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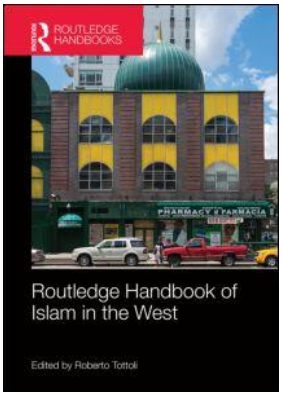

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Roberto Tottoli

A religious law for Muslims in the West

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Part 2.3

Contributing to Islam

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23

A religious law for Muslims in the West

The European Council for Fatwa and Research and the evolution of *fiqh al-aqalliyyat al-muslima*

Uriya Shavit and Iyad Zahalka

Dublin, famous for modernist literary genius and beer breweries and home to a population of no more than several thousand Muslims, is an unexpected location to spearhead a revolution in Islamic law. Yet its southern, pastoral suburb of Clonskeagh is the residence of the European Council for Fatwa and Research, a juristic panel that for over a decade has led the systemization of an audaciously pragmatic and hotly debated doctrine on the religious law of Muslim minorities (*fiqh al-aqalliyyat al-muslima*). According to Yusuf al-Qaradawi, a paramount contributor to its construction, the religious law of Muslim minorities is not a specific doctrine but the field of *fiqh* that addresses the unique conditions of Muslims living among non-Muslim majority societies (al-Qaradawi 2007: 32). However, while the doctrine on Muslim minorities propagated by the European Council (which was initiated by an American-based jurist, Taha Jabir al-'Alwani) is contested by other doctrines on Muslim minorities, the phrase *fiqh al-aqalliyyat al-muslima* is frequently used as a generic term for the Council's doctrine. The Council's relative liberalism reflects the attitudes of considerable numbers of devout Muslims in the West.

The Council's promotion of pragmatic juristic opinions for Muslim minorities constitutes an extension of the Sunni *wasati* (or "harmonizing middle ground") socio-juristic approach, which is associated mainly with al-Azhar graduates and Islamist activists. *Wasati* jurists base their ideology on Qur'an 2:143: "Thus We have appointed you a middle nation." They draw on the modernist tradition developed in the late nineteenth and early twentieth century by Jamal al-Din al-Afghani, Muhammad 'Abduh and Rashid Rida. *Wasati*s maintain that Islam, in its essence, harmonizes contrasts such as matter and spirit, individualism and communality, rationality and faith. They argue that modernity does not inherently contradict Islam, but that, in fact, modernity's virtuous aspects result from its interactions with Islam. In their juristic decisions, *wasati*s aim to find practical religious-juristic solutions, to make life easier where possible and enjoyable where permissible, and to make Muslims fond of their religion. They emphasize the need for Muslim societies to advance technologically and economically, and follow early Islamic

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modernists in arguing that compatibility exists between Islam and Western concepts and institutions, so long as the latter can be given an Islamic justification and are rid of components that *wasati*s deem un-Islamic. They also encourage greater participation of women in certain public spheres (al-Qaradawi 1973: 17–39; 2000; 'Imara 2007: 178–9, 197–8; Polka 2003: 39–64; Gräf 2009: 213–38).

Studying *wasati* jurisprudence on Muslim minorities enhances our understanding of Muslim minorities in the West as well as of contemporary *fiqh*. The European Council of Fatwa and Research aims to find religious-legal solutions that, while within the framework of *shari'a* as an all-encompassing system, and while encouraging the fortification of religious identity, enable Muslims in Europe to profess their religious beliefs without compromising their social and professional positions. In doing so, the Council expands the horizons for Muslim identity in the West, offering them a middle ground of sorts between "integration" and "introversion," but in the process also creates ethical and philosophical questions regarding identity, nationality, and law. Because abiding by the rules of the *shari'a* in the West presents some complex challenges that are not faced in majority Muslim countries, the studies issued by the Council on the general theory of *fiqh* and in response to specific queries of European Muslims represent the pinnacle of *wasati* innovation and daring, and thus also the potential and limitations for future transformations in the *fiqh* of majority Muslim societies.

The *wasati* approach to the religious law has been the subject of some academic attention, including works by Caeiro (2004, 2010), Fishman (2006), March (2007, 2009), Nafi (2004), Sisler (2009), and Shavit (2007, 2009, 2012). Most studies address the early years of *wasati*s' formulation of *fiqh al-aqalliyyat al-muslima*. This chapter, based on the analysis of several dozen studies and several hundred *fatwa*s published by the Council and affiliated jurists, as well as on a number of interviews conducted by the authors with Council officials in Dublin in February 2012 (including with its secretary general, Hussein Halawa), aims to: (1) describe the Council's structure and form of activities from its initiation in 1997 to today; (2) analyze the ideology and the religious-legal methodology that direct the Council; and (3) explore several of the groundbreaking decisions undertaken by the Council and affiliated jurists on a variety of issues, from mortgages to electoral participation to marriage.

