

## Chapter 13

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### PLURALISM AND NORMATIVITY IN FRENCH ISLAMIC REASONING

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AS MUSLIMS CREATE NEW, STABLE COMMUNITIES in Europe and North America, they have asked how best to adapt their normative and legal traditions to their new settings. These traditions are central to Islam. The root meaning of *islâm* is “submission” to the will of God, and scriptures communicate to humans the norms and forms for that submission. These norms have multiple sources, from the Qur’ân (the revealed word of God), to the collections of *hadîth* (the reports of statements and actions of the Prophet), to the decisions of qualified jurists and judges. In Muslim-majority countries they have been the basis for creating political, legal, and social institutions: councils of jurists, courts of law, mosques for worship, places for ritual sacrifice. Muslims living in countries without such institutions have begun to reconsider these norms. Should there be new sets of norms for Muslims living as minorities? Is Islam a matter of general principles that one might find to be common across Muslim and non-Muslim societies? Or is Islam perhaps best understood as a matter of individual, ethical behavior rather than compliance with legal traditions?

I consider a range of Muslim responses to these questions in France, a country of relatively new Muslim immigration. I focus on the ways in which the social and political structures of that country have shaped the direction of Islamic reasoning, and to underscore this shaping effect I consider the contrast between British and French experiences. In each country certain directions of reasoning are, I argue, more likely to be adopted and accepted by Muslims. I also emphasize that Islam has faced issues of pluralism from its beginning. Early Muslim authorities acknowledged the legitimacy of multiple traditions or schools of normative reasoning (*madhhab*)—before Christian jurists did so, one might well add. Muslim jurists see normative or legal reasoning, *fiqh*, as a human, fallible practice, an inevitably partial effort to comprehend God’s plan for humans, the *shari’â*. Judges took into account local values and prac-

tices to the extent that these did not violate God's commands. It is thus perfectly within the historical legacy of Islamic reasoning to develop norms that would accord with life in new social situations.<sup>1</sup>

#### CONTRASTING CONDITIONS FOR MUSLIMS IN EUROPE

That said, the sudden growth of resident populations of Muslims in Europe has presented new challenges for Muslim scholars. Since the 1960s, considerable numbers of Muslims have immigrated to countries in Western Europe.<sup>2</sup> Most of these Muslims have come from the countries of northern and western Africa, Turkey, and southern Asia. During the 1950s and 1960s, European governments encouraged the immigration of workers to serve the expanding industrial sector as inexpensive laborers. Many of these early immigrants were single men or married men whose families remained behind. Both the immigrants and the host countries thought that the stay was temporary. Some governments built large housing projects, both in city suburbs and in relatively isolated areas, to encourage the eventual repatriation of the immigrant workers and, indeed, to encourage their isolation from the cultural mainstream. France, for example, offered instruction in languages of origin for immigrant children in order to facilitate their expected "return" to their countries of origin.

Two things went wrong with this policy. First, the host economies suffered recession in the 1970s, and the immigrants quickly went from being useful instruments in national growth to hostile competitors for low-paying jobs. Political parties of the far right played on these sentiments. Secondly, and notwithstanding the economic reversals, many immigrants stayed on in their new countries and either brought their families to Europe or created new families in Europe. The children were Europeans in culture and language, whether or not they were granted citizenship. They began to demand rights of citizenship, including their right to practice their religion unimpeded: to build mosques, to carry out public rituals, and to dress in an Islamic way. These demands were not always welcomed by other residents, and the resentment over economic competition that fueled the far right in the 1970s and early 1980s had become, by the late 1980s and 1990s, resentment over cultural difference, an unalterable newness on the part of the Muslim families.

This economic, cultural, and political conflict was increasing in intensity at the moment when "political Islam" took world center stage. The Islamic Revolution in Iran and the rise and repression of Islamic parties in North Africa and Turkey led to a worldwide excitement among younger Muslims about the possibilities for constructing new kinds of

nations, ones in which Islam would play an important public role. These same possibilities frightened ruling parties in these same countries, and they found sympathetic listeners among political leaders in Europe and the United States. Violence increased in the 1990s, carried out by Muslims and non-Muslims. In France, the military wing of the Algerian Islamist movement planted bombs in public places; in Germany, neo-Nazi groups attacked Turks. After the attacks of September 11, 2001, popular fears of Islam focused on the network of al-Qaeda supporters that extended through Asia, North America, and Europe, and on the growing problems of violence in poor areas of the larger cities.

Less noticed during this period have been the creative efforts by European Muslims to adapt religious practices to their new social conditions. These conditions include distinct political cultures: laws regarding who may form what sort of association, policies about state recognition of and aid to religious groups, and norms about where and when one may publicly express religious beliefs (Rath et al. 1999).

The contrast of France and Britain serves to illustrate the relevant differences. In France, a long struggle between the Catholic Church and partisans of a secularist and revolutionary heritage eventuated, early in the twentieth century, in the regime of *laïcité*. The political culture of *laïcité* requires the elimination of religion from public forums: from schools, state enterprises, and government. This culture also suffuses teacher education, creating not only a heritage of militant anticlericism, but also a militant antireligious stance that often goes well beyond the strict requirement of French law. Parallel to the history of *laïcité* is that of *francité*, “Frenchness,” the idea that full citizenship requires cultural assimilation to a French model of comportment: European dress, good command of French, and socialization with French people (Bowen 2003a). The close association of *laïcité* and Frenchness helps explain the strong support in France for laws banning girls from wearing head scarves in public schools, despite the equally strong French political support for freedom of religious expressions (Bowen 2004).

