

UNIVERSITY OF CALIFORNIA

Los Angeles

Reaching from Within: Establishing a New Islamic Jurisprudence for Muslim

Minorities in the West

(The Discourse of *Fiqh al-Aqalliyyāt*)

A dissertation submitted in partial satisfaction of the requirements for the degree

Doctor of Philosophy in Islamic Studies

by

Said Fares Ahmed Hassan

2011

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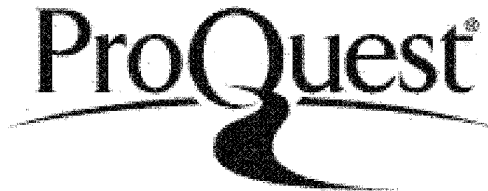
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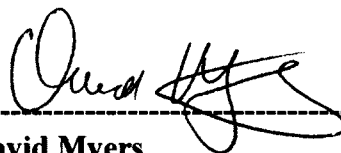
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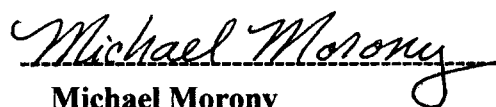
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Dedication

For the soul of my father, my first teacher.

For Nora, Omar and Ali

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Notes on Transliteration of Arabic Words

Transliteration Table

Ar. Letter	Eng. symbol	Ar. Letter	Eng. symbol
أ	'	ب	b
ت	t	ث	th
ج	j	ح	ḥ
خ	kh	د	d
ذ	dh	ر	r
ز	z	س	s
ش	sh	ص	ṣ/Ṣ
ض	ḍ/Ḍ	ط	t/Ṭ
ظ	ẓ/Ẓ	ع	'
غ	gh	ف	f
ق	q	ك	k
ل	l	م	m
ن	n	ه	h
و	w	ي	y

Short Vowels:

Fat-ha: a

Kasrah: i

Ḍammah: u

Long Vowels:

أ: ā

و: ū

ي: ī

Notes:

- The transliteration table above is used throughout this dissertation to transliterate Arabic words. However, it is departed from in cases where specific transliterations have come into general use such as Qur'an, Islam, Hadith, Shari'ah, fatwa, imam, mufti and jihad (instead of Qur'ān, Islām, Ḥadīth, Sharī'ah, fatwā, imām, muftī and jihād). To pluralize such words, an (s) is added to the singular (e.g. pl. of fatwa is fatwas)
- Unless it comes at the beginning of the sentence, all transliterated words are lower case. Exceptions to this rule are the following words: Qur'an, Islam, Hadith, Shari'ah and Ummah.

- In case of quoting other works, I followed the transcription system adopted by the authors of the quoted work.
- ء (hamza) in initial position is not transliterated as (').
- ا, و, and ي are not transliterated when used to support ء (hamza).
- ا (alif maqṣūrā) is transliterated as /ā/.
- Final consonant ي is represented as /y/, even if it has a shaddāh.
- ه (tā' marbūṭa) is transliterated as /h/, but if it is part of a genitive construct, it is transliterated as /t/.
- Final inflections are not transliterated.
- Inseparable prepositions, conjunctions and other prefixes are connected with what follows with a hyphen.
- (-) is used to connect the definite article ال with the following word. In bibliography, ال is not counted.
- (-) is used to separate two letters representing two distinct consonantal sounds, when the combination may be read otherwise as a digraph.
- Transliteration of the word "Allah" loses the first "A" when connected to other words as in /'Abdullah/.
- The combination of عبد ال is transliterated as (Abdel-).
- ابن and بن are both transliterated as /ibn/.

Acknowledgements

In order to survive the strenuous task of writing a dissertation, one needs an inspiration who always lightens the fading lights of hope and recharges the soul with more desire for knowledge. I found this inspiration in my mentor and Committee Chair Prof. Khaled Abou El Fadl. Every time we talk about the research, I feel how small one is in the endless ocean of knowledge. At the same time, he stimulates my spirit, and challenges my thinking and leaves me with more carving to knowledge. Prof. Abou El Fadl has served in many obvious and subtle ways to the development of my scholarship to the extent that words would fail me to express my thanks to him. I must also thank Prof. David Myers for his always welcoming me and willingness to spend long hours to discuss complex texts. Prof. Myers' astute comments and careful prodding have always enriched my research and stimulated my thinking. He has been an incisive reader and encouraged me to look at things from different perspectives. The presence of Prof. Michael Morony on my committee has always proven to be of great value. He has been reading my manuscript closely and provided great advice. Prof. Roger Waldinger who also served on my committee was also a great source of support and encouragement. I have benefited immensely from his class on international migration and from his comments on my paper on Muslim minorities in the United States.

A dissertation is never the work of one individual. I must thank Prof. M. Abu Laylah, Prof. P.S. van Koningsveld and Prof. Khaled Masud for guiding me through my MA and MPhil studies not only to realize the significance of the research but also to provide wisdom, expertise, sources and unwavering support and trust. This work has also

benefited from the precious advice of numerous individuals and friends. Special thanks should be extended for Father Joe Scott, Emily Richardson, and Omar Bahgat for editing parts of the dissertation. I should also thank Liladhar Pendse of UCLA library for his friendship and help with library materials and questions. Thanks should be also extended to Magda Yamamoto, the Islamic Studies Program Academic Counselor for facilitating all the paper work needed throughout course of my stay at UCLA. I should also thank Social Science Research Council for their proposal writing fellowship that allowed me to develop strong proposal and collect valuable data for my research.

The support that one receives from his family is likely to be taken for granted, but it is also the most critical of all. I must express my heartfelt thanks for my ever-supportive family from my side and from my wife's side. My gratitude is also to my sons, Omar and Ali, for their patience, love and smiles that were always there to alleviate the burden of the day. Words are not enough to convey my gratitude for my 'better half', Nora, for her unwavering love, unconditional support, and confidence in me. THANK YOU.

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PUBLICATIONS AND PRESENTATIONS

Abdelrahman (Hassan), Said (2010), "Fatwa ", in *The Encyclopedia of Muslim American History*, edited by Edward E Curtis IV, Facts on File, 190-191.

-----, "Dietary Laws ", in *The Encyclopedia of Muslim American History*, edited by Edward E Curtis IV, Facts on File, 2010, pp. 145-148.

-----, "Khaled Abou El Fadl ", in *The Encyclopedia of Muslim American History*, edited by Edward E Curtis IV, Facts on File, 2010, pp. 9-10.

-----, "Hassan Hathout ", in *The Encyclopedia of Muslim American History*, edited by Edward E Curtis IV, Facts on File, 2010, pp.233-234.

-----, "Maher Hathout ", in *The Encyclopedia of Muslim American History*, edited by Edward E Curtis IV, Facts on File, 2010, pp. 234-235.

----- (March 2011), Dar al-Islam or Dar al-Harb: Re-evaluation of World Division in the Literature of the Jurisprudence of Muslim Minority. Paper presented at the Virginia Military Institute Conference "East Meets West", Lexington, Virginia.

----- (April 2009), Eastern *Fatwa*, Western Followers: Redefining Islamic Law for Muslim Minorities. Paper presented at the Duke-UNC Graduate Islamic Studies Conference, North Carolina.

----- (March 2009), Jewish question/Muslim question: Minority Cultures and the Tensions of Modernity and Secularization. Discussion Panel with Prof. David Myers, 5th Annual Posen Foundation Conference, California.

ABSTRACT OF DISSERTATION

Reaching from Within:

Establishing a New Islamic Jurisprudence for Muslim Minorities in the West

(The Discourse of *Fiqh al-Aqalliyyāt*)

By

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Doctor of Philosophy in Islamic Studies

University of California, Los Angeles, 2011

Professor Khaled Abou El Fadl, Chair

This dissertation examines the development of an internal debate among Muslim minorities living in Western Europe and North America in contemporary time to establish a specific form of Islamic jurisprudence, *fiqh al-aqalliyyāt*, that strikes a balance between Muslim's religious commitments and their civic identity as citizens in Western liberal states. Three key trends are identified in this debate. The puritan literalist trend, which is represented by the Wahhābī discourse, argues that Muslims should not reside in a non-Muslim polity. Moreover, Muslim minorities should disassociate themselves from non-Muslims and confine their loyalty to their fellow Muslims. The traditionalist trend, which is represented by the discourse of al-Azhar scholars, maintains that modern Muslim minorities can live in non-Muslim lands but they require exceptional rules and conditional *fatwas* to meet the requirement of their place and time. The renewal trend

asserts the need for a new category of jurisprudence with a new methodological framework that normalizes and empowers Muslim minority life in non-Muslim society.

