwas. When the recommendations of a particular Islamic authority are posted and disseminated online, we can determine relatively easily how many people ask for the fatwas and how many people read them.[38] Yet we can hardly make critical evaluations of how many people really observe these fatwas and follow their guidance. In the case of the *sharī'a* councils, the situation is more straightforward since many of them keep and provide statistics about their agenda. For example, according to its statistics, as of August 2010 the Islamic Sharia Council had dealt with more than seven-thousand cases.[39] In this respect, Walker (2007) has argued that the success of transnational Muslim authorities among European Muslim minorities indicates that "the search for religious authority shows that Muslims in the West aspire to a transnational community united in belief and practice", i.e. reviving in a way the above-mentioned concept of a unified, transnational Muslim *umma*. Yet without further research there is not enough empirical evidence to show that believers asking Islamic authorities for fatwas share the same sentiment of belonging to a transnational

[38] According to recent estimations of global traffic ranks the site IslamOnline.net ranks 13,008; OnIslam.net 30,936; and Fatwa-Online.com 503,872. See *Alexa* (2011) [online]. Available at: http://www.alexa.com (24 January 2011)

[39] About us, *Islamic Sharia Council*, [online] Available at: http://www.islamic-sharia.org/about-us/about-us-9.html (28 February 2011)

community: just because they are seeking answers to their concerns about living as a religious minority.

Nevertheless, the popular demand for fatwas (Caeiro 2011; Mariani 2011) indicates the appeal this form of religious guidance has to many believers. As I have already argued, to a large extent the popularity, particularly of transnational muftis, converges with the broader transformation of contemporary religiosity, which emphasizes the role of the individual and privatization of faith. Correspondingly, the easily-accessible and searchable databases of fatwas provide pre-set knowledge and codes of behavior, which the individual can choose from (Šisler 2009). This is even exemplified in the phenomenon of so-called "fatwa shopping", when a person approaches different authorities in order to obtain a fatwa that suits his or her needs (Hosen 2008).

Beyond the emphasis on the individual, another underlying logic of the Islamic jurisprudence for Muslim minorities in Europe is the question of identity. As this thesis has demonstrated, *sharī'a* as a legal norm does not survive as such in a non-Muslim environment. Therefore, in the words of Roy (2004, p. 191), it has to be recast either in spiritualist and modern terms, or as a normative code of behavior that draws a clear boundary between Muslims and non-Muslims. From this point of view, the fatwas catering for Muslim minorities living in Europe play a more effective role in shaping the latter's identities than in the construction of a coherent and sustainable legal framework.

Indeed, some of the Islamic authorities, such as Omar Bakrī, call for radical rejection of man-made laws and therefore directly challenge the authority of the State and its courts.

Yet, the majority of the Islamic authorities analyzed in this thesis *de facto* recognizes the sovereignty of the State and provides believers with guidelines how to live in accordance with *sharī'a* within a non-Muslim legal system. Inherently, the principles promoted by these authorities are based on voluntarily adherence and individual responsibility, since the muftis lack any legal means to enforce their decisions; except when fully integrated into the coercive framework of the state's courts, as is the case with the Muslim Arbitration Tribunal.

In his prescient work, Dassetto (2000, p. 43) laid down five possible models of settlement of active Islam in Europe. The first is the assimilation of the Western model. This means that the Muslims will find inspiration in the dominant model of religions in Europe and will develop a private and spiritual Islam in a perspective of autonomy in the religious sphere. The second model is that of cosmopolitan integration. According to this model, the Muslims are concerned to integrate themselves institutionally in Europe, but they conserve cultural inspiration, cultural references and laws that belong to the Muslim world as a whole. In this model, as Dassetto (ibid.) notes, tension may however arise between the strategy of insertion into Europe and maintenance of their own points of reference in the vibrant spaces of Islam. The third model is one of dissent or controversy. In this case Islam would become an instrument of social protest. It could be inspired by and ally with the protesting fringes of Islam which reject the West and its models. The fourth model is that of diaspora. In this model, Muslims are above all concerned with increasing the numbers of their group, and they are only slightly interested in the question of their settlement in the European context. The social horizon is largely limited to the network of connections that joins them to groups, associations, and brotherhood movements. Finally, the fifth Dassetto's model depends