Leadership and institutionalization of *wasati fiqh al-aqalliyyat*

Although mass migration of Muslims to the West, especially to Western European states, began in the late 1950s, the construction of a *wasati* approach that addresses the unique conditions of Muslim minorities did not begin until the late 1990s, when the permanent nature of Muslim presence in the West was already established. This process was led by two graduates of al-Azhar, the Egyptian Yusuf al-Qaradawi (b. 1926), who is the leader of the *wasati* approach in the Arab world, and the Iraqi Taha Jabir al-'Alwani (b. 1935), who made a name for himself mainly through his pioneering efforts in the field of minority jurisprudence.

Al-Qaradawi, a disciple of Hasan al-Banna, who twice (1973, 2004) rejected offers to become the general guide of the Egyptian Muslim Brothers, has been living since 1961 in voluntary exile in Qatar. He owes his status as a leading Islamic jurist in part to his sophisticated facilitation of advanced media technologies. Al-Qaradawi has had a career-long interest in Muslim minorities. When still a young jurist at al-Azhar, he was asked to participate in a project intent on providing introductory textbooks on Islam to Muslims living in Europe and America, as well as to non-Muslims. Al-Qaradawi met the challenge by writing a book that presented his *wasati* views on religious law, *al-Halal wa-l-Haram fi al-Islam* ("The lawful and the prohibited in

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Islam"). The book, published in August 1960, became one of the century's bestsellers on Islamic religious law. It dealt with dozens of everyday issues faced by Muslims, but did not address the unique challenges faced by Muslim minorities. In the early 1970s, al-Qaradawi began visiting Western Muslim communities. By the late 1990s Muslim minorities had become his focal point, and in 2001 he systemized his *wasati* doctrine of *fiqh al-aqalliyyat al-muslima* in a book (al-Qaradawi 2007).

Al-'Alwani migrated to the United States in 1983 from Saudi Arabia, where he served as professor at Ibn Saud University. In 1986 he established the Fiqh Council of North America, a voluntary panel tasked with providing religious-legal decisions to Muslims in the United States and Canada. He has testified that he toiled to construct a religious-legal doctrine for Muslim minorities from the mid-1970s, after visiting the United States and meeting with American Muslims. However, his efforts to find prestigious jurists to join him continuously failed, and in the early 1990s he began to independently issue religious edicts based on the foundations of *fiqh al-aqalliyyat al-muslima* as he understood them (al-'Alwani 2004: 38–40). He systemized the doctrine in the form of a book only in 2000 (al-'Alwani 2000).

The European Council for Fatwa and Research was established in London in March 1997 on the initiative of an umbrella organization, the Federation of Islamic Organizations in Europe. Al-Qaradawi was appointed president, a position he still holds today, and a Lebanese Islamist, Faysal al-Mawlawi, was nominated as vice president, a position he held until his death in 2011. Al-'Alwani did not join the Council, but has served on the consultative board of its journal. The Council's declared objective has been "achieving proximity and bringing together the scholars who live in Europe, and attempting to unify the jurisprudence views between them with regard to the main *fiqh* issues" (European Council for Fatwa and Research n.d.: 1). However, since its initiation the Council has mainly served as a means to formulate and legitimize *wasati* views.

A majority of the jurists on the Council are based in European countries. Membership is contingent on the recommendation of a Council member; and once approved by the other members, it is for life. The Council does not employ any paid staff, nor does it operate an archive; the diffusion of its decisions is largely dependent on the individual efforts of jurists affiliated with it. Convening every year in June (until 2008 it was convened twice every year), the Council discusses the most challenging queries that arrive at its offices or at the offices of the committees for *fatwa* issuance it operates in France, Germany, and England, as well as queries directed from governmental bodies. The queries it addresses are initially deliberated on by its head sub-committee for the issuance of *fatwa*s, and some deliberations are based on studies commissioned by the Council. Decisions are established by absolute majority; al-Qaradawi does not have the final say. While in its early years the Council confirmed a general doctrine on *fiqh al-aqalliyyat al-muslima* and issued a number of *fatwa*s on hotly debated issues, in recent years it has generated fewer controversies. Sheikh Halawa told the authors that the Council has established itself as a *marja'iyya* – an authoritative reference – on religious law for Muslim minorities and that most Muslims in Europe, including those of Turkish descent, accept the Council's juristic approach and its decisions. 'Ali Salem, who worked as a translator for the Council, argued that most queries that arrived at its offices were in English, indicating that its reach is not limited to Muslims of Arab descent. The authors' qualitative field experience in European mosques suggests that while the Council's *fatwa*s are familiar to some European Muslims, they are unfamiliar to others, and that even among those who share its *wasati* outlook the Council is not regarded as an exclusive or binding authority. Some voices in the Council argue that greater efforts must be exerted to circulate and diffuse its views in Europe (al-Najjar 2009: 69–70).

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Ideology and methodology

The *wasati* approach to *fiqh al-aqalliyyat al-muslima*, as systemized in works published by the European Council for Fatwa and Research, emphasizes two objectives: *taysir* (facilitation, i.e. making life easier where possible) and *tabshir* (proselytizing, spreading Allah's truth). The two are tied to one slogan – *al-taysir fi al-fatwa wa-l-tabshir fi al-da'wa* (loosely translated as "facilitation in issuing *fatwa*s and the promotion of religion through proselytizing") (*Qararat wa-Fatawa* … n.d.: 26).

