

Intellectual Influences between the West and the Muslim World

– Religious Authority in Transnational Interaction

BY KAREN-LISE JOHANSEN KARMAN

Is the scholarly interrelatedness between Muslim scholars in Western Europe and in the Middle East a one-way mode of communication from the traditional loci for Islamic authority to the West? Or does a multidirectional exchange of ideas exist? These questions are addressed by examination of legal opinions on gender issues.

U ntil recently, the major seats of Islamic learning in the Muslim-majority world were the main sources of inspiration for Muslim scholars residing in the West and the key resources of Islamic thinking for Muslim minority communities. Muslims in the diaspora turned to major authorities based in the Islamic heartland for guidance and complied with fatwas (legal opinions embodying an interpretation of Sharī‘a) issued by traditional religious institutions and authorities. Lately, there seems to be a shift in the diasporic attitude towards the religious authorities. The traditional patterns of religious authority are being challenged by the creation of formalised institutions for reflection of Muslim minority issues as Western fatwa councils, as well as by the call of some Muslim scholars for the development of a specific ‘minority jurisprudence’ (*fiqh al-aqalliyyāt*) to facilitate an adaptation of Islam to Western societies. This paper attempts to trace the dynamic of transnation-

al interactions between members of the European Council for Fatwa and Research (ECFR) and members of the Egyptian Islamic Research Academy (*Majma' al-bulūth al-Islāmiyya*) concerning the development of a locally adapted Islam for European Muslim minorities. It also surveys the Western scholars' motives behind the establishment of ECFR and analyses two of the Council's legal opinions, examining whether the traditional authorities influence the Western Council in its rulings, or whether the Council represents a new mode of interpretation that has an intellectual influence beyond Europe and that challenges traditional authorities.

The cases examined are fatwas on gender issues. Although some of the stereotypical assumptions about the relationship between women and men in Islam often have been distorted or inaccurate, many Muslim immigrants come from traditions with a patriarchal understanding of family structures. The context in which the Qur'ān was revealed was in a patriarchal society, and men have largely done the exegesis through the centuries. Interpreters have understood the Qur'ān as insisting on gender differences, and the Qur'ānic verse (4:34) describing men as providers for women has often been interpreted to imply the superiority of men (Haddad 2006, 145-155). As Muslim women increasingly undertake responsibilities and roles beyond the confines of the home, both in the West and in the Muslim world, traditional gender roles are challenged and there is a call for certain Qur'ānic verses to be reinterpreted. The following analysis of the fatwas will illustrate whether the Council allows for a more liberal model of parity between sexes applicable to changing thoughts on the gender standard of equality.¹

PRODUCTION OF LEGAL OPINION – A DISCURSIVE PROCESS

The members of the fatwa councils com-

municate utterances of religious meaning to the Muslim community, and the fatwas function as a medium of communication (cf. Asad 1993, 31) between the religious authorities and believers. The purpose of the fatwas is not only to convey a message to the Muslim receivers, but also to modify their consciousness, and, if possible, influence their behaviour. In this paper, the process of issuing fatwas is, hence, considered as an example of a discursive action. The term 'discourse' has become a rather common currency in a variety of disciplines and consequently has vague and in some cases very fluctuating meanings. I do, however, find the term useful, when understood as a group of statements having a social meaning that is determined by the social context in which it is enacted, and which contributes to the way that social context continues its existence (cf. Mills 1997, 11, Foucault 1972, 117). There is no causality or regularity in a discourse's meaning-making process and it does not automatically bring about changes in people's behaviour or way of thinking (Fairclough 2003, 11). Discursive changes depend on relations of power, dominance and hegemonic struggles. A discourse may obtain the position of 'common sense' and be effective in bringing about transformation. Its universal status, which legitimises specific social action and normative orders, is, nevertheless, an 'unstable equilibrium' that may be contested (Fairclough 1992, 92).

The producers of the fatwas refer to known texts and draw from an accepted and shared juridical text corpus to derive rulings. Foucault states, "there can be no statement that in one way or another does not reactualize others" (Foucault 1972, 98, quoted in Fairclough 1992, 101). In other words, text absorbs and builds upon text from the past, and text responds to and reworks text from the past, and in doing so helps to make history, and contributes to wider processes of change (Fairclough 1992, 102). Although the authorities of