*Laïcité* and *francité* in turn shape French ideas of citizenship. Despite the fact that commentators often emphasize the distinction of legal nationality (*nationalité*) and citizenship (*citoyenneté*)—the former merely indicating the government to which one owes obedience, the latter indicating a willingness and capacity to participate in civic life—throughout French history the two have been intertwined. As a general rule, to be given nationality one has had to demonstrate citizenship, and, conversely, full rights of civic participation have been limited to French nationals.<sup>3</sup> Prior to 1981 and the ascension of François Mitterrand to power, it was relatively difficult for noncitizens to form legally recognized associations and thus to gain legitimacy in the eyes of the state. Moreover, until 2003

no national Islamic body existed that could take part in the national-level decision making so critical to French affairs.<sup>4</sup>

On the dimensions signaled in France by *laïcité* and *francité*, Britain offers a marked distinction. Religion is present in public life; indeed, Tariq Modood (1993) has argued that maintaining the established Church of England keeps secularism from controlling public space (he might have had the negative example of France in mind). The demands made on residents or subjects are minimal, consistent with Hobbes's ideas about the proper role of the state in guaranteeing order (Favell 2001). Indeed, to speak of "the state" makes much less sense in Britain than France; residents encounter myriad local agencies and boards. Immigrants from South Asia to Britain began forming diverse associations soon after their arrival, and some of these associations have worked with local school boards to press for changes in diet, religious education, and so forth, with little direct appeal to officials in London (Lewis 1993; Vertovec 2002; Werbner 2002).

In these and other countries, Muslims have correctly seen that they must forge collaborations with non-Muslim political leaders if they are to develop workable Islamic social and religious institutions: schools that need recognition and financial aid; Islamic chaplains to prisoners and soldiers who require state certification; the simultaneous sacrifice of thousands of animals on the Feast of Sacrifice that requires state health board approval. The relationships between Muslim public intellectuals and political leaders may be uneasy and unstable, but they shape the direction of Muslim social, political, religious, and intellectual life in each country. Muslims in France have become used to looking for a single, national resolution to a problem; Muslims in Britain value allowing local accommodations to resolve disputes. As Muslims develop more effective Europe-wide institutions, they probably will realize that they have become less "European" than they have become French, British, Danish, and so forth, and that they have adapted their religious and cultural institutions to these respective political cultures.<sup>5</sup>

#### THE SOCIOLOGY OF ISLAM IN FRANCE

Although France keeps no statistics on the religious beliefs or practices of its inhabitants, estimates of the number of Muslims resident in France range from 4 to 5 million people, nearly all of them immigrants and their children.<sup>6</sup> About 60–70 percent of Muslim immigrants to France have come from three countries of North Africa, the Maghreb: Algerians and Moroccans have contributed the largest numbers, followed by Tunisians. Turks and West Africans form the next largest groups.<sup>7</sup> The dominance

of North African Muslims in the public sphere is even greater than these numbers might suggest, for a number of reasons. The North African countries had historically close colonial ties to France, and Algeria was part of France until 1962. North African immigration in the 1960s and 1970s was massive and concentrated in industrial cities.<sup>8</sup>

Muslim men who came to France in the 1960s and 1970s found themselves living with Muslims from a variety of countries, often in large public housing units. In urban neighborhoods as well, or in the poorer suburbs of Paris or Lyon, one finds Moroccans, Malians, and poorer French families living together. Certain ties can reinforce country allegiances, as when an association or a mosque is predominantly associated with one country, or a Sufi order preserves ties to a particular saint. Algerians may vie with Moroccans for control of a mosque, or each, along with Comorians and others, may have their own mosque and associations. Foreign countries (in particular Morocco, Algeria, and Saudi Arabia) have financed mosques, reinforcing country-based rivalries. But even those mosques, religious schools, or associations sponsored by Muslims from a particular country rarely are exclusivist, because they usually do not seek to reproduce a particular theological or ritual tendency. Moreover, for many in the generation of Muslims born in France (the *beurs*), it is the experience of being discriminated against as “Maghrebin” or “Arab” that creates their sense of “ethnicity” (Cesari 1998, 56–57).

The common Arabic language has facilitated some degree of cooperation across the three North African communities, as has a relatively shared degree of religious jurisprudential reasoning (following the Mâliki *madhhab*) and religious practices. This cooperation exists both at the national level—for example, in the activities of the largest national organization, the Union des Organisations Islamiques de France (UOIF)—and in some cases at the local level in the forms of shared worship in mosques. In cities or neighborhoods where cross-ethnic cooperation is high, the shared Arabic language facilitates common participation by North Africans (but not others) in congregational prayers. Indeed, the growing distinction, and sometimes tension, is between the Arabic of the older generation and the French of the younger Muslims as the language of the sermon.

By contrast, Turks have not had the same historical ties to France, and the centers of Turkish diasporic activities are in Germany. Many of the Senegalese and Mali immigrants have distinct forms of religious practice and social organization, in particular the Sufi orders focused on specific teachers in West Africa. Other Muslims, from the West Indies or the Indian Ocean islands, for example, have organized into ethnically specific associations and formed a grab-bag national organization to represent their interests as “non-Maghrebis.”