*Wasati*s believe *taysir* to be more than an option: It is a component of Islam, commanded by Allah through his Prophet. Relying on Qur. 5:6, 2:185, 4:28, *wasati*s hold that, at their heart, Allah's laws are intended to make life easier, not more difficult; relying on Qur. 22:78 and 21:107, they hold that Islamic law aims to relieve believers of hardship or dire straits (*haraj*) (*Qararat wa Fatawa* … n.d.: 16, al-'Alwani 2004: 22, 74–5). Based on this premise, they argue that issuance of *fatwa*s is not universally applicable but must accommodate, within the boundaries stipulated by Allah via his Prophet, the conditions in which one lives so as to ensure the facilitation of *fiqh* and the commitment of believers to obeying it (al-Qaradawi 2000: 28–9, 113). Al-Qaradawi suggests that in our era, given the weakness of religion in the hearts of Muslims and the (temporary) triumph of materialistic ideologies, exercising *taysir* is all the more essential (al-Qaradawi 2000: 28–30).

The *wasati* doctrine on the religious law of Muslim minorities is governed by the assumption that Muslims living in non-Muslim majority societies face some difficulties that are even graver than those faced by other Muslims. Thus, just as a sick person is entitled to considerations to which a healthy person is not, Muslims who live in non-Muslim majority societies are entitled to adjustments which Muslims who live in Muslim societies are not entitled to (al-Qaradawi 2007: 48–52; al-Najjar 2009: 105, 110).

Writings on *taysir* as a foundation of the religious law of Muslim minorities convey a sense of apologetics. Jurists emphasize that facilitation does not signify a break from the governing norms of *shari'a* but rather the application of these norms. Al-'Alwani stressed that the purpose of *taysir* is not to make things easier for minorities, but to allow them to be exemplary Muslims in their receiving societies (al-'Alwani 2000: 6; 2004: 49).

*Wasati*s legitimize Muslim residence in the West with a wide array of justifications, including one's need to provide for one's family, finding political shelter, and pursuing academic studies. The prospect of bringing non-Muslims to Islam serves as an additional justification, and is a foundational concept in *wasati* texts. As will be explored on pp. 371–6, while this prospect of *da'wa* rings triumphant, one of its ironic results is providing legitimization for the liberalization of Islamic laws.

Arguing that proselytization as a legitimate reason for Muslim migration is not an innovation. The issue of residence under non-Muslim rule became acute as early as the eleventh and eleventh centuries AD, following the Christian conquests of Sicily and of Muslim territories on the Iberian Peninsula, and resurfaced when Muslims lost additional lands. While jurists agreed that continued residence abroad could weaken faith and practice and strengthen non-Muslims in their wars against Islam, they held that it was permissible to live among infidels so long as Muslims are too weak physically or economically to migrate. Some held that residence in non-Muslim societies is permissible if the Muslim is able to practice his religion, and went as far as to suggest that if the latter condition is met, residence among the infidels is desirable because it has the potential to encourage non-Muslims to convert. Jurists of the Maliki school, which was dominant in the conquered lands, were more inclined toward a stricter opinion, whereas jurists of the Shafi'i and Hanafi schools were more inclined toward the lenient approach (Abu-Salieh 1996: 37–57; Abou el-Fadl 1994: 141–87).

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The idea that Muslims in the West should engage in proselytizing entered *wasati* writings in the early 1980s and was fully integrated into some of the more systemized works on minority *fiqh* in the 2000s. In detailing the "duties of Muslims living in the West," al-Qaradawi (2006) wrote that they "ought to be sincere callers to their religion. They should keep in mind that calling others to Islam is not restricted to scholars and Sheikhs, but it goes far to encompass every committed Muslim. As we see scholars and Sheikhs delivering *khutba*s (sermons) and lectures, writing books to defend Islam, it is no wonder we find lay Muslims practicing *da'wa* while employing wisdom and fair exhortation."

Al-Qaradawi went so far as to state that, considering Islam's universal mission, on the one hand, and the West's current leadership of the world, on the other, Muslims must have a presence in the West and spread Islam there. Thus, if there had been no Muslim presence in the Western world, such a presence would have had to be created (al-Qaradawi 2007: 33). Similarly, al-'Alwani argued that any place where a Muslim is able to practice his religion can be regarded as *dar al-islam* and there he must stay, for his staying may result in the conversion of non-Muslims. Conversely, countries where Islam had not yet spread should be regarded as *dar al-da'wa* (realms of proselytizing). It is therefore obligatory for Muslims to create a presence in those countries and to bring to them the truth of Islam (Imam 1999: 26; al-'Alwani 2000: 16–19, 39–51; 2004: 84–85).