the fatwa councils base their rulings on authoritative religious traditions, the content of the fatwas change and vary among the councils. In some instances, the rulings may be contradictory and challenge one another. This dynamic process of diversity, transformation and ambiguity illustrates, as Amir-Moazami and Salvatore argue, how Islamic discourse is embedded and situated in a discursive tradition that is and has constantly been subjected to internal transformation (Amir-Moazami and Salvatore 2003, 54). Furthermore, it indicates that although the religious tradition is controlled by ritualized patterns of authorizations (cf. Albinus 1997, 219), it is institutionally and discursively shaped and the councils' utterances are subject to conditions that may constrain, facilitate and, to varying degrees, influence the discursive products they produce. The influential mechanisms that shape the discursive products may both be human and structural, like scholars' educational backgrounds, ideological standpoints, or the environment and institutions within which they operate. An exhaustive comprehension of fatwa councils' discursive products consequently requires an approach that allows for a focus on the interrelations between the discourse and the framework within which they are produced. The discourse analytical approach, which is the theoretical perspective that informs this article, focuses on not only utterances or texts as objects of inquiry, but also pays attention to the dialectical relations between discourse and the social practice in which it is situated.

TRANSNATIONAL ISLAM AND MUSLIM MINORITIES – A HISTORICAL OVERVIEW

The existence of communication and interaction linking people and institutions across the borders of nation-states and around the world is not a new phenomenon in the case of religion (Vertovec 2003, 312). Religious communities are among the oldest of the

transnationals. Sufi orders, Catholic missionaries and Buddhist monks carried work and praxis across vast distances before the places where they travelled became nation-states (Rudolph 1997, 1). Islam (as with other religions) has never respected national borders, and it may be argued that Islam, with its intrinsic transnational dimension, complicates current lines of transnational analysis (Bowen 2004, 880). Islamic religious practice contains several features that promote the perception of the worldwide community, *al-umma*, among Muslims. The requirement to pray and utter the confession of faith (*shahāda*) in Arabic promotes the notion of participating in a universal message. This also applies to the five daily obligatory rituals of worship where Muslims turn their bodies in the direction of Mecca and to the annual pilgrimage that brings Muslims from all over the world to Saudi Arabia. Islam's transnational character creates an image of an Islamic community transcending specific boundaries and borders. This idea, in turn, supports the legitimacy and indeed the imperative of searching everywhere in the world for the highest authority on Islamic matters (Ibid., 882-883). The mobility of Islamic interpretation and the practice of seeking the best religious authorities for advice regardless of location has been a common practice among Muslim communities throughout Islam's history, especially among Muslim minorities seeking adaptive strategies for Islamic practice in a non-Muslim society.

Since the eighth century, large Muslim populations have lived in non-Muslim territories, and the discussion about the legality of residing among non-Muslims has been a subject of juridical debate ever since then. A study of the juristic discourse from early Islam discloses a dynamic process of legal development concerning the statute and obligations of Muslim minorities (Abou El Fadl 1994). Muslim minorities were concerned about the extent to which they were bound by Islamic laws, and they consulted

muftis (jurisconsults) for fatwas providing guidelines on Islamic thinking and conduct. It is up to the individual petitioner to decide whether he wants to regulate his life according to guidelines or not, given that a fatwa is not legally binding but solely advisory. Some jurists ruled that all aspects of Islamic law extend to all Muslims regardless of their locations of residence.² Others acknowledged the necessity of taking into account local practices and the need for adapting the content of Islamic law to meet changing circumstances (Harvey 1964, Abou El Fadl 1994, Van Koningsveld and Wiegiers 1994, Miller 2000). Most jurists agree that residence in non-Muslim societies is permitted as long as Muslims can practice Islam, or as written in the legal documents, “manifest the signs of Islam” (Van Koningsveld and Shadid 1996, 110, note 13).³ The Islamic jurists have not developed a particular jurisprudence (*fiqh*) for Muslim minorities, and have not achieved unanimity on the elaboration of systematic ethical standards for minorities and their practices of Islam. The lack of a systematic formulation concerning minority status entails uncertainty among contemporary Muslim minorities about how to conform to the non-Muslim setting and still live a proper Islamic life. Accordingly, questions are continually raised to scholars concerning the adaptation of Islamic normative and legal traditions in the Western world. Throughout Islam’s history, it was largely jurists residing in Muslim territories that issued fatwas discussing the minorities’ Islamic obligations. Today, this tradition of transnational communication between ordinary Muslims and authorities is complemented by the participation of Muslim scholars living among minorities.