Within the North African category, although Algerians are numerically dominant (one-half of North Africans, one-third of all Muslim immigrants), and they control the important Paris mosque, Tunisians and Moroccans play important leadership roles in a number of national organizations. Tunisians have taken on major roles as leaders of religious schools, particularly around Paris. Moroccans make up 40 percent of all *imams* (sermon givers at Friday prayers) in France.<sup>9</sup> Thus in France no one country group is predominant across categories, the way that Pakistanis dominate Muslim affairs in Britain and Turks play the predominant role in Germany.

Who are the authorities among these Muslims? Because the traditional Islamic institutions that defined the roles of specific authorities are virtually absent from Europe, it is difficult to use the Islamic vocabulary of *muftis*, *ulamâ*, or *faqîhs*. I prefer to speak of Muslim public intellectuals, each with specific claims to legitimacy and specific bases in social institutions. Teachers at religious schools, mosque officials, and leaders of Islamic associations all can claim some degree of legitimacy as Muslim public intellectuals because of their institutional roles—but ratification of those claims by ordinary Muslims depends on the religious knowledge these intellectuals can demonstrate. The public realm of Islamic knowledge in France is characterized both by the importance of these religious institutions and by the refusal of ordinary Muslims to assume that someone has Islamic credibility just because he (or she) occupies a leadership position in a religious institution.

Private Islamic schools or institutes offer classes on weekends and evenings for Muslims who wish to learn more about their heritage. Those who occupy the principal positions at these schools usually also contribute to public discussions about Islam, for example, by writing in magazines or speaking at gatherings. They may have training in Islamic jurisprudence, but they are evaluated by other Muslims more in terms of their abilities to plausibly represent themselves as learned in Islam matters than in terms of their formal training. In any case, none have the level of formal Islamic education that would earn them a position as a jurist or expert in a Muslim-majority country.<sup>10</sup> Some of these teachers also developed a second, advanced track within their schools that is intended to train future scholars, teachers, and religious officiants for mosques.<sup>11</sup>

Mosques may be directed by persons with or without a high degree of religious training. Some mosque officials occupy entirely administrative roles; such is the case with the heads (*recteurs*) of the Paris “great mosque” and the largest mosque in Lyon, both of whom have the ear of the state and the French media. Other mosque officials also act as imams, as ritual leaders for prayer and other ritual events, as in the case of the large mosque in Paris’s Nineteenth *arrondissement*, the Mosquée Ad-Dawa, and

for major mosques in Marseille and Toulouse. These imam-officials often develop large and stable followings, and sponsor an array of associated activities, including religious courses, neighborhood associations, and women's groups. In a third category are the vast majority of mosques, including the many small ones housed in nondescript settings, where imams come and go, subject to the support of a mosque committee and the will of the regular worshippers. In the smaller mosques something like a free market in imams prevails: someone may appear and give Friday sermons for several weeks or months, until he loses local support. It is the coming and going of these imams, particularly those who have received training in Saudi Arabia and have brought "radical" *salafiste* ideas to France that most concerns both the French state and the more established mosque leaders. Because mosques now have become the basic electoral unit for the national Islamic representative body, the control of mosques has taken on great political importance.

Finally, there are leaders of the many local and national organizations and federations claiming to represent the interests of Muslims. Their legitimacy in the eyes of the state rests on the numbers of followers or affiliated mosques they can claim; their legitimacy in the eyes of those followers has to do with their ability to show themselves as having a political voice in France and to present an attractive version of Islam. A few can claim nationwide standing; most important are the Union des Organisations Islamiques de France (UOIF), and the "great mosque" of Paris, which functions as an umbrella organization as well as a mosque. The Paris mosque is controlled by Algeria, although it also receives Saudi funds. The UOIF leadership comes from Morocco and to a lesser extent Tunisia and Algeria. The popular legitimacy of the UOIF lies less in its political role than in its success in sponsoring the annual "Islamic fair" north of Paris at which are displayed books, videos, and clothing, and at which speak religious authorities from throughout the world (Bowen 2004).

A very few Muslim public intellectuals operate in a free-floating way, seeking financial support where they can find it. The best known speaker on Islam in Europe, Tariq Ramadan, derives his authority from his personal gifts at speaking to the social concerns of everyday Muslims, while drawing on the intellectual and to some extent political legacy of his grandfather, Hassan al-Banna, a founder of the Muslim Brotherhood. Ramadan delights audiences by cutting to the chase: urging Muslims to get involved in schools, neighborhoods, and elections. In 2003, his argument that one can be completely Muslim and European also has earned him the suspicion of an increasingly secularist and unified French media. And yet even Ramadan's success proves the rule concerning the importance of religious and social institutions to the new Muslim public intel-

lectuals, in that he has benefited from the wide promulgation of his audio- and videocassettes through the Tawhid publishing network and the local organizing activities of his several support groups, especially Présence Musulmane in the Paris region.

The ordinary Muslims who attend lectures, listen to cassettes, or ask advice of these public intellectuals are preoccupied by the question with which I began this chapter, reformulated for the individual Muslim: How should I live my life in France so as to not violate Islamic norms? Must I wear a head scarf in school? How should I find a spouse? Is it accepted to work at a bank, to eat in a non-Muslim home, to perform the sacrifice by sending money to Algeria? Precisely because the norms of Islam can no longer be taken for granted, because each individual both can and must make choices, ordinary Muslims are demanding that public intellectuals give them guidance. In order to offer that individual guidance, however, Muslim intellectuals in France are themselves searching, and debating, about the directions and limits of Islamic normativity in a secular, pluralist society.