on the context of geopoliticization. In this model, Muslims consider themselves, and they are considered, as an appendix or an expression of geopolitical strategies that originate and are devised in the centers of Islam. As this diploma thesis has demonstrated, by no means are these models mutually exclusive. Moreover, we can find elements pertaining to most of the above-mentioned models in the multifaceted contemporary Islamic jurisprudence for Muslim minorities in Europe.

Taking a similar, yet different tack, Rohe (2007, p. 16) suggests that are in principle four possible models of living together that immigrants and the indigenous population may follow. Assimilation is the first model: the immigrants give up their own cultural identity and totally adapt to the residents. The second model is the opposite of assimilation: differing cultures overlap resulting in a fundamental change to the previous cultural context of the receiving population. Segregation is the third model: locals and immigrants remain separated to the greatest possible extent and keep their own respective identities. A fourth model, not in total opposition to this is Acculturation: residents and immigrants and their respective cultures change in the process of mutual communication.

As Rohe (2007, p. 17) argues many long established residents may prefer the model of complete assimilation. Change seems to be unnecessary and custom permanent. The injunction: "when in Rome, do as the Romans do" seems to make sense. As Rohe (ibid.) continues, for very good reasons the current legal systems in Europe support this model, but only in part. It is true that the European legal orders have a territorial basis: everyone within the territory of a specific state has to abide by the same laws. Every legal system claims the ultimate right to adjudicate, so there is no "equality of laws" on

this level. Only the state can decide whether and to what extent "foreign" below can be applied and foreign customs can be practiced on its territory. Thus the legal system is not "multicultural" as far as it concerns the decisive exercise of legal power.

However, as this thesis has demonstrated, this does not mean that the foreign legal principles and cultural influences are kept out. On the contrary, liberal constitutions of European states leave a broad scope for individual lifestyles. This could be described as a "constitution open to other cultures", but the fundamental principles of the constitution are not open to interpretation according to other – "foreign" – legal principles.

> The inviolability of human dignity, the principle of democracy, the rule of law and the principle of welfare state was the binding force of all state power, separation of powers, majority rule and minority protection, as well as the essential elements of constitutional civil rights, such as the equality of the sexes, freedom of opinion, religious freedom, and protection of marriage and family etc., are among the basic principles which can't be dispensed with (Rohe 2007, p. 17).

In reality, the theoretical frameworks pronounced by the various Muslim authorities are mostly already embodied in the practices of European Muslims; albeit to varying degrees. As I have stated above, contrary to the popular notion, *sharī'a* is already applied in Europe today. This thesis has also demonstrated that, beyond the realm of private international law and marriage contracts, *sharī'a* is also incorporated into European legal systems through the institutions of mediation and arbitration, as

exemplified in the existence of Muslim Arbitration Tribunal. Moreover, several autonomous tribunals have been established that echo the 'Uthaymīn's idea of *sharī'a* judges, e.g. the Islamic Sharia Council in Birmingham, which provides Islamic divorce independently of and separately from the United Kingdom's legal system.

Particularly when discussing the claims of the oneness of *sharī'a*, which is unchangeable and valid for all Muslims in all times and places, we have to bring forward the An-Na'im's (2002, p. 16) argument, that the notion of an immutable body of principles of *sharī'a* as universally binding on all Muslims for eternity is simply not supported by the actual practice of Muslim societies and their states throughout history. Moreover, as An-Na'im suggests, *sharī'a* has not had exclusive jurisdiction in the administration of justice throughout Islamic history, as the state always exercised secular jurisdiction, nor was *sharī'a* free from state supervision whenever the state permitted it to be enforced. Finally, the ability of individual Muslims to seek and act upon independent fatwa has always been a valuable resource for addressing the personal religious needs of believers, even regarding what might technically be "legal subject matter". Therefore, the institutionalization of this function does not exhaust the possibilities of independent legal advice, which believers can observe voluntarily without state enforcement or control.