EUROPEAN COUNCIL FOR FATWA AND RESEARCH

On the initiative of the Federation of Islamic Organizations in Europe (FIOE), the

European Council for Fatwa and Research (ECFR) held its inaugural meeting in London in March 1997.⁴ According to the FIOE, there was a need for a body giving Islamic guidance to Muslim minorities in Europe, or as stated in the Sunni council’s constitution, “the Muslims in Europe have developed an immense need for an authority that can fulfil their needs of fatwas, judgements, studies and research.”⁵ The Council was introduced as complementary and not in competition with other reputed councils in the Muslim world. The FIOE was furthermore concerned with the tendency for scholarly division among Muslim scholars sojourning in Europe. It was worried that scholars’ differing rulings caused a partitioning of the European Muslim community and contradictory understandings of how to comply with Islam as a Muslim minority. The aim of the Council is thus to promote the unification of scholars’ jurisprudential views concerning Muslim minorities in Europe, and to prevent an overflow of fatwas guiding the Muslim community in diverse directions.⁶ Today, the ECFR, which comprises around 35 members, does not have female members, but some female observers attend its assemblies and have the possibility of participating in discussions. At the time of the Council’s establishment, the FIOE’s intention was to establish a council composed of mainly Islamic scholars residing in Europe. The FIOE argues, however, that there was, and to some extent, still is a lack of proficient Sharī’a scholars in Europe, and, therefore, scholars from abroad are included, provided they have full comprehension of the European Muslim communities’ situation, and that their number does not exceed one third of the Council’s members.⁷ Furthermore, the international aspect of the European Council is stated by the founding members’ appointment of Yusuf al-Qaradawi as the president.⁸ Of the 35 members, nine live in the United Kingdom, five in France, three in Germany, two in

Qatar, two in Saudi Arabia, two in Sudan and one in each of the following countries: Lebanon, Egypt, Kuwait, Norway, Austria, Belgium, Holland, Switzerland, Bosnia, Mauritania, Canada and the USA. Some regret the growing number of members residing outside Europe, while others consider them an asset to the Council. On occasion, the Muslim community has required the presence of esteemed international scholars in order to trust the Council's decisions, and some of the foreign members apparently have been selected in response to this demand.⁹

Several of the Council's members sympathise with the ideas of the Muslim Brotherhood, while others are antagonistic toward the ideology of the movement and, as a collective body, the Council does not represent the Muslim Brotherhood's ideology.¹⁰ Its approach is rather in line with the newer Islamic reform revivalism of which the president is a representative. The revivalists are committed to the reintroduction of Islamic law in relevant forms, which makes them known for being pragmatists in practice. The revivalist/awakening (*ṣaḥwa*) trend is an outgrowth of the centrist Islamic mainstream (*wassatiyya*), which strives to interpret the Islamic heritage in a way that is responsive to contemporary society and to facilitate rather than complicate Islamic life (Baker 1996, 110-112).

The Council has two fatwa sub-committees, one located in France and the other in the UK. In their daily work, the fatwa committees attempt to respond to as many submitted questions as possible. Answers to questions that are of general interest for the Muslim community are brought to the ECFR's yearly assembly to be authorised.¹¹ At the yearly assemblies, the actual issuance of fatwas has lower priority than research topics do, and only limited time is allowed for the juridical rulings. The members contend, however, that the Council's fatwas are collective rulings based on collective debates (*ijtihād jamā'ī*).

So far, the influence of the Council is still limited, and it is not yet recognised as the body of jurisconsultancy that Muslim minorities automatically turn to when an issue of Islamic legal character arises. The Council, which adopts different strategies to obtain credibility and attain influence on Muslim minorities, issues controversial fatwas for minorities that attract attention and that have initiated debate among Islamic scholars. At the same time, the Council attempts to obtain recognition by maintaining relations with esteemed Islamic institutions and by including reputed scholars as members. Essentially, the Council's collaboration with other *fiqh* councils is rather limited in scope, but it is crucial for the ECFR to present its discursive practice as in continuity with the thinking of recognized *fiqh* councils and the traditional practices of issuing legal advice. By locating itself within the Islamic jurisprudential tradition, it attempts to achieve legitimacy and demonstrates that despite the fact that some of its rulings may be deviant from the traditional *fiqh*, the Council is conducting reliable jurisconsultancy.

Several of the members interviewed touched upon the prospect of influencing scholars in the East and the fact that although the ECFR insists on its cooperative inter-relations with others, it challenges existing hegemonies of authority through its activities.¹² A widely held opinion among the members is that the Council's publication and distribution of its research papers and fatwa collection to Eastern scholars and the inclusion of members residing outside Europe provide means of increasing the flow of Islamic thought from the West to the Muslim world. The Council's participation in the ideological struggle over influence is not only reflected in its intention to pursue international influence and recognition, but also in its somewhat ambiguous effort to reach independence from the Muslim majority world. The FIOE established the European Institute for Human

