

# EUROPEAN COURTS' AUTHORITY CONTESTED? THE CASE OF MARRIAGE AND DIVORCE FATWAS ON-LINE

by

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*This article explores Islamic websites providing normative content for European Muslim minorities. It focuses on four distinct Sunni websites and analyzes their fatwas, i.e. legal and religious recommendations issued in matters related to family law. Drawing from a broader research of more than 450 fatwas, this article presents the various ways, in which Muslim authorities associated with these sites deal with the conflicting areas between Islamic law and European legal systems. Essentially, it argues that the Internet and information and communication technology create new public spheres where different, and oftentimes conflicting, concepts of coexistence between Islam and the State are negotiated. Moreover this article demonstrates how these concepts are later incorporated into existing legal frameworks through the institutions of arbitration and marriage contracts. At the same time it explores the underlying rationale behind the fatwa-issuing websites, which emphasize the role of the individual and promote voluntarily adherence to Islamic law. On a more general level, this article aims to provide case studies on how technology redefines the politics of religious authority.*

## KEYWORDS

*Islamic law, European legal systems, marriage contract, divorce, fatwa, Internet*

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*O ye who believe! Obey Allah, and obey the Messenger,  
and those charged with authority among you.*

*Qu'rān, sūra al-Nisā, verse 59*

## 1. INTRODUCTION

In the second half of the 20th century the traditional constituencies of Islam have been profoundly reshaped by immigration to the Western Europe. For the first time, a vast number of Muslims have deliberately left states which apply, at least in theory, Islamic principles in their legislation and moved to non-Islamic countries. 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. Today, these negotiations are increasingly shaped by media and new information and communication technologies. Particularly the emergence of satellite TV and the Internet have introduced substantial innovation in both production and consumption of Islamic knowledge (Mariani 2006, p. 131). The development of new infrastructures, skills and communication patterns required by these technologies has resulted in the emergence of “new media ecology”, where established traditional Muslim authorities compete for audiences with charismatic satellite preachers and Internet-based muftis (Anderson 2003, p. 45). Altogether, the authorities are challenged by the individual “privatization” of Islam, tending toward the self-interpretation of religious texts (Caeiro 2003a, p. 4).

The emergence of this new media ecology is particularly relevant to European Muslim communities, where experiences of cultural displacement and negotiations on hybridity and authenticity are at the heart of contemporary life (Metcalf 1996, p. 22). There, the Internet has become an important adjunct to traditional means of communication about Islam and is facilitating a new form of Islamic discourse (Bunt 2006, p. 13). There are hundreds of thousands of sites providing specific “Islamic” content, ranging from traditional outlets, i.e. *fatwas*, sermons, and religious treaties; through audio lectures, podcasting, and videos on You Tube; to social networking sites, educational video games, and the vibrant blogosphere. These all exemplify what Bunt (2003) calls “cyber Islamic environments” and constitute a space where contemporary Islam is articulated.

This article aims to analyze one particular segment of such cyber Islamic environments – the fatwa-issuing websites. More specifically, it focuses on

Sunni<sup>1</sup> websites catering to European Muslim minorities and explores the fatwas addressing the conflicting areas between Islamic law and European legal systems. Fatwa is a traditional institution in Islamic law and presents an answer to a real or hypothetical inquiry, oftentimes related to the interpretation of religious texts in the light of contemporary conditions. It is addressed from a petitioner (*mustaftī*) to a religious and legal authority (*muftī*). Essentially, fatwa is not legally binding, unless sanctioned by the State, and its persuasive power is therefore based primarily on the authority of the *muftī* who issued it. Due to the general non-existence of official Islamic authorities in the Western Europe, fatwas became the primary mechanism in dealing with normative issues (Caeiro 2003b, p. 3).

The following text is based on qualitative and quantitative analysis of four major websites providing fatwas and other normative content to European Muslim minorities. It stems from a larger, compound research project on the production of contemporary Islamic knowledge in Europe, during which more than 450 fatwas, among other material, have been downloaded, archived and analyzed between 2006 and 2009.<sup>2</sup> For reasons of brevity we present only a portion of our data here. In particular, this article discusses in detail fatwas related to family issues, namely marriage and divorce, and examines the different ways in which they deal with possible conflicts with European legal systems. All the fatwas were analyzed in English and/or Arabic respectively, together with a detailed examination of the off-line context and background of each of the sites and authorities in question.

Essentially, after providing a brief introduction into the broader context of Muslim minorities in Europe and the fundamentals of Islamic law, this article presents four different ways, in which Sunni fatwa-issuing websites deal with the authority of the State. These range from complete denial of man-made law to its pragmatic acceptance in accordance with various interpretations of the Qur'ān and the *hadīth*. This article argues that the Internet and information and communication technologies constitute an increasingly important public sphere, in which the various models of coexistence between Islamic law and European legal systems are negotiated and Muslim identities are shaped. Moreover, it demonstrates how these emerging concepts could subsequently be incorporated into existing European

<sup>1</sup> This essay discusses exclusively the opinions and fatwas of authorities broadly associated with Sunni Islam. These opinions can vary significantly from the theoretical approaches taken by Shi'a and other Muslim groups.

<sup>2</sup> The research project "Jurisprudence for Muslim Minorities in Europe" (GA UK 125408) was financed by Charles University in Prague. Among other materials, fatwas from the following websites have been analyzed: askimam.org, bouti.com, dar-alifta.org, fatwa-online.com, islamhelpline.com, islamicity.com, islamonline.com, islamonline.net, islam4uk.com, shariahboard.org. More information can be found on the project's website Digital Islam (<http://www.digitalislam.eu>).

legal framework through the institutions of contractual freedom and arbitration tribunals.