With regard to the Shaykh 'Uthaymīn's call for the establishment of autonomous *sharī'a* councils in lands when Muslim minorities reside, we have to note that it is not only the Muslim authorities who formulate ideas challenging the legal status quo. In his highly-publicized speech for Radio 4's *World at One* program in February 2008, the Archbishop of Canterbury, Dr. Rowan Williams, said that the adoption of certain

aspects of *sharī'a* law in the United Kingdom seems unavoidable; specifically referring to family law and marital issues. He argues that this step would help maintain social cohesion and points out that similar Orthodox Jewish courts (Beth Din) are already in operation in the UK.[40] Similarly, Lord Chief Justice Phillips stated in his speech at the East London Muslim Centre in July 2008 that the UK already goes a long way towards embracing *sharī'a* in the context of family disputes. He did however lay down clear limitations for such a process

> There is no reason why principles of Sharia Law, or any other religious code should not be the basis for mediation or other forms of alternative dispute resolution. It must be recognised, however, that any sanctions for a failure to comply with the agreed terms of the mediation would be drawn from the laws of England and Wales. So far as aspects of matrimonial law are concerned, there is a limited precedent for English law to recognise aspects of religious laws, although when it comes to divorce this can only be effected in accordance with the civil law of this country.[41]

It is worth mentioning in this respect that the Central Council of Muslims in Germany declared in its charter on Muslim life in German society on February 22th, 2002 ("Islamic Charta") that Muslims are content with the harmonious system of secularism and religious freedom provided by the Constitution. According to Article No. 13 of the Charter (cited in Rohe 2007, p. 22), "The command of Islamic law to observe the local

[40] Sharia law in UK is (unavoidable). *BBC News* [online]. 7 February 2008, [cit. 2010-11-16]. Available online: <http://news.bbc.co.uk/2/hi/uk_news/7232661.stm>.

[41] *Muslim Arbitration Tribunal* [online]. [cit. 2009-4-25]. Available online: <http://www.matribunal.com/downloads/LCJ_speech.pdf>.

legal order includes the acceptance of the German statutes governing marriage and inheritance, and civil as well as criminal procedure." Similarly, the renowned French imam Larbi Kechat (cited in Rohe 2007, p. 22) has stated that "We are in harmony with the legal framework [and] we are not willing to introduce a parallel law."

An influential Muslim intellectual Tariq Ramadan (1999, p. 138) has stated states in his treaty *To be a European Muslim*, which assesses the circumstances for Muslims living in Europe, that

> [These] Muslims can freely practise their religion (the totality of the *'ibādāt* and a part of the *mu'āmalāt*); the laws generally protect their rights as citizens or residents as well as believers belonging to a minority religion; they are also free to speak about Islam and to organise religious, social or cultural activities and nothing prevents Muslims from being involved in society or participating in social life…

As it seems from the analysis carried out in this thesis, most of the inquiries sent by believers to the Islamic authorities in Europe similarly seek to find a way providing both for fulfilling the Islamic obligations as well as adhering to the European legal systems. Therefore, as I have stated above, the discursive space of the jurisprudence for Muslim minorities in Europe arguably constitutes rather a specific public sphere where different, and oftentimes conflicting, concepts of coexistence between Islam and the State are negotiated, than a parallel legal framework *per se*.