Sciences prior to the launching of the ECFR. The aim of this Islamic teaching institute is to cultivate students within Europe and to prevent them from going abroad and becoming influenced by the tradition of rulings in the Muslim majority world. In keeping with this line of thinking, the founding members perceive the Council as a provisional body of reputed scholars with the responsibility of filling the authority gap in Europe until local scholars have graduated (Caiero 2003). The idea is that graduates from European Islamic teaching institutes will replace the Council members from the Muslim majority world, and that the ECFR eventually will become an independent European jurisprudential body consisting exclusively of European educated scholars.¹³ Other scholars do not merely refer to scholarly independence but argue for a discursive independence from the political discourse in the Muslim majority world. They claim that if the scholars and Muslim minority population keep being affected by the political conflicts in their place of origin, it will influence the guidance provided and inflame an antagonism that impedes the loyalty of the minority population to their home in the West.¹⁴

JURISPRUDENCE OF THE MINORITY – EXAMPLES OF WESTERN FATWAS TO MUSLIM MINORITIES

The two fatwas I wish to present are from the ECFR's first collection of fatwas published in 2002 (European Council for Fatwa and Research 2002).¹⁵ All the fatwas are issued in Arabic and some are subsequently translated into English. Although the fatwas as a genre of legal opinions vary quite considerably in terms of their degree of homogenization, they have an established terminology with well-defined elements. The ECFR's fatwas consist of short questions represented in a depersonalized form followed by detailed answers. The identity of the individual making an inquiry (*mustaftī*)

is anonymous, and any details that may reveal aspects of gender, age or nationality are excluded. In the practice of fatwa issuance, it is common to pose questions in general terms and in an impersonal manner or to omit very personal particulars. By collecting and transmitting the fatwas without historical details, they can be preserved as timeless legal solutions and function as a precedent for future problems of a similar nature (Motzki 1996, 132-133).

The first question looked at concerns a female convert's difficulties in wearing the Islamic headscarf (*ḥijāb*) (European Council for Fatwa and Research 2002, 34-36). The question asked is whether the Muslim community should command her to wear the *ḥijāb* even if it might cause her to withdraw from Islam. The second fatwa deals with gender relations (European Council for Fatwa and Research 2002, 92-94). The person making the inquiry would like to know the rulings on communication between members of the opposite sex. The question states that many Muslim wives are ordered by their husbands not to speak to visitors or with any foreign man, while the husband, on the other hand, is permitted to address all women. The topics and the particular angle from which the questions are represented make it most likely that Muslim women have raised the questions. The first question identifies with a female convert and expresses an understanding of the difficulties she may encounter upon conversion. It addresses not only her obligation, but attempts to influence the direction of the answer by stressing the danger of driving her away from Islam. The second question is introduced with a statement regarding the sexist behaviour of some Muslim men, clearly showing sympathy with female Muslims. Many of the questions that the ECFR receives seem to be from female questioners; approximately half of the fatwas in the Council's first selection concern the position of women (Caiero 2003).

The response to the first question, which

emphasises that the veil is a religious obligation, also adds that since this obligation is not one of Islam's pillars, but a secondary duty, it is in some circumstances tolerated that a Muslim woman does not wear the *hijāb*. Nevertheless, the Muslim community is obliged to support the Muslim woman and encourage her to cover her head, since it is regarded as a sinful act not to wear the veil. Characterised by an orientation towards commonality among the scholars, this fatwa is clearly about winning consensus and reducing scholarly differences. The response begins by arguing that it is "agreed in consensus by the entire *umma*" that the head covering is an obligation. It does not refer to any legal institution or juridical authority but points to the total community of Muslim jurists. It gives legitimacy to its accentuation of consensus by referring to the verse in the Qur'ān (24:31) that traditionally is used as a legal proof for this religious obligation. Finally, the response argues that it is considered "undeniable *ḥarām*" (forbidden) for women not to cover their hair.¹⁶ The ECFR insists on disregarding any scholarly disagreement regarding this obligation, yet, they make room for a compromise. Given that such a ruling might be perceived as rather controversial in some scholarly circles, it is essential for the Council's credibility to place itself within the dominant legal tradition of Islamic jurisprudence. It emphasises its support of the obligation to wear the *hijāb* in order not to be accused of presenting a liberal or feminist Islamic interpretation.

The second fatwa rules that men and women are allowed to speak to each other, as long as the conversation abides by the boundaries of Islamic Sharī'a. Women should not initiate conversation with male strangers, but are permitted to talk to, for example, male colleagues, teachers and neighbours as long as it is done in an 'honourable and reasonable' manner. Contrary to the prior legal *responsa*, this fatwa shows the recognition of differences. It shows