Furthermore, this article explores the underlying rationale behind the phenomenon of the fatwa-issuing websites, which emphasize the role of the individual and promote voluntarily adherence to Islamic law. We thereafter link this rationale to the shifting paradigm within contemporary Islamic movements, capitalizing on Roy's (2004) concepts of "post-Islamism" and "neo-fundamentalism". On a more general level, this article aims to provide case studies enhancing our understanding of how the Internet shapes existing public spheres and how public authorities operate within the religion-technology interaction.

## 2. MUSLIM MINORITIES IN 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. In Western Europe, the Muslim presence 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. 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 (*ibid.*). 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 provisional 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. The fundamental matter negotiated in practice by these issues was the relationship between Islam and the State, in many cases re-formulating the Church-State relationship in general (Ferrari 2000, p. 8). Albeit to a various degree in particular states and regions, Islam became an inseparable part of the Western European landscape.

In Eastern Europe, however, it never ceased to be such; although this fact has been largely obscured by the persistent reality of the Cold War. It was not until the collapse of the communist empire that Europe, in the words of Roy (2004, p. 18), "re-discovered" that there are European Muslim countries (Albania, Bosnia and, tomorrow, Kosovo) as well as genuine European Muslim minorities (Pomaks in Bulgaria, Tatars in Poland and Belarus). Most of the Balkan Muslims have been settled in the region for centuries, ethnically being mainly of Slavic, Turkish, Alban and Roma origin, and became minorities in *stricto sensu* after the withdrawal and later dissolution of the Ottoman Empire, i.e. during the second half of the 19th and the beginning of the 20th centuries. Yet, in many regions, particularly under the rule of the Austro-Hungarian Empire, Islam never ceased to play its public role and Islamic law (of the *hanafi* rite) has been applied by the State (Evstatiev 2006, p. 18). Although the communist regimes suppressed most religious manifestations in the public sphere, after their fall the issues of religious identity and relationship between Islam and the State have resurfaced with renewed intensity (Nielsen 1992, p. 4).

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 fatwa-issuing websites. First, the very existence of a Muslim minority in a non-Muslim society implies that there are no Muslim authorities appointed by the State (although this fact is about to change)<sup>3</sup> and that *shari'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

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<sup>3</sup> 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. See for example The Muslim College based in London. Viewed 24 April, <<http://www.muslimcollege.ac.uk>>.

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 linguistic 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.

Essentially, the underlying logic behind the development of European 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 by no means implies that the emerging “European Islam” may be perceived in the light of the 16th century Protestant Reformation, but – more likely – that its multi-faceted representations are adapting to contemporary Western forms of religiosity (Roy 2004, p. 5). As such these representations could no longer be analyzed within the discursive of foreign or immigrant cultures but, more precisely, in the contexts of globalization, deterritorialization and transnationalism. It is precisely the imaginary space of transnational *umma* (Muslim community), enhanced by the Internet and communication technologies, where the traditional Islamic law regains its significance and relevance to the daily life through constant discussions, inquiries and admonitions.

### 3. ISLAMIC LAW AND EUROPEAN LEGAL SYSTEMS

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 (Schacht 1964). Religious law (*shari'a*) has a central position in Islam and covers issues of legal, ritual and ethical nature, which are not necessarily regulated by law in the European sense of the word. *Shari'a* in theory expresses the Law of God as directly revealed in the Quran and manifested by the deeds and sayings of the prophet Muhammad and his companions, as recorded in the *hadith*. As such *shari'a* is in principle eternal and unchangeable. Yet we have to distinguish between *shari'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 *shari'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 *hadith* 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 ele-

ments 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 muftis.

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 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). This 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 (Bar 1999; Potz and Wieshaider 2004; Fetzer and 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 and 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 *dhimmi* 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).

#### 4. MARRIAGE AND DIVORCE IN ISLAMIC LAW

Marriage in Islam (*nikāh*) is a civil law contract concluded between the bridegroom and the legal guardian (*walī*) of the bride.<sup>4</sup> The bridegroom undertakes to pay the nuptial gift (*sadāq, mahr*) to the wife herself. The contract must be concluded in the presence of free witnesses, two men or one man and two women; this has the double aim of providing proof of marriage and disproving unchastity. This contract is the only legally relevant act in concluding marriage (Schacht 1964, p. 161). The principle differences between Islamic law and most of European legal systems are that (1) in Islam marriage presents a civil contract and as such does not need to be approved by the State nor by any religious authority in order to be valid (although most Muslim states require its registration); (2) that the impediments to marriage, i.e. the taxative enumeration of the “non-marriageable persons” vary in both systems; and (3) although a Muslim man may marry a non-Muslim woman, the opposite is forbidden in Islam.

Divorce in Islamic law can take many forms, the most common cases being (1) the repudiation (*talāq*) of the wife by the husband; (2) the dissolution of the marriage by agreement (*mubāraʿa*) with mutual waiving of any financial obligations; (3) the *tafrīk*, which is the dissolution of marriage pronounced by a judge (*qādī*) of his own initiative or at the instance of one of the spouses; and finally (4) the *khulʿ*, by which the wife redeems herself from a marriage for a consideration (Schacht 1964, pp. 164 – 165).<sup>5</sup> With regard to European legal systems, it should be noted that the marriage becomes invalid through apostasy from Islam of one of the spouses (Schacht 1964, p. 165). The legal position of the wife is, in theory, obviously less favorable than that of the husband, since the repudiation of the wife does not need to be approved by any authority and takes immediate legal effect; while any dissolution of marriage initiated by the wife requires such approval.<sup>6</sup> Especially when considered within the European context, the permissibility of repudiation (*talāq*) and its legal effects are potentially the most contested issues. These topics also constitute a substantial portion of the inquiries addressed to the Internet muftis.