The study delineates these trends in detail and investigates their background, development and current conditions with special focus on the renewal trend and the discourse of *fiqh al-aqalliyyāt*, since it has become the prevailing trend in the last decade. The study explores the jurists and institutions behind the production of this *fiqh* and examines factors that account for its production, dissemination and limitations. In particular, the study investigates the studies and thought of the pioneers of this discourse, *sheikh* Yūsuf al-Qaraḏāwī and Dr. Ṭaha Jābir al-‘Alwānī, and explains the connection between their discourse on *fiqh al-aqalliyyāt* and the discourse of legal reform of Muslim tradition in modern times. To move from theory to practice, the study presents a case study of how the discourse of *fiqh al-aqalliyyat* re-examined notions of world dichotomy to *dār al-Islām* and *dār al-ḥarb*, loyalty and citizenship.

Introduction

Over the centuries, Islamic Law has developed a complex framework of theories and practices outlining how to interact with non-Muslim polities. Due to various religious, social, and political conditions, this framework became essentialized into a number of doctrines and beliefs that evolved around two basic principles: 1) Muslims should not reside in or immigrate to non-Muslim polities because of lack of political authority as they are governed by the non-Muslims and the non-Islamic nature of the laws of these lands; 2) Muslims should not declare loyalty to or show solidarity with non-Muslim polities.

Qur'anic verses, prophetic traditions, historical incidents, and legal arguments have been utilized to support these two principles, to the extent that they have become part of the Muslim frame of reference and legal doctrines. The contextual realities that produced these two *medieval* legal principles were forgotten or ignored as Muslim political conditions became deteriorated during the last few centuries, and notions of legal creativity was replaced by notions of *taqlīd* and puritan ideology. Gradually these legal arguments turned into dogmatic positions. Some of these dogmatic positions include: migration from *dār al-kufr* to *dār al-Islām* being a permanent religious obligation for believers; Muslims not being permitted to be subjects to non-Muslim laws or to live in a sinful environment; and non-Muslims not being permitted to dominate over Muslims' affairs. In other words, a doctrine of non-immigration/non-residence in a non-Muslim polity was established. To further complicate the debate, the doctrine of non-

immigration became part of the *jihād* doctrine against non-Muslim enemies: a Muslim should perform *jihād* against non-Muslim territories rather than immigrate to them. Along with these legal positions, ethical obligations were also introduced into the debate of Muslim–non-Muslim interaction to the effect that Muslims, even those living temporarily in non-Muslim territories, are not allowed to contribute to the advancement of or be beneficial to their non-Muslim host territories and their support should be confined to the *ummah* of Muslims.

Consecutive waves of Muslim migration to modern Western liberal democracies during the twentieth century gradually challenged Muslims' traditional conventions concerning these doctrines. Immigrant Muslims gradually started to question internally, i.e. among themselves, the role and function of Islamic Law in their lives in light of the political and economic—and even religious and philosophical—changes in the “modern” world. This internal debate did not happen suddenly or gain momentum in a short period of time. At first, early immigrants were concerned with questions/*fatwas* pertaining to *ḥalāl* standards (e.g. whether certain food ingredients are permitted according to Islamic law) and the *hilāl* (moon-sighting, especially in the months of Ramadan and Shawwāl). When these questions were raised for the first time, necessity-based answers were given.¹ By the 1970s and 1980s, immigrants responded to these concerns with more practical solutions. They turned to institution-building: the *ḥalāl* became a business venture where

¹ The *fatwas* issued relied on the principle of necessity as Muslims do not have the power to execute the proper rulings of *Shari'ah*. For example, Muslims may eat meat that was not slaughtered in a proper Islamic way or consider the moon sighting of another Muslim country out of necessity since they do not have the means or the power to do that themselves.

Islamic-permitted food ingredients were manufactured, imported, or sold, and the *hilāl* became the concern of the Islamic centers that focused primarily on community religious observance. These centers started to assign people to observe the moon-sighting themselves and then inform their communities of the result. In so doing, Muslims were trying to add an 'Islamic' dimension to their lives. Though the meaning and scope of the word 'Islamic' varies from one group to another, the aspiration remains the same: *to lead an Islamic life.*

This conjecture has led some Muslims to be faced with the dilemma that submission to their belief requires them to abide by the *Shari'ah*, while at the same time, as alien residents or citizens, they are required to adhere to the laws of their state that may contradict their beliefs. In order to resolve such a dilemma and to respond to such a critical situation, Muslims tend to resort to the advice of an *imam* or a *mufti*. Although the advice of such personnel is not binding, it is used to guide, comfort, and justify what is happening on the ground. Although some of these questions are not new and have long been debated in Islamic jurisprudence, the new position and experience of Muslims in the modern nation-states of the West have obliged *muftis* and *imams* to reconsider the traditional *fatwas* and assure their application and relevance to the present situation.²

² Yusuf Talal DeLorenzo, "The *fiqh* Councilor in North America," in *Muslims on the Americanization Path*, ed. Yvonne Haddad & John Esposito (Oxford: Oxford University Press, 2000), 66-67. Some of these old questions that have been raised for reconsideration include: is it permissible to stay in a non-Muslim land, to participate in non-Muslim festivals, to take part in their politics, to eat their food, etc? Along with these traditional questions, there were new ones that require more subtle investigations. Examples of these would include questions like: is it allowed to donate one's blood to a non-Muslim fellow? Is one allowed to join a non-Muslim polity? Is it permissible to join a non-Muslim army?

The particularities of the new context prompted Muslim scholars to argue for the establishment of a new category of *fiqh* known as "*fiqh al-aqalliyyāt*"³ (jurisprudence of minorities), "*fiqh al-mughtaribīn*"⁴ (jurisprudence of the expatriates), "American *Fiqh*",⁵ or "*European Islam*".⁶ One source refers to it as "*Al-Fiqh al-Siyāsī li-al-Aqalliyyāt al-Islāmiyyah*" (the systematic jurisprudence of Muslim minorities).⁷ However, these calls to establish/develop a *fiqh* for Muslim minorities, which are frequently reiterated in scholarly circles, are actually not intended to create or invent a new kind of *fiqh*. In fact, classical *fiqh* sources have dealt with questions that are quite relevant to Muslims living in non-Muslim territories, though under various titles such as *Nawāzil*⁸ and *Waqā'ī*.⁹ What makes the situation different now is that these calls aim to generate a general framework of objectives, characteristics, and fundamentals of a minority-based *fiqh*, according to which the distinctive traits of each minority and their position in the new land are considered.

³ Al-Qaradāwī, *Fī Fiqh al-Aqalliyyāt al-Muslimah* (Cairo: Dār Al-Shurūq, 2001).

⁴ 'Abd al-Hādī al-Sayyid M. Taqī al-Dīn al-Hakīm, *Al-Fiqh lil-Mughtaribīn* (London: Imam Ali Foundation, 1998).

⁵ Ayad Hilal, *Studies in Usul al-Fiqh* (California: Islamic Cultural Workshop, nd) 150.

⁶ Tariq Ramadan, *To Be a European Muslim* (Leicester: The Islamic Foundation, 2000).

⁷ A title of a book published online. See: <http://www.alwasatparty.com/article-6923.html>

⁸ *Nawāzil*: lit. new incidents; *Nawāzil* denotes certain incidents, religious, social, or political, that befall on Muslims and that have no explicit judgments in the Qur'an and *Sunnah*. The Muslim jurists exerted their efforts to reach an opinion, taking into consideration the time, place and circumstances). See 'Abd al-Nāṣir Abū Al-Baṣāl, "al-Mad-khal ilā *Fiqh* al-Nawāzil," *Dirāsāt Fiqhiyyah fī Qadāyā Tibbiyyah Mu'āshirah*, vol. II (Jordan: Dār al-Nafā'is, 2001).

⁹ Incidents and afflictions

This study examines the development of a specific form of Islamic jurisprudence among Muslim minorities living in Western European and North American liberal democracies. It specifically explores the internal debate among Muslim jurists, as it constitutes an integral part of the development of minority life in the West. This internal debate demonstrates the tension, the aspiration, and the struggle of Muslims of how to accommodate to their new life on terms that are in harmony with their cultural and religious self. The debate seeks to create a theoretical jurisprudential framework that strikes a balance between the Muslim minority as Muslim individuals and their civic identity as citizens in liberal states. This study argues that as Muslim jurists debated over the status of a Muslim minority, they developed three key trends: the puritan-literalist, the traditionalist, and the renewalist. The puritan-literalist trend continues to look at present-day Muslim immigrants through the lens of medieval jurisprudence, ignoring the contextual realities that led medieval jurists to take such positions.¹⁰ This trend argues that Muslim immigrants should not reside outside the abode of Islam without a legitimate reason. Once the purpose of settlement outside of the abode of Islam has been realized, then Muslims should re-emigrate to their Muslim homelands. The traditionlist trend argues that the legal rulings pertaining to Muslim minorities, especially in modern-day conditions, require exceptional rules that are to be maintained as long as they are in the minority. The renewal trend asserts the need for a new category of jurisprudence and a new methodology that generates a framework of objectives, characteristics, and

¹⁰ Calling them literalists does not mean that the medieval jurists were literalists too. Actually they were “contextualists”, in the sense that their positions were based on the political and social setting of their locality. This may explain why they did not espouse one single unified position pertaining to minority questions.

fundamentals of a minority-based *fiqh*, which is to be known as *fiqh al-aqalliyāt*¹¹ (literally, jurisprudence of minorities).