openness to variation and divergence within both the Muslim communities and among scholars, although it polemically attempts to overcome the juridical diversities. The ruling states that traditions and customs govern the relations between men and women and, accordingly, behaviour changes from one place to another. It further states that in some Islamic countries men and women have the custom of greeting each other, while in other countries there are strict traditions regarding women "so that they become more like prisoners in their own homes until death comes to them." The ECFR attempts in this ruling to oscillate between religion and tradition. The ruling describes how some scholars in the Muslim world agree with oppressive traditions against women, and criticizes these scholars for not clearly distinguishing between ethnic traditions and Islamic practice. By referring to a *ḥadīth* (account of the Prophet Muhammed's words and deeds) that permits conversation between unrelated men and women, whose authenticity all scholars agree upon, it attempts to contest the legal evidence that supports a more rigorous stance and shows that it contradicts the objectives of Sharī'a. Other voices are textured in a way that supports the authorial voice by means of manifest intertextuality, i.e. by directly quoting the textual sources of Islamic jurisprudence (cf. Fairclough 2003, 39-61). Texts that support an alternative interpretation are significantly excluded and the ECFR does not let legal uncertainty or diversity of interpretation go unchallenged in the rulings.

The fatwas draw on an Islamic discourse that presents the Muslim god as gentle and tolerant and Islam as a rational and non-coercive religion. It emphasises that the female convert must be treated "in a lenient and gentle manner, rather than in a strict and rough way". The pragmatic approach finds expression in a phrase like "it is extremely unwise" to insist on the veil, since it is not one of Islam's five pillars of faith.

In his introductory remarks to the first collection of fatwas, al-Qaradawi announces that the message of the Council is to bring ease (*taysir*) to its fatwas for Muslim minorities and not difficulty (al-Qaradawi 2002, 8). The members I have interviewed clarified that the majority of the Council's scholars employ the principle of *taysir* and endeavour to issue rulings that facilitate Islamic life, and they attempt to reach opinions showing that Islam is uncomplicated to practice even within a non-Muslim country.¹⁷ The Council rules according to the principle that Islamic duties remain the same for all Muslims, but that the practice of Islamic obligations may differ. The two fatwas presented above are largely in the favour of women. This is, however, not the case in all ECFR rulings, as Caeiro points out (Caeiro 2003, 25). In a fatwa on polygyny, the practice is neither condemned nor restricted. It defends the practice and does not take notice of Western legislation prohibiting polygamy. In another fatwa on a woman's right to divorce, the ruling bases its argumentation on the traditional marital customs in the Muslim world, where men have the sole right to divorce (Ibid., 26).

EGYPTIAN AZHARITE SCHOLARS' RECEPTION

The scholars (*'ulamā'*) I have interviewed from al-Azhar, the esteemed Islamic University in Cairo, are all members of the Academy of Islamic Research (*Majma' al-buhūth al-Islāmiyya*) headed by Shaykh al-Azhar, Muhammed Sayed Tantawi. The Academy consists of several sub-committees, and is seated by some thirty leading scholars belonging to different academic fields. The research academy is described as the highest body for Islamic research that studies all matters of interest to Muslims worldwide in order to provide them with Islamic legal rulings.¹⁸ The Academy's mandate states that it seeks to free Islam

from political and religious fanaticism and endeavours to spread knowledge of Islam by giving statements on social and legal problems related to the faith.¹⁹

In general, the interviewed Azharite scholars respond favourably to the establishment of fatwa councils in Western Europe. They approve the presence of local juridical bodies, and in line with the discourse of Western scholars, they stress the importance of knowing the circumstances of the questioners' to issue adequate responses and to facilitate an adaptation of Islam. Some of the scholars hesitate to issue fatwas to Muslims living outside the Middle East, but they strongly refute the allegation that they are ill-suited to the task of solving minorities' problems. The consensus view is that a qualified Azharite scholar is competent to guide all Muslims regardless of location. Many owe their status to their institutional association and do not tolerate the reputation of al-Azhar to be disparaged. The scholars interviewed do not accept the process of creating Western fatwa councils as an attempt to reach independency from Islamic educational institutions in the Muslim majority world. In contrast, they highlight the scholarly interrelatedness between the West and the Middle East of such a development. During the interviews, the scholars accentuated how some of the founders of the ECFR are al-Azhar educated scholars, and they presented the Council's existence as a means of strengthening the global influence of al-Azhar. The Western councils do not identify themselves as especially al-Azhar related, but nevertheless the Azharite scholars use these institutions to underline al-Azhar's widespread authority and transnational influence. The establishment of Western Islamic universities is encouraged as long as it is carried out in cooperation with al-Azhar. The *'ulamā'* interviewed consider al-Azhar as a regulatory authority for correct Sharī'a understanding and a watchdog for moderate Islamic thinking, and they maintain that

such collaboration is a guarantee to prevent extremist interpretation in Europe.²⁰

Despite their approval of the establishment of European Islamic councils and institutions, the scholars interviewed insist on al-Azhar's position as the most reliable source of Islamic affairs. Nevertheless, a few scholars voice some scepticism of the increasing number of local fatwa councils. They believe that one superior council could prevent unqualified scholars from issuing legal advice, counter the tendency of contradictory fatwas and ensure greater homogeneity and uniformity in the Islamic verdicts.²¹ The scholars' endeavour to present al-Azhar as the true voice of Islam is not only part of a hegemonic struggle with Western councils but also part of a domestic debate. Al-Azhar has continually struggled to maintain its status as an autonomous authority (Crecelius 1972, Skovgaard-Petersen 1997). The interference of rulers and political manipulation of the institution challenges its integrity, and various Islamic activists criticize continuously the Azharite scholars for being the mouthpiece of the government rather than being the guardians of the Islamic faith in society (Moustafa 2000, 2-22).