The notion that proselytizing is an essential aspect of *fiqh al-aqalliyyat al-muslima* was rejected by the European Council's secretary general, Hussein Halawa. In interviews with the authors, he emphasized that the doctrine does not seek the Islamizing of Europe and that it does not consider *da'wa* as an objective. He pointed to facilitation as the Council's greatest achievement and argued that the Council's jurisprudence made it possible for Muslims in Europe to live without *haraj* – that is, without being harmed due to their beliefs. Indeed, in the Council's more recent literature direct calls for *da'wa* have been largely neglected. The secretary general's comments indicate, perhaps, an appreciation of the sensitivity of the issue.

Essential to *wasati* jurisprudence in general, and specifically to the jurisprudence on minorities, is the widening of jurists' independence in interpreting the sources of law, or exercising *ijtihad*. Thus, *wasati*s emphasize that: (1) generalities (*kuliyyat*) that define the purposes of Islamic law can be derived from the Qur'an, have precedent over partialities (*juz'iyyat*), and should direct human behavior; (2) all sources of law, including the Prophetic traditions, must be read in light of the Qur'an, which is the supreme and ultimate guide; and (3), while Allah's guidance is eternal, the Qur'an's implementation was meant to constantly evolve in light of changing circumstances (al-Qaradawi 2000: 43, 50, 57, 70; al-'Alwani 2000: 24–5; 2004: 53–6, 70). Because the Qur'an is vague on many issues, certainly more than the immense body of Prophetic traditions (*hadith*), this point of view provides *wasati* jurists with greater discretion while endowing their decisions with legitimacy. A central point on the *wasati* agenda is the legitimacy of good relations between Muslims and non-Muslims who are not at war with Islam. The supremacy of the Qur'an over all other sources and the *wasati* interpretation of some Qur'anic verses play crucial roles in legitimizing this view. *Wasati*s extensively quote Qur. 60:8, which permits Muslims to honor and do justice with non-Muslims who do not fight against them, to reassert the permissibility of socializing with non-Muslims and constructively participating in their societies.

*Wasati*s broadly and liberally apply two already existing mechanisms of religious law to promote their ideological objectives. One is to search for the most suitable answer among all four Sunni law schools (*madhhab*) and beyond them. According to al-Qaradawi, crossing *madhhab* boundaries is essential for the *fiqh* of minorities (as it is for *fiqh* in general) because it provides jurists with greater discretion; a *madhhab* that is strict on one issue may be lenient on another,

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and rulings that have been neglected may be revived at the present time (al-Qaradawi 2007: 57–60; see also al-Qaradawi 2000: 35–9, 221–2; 1973: 11–12; al-Najjar 2009: 108). In explaining its methodology, the European Council for Fatwa and Research professed that "the four schools of law as well as all other people of *fiqh* knowledge are regarded as a resource of immense wealth" from which jurists should choose whatever is supported by "the correct and best evidence that achieves the best interest" (European Council for Fatwa and Research n.d.: 3). It cautioned against *madhhabi* fanaticism (European Council for Fatwa and Research n.d.: 31–4).

Another mechanism utilized by *wasati* jurists is *maslaha* (public or individual interest), which includes three categories: necessities (*darurat*), needs (*hajiyyat*), and improvements (*tahsinat*). This mechanism was developed by Abu Hamid al-Ghazali (d. 1111), who held that the purpose of the *shari'a* is the maintenance of religion, life, offspring, reason, and property, and that anything that is a necessity for the realization of these purposes may serve as an independent basis for a legal decision. In the twentieth century, Muhammad Rashid Rida developed the concept of *maslaha* as the principal means of effecting religio-legal change. Rida's primary goal was to show that Islamic law was intended to be a comprehensive legal structure for Muslim society. Central to this approach was his differentiation between *'ibadat* ("ritual devotion") and *mu'amalat* ("social transactions"). He argued that the latter are only of a general character, allowing for considerable adaptation by successive generations of Muslims in light of the demands of their worldly welfare (Kerr 1996: 187–90).

Al-Qaradawi's doctrine on Muslim minorities emphasized the use of *maslaha* in arguing that the religious law of Muslim minorities is realistic rather than idealistic, and that its realism, which characterizes the *shari'a* in general, is manifested in its recognition of individual and communal necessities (al-Qaradawi 2007: 55–6). Al-'Alwani suggested that, in accordance with the priorities of the Muslim nation, jurists dealing with Muslim minorities should broaden the list of objectives of the *shari'a* (al-'Alwani 2000: 27–8). In doing so, as well as in establishing (albeit not consensually) that "needs" can be regarded as "necessities" whether they are communal or individual, *wasati* jurists were able to invoke *maslaha* as justification for adjusting religious laws to the unique conditions of minorities on a number of critical issues.

A point that *wasati*s stress is that jurists must decide based on comprehensive knowledge of the situation of Muslims in the West. *Wasati* methods of determining what constitutes a necessity include the application of *fiqh al-muwazanat* – evaluating the benefit and the harm incurred by reaching a specific decision; *ma'alat al-af'al* – assessing the correlation between application of specific laws and materializing the purpose of *shari'a* in the context of the special circumstances faced by minorities; and the rephrasing of queries, so as to allow the answers to address the purposes of *shari'a* and lead to a beneficial result.