The present study delineates these trends in detail, and investigates their background, development, and current conditions, with special focus on the renewal trend and the discourse of *fiqh al-aqalliyāt*, since it has become the prevailing trend in the last decade. In particular, the present study raises questions about the reasons why Muslim minorities and their *muftis* undertook the task of developing a minority *fiqh*. It explores the jurists and institutions behind the production of this *fiqh*, and examines the factors that account for its production, dissemination, and limitations. It investigates the ways in which this new *fiqh* is justified and contextualized and what it has produced in legal and social terms. It interprets how the development of this *fiqh* is relevant to the process of modernization, accommodation, and identity and how it is connected with the process of (re)defining Islam for—or Islamicizing—Muslim communities living in non-Muslim polities.

Study Focus and Methodology

This study provides a legal historical narrative of *fiqh al-aqalliyāt*. While other researchers have written about specific *fatwas* and case studies, there has been little research done on the history of its legal development—a matter of paramount significance for understanding not only the legal shifts but also the structure, the changes, and the aspirations of the parties involved: the Muslim minority, the non-Muslim

¹¹ *Fiqh al-aqalliyāt* or *fiqh* of minorities or jurisprudence of minority or diasporic jurisprudence, or minority *fiqh* refer to the same thing. They will be used interchangeably in this study.

majority communities; and the jurists involved in reshaping doctrine. *Fiqh al-aqalliyāt* is not a completely new phenomenon; as will become clear throughout this study, it relies heavily on historical legal precedents that date back to the first centuries of Islam. The focus here, however, is on the immediate forerunners of *fiqh al-aqalliyāt* as represented in the legal discourses that emerged from the Saudi *fatwa* committee and the Egyptian al-Azhar institution. The study of these two discourses constitutes chapters one and two. These two trains of thought were chosen for various reasons. Firstly, both were the main source of religious guidance for Muslim minority communities in the West during the early stages of their immigration. Secondly, they represent two different schools of thought, a matter which demonstrates the variety and complexity of the positions to be taken. Thirdly, and most importantly, many of those who contributed to the discourse of *fiqh al-aqalliyāt* had a connection with one of these two schools at one point in their life.

Chapters three and four, which represent the kernel of the original research conducted for this study, examine the thought of the two main contributors, and actual creators, of the discourse of *fiqh al-aqalliyāt*, *Sheikh* Yūsuf al-Qaradāwī¹² and Ṭahā Jābir al-‘Alwanī.¹³ These chapters address questions about the relationship between modernity, reform, and tradition. They also examine how religious knowledge is produced through the negotiation of text and context and the interpretative community of legalists. In these two chapters, one can see the forces and the variables that have been at

¹² Alternative transliteration: Yusuf al-Qaradawi; Yousuf al-Qaradawy.

¹³ Alternative transliterations: Taha Jabir al-Alwani; Taha Jabir al-‘Alawani.

work to ensure the creation of new religious paradigms in order to make Islamic law compatible with non-Muslim polities.

Chapter five discusses the establishment of *fiqh al-aqalliyāt* as a legitimate branch in the Islamic legal corpus. It examines seven studies that were published in the last few years by a number of legal Muslim minds who argue predominantly for the need for a new *fiqh*. The diversity of these studies and the scope of the arguments presented provide enough evidence of the fierce internal debate that this discourse has undergone in order to establish its ground.

Chapter six provides a clear example of how *fiqh al-aqalliyāt* challenged the doctrinal positions of traditional Islamic Law to normalize Muslims' lives in the West and to make them a solid part of their new homes and societies. It discusses questions of the division in the Islamic legal tradition between a Muslim and a non-Muslim sphere, as well matters of citizenship and loyalty to non-Muslims. It demonstrates how debate over these questions made Muslim redefine the role of Islamic Law in the West.

This study argues that *fiqh al-aqalliyāt* is part of and a response to the debate on the function of *Shari'ah* in the West. At the time *fiqh al-aqalliyāt* represents a new stage of the adaptation of *fiqh* to reality, it also provides the Muslim's response to the claim that *Shari'ah* cannot exist in the West because its values are different from those of the West, and hence Muslims are not able to integrate into the fabric of Western societies. *Fiqh al-aqalliyāt* serves to prove that the *Shari'ah* can in fact accommodate and be accommodated in the Western realm. In other words, *Fiqh al-aqalliyāt* provides, at one

level, a political and jurisprudential alternative to the anti-*Shari'ah* attitudes found in the West.

This study examines the Muslim intellectual legal history of a field that explores another stage of the complex Islamic dynamic of religious dogma, interpreted texts and legal institutions. The main methodological tool used in the present study is textual legal analysis, in which the researcher brings together relevant literature with a view to contextualizing, categorizing, and comparing it. The benefit of this methodology is that it demonstrates the tension, the dynamism, and the paradigm shifts in current intellectual, interpretative, and legal communities when compared with earlier intellectual discourses. In addition, a combination of historical analysis and socio-political references will be used in order to situate the current debate in its historical and social context. Such an approach will help to reveal the tension between competing notions such as modernity and tradition. It raises the question of how 'historical' tradition is understood in the language of 'modernity. Is it a form of continuation or disruption, a reinvention or regeneration?

Introductory Issues

Note on Terminology

This study is based on the assumption that there are three main trends involved in the discourse of *fiqh al-aqalliyāt*: the puritan-literalist, the traditionalist and the renewal. Admittedly to classify jurists into categories is problematic. Giving labels often carry loaded connotation that may not be intended by the author or misinterpreted by the

reader. Also in legal discourse, it is hard to categorize jurists, because one jurist can be identified under a certain category, say literalist, in a certain issue while in another his position may belong to a completely different category, say traditionalist. Categorization, however, is a non-avoidable tool for analysis and leads, if done properly, to substantial conclusions. This places burden on the shoulders of the researcher to carefully define his categories. An attempt has been made here to work out the closest labels possible that fit the orientation, ideology and conclusions of the jurists studied in the present study.

The first trend is described as a puritan-literalist, as puritan describes its ideology and literalist describes its legal approach. In calling this trend puritan, I adopt the definition of Khaled Abou El Fadl in which he characterizes puritans as absolutist and uncompromising individuals or groups. He argues that puritans are “intolerant of competing points of view” and consider “pluralist realities to be a form of contamination of the unadulterated truth.”¹⁴ This trend is also literal in the sense that it follows a literal linguistic interpretation of the text without much interest in the context or in the hermeneutics of interpretation. The adherents of this trend do not give much weight to the role of the intellect in the process of *ijtihad*, i.e. extrapolating judgments based on intellect reasoning and knowledge of text and its interpretations. According to them, the text, i.e. Qur’an and *Sunnah*, is closed not only in words but in interpretations.

The traditionalist trend acknowledges the richness of the tradition to the extent it holds that the tradition encompasses all needed answers and guidance. The advocates of this

¹⁴ Khaled Abou El Fadl, *The Great Theft. Wrestling Islam from the Extremists* (San Francisco: HarperOne, 2005), 18.

trend, however, distinguish between the tradition's different sources: text, legal reasoning, customs, etc. They also appreciate the urgencies of time and space. In order to strike a balance between the tradition and the condition of Muslim minorities, they search the tradition for a possible solution and then suggest it with cautious phrasing and conditional language. They always argue that one is allowed to perform a certain act if he observes specific conditions.

The renewal trend holds that the tradition has all necessary potentials for renewal and revival. It can reintroduce itself as a viable way of life to the present context. Renewalists always go beyond the immediate questions (which normally the traditionalists limit their answer to). They examine the various dimension of the question, trying to define priorities and to seek the fulfillment of the objectives of *Shari'ah*, not the mere ruling. They may be called reformers. However I preferred "renewal" as it is close to how they define their discourse. They call for *tajdīd*, which recalls the concept of renewing one's faith. This renewal process is personal as every individual is responsible to always renew and revive his religion. It is also a scholarly duty as the report narrated by Abū Hurayrah indicates. Abū Hurayrah narrated the Prophet to have said that Allah will send at the turn of each hundred year someone to the *ummah* to renew its faith.¹⁵

Shari'ah, Fiqh, and Aqalliyāt Static

The questions raised by the legal discourse of minorities are thought-provoking. Is Islamic jurisprudence a static, fixed construct or a dynamic, evolving tradition? Is it

¹⁵ Reported in a number of *hadith* sources such as Abū Dāwūd, *Sunan Abū Dawūd*, Kitāb al-Malāhim, no 3740.

divinely inspired or humanly and intellectually produced? Who authors it? Upon whom is it applicable? What is a 'minority'? Is it a question of number, power, or origin? Can there be differentiated jurisprudence for a certain group of people in a religious tradition, i.e. Islam, that claims that justice and equity are its ultimate objectives? The more one thinks about this intersection between jurisprudence and minority status, the more intricate questions are raised. This suggests that the development of minority jurisprudence is not simply a reaction to pluralism, secularism, or liberalism. Rather, it is a question of how a legal tradition that is internally challenged can prove its ongoing relevance to its own people and its applicability to others. Besides this main task, *fiqh al-aqalliyāt* discourse also responds to the suspicion and accusations of some Westerners concerning the assumption that Muslims cannot be loyal to their Western states. It also addresses the stance taken by some Muslim jurists regarding the necessity to immigrate to non-Muslim countries because of Muslims' lack of political power and their subjection to non-Islamic governing system. As the evidence unfolds in the following chapters, one will see how the emerging legal discourse of *fiqh al-aqalliyāt* of the renewalist trend addresses these claims and tackles some of the questions raised earlier. However, two urgent points should be made at the outset. First is the frequent insistence of this legal discourse to make the distinction between *Shari'ah* and *fiqh*. Second is the assertion that *fiqh al-aqalliyāt* is not a new invention, but a continuation of an old tradition.