The Islamic Research Academy has a committee intended for the supervision of rulings that go against the principles of Sharī'a, but lacks the resources to monitor fatwas being issued outside Egypt. The ECFR sends its publications to the Islamic Research Academy to inform the members about its fatwas and resolutions. The transnational communication between the ECFR and al-Azhar, however, is not marked by a formalized cooperation but by loose networks based on personal interaction. Al-Azhar has never officially responded to or commented on the decisions of the ECFR, but it is very much aware of the activities of the ECFR and increasingly shows it more attention. All of the interviewed Egyptian scholars are familiar with the ECFR's more controversial rulings, for

instance, the rulings allowing real estate purchases with usurious loans (i.e. taking out mortgages to buy a house)²² from 1999 and the ruling allowing female Muslim converts to remain married to their non-Muslim husbands from 2001.²³ Strong debate and reaction from different Islamic scholars followed these fatwas, but in my interviews with the scholars, the controversial character of the rulings was downplayed, and with it, the ECFR's contribution to Islamic thinking and innovative modes of Islamic interpretation. In agreement with the official view of al-Azhar, Ahmed al-Tayeb claims that *ribā* does not correspond to today's bank interest rates (as the ECFR argues) but should be equated with usury only.²⁴ By so doing, he purports that the ECFR did not contribute to new jurisprudential interpretation by issuing this fatwa.²⁵ This type of reaction also applies to the two fatwas presented on gender issues. Most of the Azharite scholars interviewed agree with the legal principle that rulings are in conformity with minorities' living conditions and approve of the legal methodology applied in issuing the rulings. They fully support rulings that allow for appreciation of minorities' circumstances and maintain that the Council applies consensus-based legal methodology when deriving such opinions. Deploying the principle of ease (*taysir*) is not seen as an attempt to soften the Islamic way of life in the West, but rather as an example of the true application of Sharī'a that allows choosing the easiest of two options when facing difficulties.²⁶ Most agree that if the veil causes dire difficulties, women are allowed to take off the *ḥijāb* according to the legal tool *ḍarūra*, which means necessity and refers to the legal principle "duress renders forbidden things permissible".²⁷ The principle is based on the idea that jurists have to take the demands of social and economic life into account when elaborating the law and occasionally must permit normally prohibited actions. In refuting the

novelty of fatwas permitting the removal of the veil, the Grand Mufti of Egypt, Ali Gomaa, explains that a ruling like this has a legal precedent in Islamic jurisprudence and, accordingly, there is nothing innovative in recommending women not to wear the *hijāb* if the conditions do not allow it.²⁸

Not all the members agree with the content of the ECFR's ruling and some strongly oppose edicts compromising use of the *hijāb*. They reject the ruling and maintain that Muslim females should persist wearing the veil, even if it causes them to leave their jobs or forces them to migrate to the Muslim majority world.²⁹ The topic of *hijāb* can cause heated debate and is characterized by international scholarly diversity, which became obvious following the French proposal of banning the wearing of religious symbols, including the *hijāb* in state schools. Following a meeting in late December 2003 with the then-interior minister, Nicolas Sarkozy, Shaykh al-Azhar Muhammed Sayed Tantawi declared that it is permissible for a Muslim woman not to wear the veil if she lives in a non-Islamic country where the law forbids the use of the *hijāb*. He conceded (employing the principle of *darūra*) that it is a religious obligation for Muslim women to wear the veil but if forced to take it off, they would not be committing a sin. His statement was interpreted as a support for the French ban and provoked an outcry within the al-Azhar institution (Arigita 2004, 46). Some members of the Islamic Research Academy announced publicly that the Shaykh did not represent the Academy or al-Azhar on this ruling. The Mufti of Egypt, Ali Gomaa, condemned the ban as a "blatant interference in Muslim rituals and doctrines" (Al-Ahram Weekly Online 2004). In an earlier legal opinion, the Mufti had promulgated the idea that unlike the cross or the Jewish skullcap, the *hijāb* is not a symbol of Islam but rather a religious obligation firmly established in the Qur'ān and Sunna (i.e. approved practices introduced

by the Prophet); a phrase that was later echoed in the ECFR's resolution on this matter.³⁰ The Mufti attempted to tone down the internal fragmentation by saying that Tantawi only meant that if women were forced to remove the veil by necessity, it would not be a sin (Al-Ahram Weekly Online 2004). In the wake of this debate, the president of the ECFR, al-Qaradawi, did not hesitate to make the scholarly disagreement visible. He was one of the religious authorities that led a campaign against the French authorities and Shaykh Tantawi. He dismissed the Shaykh's position and declared that it does not represent the consensus of religious scholars (www.islamonline.net, 25 December 2003).