*Wasati fatwa*s in *fiqh al-aqalliyyat*

*Fatwa*s issued since the late 1990s by the Council and by jurists who share its convictions on *fiqh al-aqalliyyat al-muslima* addressed a variety of issues that are fundamental to the daily lives of Muslim minorities, and specifically to their prospect of integrating into majority societies while maintaining the *shari'a* as a binding, all-encompassing reference. In accommodating special conditions faced by minorities, a number of these *fatwa*s broke away from confirmed and long-held religo-legal opinions, including opinions based on unquestionable Qur'anic directives. *Fatwa*s testified to the centricity of the objectives of facilitation and proselytizing in *wasati* jurisprudence, as well as the utility of cross-*madhhab* search and broad application of *maslaha* in promoting those objectives.

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Participation in elections in Western countries

Wasati jurists issued decisions that permitted, and even obliged, Muslims living in non-Muslim countries to participate in elections. Legitimization relied mainly on application of *maslaha* based on *fiqh al-muwazanat*. This reflected an appreciation that Muslim communities will be able neither to advance their status nor to serve the greater interest of the "Muslim Nation" unless they gain political power.

One of the first jurists to deal with the matter was Sulayman Muhammad Tubulyak, a Bosnian who in 1996, at the University of Jordan, wrote, from a *wasati* perspective, a master's dissertation on political issues pertaining to the religious law of Muslim minorities. Applying the principles of *fiqh al-muwazanat* and *ma'alat al-af'al*, Tubulyak legitimized the formation of political parties by Muslims living as minorities as the only means for them to promote their rights and to spread Islam, noting that the experience of Muslim minorities from Britain to Bosnia testifies to the merit of establishing political parties. He also legitimized both their joining non-Muslim political parties when not given the right to establish Muslim ones and the alliance of Muslim political parties with non-Muslim parties if the alliance serves a *maslaha* and does not harm Islam or Muslims, for example by limiting their ability to spread their religion. He ruled that where a Muslim candidate does not run for office, Muslims are required to vote for the non-Muslim candidate or party list that is least hostile to Muslims. He cautioned that Islamic politics in non-Muslim societies must follow *shari'a* regulations; empty promises must not be made and personal attacks must be avoided. If elected, a Muslim member of parliament should not approve legislation that contradicts Islam or harms Muslims wherever they may be, and must champion the liberties and rights of Muslims everywhere. In swearing the oath of allegiance, a Muslim member of parliament must articulate that the purpose is to serve Islam and Muslims, and avoid uttering any words that contradict Islamic principles (Tubulyak 1997: 140–8).

Based on an application of *fiqh al-muwazanat*, the European Council, in its second session in 1998, issued a decision on a query about the permissibility of participation in municipal elections in Europe and about voting for a non-Muslim political party which "may not serve the interests of Muslims." The Council stated that "this matter is to be decided by Islamic organizations and establishments. If these see that the interests of Muslims can only be served by this participation, then it is permissible on the condition that it does not involve the Muslims making more concessions or losses than gains" (European Council for Fatwa and Research n.d.: 100).

In 1999, al-'Alwani ruled that it is not only permissible for Muslims in the United States to participate in American politics, it is their religious duty to do so in order to protect their rights, support their brothers in faith wherever they may be, spread the truth of Islam, and materialize its universality. Al-'Alwani emphasized that the minority's political participation constitutes a duty and is not optional because it is essential to protect the necessities, needs, and improvements of Muslim society in the United States. Thus, Muslims are encouraged to run for any public office that can benefit Muslims or protect them from harm, to endorse the election of the non-Muslim candidate who benefits Muslims more or harms them less than the contender, to aspire to gain American citizenship, and to register to vote. Al-'Alwani explained the mistake of those who think that legitimizing political participation in an infidel regime constitutes neglect of the duty to establish an Islamic regime. Establishing an Islamic regime, he wrote, is the duty of Muslims living in majority Muslim societies; the duty of Muslims living as a minority in the United States is different: It is to support Islam's presence in the country through participation in the general society and the building of a united community that would be able to bring the majority of society to Islam by convincing it of Islam's truthfulness. This process,

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through which an Islamic political order will be created in America, will take several centuries. The gradualist method, he argued, is in line with the path of the Prophet, who first established a community, then a society, then an Islamic system. Furthermore, any advancement of virtue and justice constitutes a brick in building an Islamic regime; thus, if Muslim political participation helps to outlaw abortion or drugs, then it should be considered a support for Muslim values even if it is not facilitated through Muslim political parties or slogans (Imam 1999: 26). In his 2000 systemization of *wasati fiqh al-aqalliyyat*, al-'Alwani asserted that it is the duty of Muslim minorities at large to be active in the politics of their societies in order to enhance Islam and materialize its universality (al-'Alwani 2000: 50).

In its seventeenth session in 2007, the European Council affirmed al-'Alwani's opinion that political participation is a necessity (al-Majlis al-urubi 2008: 511). In an interview with the authors, Sheikh Halawa presented a similar approach, arguing that it is not only the right, but the duty of Muslim minorities to be politically active. He stressed that the Council does not endorse candidates but calls on voters to determine for themselves who best enhances *maslaha*.