The term "public sphere" was defined by Habermas (1989, p. xi) as "a sphere between civil society and the state, in which critical public discussion of matters of general interest" take place. Habermas developed his notion around the public sphere created by the European bourgeois elites of the seventeenth and eighteenth centuries. Therefore, his theory appears to a large extent to be culture-bound and not necessarily fitting nonwestern societies. In this respect, Salvatore (2007, p. 2) has expressed concern that the Western Habermasian notion of public sphere could not easily "apply" to the Muslim world, mainly because Habermas "significantly underplayed the role of religious traditions in its formation". Despite the various criticisms of the Habermasian notion of the public sphere, mainly on the grounds of being Eurocentric, it continues to be a useful framework for "thinking about how wider social and cultural issues are addressed and for trying to make sense of how agreement about what is acceptable in a culture is reached" (McKee, 2005, p.6).

Thus, there is, according to Salvatore (2007, p. 11), a need to reconstruct a different genealogy of the public sphere, based on historical experiences other than those originating from the models of northwestern, European modernity. In particular, Salvatore presents a genealogy of the public sphere departing from axial traditions, thus incorporating an Arab Islamic legacy to the construction of the symbolic-communicative link into the genealogy of the European, Christian and post-Christian self-understanding that has shaped the bulk of the theoretical literature on the public sphere.

By the same token, on a more general level, this thesis similarly suggests that we are in a crucial need of rethinking the discursive space of the jurisprudence for Muslim

minorities in Europe as a public sphere where different, and oftentimes conflicting, concepts of integration of *sharī'a* into European frameworks are negotiated, rather than perceiving this jurisprudence primarily within a strict legalistic framework. At the same time, this emerging public sphere constitutes an inherent and inseparable part of the contemporary European religious, social, and political landscape. It maintains a strong link with the traditional Islamic heritage of *iftā*, while simultaneously emphasizing the role of the Self and the increasing insistence on religion as a system of values and ethics; both of which corresponds with the contemporary forms of European religiosity.

Bibliography

ABOU EL FADL, Khaled. 2001. *Speaking in God's Name: Islamic Law, Authority and Women.* Oneworld, 2001. 384 p. ISBN 9781851682621.

ABUL-FADL, Mona. 1990. *Islam and the Middle East : the aesthetics of a political inquiry*. 1st ed. Herndon, USA : International Institute of Islamic Thought, 1990. 61 p. ISBN 0912463740.

ABDEL-FADIL, M. 2011. The Islam-Online Crisis: A Battle of Wasatiyya vs. Salafi Ideologies? *CyberOrient* [online], 2011, vol. 5, no. 1. [cit. 2011-07-26]. Available online: <http://www.cyberorient.net/article.do?articleId=6239>.

ALEV, Fatih. 2010. *Islamic law in Western Thrace* [online]. [cit. 2011-07-26]. Available online: <http://alev.dk/wp-content/uploads/2010/08/Islamic-law-in-Western-Thrace-Fatih-Alev.pdf>.

ALI, Shaheen Sardar , et al. 2009. *Islamic Law and the Muslim Diaspora : A Teaching Manual* [online]. May 2009 [cit. 2010-11-14]. Available online: <http://www.scribd.com/doc/33946556/Islamic-Law-and-Muslim-Diaspora-Teaching-Manual>.

AN-NA'IM, Abdullahi A. *2002. Shari'a and Islamic Family Law: Transition and Transformation. In Islamic family law in a changing world : a global resource book*. Edited by Abdullahi A. An-Na'im. London : Zed Books, 2002. p. 1-22. ISBN 1842770926.

BABÈS, L. 1997. *L'islam positif: la religion des jeunes musulmans de France.* Paris: Editions de l'Atelier, 1997. 223 p. ISBN 9782708233126.

BABÈS, L. 2004. Norme et autorité religieuse chez les jeunes musulmans de France. In *Les transformations de l autorité religieuse*. Paris : Harmattan, 2004. p. 199-214. ISBN 274754253X.

BAKER, Raymond William. 2003. *Islam without fear : Egypt and the new Islamists*. Cambridge : Harvard University Press, 2003. 309 p. ISBN 0674012038.