#### REWORKING FIQH TO FIT FRANCE

In their writings and public discussions on normative questions, Muslim intellectuals in France have followed one of two broad two types of reasoning: one that starts from the traditions of practical jurisprudence (*fiqh*), and another that seeks to ground Islam on general principles. As I will discuss below, this division is not specific to France or to Europe; indeed, parallel discussions are to be found throughout the Islamic world. However, these lines of reasoning take on socially specific values in the French context, as the example below illustrates.

One of the more pressing questions for Muslims who are planning to reside permanently in Europe is whether they may take out loans at interest to purchase homes. The Islamic prohibition against lending or borrowing at interest would seem to prevent them from so doing, but in the late 1990s some Muslims living in Europe put the question to the European Council for Fatwa and Research, a collection of jurists of various nationalities who now reside in Europe.<sup>12</sup> The council is led by the highly influential Egyptian jurist Sheikh Yûsuf al-Qardâwî, who lives in Qatar. In 1999, the council responded to the question in the form of a *fatwâ*, a nonbinding legal opinion issued by a qualified person or group. The jurists stressed that the prohibition on usury does mean that Muslims everywhere should take steps to avoid borrowing from banks that charge interest, and should devise alternative ways of financing homes, such as paying more than the stated price but in installments. However, if

Muslims in Europe could not practice such alternatives, then they could take out a mortgage for a first house.

In their argument the jurists cited two considerations. First, the doctrine of extreme necessity (*darurat*) allows Muslims to do what otherwise is forbidden under compulsion or necessity. Why is it a necessity to own a house? Renting keeps the Muslim in a state of uncertainty and financial insecurity, stated the council. Owning a house allows Muslims to settle in close proximity to a mosque, and to modify their house to accommodate religious needs. Moreover, Muslims living in Europe had reported to the council that mortgage payments were equal to or lower than rents. The jurists also referred to the idea that while in non-Muslim countries, Muslims may make contracts that violate Islamic law. In support of this argument they cited the opinions of past jurists who belonged to two of the traditional schools of Sunni legal interpretation, the Hanafî and the Hanbalî.<sup>13</sup> Muslims cannot change the institutions that dominate life in their host countries, stated the council members, and thus Muslims are not responsible for the existence of an interest-based financial system. If they were forbidden to benefit from banking institutions, then Islam would have weakened them, a result that would contradict the principle that Islam should benefit Muslims.

The ruling did not change the traditional prohibition of lending at interest, but exempted Muslims living in Europe from the prohibition because of a combination of empirical circumstances: the importance of owning a house, the high level of rents, and the absence of viable alternatives. These circumstances allow the jurists to apply the principles that necessity allows for exemption, and that Muslims may use otherwise invalid financial instruments when they live in “non-Islamic countries.” The ruling generated considerable interest among Muslims living in Paris, even though many of them either were not in a financial position to apply for a bank loan or, because they were in Europe only for a brief period of study, would probably return to their home country to seek work and raise a family. Muslims found the ruling important because it implied that Muslims in Europe could legitimately create a new set of Islamic rules, valid only in Europe. This heady possibility excited some and disconcerted others.

In 2001 and 2002 I sought the opinions of Islamic scholars in France on the ruling. I began with one of the jurists making up the European Council, Dr. Ahmed Jaballah, who now is recognized as the chief jurist for the UOIF. Jaballah explained that the council decided that Muslims could best provide for their children by moving out of poor neighborhoods and buying houses. “The only way to improve family life is to move out, and the loan helps them do that. But many in the Muslim

world objected to the fatwa because it approved interest. They do not understand what social life is like here.” Later the same day, I attended Jaballah’s evening class on *fiqh*. He directs and teaches at the Paris branch of the Institut Européen des Sciences Humaines, an evening school for Muslim men and women sponsored by the UOIF. The school is located in Saint Denis, an easy train ride from Paris. That evening, Jaballah emphasized the flexibility of the shari’a. Islam is “valid for all places and times,” he explained (writing out the phrase in Arabic), but it is also adaptable to all contexts. There are universal elements and those which we change. Most things are neither prescribed nor proscribed, thus they are in the large domain of *le licite*, the permitted, which in his model constituted a legal vacuum. He drew a circle, with a shaded portion being those acts for which there are texts, and the much larger remainder being that vast area of “le licite.”

This general approach to understanding Islamic norms emphasizes the place within Islam for creativity. However, other Muslim scholars were opposed to the ruling precisely because it stifled creativity among Muslims. Hichem El Arafa is the director of another school in the Paris region, CERI, the Centre d’Études et de Recherches sur l’Islam (formerly the Institut des Études Islamique de Paris), also located in Saint Denis. He was asked frequently to speak about the council’s ruling. “Everyone had heard about it; if you played ‘micro on the sidewalk’ and asked people coming out of a mosque if they had heard of it [the fatwa] they would have. So they asked me about it.” [JB: And were you opposed?] “I am not entirely against it, but I wanted to consider other arguments. I think that it does not lead to creativity in thinking about these issues. For example, the few experiments we do have in Islamic banking, we would not have had them if Muhammad ‘Abduh [the important late-nineteenth-century reformer] had said that you did not need to come up with something new. And the experimentation is good, many fail and some succeed and we have new institutions” (interview 2001). In his classes on *fiqh* (which I have attended beginning in 2001), El Arafa stresses the importance of looking for the consensus of Islamic scholars, *ulamâ*, in deciding on a difficult question, an approach that in this case leads him to remain on the side of the majority of Muslim scholars in the world who oppose these concessions to banks and mortgages.