Mortgages and student loans when no alternative is available

Qur. 2:275–7 prohibits usury (*riba*), and warns that Allah and his Prophet will wage war against those who do not obey this command. In modern economies, in which corporate and individual transactions often rely on interest-based loans, this prohibition creates a challenge. Islamic banking systems have developed several mechanisms that circumvent the prohibition on *riba*. In real estate, the most popular one is *murabaha*: the bank serves as an intermediary that buys a house at the request of a customer and then sells the house at a higher price, which the customer pays in installments (Lewis and Algaoud 2001: 52–5; Abdullah 1996: 76–95). In some Western countries Islamic banking systems are not available. Because most Muslim migrants in the West are not affluent and cannot afford to buy a house without a mortgage, the issue has become highly relevant.

Responding to this situation, at its fourth session, held on October 27–31, 1999, the European Council decided to legitimize mortgages. Its *fatwa* began with a reaffirmation of Islam's prohibition on usury. It encouraged Muslims in the West to find religiously legitimate alternatives to mortgages, such as the *murabaha* system offered by Islamic banks. It also encouraged Islamic organizations in Europe to ask European banks to adopt Islamic systems in order to attract Muslim customers. If, however, there is no alternative, then a Muslim living in Europe who does not own a house and does not have the means to purchase one without a loan is permitted to take a mortgage.

The Council based its argument on two notions. First it argued that a need (*haja*) can be regarded as a necessity (*darura*), whether the need is communal or individual. The *fatwa* explained that a "necessity" is something without which a Muslim cannot live and a "need" is something without which a Muslim would be put in a state of hardship (*haraj*). Qur. 22:78 and 5:6 state that Islam will not put Muslims in a state of hardship. Thus, certain needs can be regarded as necessities, and in addressing them it is possible to legitimize what is prohibited. While having a home (rented or owned) is a necessity for a Muslim family (as indicated in Qur. 16:80), owning a home is a need that can be regarded as a necessity because it is crucial for preserving Islamic identity and for promoting the spread of Islam. A Muslim in Europe who does not take a mortgage may be forced to pay rent to a non-Muslim landlord for many years without getting any closer to ownership and remaining under the threat of eviction, while a Muslim who is permitted to take a mortgage will be relieved of these concerns and will be able to choose a home that is close to a mosque and to an Islamic school. Buying homes may bring

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together Muslims living in non-Muslim majority countries, strengthen their ties, and enable them to create small Islamic enclaves within the larger society. Furthermore, mortgages advance proselytizing efforts, and thus constitute a communal need, in two ways: by becoming home-owners, Muslims will present a respectable face to non-Muslims; and relief from the financial burden of renting a house will make it possible for Muslims to pursue their duty to engage in *da'wa*.

The other argument presented in the *fatwa* draws on the *wasati* method of cross-*madhhab* search. The *fatwa* invoked the Hanafi opinion (endorsed by some Hanbalis) that contracts between Muslims and non-Muslims that are normally prohibited are permitted outside the Abode of Islam (*dar al-islam*). This opinion is based on two notions: first, while living among infidels, a Muslim is not obligated to follow the rulings of the *shari'a* on civil, financial, political and similar matters, because following them is beyond his ability, and Allah does not require people to do more than their ability; and, second, Islam seeks to strengthen its believers in all respects, including the elimination of financial hardship. The Council's *fatwa* criticized the argument of several Hanafi jurists, namely that Muslims in non-Muslim societies can charge interest, but not pay it, because they do not benefit from paying interest. The Council explained that no consensus was reached on this issue, and that by paying interest on a mortgage the Muslim receives a benefit, because he will eventually own a home. The Council emphasized that it regards the Hanafi legitimization of mortgages in Europe merely as a supplement to its main argument, to wit, in the European context a mortgage may be considered a "need" that qualifies as a "necessity." It noted that jurists of all schools of law can permit mortgages based on its main argument (al-Qaradawi 2007: 174–9).

The Council's decision was opposed by several of its members. 'Abd Allah b. Bayya, a Mauritanian-born, Saudi-based jurist and politician (b. 1935), wrote that a "need" can be regarded as a "necessity" only in regard to Islam's weaker prohibitions and that a "need" by itself cannot legitimize usury (bin Bayya 2004: 93–145). Two other members of the Council – Denmark-based Muhammad al-Barazi, a Muslim Brother, and the England-based Pakistani Suhayb Hasan 'Abd al-Ghaffar – criticized the *fatwa* on two other grounds. First, they argued that the Council misinterpreted the Hanafi school in two ways: (1) Hanafis permit usury only in *dar al-harb*, a category that does not apply to contemporary European countries; (2) Hanafis allow Muslims in non-Muslim societies to take interest but not to pay (as mentioned above, the Council addressed this issue in its *fatwa*). Second, al-Barazi and al-Ghaffar asserted that the Council wrongfully applied the principle of a "need" becoming a "necessity" because the financial weakness experienced by Muslims in Europe is not the result of avoiding mortgages, but of disunity. It is therefore legitimate for a Muslim to take a mortgage only if he is unable to rent a home for an appropriate price or to purchase one in a religiously lawful way (al-Qaradawi 2007: 179–81).