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<sup>4</sup> The *walī* is the nearest male relative, in the order of succession, followed by the manumitter and his succession, and failing those, the judge (*qādī*).

<sup>5</sup> The permissibility of *khulʿ*, or its particular features, has been disputed by some Islamic schools of law (for details see An-Naʿim 2002).

<sup>6</sup> In fact, the wife’s situation could be, and often is, considerably improved by specific stipulations made in the marriage contract. These include, for example, conditional repudiation which is pronounced by the husband immediately after the conclusion of the marriage and can be accepted by the wife anytime later on.

## 5. THE INTERNET AND PRODUCTION OF ISLAMIC KNOWLEDGE

A typical discursive covering the Internet, Islam and the Middle East has, from the beginning, been dominated by a conventional link between information technology and democratization (Kalathil, Boas 2003). As Anderson (2008) has noted, excitement over the revolutionary potential of new media in the Middle East focused on them as alternatives: suggesting transformation of a public sphere and the dissolution of traditional authorities. However, as he argues, time and experience have outrun this paradigm:

*Many new actors turned out to have roots in old establishments. Often it was the cadet generations of elites who brought the new technologies. Governments proved adept at deploying the underlying technologies to their own ends. [...] Early experiments were absorbed into media conglomerates; by the millennium established religious figures had their sermons, lessons, and outreach on the Internet for the populations it drew and aggregated (Anderson 2008, p. 1).*

Instead of undermining the traditional and established religious authorities, the Internet and ICT created new space in which traditionally educated muftis compete with new popular preachers over audiences. This phenomenon is poignantly demonstrated in Mariani's (2006) case study of the Internet presentations of two foremost Muslim media figures – Yūsuf al-Qaradāwī, an Al-Azhar graduate and a traditionally defined *'ālim* (scholar), and Amr Khāled, holder of an accountancy degree and a newly established *dā'iya* (preacher). The Internet and ICT also provide for new usages and practices, which could significantly reshape the production and consumption of knowledge. For example, Riexinger's (2008) case study of Turkish popular preacher, Harun Yahya, demonstrates how the combination of a neglected subject with the innovative use of new media can establish opinion leadership, particularly in a Muslim minority context. It is also the conditions of European Muslim minorities where, as Caeiro (2003a) and Vertovec (2003) have argued, ICT and the Internet tend to displace the interpretive authority from scholars towards selective personal interpretation, contributing to the so called processes of "individualization" and "privatization" of Islam.

By the same token, the following case studies do not explore on-line fatwas as part of a discreet and coherent theological corpus, but rather as a result of concrete actions of the Muslim individuals, who initiated their deliverance. The extent to which these on-line fatwas reflect existing discourses

and practices can not easily be determined, yet they all constitute differentiated responses to the fundamental questions of modernity; namely how to live in accordance with Islamic law in a Western, globalized society.

## 6. CASE STUDIES

### 6.1. ISLAM FOR THE UK

Islam4UK.com is an English-language website launched in 2008 and registered in Preston, UK. According to its mission statement, it has been established “as a platform to propagate the supreme Islamic ideology within the United Kingdom as a divine alternative to man-made law”.<sup>7</sup> Similarly, its objectives consist of “changing public opinion in favour of Islam in order to [...] implement the Sharee’ah in Britain”.<sup>8</sup> The website is closely connected with Anjem Choudhary and his teacher Omar Bakri Muhammad, a radical Islamist preacher, who played a significant role in the development of the Hizb al-Tahrir movement in the United Kingdom between 1986 and 1996. Later on, he led another Islamist organization, Al-Muhajiroun, until its disbandment in 2004. Bakri, who is Syrian with Lebanese citizenship, was granted political asylum in the UK on the grounds of his involvement with Islamist opposition to the authoritarian Syrian regime in the 1980s. He is currently residing in Lebanon and banned from entering the United Kingdom.<sup>9</sup> 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.<sup>10</sup> He also utilizes ICT for maintaining direct contact with his audience, as was recently the case with his preaching over the telephone to a Muslim rally in north London in March 2009 (Edwards 2009).

Bakri has appointed himself a “Judge of the Shari’ah Court of the UK”,<sup>11</sup> 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 Bakri, 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,

<sup>7</sup> Viewed 20 April 2009, <<http://www.islam4uk.com/about-us>>.

<sup>8</sup> Viewed 20 April 2009, <<http://www.islam4uk.com/about-us>>.

<sup>9</sup> ‘Banned cleric barred from rescue ship’, *guardian.co.uk*, 21 July 2006, viewed 20 April 2009, <<http://www.guardian.co.uk/world/2006/jul/21/syria.immigrationpolicy>>.

<sup>10</sup> ‘Covert preaching of banned cleric’, *BBC News*, 14 November 2006, viewed 20 April 2009, <[http://news.bbc.co.uk/2/hi/uk\\_news/6143632.stm](http://news.bbc.co.uk/2/hi/uk_news/6143632.stm)>.