Banned cleric barred from rescue ship. 2006. *Guardian.co.uk* [online]. 21 July 2006, [cit. 2010-11-14]. Available online: <http://www.guardian.co.uk/world/2006/jul/21/syria.immigrationpolicy>.

BRUINESSEN, Martin. 2003. Making and Unmaking Muslim religious authority in Western Europe. Paper presented at the *Fourth Mediterranean Social and Political Research Meeting*, Florence & Montecatini Terme 19 – 23 March 2003, organised by the Mediterranean Programme of the Robert Schuman Centre for Advanced Studies at the European University Institute, 2003. [cit. 2010-11-14].

Available online:
<http://www.let.uu.nl/~martin.vanbruinessen/personal/publications/making_authority.htm>

BRUINESSEN, Martin. 2011. Producing Islamic Knowledge in Western Europe: discipline, authority, and personal quest. In BRUINESSEN**,** Martin van and ALLIEVI Stefano. In *Producing Islamic Knowledge: Transmission and dissemination in Western Europe (Islamic Studies Series).* Routledge, 2011, p. 142-168. ISBN 9780415355926.

BUNT, Gary R. 2000. *Virtually Islamic : computer-mediated communication and cyber Islamic environments*. Cardiff : University of Wales Press, 2000. 189 p. ISBN 0708316123.

BUNT, Gary R. 2009. *iMuslims : Rewiring the House of Islam*. Chapel Hill : The University of North Carolina Press, 2009. 416 p. ISBN 0807859664.

CAEIRO, Alexandre. 2003b. The European Council for fatwa and Research. Paper presented at the *Fourth Mediterranean Social and Political Research Meeting*, Florence & Montecatini Terme 19 – 23 March 2003, organised by the Mediterranean Programme of the Robert Schuman Centre for Advanced Studies at the European University Institute, 2003.

CAEIRO, Alexandre. 2004. The social construction of Shari‘a : Bank interest, home purchase, and Islamic norms in the West. *Die Welt des Islams*. 2004, vol. 44, no. 3, p. 351-375. ISSN 0043-2539.

CAEIRO, Alexandre. 2010. The power of European fatwas : The minority fiqh project and the making of an Islamic counterpublic. *International Journal of Middle East Studies*. 2010, vol. 42, no. 3, p. 435-449.

CAEIRO, Alexandre. 2011. *Transnational ulama, European fatwas, and Islamic authority: a case study of the European Council for Fatwa and Research.* In BRUINESSEN**,** Martin van and ALLIEVI Stefano**.** Producing Islamic Knowledge: Transmission and dissemination in Western Europe (Islamic Studies Series). Routledge, 2011, p. 121-141. ISBN 9780415355926.

CESARI, J. 1998. *Musulmans et républicains: les jeunes, l'islam et la France.* Brussels : Editions Complexe, 1998. 166 p. ISBN 9782870277027.

CESARI, J. 2003. Muslim minorities in Europe: the silent revolution. In *Modernising Islam: Religion in the Public Sphere in the Middle East and in Europe*. J. Esposito and F. Burgat (Eds). London : Hurst, 2003. p. 251–269. ISBN 9781850656784.

CESARI, J. 2006. *When Islam and Democracy Meet: Muslims in Europe and in the United States*. New York : Palgrave Macmillan, 2006. 280 p. ISBN 978-1403971463.

Covert preaching of banned cleric. 2006. *BBC News* [online]. 2006, 14 November. [cit. 2011-07-27]. Available online: < http://news.bbc.co.uk/2/hi/uk_news/6143632.stm>.

DASSETTO, Felice. 2000. The New European Islam. In *Islam and European legal systems*. Aldershot : Ashgate/Dartmouth, 2000. p. 31-47. ISBN 1840144661.

ECFR [European Council for Fatwa and Research]. 2002. *Qararāt wa fatāwā li-l majlis al-urubī li-l-iftā' wa-l-buhūth (First and Second Collection of Fatwas by European Council for Fatwa and Research)*, translated by Anas Osama Altikriti and Shaikh Nasif al-Ubaydi. Cairo : Islamic INC/Al-Falah Foundation. 2002.