Despite the criticism, al-Qaradawi reaffirmed the Council's legitimization of mortgages and its broad interpretation of the concept of necessity. More than one-quarter of al-Qaradawi's 2001 book on the religious law of Muslim minorities is dedicated to his Council's 1999 *fatwa*; clearly, al-Qaradawi felt that he needed to defend it. He conceded that in legitimizing interest-based loans for European Muslims he adopted a position that he had opposed his entire career (al-Qaradawi 1973: 230–3). He attributed his change of heart to the softness and confidence that comes with age (al-Qaradawi 2007: 169–70). In his response to al-Barazi and al-Ghaffar, al-Qaradawi stressed that to determine whether owning an apartment constitutes a "need" one should consult not only jurists but also non-religious experts as well as European Muslims who rent apartments (al-Qaradawi 2007: 182–3). In his defense of the *fatwa* he added several elements to the Council's description of ownership as a condition for leading an Islamic life in the

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West and promoting Islam. He argued that Muslims who own apartments have access to better education; reside in closer proximity to local mosques, Islamic centers, and other Muslims; enjoy better public services; enable their wives to walk around the house without being watched by neighbors (as is the case in rent-based residential areas); and gain the respect of all walks of society, from school teachers to drivers of garbage trucks. Al-Qaradawi hinted that the lateness of his juristic transformation on the matter had been harmful to the interests of the Muslim nation, noting that Muslims from the Indian subcontinent, who adhere to the Hanafi school and have taken mortgages, are some of the richest men in contemporary London (al-Qaradawi 2007: 154–61). Other *wasati* jurists have also defended the Council's stand on mortgages (Sidiqqi 2000).

Our interview with the secretary general of the Council revealed that more than a decade after its issuance the *fatwa* on mortgages remains a sensitive issue: When asked about the controversy the *fatwa* ignited, Sheikh Halawa passionately and apologetically read it to us, emphasizing that it opened with an assertion that usury is prohibited as well as with a call for European Muslims to find other alternatives. He also stressed that the *fatwa* permitted mortgages on a temporary basis, until the day comes when it is possible to purchase homes in Europe in line with Islamic regulations. Our qualitative field experiences in European mosques indicate that the *fatwa* is highly controversial, and that even some Muslims who identify with the *wasati* orientation do not approve of it.

In a study published by the Council's journal in 2009, student loans were legitimized based on justifications reminiscent of those invoked in relation to mortgages. Salim al-Sheikhi (b. 1964), a Libyan-born, Saudi-educated, and England-based jurist and member of the Council, argued that because Muslims in Britain do not have access to reliable Islamic-regulated interest-free loans, the principle that a need can be regarded as a necessity legitimizes the taking of interest-based student loans. The need is individual as well as communal. For individuals to find good jobs, academic education is required. Because most Muslims in the United Kingdom work in low-paying occupations, they will not be able to afford higher education if student loans remain prohibited. As for the communal need, unless student loans are legitimized the Muslim minority will be harmed, and Islamic law rejects such harm. Furthermore, to facilitate integration, Muslims are required to establish a presence in the public and private sector, and they can do so only if they have access to higher education. Al-Sheikhi concluded that, considering that the Council legitimized mortgages based on the notion that a need can be regarded as necessity, the legitimization of student loans is all the more justified, especially in considering that, unlike mortgages, student loans are matched to the rise in the consumer price index (and thus are considered by some jurists as legitimate in any case) (al-Sheikhi 2009: 445–53).

Service in a Western military fighting against Muslims

Shortly after 9/11, as the United States was preparing to retaliate in Afghanistan, a Muslim chaplain in the American army, Muhammad 'Abd al-Rashid, presented al-'Alwani with a query on the permissibility of participation in a war against the perpetrators of the attacks. Al-'Alwani consulted with al-Qaradawi, who joined four jurists in approving of participation. Their decision was based on two considerations: first, the 9/11 attacks were terrorist acts, and Muslims should be united against those who terrorize innocents; second, applying *fiqh al-muwazanat*, they argued that if Muslim American military personnel were to resign their positions they would cause harm not only to themselves but also to millions of Muslim Americans, and this harm would be greater than that caused by participating in war. The jurists advised the questioner

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that he should ask to serve in a non-combat position, unless such a request would raise doubts about his allegiance or loyalty (Nafi 2004: 80–2).