<sup>11</sup> Viewed 20 April 2009, <[http://mrc.org.uk/marriage\\_2.html](http://mrc.org.uk/marriage_2.html)>.

he claims that a believer living today in a non-Muslim society has to strive to 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.<sup>12</sup>*

First, it should be noted that not only does Omar Bakri'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"<sup>13</sup> – is considered oppressive and unlawful.<sup>14</sup> These and other statements of Omar Bakri, including support of international *jihād* (Bunt 2000, p. 101), eventually led to his ban from entering the United Kingdom.<sup>15</sup>

Yet, when we closely examine the *ratio decidendi* of the above-mentioned fatwa, we discover that the main concern of Omar Bakri lies not only in the fact

<sup>12</sup> Viewed 20 April 2009, <<http://www.islam4uk.com/current-affairs/latest-news/44-latest/195-the-islamic-verdict-on-civilregistered-marriages>>.

<sup>13</sup> Qur'ān, sūra al-'Imrān, verse 104.

<sup>14</sup> 'Covert preaching of banned cleric', *BBC News*, 14 November 2006, viewed 20 April 2009, <[http://news.bbc.co.uk/2/hi/uk\\_news/6143632.stm](http://news.bbc.co.uk/2/hi/uk_news/6143632.stm)>.

<sup>15</sup> 'Banned cleric barred from rescue ship', *guardian.co.uk*, 21 July 2006, viewed 20 April 2009, <<http://www.guardian.co.uk/world/2006/jul/21/syria.immigrationpolicy>>.

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 Bakri's above-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 *shari'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 Bakri's radical concept is estimated to be relatively low (Wiktorowicz 2005), despite his prominent media coverage (Poole 2002).

## 6.2. FATWA-ONLINE

Fatwa-online.com is an English-language web-site launched in 1999 and registered in Medina, Saudi Arabia. Its aim is to make "officially published fatwas which originate in the Arabic language available online for English-speaking Muslims".<sup>16</sup> The term "officially published fatwas" refers exclusively to fatwas issued by the "Permanent Committee for Islaamic Research and Fataawa" of Saudi Arabia, as established by a Royal Decree in 1971.<sup>17</sup> Fatwa-Online is closely connected with a range of explicitly *salafi*<sup>18</sup> websites via promoted links.<sup>19</sup>

<sup>16</sup> Viewed 20 April 2009, <<http://www.fatwa-online.com/ouraim.html>>

<sup>17</sup> Viewed 20 April 2009, <<http://www.fatwa-online.com/scholarsbiographies/15thcentury/permanentcommittee.htm>>.

<sup>18</sup> *Salafiyya* is originally the name given to the followers of the ideas and practices of the so-called "righteous ancestors" (*al-salaf al-salih*). The approach of *salafiyya* generally rejects later traditions and schools of thought, calling for a return to the Qur'an and the *sunna* as the authentic basis for Muslim life. By the end of the twentieth century, however, the term *salafi* came to be applied to many different types of Islamic revivalism (ed. Martin 2004, p. 608-610).

The web-page includes a special section labeled "Muslim minorities", where fatwas directly addressed to Muslims living in the West are published. These consist mainly of the fatwas of two respected Saudi scholars, i.e. Shaykh 'Abdul-'Azeez Ibn Baaz, former Grand Mufti of Saudi Arabia, and his student Shaykh Muhammad Ibn Saalih Ibn 'Uthaymeen, a former member of the Council of Senior Scholars of the Kingdom. In fact, the fatwas published in this section stem, to a large extent, from a previously printed collection (Ibn Baz & Uthaymeen 1998). Direct interaction between petitioners and muftis is not enabled by this site, although the authors add new fatwas on a regular basis (Bunt 2003, p. 143).

The site strictly follows 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, the fatwas published by Fatwa-Online claim the validity of Islamic law for all Muslims, regardless their place of residence, and its superiority over man-made laws, particularly in cases regarding marriage and divorce:

*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.<sup>20</sup>*

Moreover, in another fatwa Shaykh Ibn 'Uthaymeen 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:

<sup>19</sup> These examples include sites like smatch.net, a *salafi* matchmaking site; madeenah.com, an unofficial forum of students and lecturers of the Islamic University of Medina; and service-woman, a charity site.

<sup>20</sup> Viewed 20 April 2009, <[http://www.fatwa-online.com/fataawa/muslimminorities/0000920\\_2.htm](http://www.fatwa-online.com/fataawa/muslimminorities/0000920_2.htm)>.

*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.<sup>21</sup>*

Another fatwa declares void any marriage in which the wife converts to Islam while the husband does not.<sup>22</sup> 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 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 Islaamic 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.<sup>23</sup>*

The underlying logic behind the fatwas disseminated through Fatwa-Online resonates with the notion of oneness and the unchangeability of *sharī’a*, that is valid for Muslims at all times and in all places. It 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 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 cen-

<sup>21</sup> Viewed 20 April 2009, <[http://www.fatwa-online.com/fataawa/muslimminorities/0000903\\_4.htm](http://www.fatwa-online.com/fataawa/muslimminorities/0000903_4.htm)>.

<sup>22</sup> Viewed 20 April 2009, <[http://www.fatwa-online.com/fataawa/muslimminorities/0000324\\_2.htm](http://www.fatwa-online.com/fataawa/muslimminorities/0000324_2.htm)>.

<sup>23</sup> Viewed 20 April 2009, <[http://www.fatwa-online.com/fataawa/muslimminorities/0000920\\_3.htm](http://www.fatwa-online.com/fataawa/muslimminorities/0000920_3.htm)>.

ters, 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 Fatwa-Online on individual behavior is questionable, the fatwas of Ibn Baz and Uthaymeen circulate broadly in cyber-Islamic environments.