CONCLUSION

The trajectory of communication between scholars in the West and religious authorities in the Muslim world has expanded from being unidirectional to a multidirectional exchange of ideas. In studying Western Islamic guidance on gender issues, it appears that the viewpoint on gender issues does not depend on geographical location or institutional affiliation. Western scholars take into consideration the minorities' circumstances but do not represent a particular non-traditional viewpoint on gender relations. The effect of the transnational mobility of thinking is thus not one of "modernisation" from Europe directed at Muslim countries.³¹ ECFR scholars utilize and reinterpret previously produced discourses and legitimate their statements in relation to an established authority i.e. shared religious sources. By drawing upon existing discourses or combining discourses under particular social conditions, new and complex discourses can be developed, altering the status quo. Access to new voices is not unlimited, however; past texts may also control and curb the productivity of change. The analysis of the rulings provided in this paper demonstrates that the dis-

cussion of local issues is carried out against a shared normative and linguistic background. It includes figures of learning and authority from the Arabic-speaking world and refers to legal opinions represented by scholars in the Muslim world. Muslim scholars sojourning in the West engaged in discussion about how to adapt Islam to Europe are unwilling to cut themselves off from the transnational field of reference and the debate that extends across Europe and beyond (Bowen 2004, 891). In order to attain legitimacy and credibility, the Council has yet to maintain relations with the authorities affiliated with institutions of Islamic thinking and the legal heritage developed in the Muslim motherlands. They do not refrain from criticizing *'ulamā'* in countries of origin or from issuing rulings that in some scholarly circles are conceived as controversial, but they are committed to a normative frame of interpretation that has its roots in the traditional seats of Islamic learning and that defines the scope of differing interpretations. There is a tendency among Western scholars to seek independence from authorities in the Muslim world, but they are still effectively in connection with the countries of origin. As a result, they are so well embedded in the legal tradition that inertia somehow prevents the potential for legal transformation.

In this paper, the European Council for Fatwa and Research has been treated as a European Islamic institution fully in line with its self-image. A glance at its membership list reveals that the Council might as well be treated as a transnational institution, which per se is an excellent example of the vivid transnational communication and the dynamic exchange of ideas that exists between Muslims scholars in Europe and scholars in the Middle East. Scholars affiliated with a traditional institution of authority such as the al-Azhar University in Egypt are familiar with and study the work of the European Council for Fatwa and Research. The multidirectional flow of com-

munication is, however, still in its initial phase. The Azharite scholars may be inspired by the Council's rulings on ways of accommodating local conditions, but there seems to be no indication of a general intellectual influence from the West to the East that colonizes the Eastern scholars' legal discourse. The ECFR is not regarded as a legitimate authority equal to the traditional Islamic bodies of jurisprudence, and the traditional authorities do not recognise its work. Despite the flow of thinking, the old patterns of religious authority regarding guidance only slowly give way to new authorities.

NOTES

1. The article builds on conversations in English and Arabic with members of the ECFR conducted in England, February 2006, and with scholars of the Islamic Research Academy in Egypt, October and November 2005. The empirical data presented in this paper are collected as part of my doctoral research on contemporary fatwa councils and their rulings for Muslim minorities.
2. Islamic law covers many aspects of religious, political and civil life. It includes matters such as worship, personal morality, family relations and public welfare and thus covers a wider scope of meanings than those attributed to modern Western law (Haddad 2004, 4-5).
3. The jurists did not fully elaborate on what they meant by this phrase. It is unclear whether they referred to the act of religious worship or the possibilities of governing the minority communities according to Islamic law principles. Most law schools emphasise, as a minimum, the religious freedom to execute the ritualistic aspects of Islamic law as a prime requisite for residing outside the abode of Islam (Abou El-Fadl 1994).
4. The predecessor organization, Union des Organisations Islamiques de France (UOIF), is the French branch of the FIOE.
5. <http://www.e-cfr.org/eng/article.php?sid=47>, 22 March 2006. Conversation with Ahmed al-Rawi (Head of FIOE and member of ECFR), Leicester, 14 February 2006.
6. Conversation with Salim Sheikhy (member of ECFR) Manchester, 15 February 2006 and with