EDWARDS, Richard. 2009. Banned cleric Omar Bakri addresses conference at London primary school . *The Telegraph* [online]. 02 Mar 2009, [cit. 2010-11-10]. Available online: <http://www.telegraph.co.uk/news/newstopics/politics/lawandorder/4903920/Banned-cleric-Omar-Bakri-addresses-conference-at-London-primary-school.html>.

EICKELMAN, Dale F. - PISCATORI, James. 2004. *Muslim politics*. Princeton : Princeton University Press, 2004. ISBN 0691120536.

EL-NAWAWY, Mohammed - KHAMIS, Sahar. 2009. *Islam dot com : contemporary Islamic discourses in cyberspace*. 1st ed. New York : Palgrave Macmillan, 2009. 269 p. ISBN 0230600352.

EVSTATIEV, S. 2006. *Public Islam on the Balkans in a Wider Europe Context* [online]. 2006, Budapest: Central European University, Center for Policy Studies. [cit. 2010-11-14], Available online: <http://pdc.ceu.hu/archive/00003105/01/simeon_evstatiev_final.pdf>.

Fatwa Online [online]. [cit. 2011-07-27]. Available online: < http://www.fatwa-online.com/ >.

FETZER, Joel S. - SOPER, J. Christopher. 2005. *Muslims and the state in Britain, France, and Germany*. Cambridge : Cambridge University Press, 2005. 208 p. ISBN 0521828309.

GRÄF, B. 2007. Sheikh Yūsuf al-Qaradāwī in Cyberspace. *Die Welt des Islams*. 2007, vol. 47, no. 3-4, p. 403-421. ISSN 0043-2539.

HABERMAS, Jürgen. 1989. *The structural transformation of the public sphere: An inquiry into a category of bourgeois society.* Cambridge : MIT Press., 1989.

HOSEN, Nadirsyah. 2008. Online Fatwa in Indonesia : from Fatwa Shopping to Googling a Kiai. In *Expressing Islam : Religious Life and Politics in Indonesia*. Singapore : Institute of Southeast Asian Studies, 2008. p. 159-174. ISBN 9789812308504.

IBN BAZ, Shaykh - UTHAYMEEN, Shaykh. 1998. *Muslim Minorities : Fatawa Regarding Muslims Living as Minorities*. Hounslow : Message of Islam, 1998. 88 p.

KHALIDI, T. 1992. Religion and Citizenship in Islam. In *Religion and citizenship in Europe and the Arab world*. Edited by Jørgen S. Nielsen. London : Grey Seal, 1992. ISBN 1856400301.

KHAMIS, Sahar - ŠISLER, Vít. 2010. The New Arab Cyberscape : Redefining Boundaries and Reconstructing Public Spheres. In *Communication Yearbook 34*. New York : Routledge, 2010. p. 277-315. ISBN 0415878578.

KHAN, M. A. Muqtedar. 2006. Introduction : The Emergence of an Islamic Democratic Discourse. In *Islamic Democratic Discourse : Theory, Debates, and Philosophical Perspectives*. Lanham : Lexington Books, 2006. p. ix-xi. ISBN 0739106449.

KHOSROKHAVAR, F. 1997. *L'islam des jeunes.* Paris: Flammarion, 1997. 323 p. ISBN 9782080674098.

KROPÁČEK, Luboš. 2002. *Islám a západ : historická paměť a současná krize*. Praha : Vyšehrad, 2002. 197 p. ISBN 8070215402.

KROPÁČEK, Luboš. 2003. *Duchovní cesty islámu.* Praha : Vyšehrad, 2003. 292 p. ISBN 8070216131.

KÜNG, Hans. 2007. *Islam : Past, Present and Future*. Oxford: Oneworld, 2007, 1024 p. ISBN 1851683771.