### 6.3. ASK – IMAM

AskImam.org is an English-language website launched in 2004 and registered in Alexandria, Virginia, USA. It seems to be a technically-updated mirror of the site Ask-Imam.com which has been in operation since 2000 and is hosted and maintained in San Jose, California, USA. Both sites contain fatwas issued by the *muftī* Ebrahim Dessai, a former head of the Dar ul Ifta department at Jamiatul Ulama (Council of Muslim Theologians) in Camperdown, South Africa.<sup>24</sup> The aim of both sites is to "provide easy access to common Islamic questions and answers to anyone using the World Wide Web".<sup>25</sup>

Essentially, Dessai holds the position that Muslims living in a non-Muslim country are bound to follow the laws of that country as long as they are not contrary to *sharī'a*.<sup>26</sup> The methodology of how to determine such contradiction is not explained on Dessai's webpage, but can to some extent be discerned from the fatwas he has issued in particular cases. His approach follows casuistic and legalistic interpretations of *sharī'a* focusing more on individual deeds and their requirements than on rules of law and their validity as such. In other words, if a particular deed or act satisfies both procedural and substantial conditions laid down by Islamic law, it is valid according to Dessai, regardless of the law under which it has formally been carried out. Thus, a marriage contracted in accordance to civil law at a municipal registry office constitutes a valid Islamic *nikāh* if two Muslim witnesses have

<sup>24</sup> Viewed 20 April 2009, <<http://www.jamiat.org.za/index.html>>.

<sup>25</sup> Viewed 20 April 2009, <<http://www.askimam.org/about.php>>.

<sup>26</sup> Viewed 20 April 2009, <<http://www.askimam.org/fatwa/fatwa.php?askid=4db27ac0a921fcd91f643fbdcf5c26bb>>.

been present and the Islamic impediments to marriage have not been breached.<sup>27</sup>

In a similar manner, Dessai considers any divorce approved by a civil court valid on the condition that it has been initiated by the husband.<sup>28</sup> This reflects the above-mentioned concept of *talāq* (repudiation) granted by *sharī'a* to the husband only. In one of the many fatwas issued on that matter, Dessai actually extends the Islamic concept of revocability of *talāq* to civil court decisions. Moreover, he explicitly invalidates any civil divorce initiated by the wife, unless the marriage was annulled by a Muslim judge in advance.

*Answer [excerpt]: If the husband instituted divorce through court and it was granted, it will be regarded as only one Talaaq-e-Raj'ee (revocable divorce). The husband can revoke the divorce within the Iddat period. If he did not revoke it, the Talaaq will be changed to Talaaq-e-Baain (irrevocable divorce). [...] If the wife instituted the divorce through Court, it will not constitute Talaaq.*<sup>29</sup>

Dessai's strict legalistic approach is most evident in contested cases, where he often refuses to issue a fatwa unless he knows the exact wording of a civil court's decision so he can determine its validity from an Islamic point of view.<sup>30</sup> Finally, in a manner somehow similar to the Uthaymeen's concept of arbitrary courts, Dessai suggests to Muslim women that they contact local Muslim authorities in order to get *tafrīk* (dissolution of marriage) granted, before (or even instead of) seeking divorce through civil courts:

*Question [excerpt]: Can a woman file for divorce with the secular courts to release her from a marriage of zulm where the man has been guilty of adultery?*

*Answer [excerpt]: The decree of divorce granted in a secular court does not constitute an Islamic divorce (Talaaq) if the wife is an applicant. [...] If a woman is oppressed and she requests her husband to issue her a Talaaq and he refuses, then the woman should contact her local Ulama body, for example, the Jamiat and present her case there. The Ulama will advise her accordingly. That may include an application for an annulment of her marriage.*<sup>31</sup>

<sup>27</sup> Viewed 20 April 2009, <<http://www.askimam.org/fatwa/fatwa.php?askid=3a1f6208c913a3fe44905186b6f12c20>>.

<sup>28</sup> Viewed 20 April 2009, <<http://www.askimam.org/fatwa/fatwa.php?askid=f69061373bbaf9c606057b53493dc21>>.

<sup>29</sup> Viewed 20 April 2009, <<http://www.askimam.org/fatwa/fatwa.php?askid=7c700f9e8e81880d7a52f8a236793de5>>.

<sup>30</sup> Viewed 20 April 2009, <<http://www.askimam.org/fatwa/fatwa.php?askid=543dd28ef94d141d12d1c18ed3c6584d>>.

The case of Ask – Imam meets, in particular, the above-mentioned Riexinger's (2008) claim of establishing an authority through the innovative use of new media combined with filling a gap on the religious market. As Bunt (2003, p. 167) argues, Dessai's qualification does not necessarily equip him for the issuing of fatwas in the strict interpretations of Islamic law. However, this has not stopped substantial numbers of questions from being sent to him, and he seems to produce opinions prolifically on a daily basis. The number of questions related to family issues and initiated by Muslims living in Western Europe clearly indicates that this is fertile ground for counseling and establishing opinion leadership. As Bruinessen (2003) has stated, religious authority is expressed most clearly and explicitly in the relationship between *mustaftī* and *muftī*. The very act of asking someone for a fatwa is the most explicit recognition of that person's religious authority. Ebrahim Dessai exemplifies a scholar who, although being trained in non-Azhari institution outside of the Arab world, gained global recognition mainly through mass support accumulated via information and communication technology.