Concerning the first point, advocates of *fiqh al-aqalliyāt* stress that a distinction should be made between *Shari'ah* and *fiqh*. *Shari'ah* is the set of laws and principles contained in the revelation and in the verified *Sunnah* of Prophet Muḥammad. *Shari'ah* is

elaborated upon through the work of the interpretative community of Muslim scholars and intellectuals. *Fiqh*, on the other hand, is the human application of reason for the purpose of comprehending and interpreting God's will, whereby jurists deduce from the Qur'anic text and prophetic tradition what they believe to be relevant to people's lives. *Fiqh* is the attempt to discover, explore, describe, interpret, and derive rules in a legal fashion. This understanding of *fiqh* is a basic component of *fiqh al-aqalliyāt*, through which the minority *fiqh* advocates respond to Western claims that Islam is inherently unable to 'renew' itself in order to adapt to modern life. Such a claim does not see the intricacy of the Muslim tradition that developed various mechanisms to distinguish between *Shari'ah*, as seeking the wisdom of the divine and *fiqh*, as the intellectual human process of interpreting this wisdom. Through *fiqh*, Islamic tradition goes through a constant process of adaptation that never gets polarized into one dominant sect throughout the Muslim world. The juristic schools, the theological groups and the political sects are all evidence that Islam is in continuous dialectic relation with its environment. The essence of *fiqh* is its ability to renew and adjust itself to its surrounding social realities.¹⁶ With asserting this point, the proponents of *fiqh al-aqalliyāt* argue that they belong to the same tradition and their work is to understand the wisdom of the divine in relation to their present world, and that is *fiqh* and not *Shari'ah*.

¹⁶ For a study of the difference between *Shari'ah* and *fiqh* see: Mohammad Hashim Kamali, "Fiqh and Adaptation to Social Reality," *The Muslim World*, vol. LXXXVI, no. 1 (Hartford Seminary: January 1996), 63-65; Ahmed Mohsen al-Dawoody, *War in Islamic Law, Justifications and Regulations*, PhD. Dissertation, Birmingham Univ., August, 2009, 122-129; Kathleen Moore, *The Unfamiliar Abode, Islamic Law in the United State and Britain* (USA: Oxford University Press, 2010), 7. Khaled Abou El Fadl, "The Place of Ethical Obligations in Islamic Law," *UCLA Journal of Islamic and Near Eastern Law*, vol. 4 (2004-5): 15-16.

As for the second point concerning the relationship between *fiqh* of minority and the *fiqh* genre, the advocates of *fiqh al-aqalliyāt* explain that the two are closely related. Some, such as al-Qaraḏāwī and Ibn Bayyah,¹⁷ identify *fiqh al-aqalliyāt* as a chapter in the *fiqh* genre similar, for example, to chapters on rituals and transaction. Other jurists, such as al-‘Alwānī,¹⁸ redefine the meaning of *fiqh*, so as not to be limited to legal determinations but to be a comprehensive term that covers all faith aspects, including theology, law and the divine text. *Fiqh al-aqalliyāt* is part of this comprehensive understanding of *fiqh*. The establishment of this relationship to the Islamic tradition is important for the discourse to show that it is an authentic discourse and not an heretic innovation or political justification. This relationship creates a space for the jurist to negotiate with the legal sources as well as with his targeted audience.

An Immigration Phenomenon

The discourse of *fiqh al-aqalliyāt* is primarily developed by *Sunni* activist-jurists of Arab origin in the 1970s and the 1980s in response to the immigration flow of Muslim to the West during that time. The study of the legal debate and the formation of Western-based *fatwa* institutions show little connection between local Islamic movements (e.g. African American groups) or individual native Westerners (e.g. converts) and the discourse of *fiqh al-aqalliyāt*. It is difficult to locate an indigenous contribution to the discourse.

¹⁷ See chapter III and V.

¹⁸ See chapter IV.

The dominance of Arab immigrants in the discourse of *fiqh al-aqalliyyāt* raises serious questions about how this phenomenon should be understood. This study argues that it has to do with an individual's attitude towards the 'land' they reside in. At first, early immigrants to Western Europe and North America (between the 1950s and the late 1970s) had a mentality of temporal settlement and isolation, and were often waiting to achieve a specific task before returning to their home country. They rationalized their isolation by referring to traditional legal doctrines that view with suspicion any interaction with non-Muslims in non-Muslim lands. These doctrines caused immigrants to reject their place of residence due to the belief that they would be subject to non-Muslim rule, add to the strength of a non-Muslim state, and betray the *ummah*. The assumption was that the best they could do until they rectified their situation was to work to keep their Islamic identity intact and their community protected from assimilation into the non-Muslim culture. This was the function of early Islamic institutions such as mosques and centers that were built in the West in the 1970s and the 1980s. Within a few decades, however, Muslim immigrants realized that the new land had become their new home and they were the ones who needed to rethink their tradition in light of the changing realities; hence, a discourse on the position of Islamic law in the West began to develop.

Local indigenous Muslims, on the other hand, knew no other home. Islam for them was a spiritual path that did not require relocation to other lands. Coming to Islam from outside the tradition, they mostly believed in the secular nature of the state. As such, they did not see a connection between their faith and forbidding themselves from serving

or working for the benefit of their fellow citizens, who largely consisted of their families and friends. It is true that some converts have the belief that it is better for them to immigrate from the West and go to a Muslim land to enjoy a better Islamic experience and dwell in *dār al-Islām*, but those were not in the majority. Local Muslims developed their own Islamic paradigm of worshiping the divine and serving the human. Most of them knew little about the legal traditions of the obligation to immigration or the questions of *izhār al-dīn*, i.e. manifesting one's religion. And if they know they would not pay much attention to them because they believe that they do not apply to their contemporary life.

It should also be noted that it is Arabs who have played the leading role in the discourse. Although many non-Arab immigrants, especially Indian and Pakistani scholars, are increasingly participating in the legal debate, the discourse itself is dominated by Arab jurists and intellectuals. This may be due to the fact that non-Arab immigrants, who are mostly South Asians, have had prior experience with both secularism and minority issues in their home countries, having engaged and worked with non-Muslims in an open environment. Therefore, they did not have problems seeking Western citizenships or politically engaging with the non-Muslim polity. But Arabs did not have this experience. Instead, their memories are alive with colonized histories followed by despotic regimes that used puritan forms of religion to control the masses and galvanize them against the 'liberal' West. This created an internal dynamic of distancing oneself from the culture and politics of the 'other'.

It took Arab immigrants some time to realize the qualitative difference of their new life and its potential for their advancement, whether in political, economic, or even religious realms. The first Arabs to realize this potential were the activists who left their countries in fear of persecution or for a better life in the 1970s. Utilizing the open political space of their new homes, the Arab activists engaged in political work, both on the local and international levels. Among their cadres were Muslim scholars who either settled in the new land or were invited on a regular basis to participate in conferences, seminars, and workshops organized by Arab activists. Those Muslim scholars participated in the formulation of the religious orientation of these activists and their institutions and consequently, of the people attending their institutions. As part of the activists' institutional work, they established centers for Islamic research and *fatwas*, which were inhabited by jurists and scholars. This gradually created a phenomenon of Arab-jurist dominance in the West for various reasons: they had traditional legal educations in accredited religious institutions such as al-Azhar University; they were known for their stand against despotic regimes in their own countries; and they represented institutions supported by Muslim minorities. In short, the field was ready for Arab jurists to lead the discourse.

Another characteristic also of this phenomenon is that most of those involved in the discourse have affiliation with modern movements of political Islam, especially the Muslim Brothers. It will be demonstrated through the study that this affiliation has influenced the reasoning of their discourse and their vision of the nature of *fiqh* in modern life. As activists in an alien setting, they needed to justify their presence in

relation to their faith and to their country of origin. Also as activists within their new residence, they sought to maintain an Islamic vision of life and promote it among their fellow Muslims. This is done through establishing national institutions such as Muslim Student Association in the United States and Federation of Islamic Organization in Europe. The more engaging these institutions were with their local and non-Muslim community, the more need felt for a specific legal discourse that responds islamically to the new challenges.