LANDMAN, Nico. 1992. *Van mat tot minaret: de institutionalisering van de islam in Nederland.* Amsterdam: VU Uitgeverij, 1992. 386 p. ISBN 9789053830864.

LEWELING, T. 2005. Exploring Muslim Diaspora Communities in Europe through a Social Movement Lens : Some Initial Thoughts. *Strategic Insights* [online]. 2005, vol. 4, no. 5, [cit. 2010-11-14]. Available online: <http://handle.dtic.mil/100.2/ADA520982>.

LEWIS, BERNARD. 1994. The situation of Muslim populations in a non-Muslim regime - historic and legal thoughts. In *Muslims in Europe*. Edited by Bernard Lewis and Dominique Schnapper. London : Pinter, 1994. ISBN 1855672502.

MANDAVILLE, Peter. 2003. Towards a critical Islam : European Muslims and the changing boundaries of transnational religious discourse. In *Muslim networks and*

transnational communities in and across Europe. Leiden : Brill, 2003. p. 127-146. ISBN 9004128581.

MANDAVILLE, Peter. 2005. Toward a Virtual Caliphate. *YaleGlobal Online* [online]. 2005, 27 October. [cit. 2011-07-26]. Available online: <http://yaleglobal.yale.edu/content/toward-virtual-caliphate>

MARIANI, E. 2006. The Role of States and Markets in the Production of Islamic Knowledge On-Line : The Examples of Yūsuf al-Qaradāwī and Amru Khaled. In *Religious communities on the internet : Studies on Inter-Religious Relations*. Edited by Göran Larsson. Uppsala : Swedish Science Press, 2006. p. 131-149 . ISBN 918965224X.

MARIANI, E. 2011. Cyber-fatwas, sermons, and media campaigns: Amr Khaled and Omar Bakri Muhammad in search of new audiences. In BRUINESSEN**,** Martin van and ALLIEVI Stefano. *Producing Islamic Knowledge: Transmission and dissemination in Western Europe (Islamic Studies Series).* Routledge, 2011, p. 142-168. ISBN 9780415355926.

MARTIN, Richard C. 2004. *Encyclopedia of Islam and the Muslim Word.* New York : Macmillan Reference USA : Thomson/Gale, ©2004. 823 p. ISBN 9780028656045.

MCKEE, Alan. 2005. *The public sphere: An introduction*. London: Cambridge University Press, 2005. 265 p. ISBN 9780521549905.

METCALF, Barbara D. 1996. Introduction: Sacred Words, Sanctioned Practice, New Communities. In *Making Muslim space in North America and Europe*. Edited by Barbara Daly Metcalf. Berkeley : University of California Press, 1996. p. 1-30. ISBN 0520204034.

MOZAFFARI, Mehdi. 1987. *Authority in Islam : from Muhammad to Khomeini*. Armonk, N.Y. : M.E. Sharpe, 1987. 129 p. ISBN 0873323882.

Muslim Arbitration Tribunal [online]. [cit. 2011-07-27]. Available online: <http://www.matribunal.com/contactus.html>.

Muslim College, London [online]. [cit. 2010-11-24]. Available online: <http://www.muslimcollege.ac.uk >.

NIELSEN, Jørgen S. 1992. *Introduction: Muslims, Christians and loyalties in the nation-state. In Religion and citizenship in Europe and the Arab world*. Edited by Jørgen S. Nielsen. London : Grey Seal, 1992. ISBN 1856400301.

PETER, F. 2006. Individualization and Religious Authority in Western European Islam. *Islam and Christian-Muslim Relations*. 2006, vol. 17, no. 1, p. 105–118. ISSN 0959-6410.

POOLE, Elizabeth. 2002. *Reporting Islam : media representations of British Muslims*. London : I.B. Tauris, 2002. 297 p. ISBN 1860646867.