#### 6.4. ISLAMONLINE

The Arabic and English website IslamOnline.net was launched on 24 June 1997. It is owned and controlled by the Al-Balagh Cultural Society, a non-profit company registered in Doha, Qatar (Mariani 2006, p. 136). Although the website is registered in Qatar as well, it operates mainly from Cairo, Egypt. According to its mission statement, IslamOnline "aims to present the unified and lively nature of Islam that is keeping up with modern times in all areas."<sup>32</sup> With regard to Islamic law, the website's objective is:

*To expand the circle of introducing Islam; present its comprehensiveness and the way its system and laws complement each other; to affirm its balance, fairness and applicability in all places and times; and present the tolerance and the humanity of its laws.*<sup>33</sup>

IslamOnline constitutes one of the most influential fatwa-issuing websites (Bunt 2003; Mariani 2006; Gräf 2007). It offers a vast, searchable fatwa database, forms to electronically submit an inquiry for a new fatwa, and live "fatwa-sessions" with various muftis immediately answering users' questions. The body of muftis and counselors associated with IslamOnline is

<sup>31</sup> Viewed 20 April 2009, <<http://www.askimam.org/fatwa/fatwa.php?askid=e90e87e526e4c18a78197dbb7012c408>>.

<sup>32</sup> Viewed 20 April 2009, <<http://www.islamonline.net/English/AboutUs.shtml>>.

<sup>33</sup> Viewed 20 April 2009, <<http://www.islamonline.net/English/AboutUs.shtml>>.

large and consists of many different authorities, ranging from al-Azhar graduates to European and North American imams. Yet, the site is particularly connected with the European Council for Fatwa and Research and the above-mentioned scholar, Yūsuf al-Qaradāwī. The latter 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). Since 1997 he has also run his own website, which is in Arabic only.<sup>34</sup>

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 Mawlawī, 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 2003b). 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 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).

Generally speaking, the site IslamOnline adheres to the main principles of *fiqh al-aqalliyyāt*. Yet, due to the diverse range of muftis associated with the site, the concrete fatwas vary substantially in their decisions and reasoning. This is particularly evident in fatwas related to family issues:

*Question: I would like to know the point of view of Islam if a Muslim living in a Western country, where polygamy is regarded unlawful, has to have a second wife due to some reasons.*

*First Response [excerpt]: The Muslim man who has a second wife [...] has to follow the channels of law in order to legalize his second marriage in the country he lives in. [...] If the attempts to legalize the second marriage fail,*

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<sup>34</sup> Viewed 20 April 2009, <<http://www.qaradawi.net>>.

*the person could document his (second) marriage in one of the Islamic centers. [...] The problem he might face in the future is regarding getting birth certificates for the children from his second wife. But I think there are some flexible European laws concerning registering names of the children born even from illegitimate relationships.*

*Second Response [excerpt]: A Muslim living in a non-Muslim society is obligated to follow the laws. We cannot say that their laws are contrary to the Shari`ah, so we have to follow the Shari`ah. Taking a second wife is not a necessary requirement; there is no mandatory duty on the Muslim to have a second wife.<sup>35</sup>*

The fact that two different decisions were actually given is specific to IslamOnline. It resembles the institution of *dissenting opinion* known from European jurisprudence and demonstrates the dynamic behind the decision-making processes within the body operating the site. Both fatwas have been issued by muftis living in Western countries and knowing the local laws and customs. Both recognize the authority of civil law; albeit in very different ways. The first fatwa by Sheikh Ahmad Hulail, imam of Tariq ibn Ziad Mosque in Frankfurt, Germany, recommends that believers *de facto* avoid the law; whereas the latter by Jamal Badawi, member of the Fiqh Council of North America, strictly obliges them to abide by it. Yūsuf al-Qaradāwī has stated that in the case of contradicting fatwas a Muslim must follow the one that “his true conscience believes is closer to the truth” (Caeiro 2003b, p. 32). This statement in fact echoes the emphasis on the role of the individual and the privatization of faith, as we will discuss below.

It seems that over the course of time fatwas issued by IslamOnline more or less converge to the second, Badawi's point of view. For example, the following fatwa delivered by Faysal Mawlawi, Deputy Chairman of the European Council for Fatwa and Research, validates civil marriages as long as they are not contracted between the “unmarriageable” persons as defined in Islamic law:

*Question: Is the civil marriage conducted in Western and European countries valid from a Shari`ah point of view?*

*Answer [excerpt]: The legal marriage which is done in European countries is regarded as a valid marriage in Shari`ah as long as there is no legal reason in Shari`ah against the marriage. [...] For instance, a Muslim is not allowed*

<sup>35</sup> Viewed 20 April 2009, <[http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask\\_Scholar/FatwaE/FatwaE&cid=1119503547860](http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503547860)>.

*to marry his foster-sister, though this is permissible in European laws. Likewise, a Muslim woman is not allowed to marry a non-Muslim and a Muslim man is not allowed to marry any non-Muslim other than a Christian or Jewish woman, though all types of inter-faith marriage are permitted in Western laws.*<sup>36</sup>

Mawlawi's approach seemingly corresponds with the above-mentioned one of Ebrahim Dessai. Yet, when we closely examine his reasoning, we discover that Mawlawi scrutinizes the marriage's validity only from the substantial law's point of view and not from the procedural one. In fact, this indicates *de facto* recognition of the civil law and its procedures and leaves the responsibility for choosing the spouse in accordance with Islamic law to the individual believer.