Shi'i scholars have developed their own positions toward *shi'i* Muslim minorities, but their debate—under the rubric of *fiqh al-mughtaribin*—is framed within their own legal and theological experience. While there are definite points of convergence and divergence between the *sunni* and the *shi'i* discourses, the focus of the present research is on the *sunni* one. The significance of the *sunni* discourse emanates from the fact that the majority of Muslims living in the West are *sunnis*. Of additional relevance is that due to their historical minority experiences and legal philosophy of accommodating minority life, the *shi'i* minority developed an early and clear stance on the legitimacy of minority life, a fact that makes the transformation in the *sunni* discourse more appealing for investigation.

The position of indigenous Western Muslims is also not discussed in this study. There is no doubt that they have developed a complex stance toward the role of Islamic law in their lives that reflects their own understanding of the role of Islam in a 'pluralistic world'.

Combating Victimization

At a time when Muslims' perception of their new Western 'homes' had started to become more rooted, a trend of Islamphobes was on the rise in the West. The events of September 11 and the bombings in London and Madrid intensified anti-Islamic feelings. Almost immediately, Muslims became a scrutinized minority who were met with suspicion in many circles. Claims that Islam is inherently anti-modern and that its adherents cannot be integrated into modern liberal states were revived, increased, and publicized through Islamophobic literature and media coverage. Such hostility against Islam and Muslims resulted in the intensification of Muslims' personal attachment to Islam and an increased desire to confirm their Islamic identity. This attachment became stronger in cases where individuals had personally fallen victim to discrimination. This attachment does not necessarily reflect itself in religious practices and rituals. It is rather a way to establish one's identity in relation to external challenges.¹⁹

Conscious affirmation of Islamic identity in response to discrimination and victimization has been empowered by the establishment of Muslim advocacy groups which, although led primarily by older immigrant generations, have cultivated new young Muslim leaders. Educated and cultured in the West, these young leaders and their generation gradually started to develop their own interpretation and discourse on Islam. They ignited a discourse not only among themselves but among the Muslim public and intellectuals about 'claiming democratic America' against 'colonial America'. This

¹⁹ Jocelyne Cesari, *When Islam and Democracy Meet, Muslims in Europe and in the United States* (Palgrave: Macmillan, 2004), 42.

paradigm shift towards *'believing in the West'* as a space of coexistence is clearly reflected in the discourse of *fiqh al-aqalliyyāt*. Although the discourse itself started in the 1990s, as will become evident in this research, its real influence began in the first decade of the twenty-first century.

Minority Discourse and the Muslim Question

The discourse on minority rights in the context of globalization and liberalization challenged many Western intellectuals to produce a coherent vision and a theoretical framework that attempt to counteract the atrocities perpetrated against past minorities (e.g. the Jewish case) and address the ethnic and cultural bias against them. Ongoing debates about pluralism, multiculturalism, and nationalism incorporated and defined the question of 'minorities'. Although many positions were reformulated and developed throughout the last few decades by proponents of various schools, e.g. the liberal school and the multicultural school, the prevailing notion seems to be that minorities should enjoy the right to maintain their cultural traits, including their customs, language, and ethical beliefs, as long as these traits are within the framework of the liberal ideology of individual freedom and pluralism. In his *Multicultural Citizenship*, Will Kymlicka argues that minorities should be categorized according to their relationship to the land they live in and, as such, two main categories can be established. The first is the minority of the indigenous population, and the second is the minority of the immigrant communities. In both cases, each minority group has a set of rights that is justified.²⁰ In the same vein,

²⁰ Will Kymlicka, *Multicultural Citizenship, a Liberal Theory of Minority Rights* (USA: Oxford University Press, 1996).

Hellyer, author of *Muslims of Europe, the Other Europeans*, states that the multiculturalism paradigm, in its fully developed version, allows space for religious minorities, including Muslims, to maintain their peculiarities. On a proportional basis, it is feasible for these minorities to be integrated into the wider society to the extent that they can become a part of the national cultural story, be included in the national political culture, and project citizenship-civic values.²¹ In the case of Muslim minorities, Andrew March uses overlapping liberal consensus theories to confirm that many of the diasporic juridical arguments (i.e. *fiqh al-aqalliyāt*) that Muslims formulate to strike a balance of identities, for example as American-Muslims, do not contradict the liberal expectations of residents of liberal democratic states.²²

In his “Muslim Minorities and Self-Restraint in Liberal Democracy”, Khaled Abou El Fadl argues that Muslims should seek accessible grounds to engage the discourse of liberal democracy. Muslim activists, Abou El Fadl states, hold the position that self-exclusion of Muslims from public sphere is not warranted, since Muslims are demanded to do the good and forbid the evil. The question is to do the good or to forbid the evil for whom? Does it mean only the Muslim good or does it also include the public welfare? Muslim discourse projected the two positions. Abou El Fadl argues that although there are Muslim scholars who support the duty of Muslims to work for the

²¹ H.A. Hellyer, *Muslims of Europe, the 'Other' Europeans* (Edinburg Univ. Press, 2009).

²² Andrew F. March, *Islam and liberal citizenship: the search for an overlapping consensus* (New York: Oxford University Press, 2009). See also: Andrew F. March, “Liberal Citizenship and the Search for an Overlapping Consensus: the Case of Muslim Minorities,” *Philosophy and Public Affairs*, 34, no. 4, (Blackwell Publishing Inc.:2006), 373-421. Andrew F. March, “Sources of Moral Obligation to non-Muslims in the “jurisprudence of Muslim Minorities” (*Fiqh al-Aqalliyāt*) Discourse,” in *Islamic Law and Society*, 16 (Leiden, Brill: 2009), 34-94.

general welfare, such a position is not complete as those scholars do not elucidate the form of Muslim participation in the society.²³

Given the ongoing theoretical debate on the position of minorities in liberal democracies, there have been attempts from Muslims themselves to demonstrate that their demands (i.e. cultural and religious needs and traits) correspond with the principles of liberalism and are a reflection of their constitutional rights in liberal states. They utilize different approaches to argue their case. Some Muslims engage in philosophical and intellectual analysis to prove that liberal principles—such as freedom of religion, gender equality, and human rights—do not contradict the Islamic faith but, on the contrary, are part of it. Both Muslims and non-Muslims need to acknowledge this connection if a healthy relationship is to be established. In other words, Islam and Muslims in the West do not object to liberal principles. Rather, they believe that these principles should govern the whole society. If these principles are followed, then Muslims must maintain their right to practice their religious obligations, as dictated by their constitutional rights. If it happens that there is a conflict between religious obligations and constitution, then it is either superficial or accommodation can be reached.²⁴

²³ Khaled Abou El Fadl, “Muslim Minorities and Self Restraint in Liberal Democracies,” *LOYOLA of Los Angeles*, vol. 19, no. 4 (June 1996), 1525-1542.

²⁴ Examples of this trend include Imam Feisal Abdul Rauf and Tariq Ramadan. Although both scholars have different approaches, both subscribe to the idea that liberal democratic principles are part of the Islamic tradition. See: Feisal Abdul Rauf, *What is Right with Islam, a New Vision for Muslims and the West* (HarperOne, 2004). Tariq Ramadan, *Western Muslims and the Future of Islam* (USA: Oxford University Press, 2005).

This approach can be interpreted as a progressive attempt by certain Muslim scholars to address the Muslim question in the West. However, the main source of contention between the question of Muslim minorities and liberalism remains: the so-called inherent nature of Islamic *Shari'ah* and its propensity to dominate the life of Muslims and consequently the land in which they live. In order to address this perception, different mechanisms have been developed, the most significant of which is the development of the discourse of *fiqh al-aqalliyāt*. On the surface, this discourse appears to respond to specific legal questions pertaining to aspects of a Muslim's life in the West, but it is also an attempt to dispel the perception of *Shari'ah* as a hegemonic anti-liberal legal system. The significance of this discourse does not lie in an innovative methodology of providing new *fatwas* for Muslims, but in a practice of adaptation, accommodation, and negotiation with contextual realities and a reaffirmation of the changing nature of the Islamic legal system. In this regard, *fiqh al-aqalliyāt* is a discourse with four parallel goals. First, it contextualizes the legal tradition by arguing that the classical tradition is a result of its own context. Second, it normalizes a Muslim's life in the West by providing evidence that western life in harmony with Islamic principles. Third, it argues that certain *Shari'ah* principles do not contradict liberal ethical beliefs. Fourth, it constructs a neo-Muslim identity where law, context, and identity converge and balance. These four goals will be revealed more clearly throughout the present research, but as a way of introducing the debate, a brief comment on the fourth goal may be helpful.