Echoing El Arafa’s pragmatic arguments were those proposed by Dhaou Meskine, a scholar who also runs an evening and weekend school, “La Réussite,” in Aubervilliers, north of Paris and east of Saint Denis. “There are too many families in France who live in debt,” he said, “and four million who have been unable to repay their debts.” He went on to explain that there are other, creative ways of obtaining money, such

as repaying the seller of the house gradually, perhaps at a higher price, and that he had successfully experimented with such arrangements. Meskine also objected to the very idea of different laws for different places: “Syeikh Qardâwî says that interest in Europe is acceptable because Europe is not a Muslim land. But laws must be universal: if it is forbidden to steal, or lie, or falsify papers, or to make illegal marriages in Muslim lands, then it is also the case for Muslims living in Europe, in the “*dâr al-‘ahd*,” land of treaty. That is the nature of religion; it is intended to apply everywhere” (interview 2001).

Although they all agreed that statements about Islamic norms should be based on jurisprudential reasoning, these scholars emphasized not the legal arguments but the socially pragmatic ones. What would be the social consequences of permitting mortgages or forbidding them? Some hold that bank mortgage gives Muslims the ability to realize their duties to their families, a positive value in Islam. Others counter that retaining the prohibition leads to fruitful experimentation and maintains the moral power of the law. For someone such as Dhaou Meskine, who has lived through years of difficult negotiations with a left-wing local government, many of the problems faced by Muslims come from their not following the rules that are common to Islamic law and French state law.

The claim that there could be distinct Islamic norms for Europeans draws on an old debate in Islamic jurisprudence as to whether differing social conditions justify creating new or different Islamic rules. In the early centuries of Islam scholars developed a distinction between two realms, the *dâr al-islâm*, or abode of Islam, versus the *dâr al-harb*, or abode of war. The former included the countries ruled under Islamic principles; the latter referred to all other places, where, presumably, Muslims would not be free to worship. Today, many Muslims find discomfort in this way of viewing the world. How is one to define “Muslim societies,” the *dâr al-islam*? Does one look to the correctness of the government, the piety of the people, or simply the fact that most people living in the country profess Islam as their religion? Is a majority-Muslim country whose government represses its people and prevents the free expression of religious ideas to be considered part of *dâr al-islâm*? Conversely, why should countries not governed by Islamic laws but where Muslims are free to worship be considered as belonging to an “abode of war?”

Some Muslims have proposed alternatives. Referring to the protection given to religious minorities by international law, some scholars have proposed *dâr al-‘ahd*, “abode of treaty,” as a better way of designating non-Islamic states that offer religious freedom. Others have proposed *dâr al-da‘wa*, “abode of predication,” or *dâr ash-shahâda*, “abode of witness,” emphasizing the possibilities open to Muslims in these lands (Ramadan 2002).

## REASONING FROM ISLAMIC PRINCIPLES

The range of alternative interpretations discussed above remains quite narrow, and the accommodations made to European social conditions remain negative ones, under which one does (or does not) allow an exemption to an otherwise universally valid rule. A second, quite different way of adapting Islamic norms to European social life is to shift focus from rules to principles or general ethical values. This shift leads some Muslim scholars to ask whether a positive Islamic value can be accorded features of French, and more broadly European, social life. Should Muslims consider certain French institutions to be valuable in Islamic terms, to provide legitimate answers to problems of social life? Perhaps these institutions provide moral and legal equivalents of Islamic institutions. So arguing would require emphasizing the general meaning or intent of an Islamic rule rather than the social form that a rule has taken in what are considered as “Muslim countries.”

Approaching Islamic norms in this way is hardly unique to Europe; throughout the Muslim world, scholars interested in reforming Islamic law often have based their arguments on claims about the principles or general intentions behind Islamic rules. Of continuing importance to modern debates is the work of the fourteenth-century scholar al-Shatibi, who distinguished between the timeless principles, *maqâsid*, found in the Qur’ân, and the historically changing products of jurisprudence (Masud 1977).<sup>14</sup> In Indonesia, generations of legal scholars and historians have argued that one must separate the Arab cultural content of Islamic law from the universal principles contained in the Qur’ân and *hadîth* (Bowen 2003b).

In Europe, scholars who take this approach often criticize the approach taken by the Council of Qardâwî as too unimaginative, overly trapped in an old style of *fiqh*. Tariq Ramadan, for example, considers the council as engaging in a juristic *bricolage*, an effort to lighten *fiqh* without rethinking it in European terms. Ramadan agrees with Meskine that *fiqh* should be universal, but he would locate the universal dimension at the level of general principles.<sup>15</sup> Consider, for example, Ramadan’s approach to the question of marriages performed according to European law. Many Muslims in Europe consider marriages to be religiously valid only if performed in a private, “Muslim” context, after the legal marriage has been performed at city hall. For Ramadan, thinking in this way is to preserve the traditional forms of marriage without examining the nature of marriage itself, which is a contract. “A civil marriage already is a Muslim marriage, I think, because it is a contract, and that is what a Muslim marriage is.” More generally, the European law of contracts corresponds to the Islamic law of contracts, and Muslims are just as obliged to respect

contracts with non-Muslims as with Muslims; “that is a universal element of *fiqh*, valid anywhere. If we take this step then we can accept much of European law” (interview, 2001).