Similarly, the European Council for Fatwa and Research, although in theory acknowledging the imperative for Muslims to resort to Islamic law only, 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.*<sup>37</sup>

Finally, Ahmad Kutty, a scholar of Islamic studies at the Islamic Institute of Toronto, Ontario, Canada, recognizes civil law to its full extent in the following fatwa also published by IslamOnline:

<sup>36</sup> Viewed 20 April 2009, <[http://www.islamonline.net/servlet/Satellite?cid=1119503546430&pagename=IslamOnline-English-Ask\\_Scholar%2FFatwaE%2FFatwaEAskTheScholar](http://www.islamonline.net/servlet/Satellite?cid=1119503546430&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar)>.

<sup>37</sup> Viewed 20 April 2009, <[http://www.islamonline.net/servlet/Satellite?cid=1119503544364&pagename=IslamOnline-English-Ask\\_Scholar%2FFatwaE%2FFatwaEAskTheScholar](http://www.islamonline.net/servlet/Satellite?cid=1119503544364&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar)>.

*Question [excerpt]: Do you think that it is important to wait until civil divorce is completed if Islamic divorce has been issued long ago?*

*Answer [excerpt]: Islam teaches us to abide by the laws of the land; Islam never favors anarchy and lawlessness. Since we don't have Shari'ah courts in Western countries, we should govern ourselves by the existing laws as best as we can. After all, marriage and family life are not personal issues; rather they have direct bearing on communities and societies. It is highly important for you to finalize your legal divorce before getting married again. In this way, you can avoid any unforeseen harm that may arise due to lack of legal support.<sup>38</sup>*

Most of the above mentioned fatwas on IslamOnline generally adhere to the concept of *fiqh al-aqalliyāt*, although the different interpretations result in significantly different decisions. Nevertheless, namely in comparison with the previously-described, fatwa-issuing websites, IslamOnline as a whole presents a more moderate approach towards Islamic law. The site seems to follow the concept of "balance and moderation" (*al-wasatiyya wa-l-ʾitidāl*) as coined by Qaradāwī and adopted by other Muslim scholars. 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, IslamOnline 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 Fatwa-Online and its legalistic interpretation of *sharī'a*, IslamOnline 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".

Both websites emphasize the role of the individual and his/her voluntarily adherence to Islamic law; albeit in a very different manner. The muftis associated with Fatwa-Online urge believers to distance themselves from the State and to establish private councils, judging their affairs according to rigid interpretations of Islamic law with an indisputable and predefined set of norms. On the other hand, IslamOnline invites individuals to discuss these interpretations and the following set of norms and engages the believ-

<sup>38</sup> Viewed 20 April 2009, <[http://www.islamonline.net/servlet/Satellite?cid=1146992942251&pagename=IslamOnline-English-Ask\\_Scholar%2FFatwaE%2FFatwaEAskTheScholar](http://www.islamonline.net/servlet/Satellite?cid=1146992942251&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar)>.

ers in the rebuilding of the imaginary global Muslim *umma* by deliberate observance of these rules.

Correspondingly, IslamOnline is distinguished by its technological standards and the extent of interactivity and engagement available to the user. In comparison with the sites Fatwa-Online or Islam4UK, which mainly re-publish fatwas issued elsewhere, IslamOnline enables direct deliverance of fatwas in a live, computer-mediated session. Not only does this feature utilize the potential of ICT to its full extent, but it also enhances the attractiveness and topicalness of the site. As al-Qaradāwī has stated, exploiting the Internet in the service of Islam is necessary and a religious obligation (*fard*) (Kouřilová 2008). This imperative is reflected as well in the site's mission statement:

*The Internet has created a realm of opportunities for communication. We pledge to take advantage of these opportunities to achieve the highest levels of integrity, precision in content and creative professionalism in design. We work hard so that IslamOnline.net's content, information, and ideas are presented professionally to gain the distinction that will make it credible and attractive.*<sup>39</sup>

The discursive of this statement in fact echoes Haenni's (2008) notion of "private religious entrepreneurship". He uses this term to describe the assemblage of Islamic piety, usage of communication technologies, and marketing strategies. Up to the present day, IslamOnline, which exemplifies precisely such a private religious initiative, remains one of the most successful Islamic websites worldwide in terms of visitors per day.<sup>40</sup> The muftis on the site may lack the official recognition by the State, but they can be sure that their fatwas are read and discussed from Morocco to Malaysia.

## 7. CONCLUSIONS

This article has briefly explored four distinct websites providing normative content in English and Arabic for European Muslim minorities. By no means should this list be considered as an exhaustive one, since there are many similar sites with significant influence<sup>41</sup>, and others aimed at Turkish, French, or German speaking audience. There are also plenty of popular Is-

<sup>39</sup> Viewed 20 April 2009, <<http://www.islamonline.net/English/AboutUs.shtml>>.

<sup>40</sup> According to Alexa, IslamOnline has the 2<sup>nd</sup> highest rank in the category "Top/Society/Religion and Spirituality/Islam" and 3714<sup>th</sup> highest rank in general. It is preceded by IslamWay (islamway.com, ranked 1616<sup>th</sup> overall) and followed by the website of Amr Khaled (amrkhaled.net, ranked 6238<sup>th</sup> overall). Viewed 20 April 2009, <<http://www.alexa.com>>.