Convergence of Law, Context, and Identity

In her analysis, Kathleen Moore argues that the ways in which law, context, and identity converge in the Muslim diasporic jurisprudence create social and legal dilemmas that both mirror points of tension and provide opportunities for interaction. The law represents the mechanism through which people try to understand, justify, and reinterpret dichotomies resulting from history, culture, or religion. Law—especially in the minority context—has a considerable impact on the cultural and religious reproduction of elements of distinction, specificity, and difference.²⁵ Legal structures are where ideas can be found in support of one position and rejection of another, regardless of what each may represent. Alternatively, the law is an area where common ground can be found in order to facilitate interaction with those holding opposing positions. Both law and context acquire their meaningful presence through people who themselves aspire to fulfill their distinct selfhood both as individuals and members of a community. This distinctive selfhood is the identity that creates one's world view, conception of life, and perceptions of the other. Therefore identity, by its very nature, cuts across law and context by shaping—as well as being shaped by—law and context. This dialectic relationship between law, context, and identity is present throughout the discourse of *fiqh al-aqalliyyāt*, in which the advocate of this *fiqh* argues that law should be re-contextualized to fit the current moment, with a view to affirming the identity of Muslims. For example, Friday prayer (a question of law) is better delivered in the native language of the land (context) and not in Arabic, because its ultimate goal is to teach Muslims about their

²⁵ Kathleen Moore, *The Unfamiliar Abode*, 4.

religion (identity). A Muslim may donate his blood (a question of law) to a fellow non-Muslim citizen (context) because this shows the real 'identity' of Muslims as caring individuals. Muslims should engage in politics (a question of law) in a democratic system (context) to promote justice and welfare for his society and fellow Muslims (identity). *Fiqh al-aqalliyyāt* is not only a legal paradigm as it may sound from its title, but an internal discourse among Muslim jurists, if not a reform project, that addresses Muslims' questions on the function of law in maintaining Muslim identities in the context of globalization. *It is that 'internal discourse' that this research examines.* Internal discourse means the debate of Muslim jurists among themselves as interpreters of law to negotiate the interconnection between rules of law, people's aspirations and realities with a view to finding a balance that maintains the integrity of each element.

At this juncture, it should be asked what the benefits of this 'internal discourse' would be. The answer for this question will reveal itself throughout the present research, but for now the following may be stated: this internal discourse is intended to normalize Muslims' life in the West via *an islamicized package* that addresses individuals' religious aspirations, the integrity of traditions, the authority of jurists, the threat of identity erasure in a globalized context, and the theoretical discourse of globalization and liberalization. Kathleen Moore elaborates that diasporic jurisprudence is a form of legal strategy designed to 'normalize' Muslims' presence in the West, not necessarily in terms of the dominant institutions of a society, but internally, through the conscious use of Islamic idioms.²⁶ The use of Islamic idioms serves multiple purposes: it empowers the identity of

²⁶ *Ibid.*, 5.

Muslims by connecting it to its historical roots; it assures non-Muslim society that Islam has internal dynamics that fit their framework of reference and that Islamophobic claims are not warranted; it provides verification that the discourse participants are legally qualified and authorized to examine the issue; it renders their discourse authoritative enough for the satisfaction of diverse groups; and it constructs normative claims that can serve as principles for future debates. These various elements have been evident in the discourse of minorities. One may venture to argue that were it not for this internal discourse, Muslim integration into Western societies would not be complete.

Significance

A frequent question that arises with regard to research on Islamic Law in the West is “Who cares?” Statistics indicate that significant numbers of Muslims in the West are neither observant nor interested in fitting Islamic law into a Western context.²⁷ If this is indeed the case, then what is the significance of *fiqh al-aqalliyāt* to local communities? The present study argues that the discourse of *fiqh al-aqalliyāt* is highly relevant to those ‘non-observant’ Muslims in the same way it is relevant to ‘practicing’ Muslims. One of the functions of law is that it offers identity and legitimacy whether people apply it or not. Two points are in order here. First, it may be argued that one of the main reasons for the development of *fiqh al-aqalliyāt* is the growing number of ‘non-observant’ Muslims in the West and the fear of the impact of privatizing religion or stripping Islam of its meaningful presence in Muslim’s lives, especially the younger

²⁷ *Ibid.*, 13.

generations.²⁸ *Fiqh al-aqalliyāt* represents an effort to preserve a particular sense of community and to protect offspring from secularizing pressures.²⁹ In other words, the lack of interest of some Muslims in *fiqh al-aqalliyāt* does not mean they are not participants in the making of the discourse. On the contrary, they are ‘negative’ participants who are expected to join in at any moment, especially given the increase in racial profiling of Muslims that does not make any distinctions between the observant and the non-observant.

The second point is the relative definition of terms like ‘non-practicing’ and ‘observant’ when it comes to religious practices or, to put it differently, how one measures the (non)religiosity of certain individuals, especially in modern life where religious interpretation has taken on non-traditional forms. Distinctions should be made between religion, religiosity, and legal legitimacy as a reflection and product of modes of globalization and pluralization norms. Religion represents the comprehensive container that covers a whole range of modes of interpretation and praxis that includes—but is not limited to—categories such as nominal Muslim, cultural Muslim, practicing Muslim, emotional Muslim, and heritage Muslim. Religiosity is the personal mode of interpretation of ethical concepts as understood from religion. Religiosity based on ritual practices is just one of its manifestations. Others may focus on spiritual or behavioral aspects to express their religiosity. As such, the argument that it is only observant Muslims who care about the meaning and application of Islamic law in the West is

²⁸ *Ibid.*

²⁹ *Ibid.*

imprecise. On the contrary, it may be argued that ‘puritan’ observant Muslims do not care as much about *fiqh al-aqalliyāt*, since they have a set of convictions that leaves no space for negotiation with the other. Conversely, this also does not mean that the non-observant cares more. The point is the significance of *fiqh al-aqalliyāt* to local community should not be tied only to the question of practice but also to the meaning of religious experience of the self.

Undoubtedly, *fiqh al-aqalliyāt* is closely related to the concept of religiosity in its comprehensive meaning. Under this *fiqh*, space is given for gradual or ease practice of rituals and legal rulings (e.g. a convert may not have to give up his drinking habit or fast the whole month of Ramadan immediately after conversion; a Muslim may combine prayers for simple practical reasons), and for moral and ethical interpretation (e.g. classical legal inclinations to isolate oneself from non-Muslims are superseded by human dignity and joining forces to establish worldly welfare). In other words, *fiqh al-aqalliyāt* attempts to maintain a Muslim’s religiosity through the lens of legal legitimacy.³⁰ In this context, legal legitimacy encompasses both Islamic law and the laws of the land. If there is a conflict or tension, both laws have internal mechanisms to resolve it. For example, as interest from credit cards purchases is Islamically illegal, Muslims can use the legal grace period option to pay their credit debt and hence stay within the regulations of Islamic law. Similarly, while Muslims are required to marry in a religious ceremony, they should still follow the civil law and officialize the marriage through the appropriate institution. Legal

³⁰ Legality denotes a concern with the legitimacy of the law as rooted in the individual’s belief and acceptance of legal order. Kathleen Moore, *The Unfamiliar Abode*, 12.

legitimacy has become one of the dynamics in the maintenance of a Muslim's religiosity and identity. *Fiqh al-aqalliyāt* works as a mediator between Islam (the religion), Muslim (the culture), and *Shari'ah* (the law) on one side and the West, the home, globalization, the context, and secularization, on the other.

It should be also stressed that *fiqh al-aqalliyāt* is not concerned with ritual practices, which are easily handled in classical Islamic texts. It is more about a Muslim's interaction with his fellow Muslims as well as with the non-Islamic environment. Even if a Muslim is not practicing the tenets of his faith, he may still be interested in the discourse of *fiqh al-aqalliyāt* because at some point he may find himself in a situation that would oblige him to think 'religiously'. For example, if a Muslim is getting married, the spouse may request an Islamic ceremony. If a Muslim is invited to another Muslim's home, he may not be allowed to drink alcohol. If a Muslim votes in an election, he may be influenced by the attitudes of his Muslim community. In such contexts, the 'non-practicing' Muslim dis/agrees with certain positions developed not only by culture, but also by religious tradition. The point is that people may not be aware of or deny their participation in a certain discourse while in fact they represent unconsciously a significant part of it. In its essence, religion is not a set of fixed rituals or beliefs. It is a resource from which individuals may draw symbols, practices, and discourses in order to respond to or to reaffirm and contest dominant social relationships.³¹

³¹ *Ibid.*, 75.