A similar approach, but with a slightly different conceptual base, is taken by the director of the Bordeaux mosque, Tareq Oubrou. In an innovative interpretation of the basic structure of Islamic normativity, Oubrou distinguishes between obligatory ritual (*ibâdât*) on the one hand, and social norms (*mu‘âmalât*) on the other. The former does not change, but the latter may be realized either as law (*droit*) or as ethics, depending on the political context within which one lives. In a country with Islamic law and social institutions, social norms are realized as law. In countries such as France, where such realization is impossible, Muslims must “ethicize” these norms. He offered an example: “If a woman comes to me and says, ‘My husband beats me; do I have the right to ask for a divorce,’ I say yes, divorce; and when the judge pronounces the divorce they are divorced, ethically speaking, religiously speaking. So we ‘ethicize’ the Islamic law on divorce, same values, but we choose the idea from one or another of the legal schools that is more subtle, for example from the Mâliki, or another, which ever can best respond to the spirit of the *shari‘a* and also to the society into which Muslims integrate sociologically and anthropologically in French citizenship” (interview, 2002).

This search for general principles as a bridge across cultural and legal divides sometimes is developed as the study of the “reasons, objectives, goals” of the sacred texts, the *maqâsid* of the Qur’ân. Scholars such as Oubrou suggest the idea of a hierarchy or priority of obligations and norms, and ask whether we may discard certain lower-order obligations in order to better accomplish higher-order ones. Oubrou has applied this approach to a range of questions. For example, he (2000) has argued that a Muslim may eat meat whether or not he or she knows that it was killed according to Islamic procedures, because the purpose of the dietary rules were those of health and hygiene. “Why does Islam refuse to eat meat that has not been cleansed of its blood? Precisely because the blood contains unhealthy germs” (2000, 43). If one is assured that a butcher is an honest person and follows health rules, then the meat is acceptable.

This second approach to norms is hotly contested by those urging continued reliance on the traditions of *fiqh*. For example, from their positions at the University of Damascus, Sheikh Ramadân al-Boutî and his son, Tawfik al-Boutî, condemn roundly the idea of an Islamic law based either on the special conditions confronting Muslim minorities in Europe or on the principles of the Qur’ân, which they call “this new Islamic ‘jurisprudence’ that has never been a part of Islamic law.”<sup>16</sup>

## THE FUTURE OF ISLAMIC NORMATIVE REASONING IN FRANCE

The development of one or more distinctive French, or European, approaches to normativity is at its beginning. I believe that the particular form of political culture in each country will continue to shape Muslims' responses to specific social problems. For example, in France the taken-for-granted importance of the central state in regulating social life has led Muslims to automatically turn to Paris to demand assistance in obtaining *halâl* food, ensuring safe travel to Mecca, creating religious schools, and so forth.

Despite the strong mutual suspicions professed by the many associations and public figures in France, most have supported, in principle, the efforts to create a national Islamic body. That the state would have the right and the obligation to "organize Muslims" is accepted by most Muslim public intellectuals. This acceptance will continue to shape the way scholars carry out normative innovation, by exerting pressure for nationwide, uniform decisions to be taken about issues affecting Muslims, and pressure for these decisions to conform to French social norms. Such pressures are less felt in, say, Britain, and a greater range of normative positions are publicly promoted. (One cannot imagine a French Hizb ut-Tahrîr publicly urging all Muslims in France to refuse all participation in politics, as their British counterpart did at the 2002 assembly I attended.) Put another way, Muslims living in France experience more political and social pressure to "scale up" their institutions to a national level than do Muslims living in Britain (or, probably, Muslims living in any other European country).

The pressure for national uniformity makes it quite difficult to propose that Muslims in France should follow a particular Islamic legal school, or even that a subgroup should do so. It also lends support to those scholars who urge Muslims to draw on several legal schools or to employ an approach to normativity that is not confined to the traditional methods of jurisprudence. If there is a consensus among the new generation of teachers, it is on this point. Dhaou Meskine, who was trained in Tunisia where the Mâliki legal school is followed, described the situation: "In *fiqh* there are legal schools, and in the Muslim world each country follows one, but there is none for France, so you have to teach all of them, even though that is not a very good solution. You cannot just choose one. So, we leave it up to the teacher. He can either choose one school and then also teach some of the comparisons, or teach *fiqh* based on the *hadith*. Last year we had a Hanbalî teacher, this year we had a Mâliki one" (interview, 2002).

In his plans to create a new institute to train religious scholars, Tareq Oubrou proposes a similar approach: "We will teach them law as well as the other topics; law will include French law. It is eclectic, with sociology,

theology, law, with the hope that the imam will have some classical knowledge, but that he will have a very specific orientation. We have no specific books or references; we work on the texts, practical work, looking at all the possible sources, Hanafî, Hanbalî, etc., and also knowing French law.”