<sup>41</sup> For example, the above-mentioned islamway.com; amrkhaled.net; bouti.com, dar-alifta.org, islamcity.com, islamonline.net, islam-qa.com; and others.

lamic websites, whose authors deny the concept of fatwa as such and strive for different, non-legalistic interpretations of Islam.<sup>42</sup> As has been stated above, the examples quoted in this article stem from a broader corpus of more than 450 fatwas. Most of these fatwas could actually be subsumed under one of the four patterns explored in this article, 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*. As Roy (2004, p. 20) puts it: "Although there is a long tradition of exegesis and fatwa on what a Muslim should or should not do when confronted with a non-Muslim environment and practices, most Muslims find a way to deal with that without contacting Fatwa-Online.com." 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).

Yet, the popularity of normative-content oriented sites, e.g. the IslamOnline or Amr Khaled,<sup>43</sup> and the successful establishment of some predominantly Internet-based muftis, e.g. Ebrahim Dessai, indicates the appeal this form of religious guidance has to many believers. To a large extent, the popularity of Internet preachers and muftis converges with the broader transformation of contemporary religiosity, which emphasizes the role of the individual and privatization of faith. At the same time, such transformation promotes a ready-made and easily-accessible set of norms and values that might order daily lives and define a practical and visible identity (Roy 2004, p. 31). The easily-accessible and searchable databases of fatwas provide exactly such pre-set knowledge and codes of behavior, which the individual can choose from. The latter 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 fatwa-issuing websites is the question of identity. Qaradāwī (2005, p. 7) has poignantly stated that it is the adherence to *sharī'a* through which Muslim minorities living in non-Muslim societies reaffirm their identity. Yet, as we

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<sup>42</sup> For example the North American Muslim intellectual, Muqtedar Khan, and his website *Ijtihād*. Viewed 20 April 2009, <<http://www.ijtihad.org>>.

<sup>43</sup> Viewed 20 April 2009, <<http://www.amrkhaled.net>>.

have 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 fatwa-issuing websites aimed at 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.

Information and communication technologies cannot have any social or political impact apart from their use by human beings (Kalathil & Boas 2003, p. 2). Indeed, some of the fatwa-issuing websites, e.g. Islam4UK, call for radical rejection of man-made laws and therefore directly challenge the authority of the State and its courts. Yet, the majority of sites *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 sites are based on voluntarily adherence and individual responsibility, since the muftis lack any legal means to enforce their decisions.

In his prescient work, Dasseto (2000) laid down five possible models of settlement of active Islam in Europe. According to him, these are (1) assimilation to the Western model of religion as a private and spiritual sphere; (2) cosmopolitan integration preserving institutionalized cultural references and laws; (3) dissent and rejection of the West and its models; (4) diasporas of networked and self-concerned communities; and (5) geopolitization of minorities as an appendix to the foreign policy of their states of origin. By no means are these models mutually exclusive. The Internet fatwas in fact exemplify the existing as well as the possible future assemblages of Dasseto's model.

In reality, the theoretical frameworks manifested by the various fatwa-issuing websites are mostly already embodied in the practices of European Muslims; albeit to varying degrees. Contrary to the popular notion, *sharī'a* is already applied in family matters 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.<sup>44</sup> It is indeed applicable in family matters in most other European states within the framework of private international law, when the chosen *lex causae* is that of a foreign state applying *sharī'a*. Finally, it is incorporated into European legal systems

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<sup>44</sup> Spain recognized the Islamic formal way of contracting a marriage as an option in its Personal Status Law in 1992. In order to ensure necessary legal protections there are compulsory provisions for the registration of these marriages (Rohe 2007, p. 20).

through the institutions of mediation and arbitration. Essentially, 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. In the United Kingdom several tribunals of this kind currently operate; for example, the Muslim Arbitration Tribunal:

*The Muslim Arbitration Tribunal (MAT) was established in 2007 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. 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.*<sup>45</sup>

Moreover, several autonomous tribunals have been established that echo Uthaymeen's idea of *sharī'a* judges, e.g. the Islamic Shari'a Council in UK which provides Islamic divorce (*talāq* for men and *khula'* for women) independently of and separately from the United Kingdom's legal system.<sup>46</sup> Such divorce is then not legally valid in the eyes of UK law but could be recognized within the participants' community.

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* programme 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.<sup>47</sup> 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*

<sup>45</sup> Viewed 20 April 2009, <<http://www.matribunal.com/index.html>>.

<sup>46</sup> Viewed 20 April 2009, <<http://www.islamic-sharia.org/>>.

<sup>47</sup> 'Sharia law in UK is 'unavoidable'', BBC News, 7 February 2008, viewed 20 April 2009, <<http://news.bbc.co.uk/1/hi/uk/7232661.stm>>.

*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.*<sup>48</sup>

The public statements of various religious and State authorities take us back to the Habermasian notion of the public sphere, as a sphere between the civil society and the state, where critical public issues of general interest are discussed. As we have demonstrated, the authority of European courts is not contested by the virtual fatwa-issuing websites, but reconfigured by the very real behavior of concrete social actors. Nevertheless, it is increasingly on the Internet and in the multiple public spheres it creates where these new configurations are constantly negotiated and new models of European Muslim identity are shaped. Moreover, the fatwa-issuing websites constitute a prominent example of how technology reconfigures the politics of religious authority in the contexts of globalization, deterritorialization, and transnationalism.

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<sup>48</sup> Viewed 25 April 2009, <[http://www.matribunal.com/downloads/LCJ\\_speech.pdf](http://www.matribunal.com/downloads/LCJ_speech.pdf)>.

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