Review of Literature

A critical assessment of the internal Muslim debate in modern time has not received enough attention from scholars in the field. In the mid 1990s, Khaled Abou El Fadl of UCLA laid the ground for examining the legal debate on Muslim minorities through the publication of four significant articles on the juristic discourse of Muslim minorities as early as the second/eighth century until the beginning of the twentieth century. His review establishes the fact that Muslim legal tradition on Muslim minority is complex and diverse. The jurists of various schools debated almost every single issue and projected different positions based on their geo-political setting and juridical orientations. They debated the ruling pertaining immigration, definition of *dārs* (both *dār al-Islām* and *dār al-ḥarb*), the boundaries of Islamic jurisdiction, the limitations of manifesting one's religion and the role of *amān* in defining their relation to the non-Muslim territory. Abou El Fadl argues that this historical diversity of juridical opinion still hold today as contemporary Muslims debate the best course Muslim minorities need to take. They try to steer Muslim minorities to a middle path and to strike a balance between rejection and accommodation. In order to achieve this path, Abou El Fadl argues that Muslims needs to choose an Islamic comprehensive view (out of many developed throughout legal history) that can self-restraint other irrelevant comprehensive views and develop a consensus vision of how to engage liberal democracy.³² Khaled Masud, former Chairman of the

³² Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Journal of Islamic Law and Society*, 1:2, 1994, 143-153. Khaled Abou El Fadl, "Muslim Minorities and Self Restraint"; Khaled Abou El Fadl, "Legal Debates on Muslim Minorities, Between Rejection and Accommodation," *Journal of Religious Ethics*, 22.1 (Spring 1994): 127-162; Khaled Abou El Fadl, "Striking a Balance: Islamic Legal

Council of Islamic Ideology in Pakistan, have been principally concerned with the question of the legality of *hijrah* 'immigration' from an Islamic Law perspective. He argues that although *hijrah* appears constantly in the Islamic tradition, it did not earn sufficient prominence in the classification of *fiqh*. On the contrary it was left vague so that jurists at every stage would go back to the text for a discursive process of reinterpretation to justify either earlier positions or to craft new ones.³³ Actually it was not only *hijrah* that was left vague but the complete discourse, according to Abou El Fadl, was ambivalent to the extent that led many jurists to leave the final judgment to the minority to decide for itself. In his response to Bosnian Muslims on the legality of residence in their non-Muslim land, Rashīd Rīḏā, commented that they are the best judge of their affairs.³⁴

P.S. van Koningsveld, Weigers, and Miller contributed various studies of immigration *fatwas* that were primarily concerned with Muslim minorities in Granada and al-Andalus. These *fatwas* reveal more evidence to Abou El Fadl's argument of the impact of the historical moment and the *mufti's* school of thought in his *fatwa* formulation.³⁵ In 2002, P.S. van Koningsveld introduced a typology of Muslims'

Discourse on Muslim Minorities," in Muslims on the Americanization Path, eds. Yvonne Yazbeck Haddad and John Esposito (Oxford: Oxford University Press, 2000), 47-64.

³³ Muhammad Khaled Masud, "The obligation to Migrate: the Doctrine of *Hijrah* in Islamic Law," In Eickelman, D.F. & Piscatori, James (eds.). *Muslim Travellers: Pilgrimage, Migration, and the Religious Imagination* (California: University of California Press, 1990), 42-ff. See also, "Being Muslim in a Non-Muslim Polity: Three Alternate Models," *Journal Institute of Muslim Minority Affairs*, vol. 10:1 (Jan. 1989), 118-128.

³⁴ Abou El-Fadl, "Legal Debates on Muslim Minorities," 153.

³⁵ See for example: P.S. van Koningsveld and G.A. Wieggers, "The Islamic Status of the Mudejars in the Light of a New Source," *Al-Qantarāh* 17 (1996): 29. P.S. van Koningsveld and G.A. Wieggers, "Islam in

authority in the West and expressed the need to develop a *fatwa*-study focus group to better understand the presence of Muslims in the West.³⁶

In a later contribution, Khaled Masud provided a scheme to the contemporary Muslim discourse to Muslim minority. He drew attention to the rise of a discourse of diasporic jurisprudence among Muslim minorities.³⁷ He identified three trends: the first is the one that applies medieval rules without consideration of present time urgencies; the second treats minority question as exception cases; and the third believes that Muslim minority needs a special category of *fiqh*. Masud considers this sort of *fiqh al-aqalliyyāt* movement an attempt toward an Islamic civil rights movement.³⁸ Masud's categorization was the inspiration for that used in the present research.

With the exception of Masud's brief article, many of the studies conducted on Muslim minorities have either a socio-political dimension, focusing on the questions of dis/integration, gender differences, institutionalization of Islam, Muslim agents (*imams*, students, etc.), Muslims' understanding of the notion of secularization and pluralism, or

Spain During the Early Sixteenth Century: the Views of the Four Chief Judges in Cairo (Introduction, Translation, and Arabic Text)," in *Orientations (Poetry, Politics and Polemics: Cultural Transfer between the Iberian Peninsula and North Africa)*, eds. Otto Zwartjes, Geert Jan van Gelder and Ed de Moor (Amsterdam: Rodopi, 1996): 133-52. Kathryn A Miller, "Muslim Minorities and the Obligation to Emigrate to Islamic Territory: Two *Fatwas* from Fifteenth Century Granada," *Islamic Law and Society*, 7: 2 (2000): 256-288.

³⁶ P.S. van Koningsveld, "The Significance of *Fatwas* for Muslims in Europe: Some Suggestions for Future Research," *Nederlandsch Theologisch Tijdschrift*, n.d. 208-221.

³⁷ Khaled Masud, "Islamic Law and Muslim Minorities," *ISIM Newsletter* 11 (2002): 17.

³⁸ *Ibid.*

focus on *fatwa* case studies within a specific context.³⁹ Although these studies make significant and important questions, it is not enough, as Mandaville argues, to look for cases of loss and gain, or of aspects of Islam that simply ‘appear’ or ‘disappear’ in situations of diaspora. What we see, he continues, “is a far more complex *hybrid condition*, one in which *Islamic meanings* shift, change, and transmutate, where things become something else.”⁴⁰ The discourse of creating these *Islamic meanings* is what we do need to understand.

Cesari produced the concepts of ‘parochial’ and ‘bureaucratic’ leaders to describe the different kinds of authorities developed among Muslim communities in Europe and the U.S. Among others, those leaders helped to reconcile the legal norms of the host country with those inherited from the Islamic tradition.⁴¹ However the scope of Cesari’s study did not allow her to develop this idea in enough depth to show the reason behind this discursive shift and how it can be assessed. Along with the appearance of new authorities in the minority context, Rohe Mathias argued for an ongoing process to create a form of European *Shari‘ah*. His analysis indicates two different levels on which the

³⁹ See for example: W.A.R. Shadid and P.S. van Koningsveld, eds, *Religious Freedom and the Neutrality of the State: the Position of Islam in the European Union* (Leuven: Peeters Publishers, 2002); W.A.R. Shadid and P.S. Van Koningsveld (eds.), *Muslims in the margin: political responses to the presence of Islam in Western Europe* (Kampen, Netherlands; Kok Pharos Pub. House, 1996); Yvonne Yazbeck Haddad, *Muslims in the West: From Sojourners to Citizens* (New York: Oxford University Press, 2002); Yvonne Yazbeck Haddad and John L. Esposito, eds., *Muslims on the Americanization Path?* (New York: Oxford University Press, 2000); Michael Thompson, *Islam and the West: Critical Perspectives on Modernity* (Lanham: Rowman & Littlefield Publishers, Inc., 2003); Zahid H. Bukhari, et al, eds, *Muslims' place in the American public square: hope, fears, and aspirations* (Lanham: AltaMira Press, 2004).

⁴⁰ Peter Mandaville, “Reimagining Islam in Diaspora: the Politics of Mediated Community,” *Gazette*, vol. 63: 2-3, Sage Publication (2001): 173.

⁴¹ Jocelyne Cesari, *When Islam and Democracy*, 125-ff.

formation of a European *Shari'ah* is taking place: firstly, the Muslims are developing a framework that takes place both inwardly (Muslims' commitment to their beliefs) and outwardly (interpretation of religious commandments in such a way that Muslims do not find themselves in an inevitable collision with the requirements of their environment); secondly the European *Shari'ah* could become a powerful voice among the various opinions within the *Ummah*, i.e. the impact will not be limited to Muslims in minority situations but extended to include Muslims in all places.⁴² Although Rohe dedicated the second part of his paper to an overview of the *fatwas* of the European Council for Fatwa and Research, he did not study them analytically or critically. Two Masters theses from Leiden University have contributed to the subject, but are not yet published. The first thesis centered on a collection by the late Grand *Sheikh* of Al-Azhar Jād al-Ḥaqq 'Ali Jād al-Ḥaqq's *fatwas* for Muslim minorities.⁴³ The comments given on the *fatwas* did not place much focus on the juridical debate or the previous legal/historical cases of similar *fatwas*. The second thesis focused on the case of a convert Muslim woman staying with her non-Muslim husband.⁴⁴ The researcher's focus was mainly the debate of the European Council for Fatwa and Research over this issue.