But how does a jurist or other scholar then choose among the several legal schools? Oubrou’s answer to this question reveals the particular effects of the pluralism in social institutions on normative reasoning. This pluralism introduces new constraints, in this case those of French social norms and law, and possibilities, into jurisprudence. Oubrou reasons by beginning with the norms of French culture and requirements of French law, and then looks for the Islamic legal alternative that offers the best fit with these parameters. In many cases it is the Hanafî or Mâliki school that meets this conditions, and the Hanbalî legal school that is the strictest (the Saudi Arabian jurists follow that school), but Oubrou pointed out that sometimes this is not the case: “Sometimes there are zones in Hanbalî law that are more supple than in Hanafî or Mâliki law, for example on polygamy. Mâliki law says the husband has to receive the permission of the first wife [to take a second], but the Hanbalî position is by way of the needs of society (*maslahat*), that if the culture is monogamous, then so is the shari’a on this point. I always say, if the first wife accepts the second, then why should I interfere? We accept homosexuality, polyandry, why not a man and a woman? It is scandalous.”

Oubrou’s argument on this point exemplifies what we might call the bidirectional reasoning pursued by many of these scholars. He and others seek to develop an Islamic normative base for a way of life that would be in accord with French social norms and French law. Thus, if the broad society is monogamous, then Islamic norms also point toward monogamy as the appropriate marital form. But he also insists that Islamic norms might on some counts improve on French ones. If French men can have mistresses as well as wives, as do many prominent public figures, then would it not be better to legalize these relationships by permitting polygamy?

Within what might become a consensus there are, however, some important tensions. One lies between those scholars who identify with North African legal traditions and those who advocate looking directly at the Qur’ân and *hadîth*. This tension is not as sharp as that which, in some majority Muslim countries, has opposed advocates of *taqlîd*, following a specific madhhab, to advocates of a direct reinterpretation, an *ijtihâd*, based on Qur’ân and hadîth. In contemporary France, none of the public scholars and teachers can advocate *taqlîd*, for the reasons pointed out by Meskine. Nor is it possible to reject legal schools per se, because those schools have become part of the background heritage of many immigrants, because the foreign states that provide financial assistance would not look

kindly upon such rejection, and because those French scholars who did have training in jurisprudence generally were trained within a *madhhab*.<sup>17</sup> The difference among scholars is more one of relative emphasis, as I will try to convey with some excerpts from interviews.

Dhaou Meskine, for example, prefers to remain within a *madhhab*, and complains that those teachers who teach only from Qur'ân and *hadîth*, and those who teach the stricter Hanbalî *madhhab*, are less likely to be criticized by younger Muslims than are those who teach from within the more "flexible" Hanafî or Mâliki schools (the fourth, the Shâfi'î, is not taught by North African Muslims): "The problem is that if you teach Hanbalî or salafite [meaning strict, approximately Hanbalî] approaches to *fiqh*, it is all right, but if you teach Mâliki or Hanafî, people object. There is a wind from the Orient bringing texts and television programs from Saudi Arabia, all of which promote Hanbalî or worse, all of which is quite different from Maghrébin *fiqh*. The Medina and Meccan scholars are dominant, even in the style of reading the Qur'ân. The worst approach is in the book of *fiqh* by al-Jazaïri, who was born in Algeria but then moved to Saudi Arabia. [JB: Is he a Hanbalî?] He is worse than Hanbalî, because he has to show that he is even more strict than the Arabian scholars, as he is from elsewhere."

His former co-teacher of *fiqh* classes (until the early 1990s) and fellow Tunisian, Hichem El Arafa, criticized Meskine's preference for Mâliki texts, and preferred the *fiqh* book by al-Jazaïri, as "not good but better than Meskine's preferred text." El Arafa's method of teaching *fiqh* (as I have followed it in his courses in Saint Denis) is to base instruction directly on Qur'ân and *hadîth*, as do al-Qardâwî and al-Jazaïri. He studied in Saudi Arabia, and although he describes ways of thought there as very rigid, this experience may have made teachings "from the Orient" more palatable to him than to Meskine.

And yet others find that these disagreements ignore the larger context of Islamic thought. "We cannot just work with *fatwâ*," argues Tareq Oubrou, "because we have to think not just normatively but in terms of theology, tolerance, the person, the society, liberty and determinism, and ethics. We are required in emergencies to respond to questions about what is harâm and halâl, but we have to carry out a long term effort to rethink what Islam should be in a very secularized society, as France, which is not like in the US. The normative has to respond to what I call the *maqâsid*, the broad vision of Islam, design, objectives; this goes beyond the normative. Ethics are central to Islam. We did not have to undergo what Christianity did to overthrow the power of the Church; it was already people who developed Islam; it is Protestant" (interview 2002). Although in print (Babès and Oubrou 2002) he has been more cautious, insisting on the continued importance of Islamic norms for all

Muslims against a more secularized, one could say Kantian, view, Oubrou's position could lead to a more rationalized and internalized version of Islam than most European Muslim scholars would publicly favor.

In this review of some of the more prominent scholars and teachers active in France today, I have emphasized the positions taken with respect to two distinct, but related, questions. The first question concerns whether different norms should apply either ethically or in some sense legally in different countries. This question is an old one, but it has renewed immediacy as Muslims set out to rethink the proper form of social life in countries of new immigration. It admits of a wide array of responses. Some of these responses, such as those given by Dhaou Meskine, Hichem El-Arafa, and Yûsuf al-Qardâwî on the issue of mortgages, fit into longstanding ways of thinking about Islamic normativity in terms of jurisprudence. One may argue that norms ought to differ in Europe, or that they ought to be the same as in, say, Qatar, but in either case the argument is based on principles of jurisprudential reasoning.