- Suhaib Hassan (member of ECFR), London, 16 February 2006. Cf. the constitution of the ECFR, *Fatwas of European Council for Fatwa and Research*, pp. 1-7.
7. Conversation with Ahmed al-Rawi, and Abdullah al-Judai (member of ECFR), Leeds, 15 February 2006.
8. Al-Qaradawi, who was born in Egypt and is an al-Azhar graduate, was active in the resistance against the British presence in Egypt, but his links to the Muslim Brotherhood led to imprisonment in 1954. In 1977, with support of the Qatar regime, he established the Sharī'a Faculty in Qatar, where he holds the position as dean.
9. Conversation with Salim Sheikh.
10. The Muslim Brotherhood was formed in 1920's Egypt by Hasan al-Banna, a teacher who reacted against the colonisation of his country by advocating a return to Islam. He promoted education and social justice and the idea that Islam should be the foundation of society (Kepel 2003).
11. Correspondence with Abdullah al-Judai.
12. Conversation with Rashid Ghannoushi (member of ECFR), London, 16 February 2006.
13. Conversation with Ahmed al-Rawi.
14. Conversation with Abdullah al-Judai. Cf. Werbner's (2000, 5) discussions about how diaspora communities continue to foster transnational relations and continue to have a sense of displacement and loyalty to other places and groups beyond their place of settlement.
15. Translated from the Arabic publication *Qarārāt wa fatāwā: Al-majlis al-ūrūbī lil-iftā' wal-buḥūth*.
16. The obligation to wear the veil is the predominant interpretation in Islam, although other interpretive views exist. There is a sizable body of literature on the veil, and it would require a separate article to do justice to this topic (cf. Mernissi 1992, Ahmed 1992).
17. Conversation with Suhaib Hassan, who personally regrets this approach, arguing that it too often leads to unnecessary compromises.
18. Conversation with Shaykh Maher Haddad (administrative secretary of *Majma' al-buḥūth al-Islāmiyya*), Cairo, 2 October 2005.
19. Wizārat al-Awqāfi: *al-Azhar: tarīkhuhu wa taṭawwuruhu*, Cairo (1994, p. 481); see Skovgaard-Petersen (1997, p. 187) for a translation or al-Azhar's homepage <http://www.alazhar.org/english/about/isres.htm>
20. Conversation with Ahmed al-Tayeb (former Grand Mufti of Egypt and sitting president of al-Azhar, member of *Majma' al-buḥūth al-Islāmiyya*) Cairo, 29 October 2005.
21. Conversation with Abdul Fatah al-Sheikh, (former president of al-Azhar and member of *Majma' al-buḥūth al-Islāmiyya*), Cairo, 16 October 2005.
22. A Qur'ānic verse prohibits usury (*ribā*), but the question of how to define *ribā* and whether charging interest is a legitimate financial instrument has long been a source of controversy among Islamic jurists. Mainstream intellectual thinking holds that interest is an impediment to social justice (Kuran 1995, pp. 205-207).
23. According to Islamic ruling, a marriage between a Muslim woman and a non-Muslim man is prohibited but rulings regarding converted females are more ambiguous.
24. In 1998, Muhammad Sayed Tantawi, Mufti of Egypt, issued a fatwa permitting 'harmless' forms of interest. In 2002 this ruling was followed by another fatwa from the Islamic research academy stating that "investing funds with banks that pre-specify profits or returns is permissible". Although the fatwa is issued based on the ECFR's rulings, it includes no references to the ECFR's fatwa. Conversation with Tantawi, Cairo, 8 October 2005.
25. Conversation with Ahmed al-Tayeb.
26. Conversation with Hamed Abutaleb (dean of the Faculty of Sharī'a and Law, member of *Majma' al-buḥūth al-Islāmiyya*), Cairo, 13 October 2005.
27. Conversation with Abdul Fatah al-Sheikh.
28. Conversation with Ali al-Gomaa (member of *Majma' al-buḥūth al-Islāmiyya*), Cairo, 25 October 2005.
29. Conversation with Omar Sotouhi, Cairo, 2 October 2005.
30. Final statement of the twelfth ordinary session of the European Council for Fatwa and Research, held 31 December 2003-4 January 2004.
31. The terms 'modern' and 'modernisation' are somehow ambiguous in character. They are nevertheless mainly associated with the epistemological progression and the philosophical, social and political process of changes that took place in Western Europe between the seventeenth and nineteenth centuries. These processes involved the existence of a high degree of differentiations in the activities of individuals and institutions, making individuals act as atomised social selves who may perform their activities in a manner free from the rigid control of family, class or tradition.

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Karen-Lise Johansen Karman, PhD-scholar, Department of the Study of Religion, Aarhus University, Denmark.