Following the commencement of the war in Afghanistan in October 2001, in a *fatwa* responding to a query from Zaynab, a Canadian, on the permissibility of participation in the war, al-Qaradawi authorized military participation provided that the Muslim soldier does his best to avoid direct confrontation. His *fatwa* began by stressing that a Muslim who fights another Muslim has committed *kufr* (disbelief); several traditions on this matter were invoked, including one narrated by al-Ahnaf, in which the Prophet reportedly said that if two Muslims fight each other, not only the killer but also the killed is doomed to hell fire, because he was willing to kill his fellow Muslim. However, al-Qaradawi argued that a Muslim who is recruited to a non-Muslim army to fight against Muslims finds himself in a peculiar circumstance that demands special consideration. This Muslim might be a "helpless" soldier who has "no choice" but to yield to the orders of his commanders. If that is the case, the Muslim soldier can join the rear guard to help in military service, while avoiding combat confrontation to the extent possible. If he does participate in war against Muslims, the soldier should have an inner feeling of resentment, which is the "least of faith." As in the collective former *fatwa*, al-Qaradawi's approval was based on *fiqh al-muwazanat*, and specifically on concern for the future of proselytizing efforts. In his view the harm caused by avoiding the battle would be greater than that caused by participating in it, because if a Muslim soldier refused to fight other Muslims "the Muslim as well as the Muslim community may be accused of high treason. Such an accusation may pose a threat to the Muslim minority and this may also disrupt the course of *da'wa* that has been in full swing since tens of years ago [viz. for decades], and has started to reap fruits" (Group of Muftis 2001).

Marriage to a non-Muslim husband

In his theorization on his approach to *fiqh al-aqalliyyat al-muslima*, al-Qaradawi brought the matter of female converts married to non-Muslims as one example of how cross-*madhhab* search enhances the implementation of the *taysir* which Allah wishes for humankind (al-Qaradawi 2007: 60). Islamic law allows men to marry Jewish and Christian women, but prohibits Muslim women from marrying non-Muslim men. The opinion among jurists of all four schools of Sunni law has been that if a woman converts to Islam and her husband does not follow in her footsteps, she must divorce him. That was also the original opinion held by al-Qaradawi, but, similarly to his change of heart and mind on mortgages, he revised his view on this matter, and made it permissible for female converts not to divorce their non-converted husbands (al-Qaradawi 2007: 105–6). His detailed deliberation demonstrated that in reading afresh into the depths of Muslim traditions, and classic interpretations of those traditions, it becomes clear that while there is unanimity on the impermissibility of a Muslim woman's marriage to a non-Muslim man there is no consensus regarding the obligation of a convert to terminate her marriage with a non-Muslim. Al-Qaradawi noted that the Prophet did not oblige married couples to divorce in cases in which only one of them became Muslim; neither did he rewrite their marital contract. The Prophet allowed women, including his daughter Zaynab, to wait, even a long time if necessary, for their husbands to embrace Islam as well, and then to resume marital relations. Following his example, the Khalifa 'Umar permitted women who converted to Islam to remain married to their unconverted husbands, with a similar expectation of a future conversion (al-Qaradawi 2007: 106–25).

Al-Qaradawi's opinion was embraced by the European Council for Fatwa and Research in its eighth session in a decision that followed three lengthy meetings and conveyed a greater sense

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of caution. The Council stated that while the four schools of law call on female converts to divorce their non-Muslim husbands, "some scholars" believe that it is permissible for female converts not to terminate the marriage and to maintain all their marital rights and duties so long as the husband does not limit their ability to profess their religion and so long as they aspire to bring their husbands into the fold of Islam. The Council justified this opinion by explaining that women should not to be deterred from embracing Islam. Sheikh Halawa told the authors that he deemed this decision as revolutionary as the one on mortgages, because it broke from a well-established consensus.

Inheritance from non-Muslims

The four schools of law forbid Muslims to inherit from non-Muslims, and for non-Muslims to inherit from Muslims, based on the tradition according to which the Prophet said, "A Muslim does not inherit from the *kafir* ('infidel') nor does the infidel from a Muslim." This consensus seriously injures the financial prospects of Western converts to Islam whose parents did not convert, and serves as an obstacle to conversion efforts. Al-Qaradawi, relying on Ibn Taymiyya, broke from the consensus. He noted that Islam seeks to benefit the believers, and that the fear of losing the right to inherit their family's fortune is a major concern of people who contemplate conversion. Therefore, there is a *maslaha* to permit inheritance from non-Muslims (al-Qaradawi 2007: 126–31). The European Council adopted this view. It explained, as did al-Qaradawi, that the tradition that forbids inheritance from non-Muslims relates only to infidels who are in a state of battle with Muslims (European Council for Fatwa and Research n.d.: 148–9).

Conclusion

The *fatwa*s discussed above demonstrate that in the scope of less than two decades the European Council for Fatwa and Research, and jurists associated with its *wasati* views, issued decisions that allow Muslims in the West greater integration into majority societies in various and crucial aspects of life. Decisions emphasize two points: facilitation – making the lives of Muslim minorities easier; and proselytizing – enhancing the prospect that non-Muslims convert to Islam. A "chicken and egg" question is unavoidable: Which is a means and which an end? Yet from the *wasati* point of view, facilitation and proselytizing are complementary rather than contradictory.

The European Council is located within a Muslim community that is on the periphery of Islam in Europe. Its juristic audacity is legitimized because it is headed by jurists situated at centers of authority in the Arab world. By formulating specific juristic decisions for minorities, it potentially contributes to the separation of Muslims in the West from their sending societies. Yet this process is made possible through a mechanism that asserts the authority of the center over the periphery.

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