And it is here that the second question arises: Should normative reasoning be carried out in that manner or should it be based entirely on the general values or objectives of the Qur'ân? Tariq Ramadan argues that general principles contained in scripture or in the traditions of *fiqh* often find their equivalents in European social norms or law, and that this equivalence should be the starting point for rethinking normativity. Tareq Oubrou emphasizes the ethical dimension of norms, but his conclusions resemble Ramadan's. Other scholars, especially those based outside Europe, find this way of thinking to be too radical a departure from the traditions of Islamic jurisprudence; the Syrian scholars Ramadan and Tawfik al-Boutî, for example, explicitly take the emphasis on "objectives" to task.

I find that it is the answers to this second question that most fundamentally divide Muslim scholars in Europe—and not only in Europe. Those scholars who emphasize their roots in the traditions of jurisprudential reasoning argue that Muslims, and not only Muslims, have a lot to learn from the traditions of Islamic normative thought. Those scholars who emphasize the points of convergence between European and Islamic traditions argue that Muslims need to creatively and continually adapt their religion to their conditions of social life. These positions inevitably orient their advocates differently: in the first case, toward the classical sources of authoritative Islamic jurisprudence; in the second case, toward other public intellectuals, Muslim and non-Muslim, in Europe and North America. In France, at least, it is this choice of starting point—*fiqh* or France—that provokes the loudest cries of approval or suspicion from Muslims and non-Muslims. For some Muslims, at least, the greatest challenge is to find a way of doing both at the same time, to rhetorically as well as substantively root reasoning in both the traditions of *fiqh* and those of Europe.

## NOTES

1. On the development of the theory of jurisprudence in Islam, see Hallaq 1997, 2001; on the practice of rendering judgments in early modern Muslim societies, see Johansen 1999 and Powers 2002.
2. Many recent works provide overviews of Muslims in Europe. Among the most interesting in English, see the following: Vertovec and Peach 1997, for a collection of studies on processes of adaptation; Nielsen 1999, for an analysis of issues facing Muslims in Europe, with a focus on Britain; Kastoryano 2002, for a comparative study of immigration to France and Germany; and (in French) Roy 1999, for a French view on what Muslims ought to do to become European.
3. See Brubaker 1992 and Kastoryano 2002; this close association has impeded efforts to give nonnational residents the right to vote in local elections.
4. In April 2003, a new body, the Conseil Français du Culte Musulman (CFCM), was organized and charged with coordinating policy regarding the training of imams, the certification of *halal* food, the provisions for Muslims in cemeteries, and other matters.
5. For an extended contrast of Britain and France see Bowen 2003c.
6. On Islam in France see Cesari 1998; Souilamas 2001; and Venel 1999 for interviews with younger Muslims, and Cesari 2002 for a brief English-language article. The somewhat older work by Kepel (1991) retains a great deal of interest for its fine attention to sociological detail.
7. Haut Conseil 2001, 36–39 follows earlier scholars in estimating the number of Muslims at slightly over 4 million but insists that the number of people “of Muslim religion” would be closer to 1 million the rest being “of Muslim culture.” They base their estimate of religious Muslims on surveys concerning how often Muslims pray in mosques. Because the census is not allowed to gather data on “faith,” figures in France always have to do with immigration history and various religious practices as determined by surveys.
8. Contrast the pioneering and thus socially salient role played by “black” West Indian immigrants to Britain (Modood et al. 1997).
9. It is very difficult to generalize about these three populations, since in fact there have been distinct migrations, each involving different socioeconomic segments, from these countries. A group at INED (Institut National des Études Demographiques) is currently developing the relevant analyses. Also shaping these histories are the very different orientations of the three governments. Both Algeria and Morocco have strong, direct presences in France, through local “amicales,” through funding of mosque projects, and through direct negotiations with the French government. Algeria’s relationship is particularly direct because of its role in directing the Paris mosque.
10. Tunisians play a preponderant role as teachers for reasons not yet well analyzed, but which probably have to do with the suppression by the Tunisian government of Islamic education, and the fact that far more Moroccans and Algerians came as unskilled workers to France.
11. Examples of teachers developing this dual track are Tareq Oubrou in Bordeaux,

- Ahmed Jaballah and Hichem El Arafa in Saint Denis, and Dhaou Meskine in Aubervilliers, all mentioned below.
12. A French-language collection of the council's *fatwâs* recently was published (Conseil 2002); the *fatwa* discussed here appears on the council's Web site in the list of resolutions taken at the 1999 session: [http://www.fioe.org/ask\\_the\\_scholar/fourth%20statement.htm](http://www.fioe.org/ask_the_scholar/fourth%20statement.htm).
  13. On the early modern Hanafi position, see Abou El Fadl 1994, 173–74.
  14. As a rough and ready indication of continued importance, the Web site islamonline.net has nine *fatwas* in its current *fatwa* bank that refer to al-Shatibi as an authority.
  15. See Ramadan 1998 for his most extensive analysis of the heritage of Islam.
  16. Al-Bouti 2001; I have seen the two al-Boutîs, at different times, make this argument in conferences at a major Paris mosque; see Bowen 2004.
  17. It is thus not accidental that the teachers in France who place more emphasis on questioning the assumptions behind jurisprudence, such as Tareq Oubrou and Tariq Ramadan, were not themselves trained as jurists, whereas teachers who emphasize working within legal schools to the extent possible, such as Dhaou Meskine and Ahmad Jaballah, did have such training.

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