POTZ, Richard - WIESHAIDER, Wolfgang [Editors]. 2004. Islam and the European Union. 2004. Edited by Richard Potz, Wolfgang Wieshaider. Leuven, Belgium : Peeters, 2004. 262 p. ISBN 9042914459.

QARADĀWĪ, Y. 2005. *Fī fiqh al-aqallīyāt al-Muslima: hayāt al-Muslimīn wasta al-mujtama'āt al-ukhrá,* Cairo : Dār al-Shurūq, 2005.

REEBER, M. 2000. Les khutbas de la diaspora: enquête sur les tendances de la prédication islamique dans les mosquées en France et dans plusieurs pays d'Europe occidentale. In DASSETTO, F. (ed.). *Paroles d'islam; Individus, sociétés et discours dans l'islam européen contemporain.* Paris: Maisonneuve-Larose, 2000, p. 185-203. ISBN 9782706814372.

ROHE, Mathias. 2007. *Muslim Minorities and the Law in Europe : Chances and Challenges*. 1st Ed. New Delhi : Global Media, 2007. 173 p. ISBN 8188868236.

ROY, Olivier. 1994. *The failure of political Islam*. Translated by Carol Volk. Cambridge : Harvard University Press, 1994. 238 p. ISBN 0674291409.

ROY, Olivier. 2000. L'individualisation dans l'islam européen contemporain. In DASSETTO, F. (ed.). *Paroles d'islam; Individus, sociétés et discours dans l'islam européen contemporain.* Paris: Maisonneuve-Larose, 2000, p. 69-83. ISBN 9782706814372.

ROY, Olivier. 2004. *Globalized Islam : the search for a new Ummah*. New York : Columbia University Press, 2004. 349 p. ISBN 0231134983.

SALVATORE, Armando. 2007. *The Public Sphere: Liberal Modernity, Catholicism, Islam.* New York, NY: Palgrave Macmillan, 2007. 293 p.

SCHACHT, Joseph. 1964. *An introduction to Islamic law*. Oxford : Clarendon Press, 1964. 304 p.

Sharia law in UK is 'unavoidable'. 2008. *BBC News* [online]. 2008, 7 February. [cit. 2011-07-27]. Available online: <http://news.bbc.co.uk/2/hi/uk_news/7232661.stm>

ŠISLER, Vít. 2009. European Courts' Authority Contested? The Case of Marriage and Divorce Fatwas On-line. *Masaryk University Journal of Law and Technology*, 2009, vol. 1, no. 3, pp. 51-78. ISSN 1802-5951.

ŠISLER, Vít. 2011. Cyber Counselors: Online Fatwas, Arbitration Tribunals, and the Construction of Muslim Identity in the UK. *Information, Communication and Society*. 2011, vol. 14. ISSN 1369-118X (forthcoming).

SKOVGAARD-PETERSEN, Jakob. 1997. *Defining Islam for the Egyptian state: muftis and fatwas of the Dār al-Iftā.* Leiden : BRILL, 1997. 420 p. ISBN 9789004109476.

United Kingdom. 1996. Arbitration Act 1996 [online]. 17.12. 1996. London : The National Archives [cit. 2011-07-27]. Available online: <http://www.legislation.gov.uk/ukpga/1996/23/1996-12-17>

WALKER, M. Karen. 2007. *The Search for Community as Described in the Literature Addressing Identity Discourses in the Arab Public Sphere* [online]. 2007, [cit. 2010-11-14]. Available online: <www.rhetoricalens.info/images/search_for_community.pdf>

WIKTOROWICZ, Quintan. 2005. *Radical Islam Rising : Muslim extremism in the West*. Lanham : Rowman & Littlefield, 2005. 248 p. ISBN 0742536408.

YILMAZ, I. 2004. Marriage Solemnization among Turks in Britain. *Journal of Muslim Minority Affairs : The Emergence of a Hybrid Anglo-Muslim Turkish Law*. 2004, vol.24, no.1, p. 57-66. ISSN 1360-2004.