During the last few years, young Western researchers have turned their attention to exploring the discourse of *fiqh al-aqalliyāt* from within the intellectual discourse of

⁴² Mathias Rohe, *Muslim Minorities and the Law in Europe: Chances and Challenges* (Global Media Publications, 2007)

⁴³ M. Hashem, *Problems of Muslim Minorities within the Western Context, a Case Study of Jād al-Haqq's Printed Fatwās to Muslims in the West*, unpublished MA thesis, Leiden Univ. 1997

⁴⁴ Mahmoud Sayfī, *Fiqh of Muslim Minorities: a New Era of Islamic Jurisprudence*, unpublished MA thesis, Leiden Univ., 2004

modernity, liberalism, secularization, and multiculturalism. Andrew March has worked on the question of *fiqh al-aqalliyāt* from a political science perspective, with his primary focus being on how the *fiqh al-aqalliyāt*'s debate on residency, *walā'*, *da`wah*, and citizenship may constitute an overlapping consensus that can be utilized as a base for affirming the ethical obligations of Muslims towards non-Muslims and for establishing a foundation for Muslims' civic engagement in Western societies. He engages the debate by showing the inherently complex arguments and how they can be interpreted differently based on the context and school of the interpreter.⁴⁵ In another study, H.A. Hellyer utilizes the multicultural discourse to prove two points. Firstly, multiculturalism theory is not fading away, as some claim, but is rather reinventing itself to adapt to the intellectual progress of minority discourse. Secondly, the evolving multicultural trend allows Muslims to develop a form of jurisprudence that fits the civil society of modern Europe. Relying greatly on contributions from Tariq Ramadan, al-'Alwānī, and Bin Bayyah, Hellyer argues that Muslims can thrive in the West as Muslims provided that they understand the nature of their multicultural society and the boundaries of their space to maneuver within it.⁴⁶ Alexandre Caeiro, using Khaled Masud's concept of 'the social construction of *Shari'ah*', focuses more on the question of the authority of the *'ulama* and their interpretations of religious texts in the modern world, especially in the Western context. He uses the example of home mortgages to illustrate how Islamic norms are being contested and socially reconstructed to reverse the traditional ruling and authorize

⁴⁵ Andrew F. March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (New York: Oxford University Press, 2009).

⁴⁶ Hellyer, *Muslims of Europe*.

Muslims to engage in interest-based mortgages. As mediators between the divine claim and the pressing non-Muslim societal domain, Caeiro argues that the *'ulama*, in order to maintain their role as authoritative interpreters of *Shari'ah*, have found themselves obliged to take a more systematic approach towards people's concerns rather than satisfying them with occasional and exceptional *fatwas*. Herein lies the dilemma of Muslim scholars in modern times: how much change must they allow for Islam to remain relevant, without losing their authority over religious interpretation and without compromising the 'divine' nature of *Shari'ah*.⁴⁷ This problem and challenge constitutes an essential part of the discourse of *fiqh al-aqalliyāt*.

Generally speaking, *fatawa* analysis does not attract much attention from researchers unless it involves some form of political or social tension, as in the case of banning the face veil in France or the fight against terrorism in the U.S. Even in these cases, the discourse itself failed to receive in-depth analysis. Rather, the focus was placed on the social and political repercussions. Although important factors, the case would be better understood if located within the whole discourse of *fiqh al-aqalliyāt*. To clarify the point, I argue that devising certain rules for Muslims living in non-Muslim communities has an immense influence on the promotion (or otherwise) of intergenerational Muslim communication, and communication between Muslims and the Western communities. It also reveals the processes of the Islamic legal system, its epistemology, its mechanism and negotiative power. It demonstrates the relationship

⁴⁷ Alexandre Caeiro, "The Social Construction of *Shari'ah*: Bank Interest, Home Purchase and Islamic Norms in the West," *Die Welt des Islams* 44: 3 (2004): 375.

between Muslims and their own tradition in terms of continuity or rupture. It reveals the tension in the legal discourse with regard to coping and competing with the global market of ideas. It underlines the various intellectual claims, whether toward 'reform' or 'tradition'. A *fatwa*, for example, that states a Muslim is allowed to take out a home mortgage has many ramifications. It does not simply mean that this *fatwa* is a result of social pressure or religious necessity. In fact, it is an implicit invitation to:

- empower Muslims from within to encounter the challenge of dominant society.
- permanently stay in a 'non-Muslim' land
- acknowledge that the non-Muslim land is not a *dār ḥarb* or *kufr* but it is *dār Islām* or, at the minimum, *dār 'ahd*
- assume citizenship rights in a non-Muslim country (the *fatwa* does not only intend to make Muslims' lives easier but also suggests they become part of the system by dealing with the tax administration, banks, loan companies, etc.)
- apply the legal rules of *Shari'ah* objectives and public interest rather than limiting oneself to traditional positions of jurists.

As one of the leading figures to study religious authorities and *fatwas* in a modern Western context, P.S. van Koningsveld proposed a research project to study minority *fatwas*. His project, which has not yet been adopted, suggests a three-stage research sequence. The stages he suggested are: (1) identification and content analysis, (2) comparative analysis of trends and models, and (3) social and cultural analysis.⁴⁸ Almost a decade after his suggestion was made, it is evident that most of the work thus far has been done on stage three, while little has been produced to cover stages one and two. This study aims to fill the void in steps 1 and 2. This study is an in-depth content analysis of

⁴⁸ I should express my wholehearted appreciation for Prof. Van Koningsveld for mentoring me when I was studying my MA in Leiden, 1999 and for his support when I was doing my MPhil in ISIM, 2001.

the minority jurisprudence phenomenon that is expected to shape the discourse of Islam and the West in the years to come.

Chapter I

Between Text and Context:

The Impact of Textual Literalism and Puritan Ideology on the Life of Muslim Minorities

In the last three decades of the twentieth century, Western Europe and North America witnessed an influx of unprecedented numbers of Muslim immigrants. These Muslim immigrants put down roots by building community institutions such as Islamic centers, schools and businesses. As they struggled to get established in the new land, they looked for moral, social and financial support from their ethnic/religious communities and from philanthropic Islamic societies. Furthermore, many Muslim countries and organizations sought to establish contacts and relationships with Muslim immigrants. These contacts were established on various grounds: ideological, religious, social and political. In fact, there was a rivalry among certain Muslim countries and institutions over who would win the hearts and minds of these immigrants. Cesari argues that the 1980s witnessed an outbreak of an authority war among the Saudis, the Iranians and the Pakistanis over the domination of the Muslim world in general and the Muslim minorities in particular.¹ They massively funded mosques, schools and Islamic organizations. The objective of this interest in the conditions of Muslim minorities was not only to maintain the immigrants' loyalty to and affiliation with the home country in order to defend its

¹ Jocelyne Cesari, *When Islam and Democracy Meet*, 15-16.

political and economic interests, but also to improve the status of the country in question as a representative of the Muslim world. Given this dynamic interaction between Muslim immigrants and their home countries, religion factors in as a key player. In their search for a stable consistent contact to preserve their cultural identity, tradition and religion in their lives, Muslim immigrants sought *fatwas* and guidance from religious authorities, mainly those living in the country of origin or those affiliated with the heartland institutions of Islam, such as al-Azhar, Egypt, or the Holy Mosque of Mecca, Saudi Arabia. This *fatwa*-search or guidance-quest comprises more than a search for simple answers to mundane questions. It involves ideological and political interests on both sides, that of the *fatwa*-seeker and that of the *mufti*. The seeker tries to prove the legality of his condition, to find justification for his practices, to strengthen his connection to his home country and to show his concerns of the Muslim community. The *mufti* wants to demonstrate his authority, the credibility of his school, and the supremacy of his state. This *fatwa*-search mechanism, when combined with the host-country's modern liberal social structure, the immigrants' aspirations of good life, and the *ummah*'s expectations of Muslims' defending its causes, has eventually led to positions that, over the course of time, developed into trends and discourses. Three of these trends became influential in this process: the puritan literalists, the traditionalist, and the renewalists. This chapter examines the position of the puritan literalist trend, the ideology of its proponents and the extent to which it impacts Muslim minorities.

The puritan-literalist trend looks at the present day Muslim minorities through the lens of medieval jurists and traditional manuals of *fiqh*, without taking into account the

difference of the historical moment or the necessities of the present time. The proponents of this trend tend to belong to the traditional literalist school that emphasizes literal readings of religious legal texts over their context and the wisdom behind them.² They continue to treat Muslim minorities today as did the early and medieval jurists who regarded residents of non-Muslim lands as subjects to non-Muslim rule and laws. They presume that those Muslims will eventually re-emigrate back to Muslim countries, and that, in the meantime, they must protect their religious and cultural identity by isolating themselves from their host societies.³

The literalist discourse is best represented by many of the *Wahhābī*⁴-Saudi-affiliated institutions and *muftis*. The impact of this discourse cannot be ignored in shaping the lifestyle of Muslim immigrants in its formative stage from early 1970s up to

² Sometimes they are called neo-Zaherites, because the methodology of the classical Zaherite's school, established in the third century Islamic Era by Dawūd ibn 'Alī al-Zāhirī (200-270 A.H./815-883 C.E.), is based on literal interpretation of the Qur'an and *Sunnah* with less focus on the context of revelation or the search for the divine wisdom. The neo-Zaherites, however, is different from the original school in terms of their limited knowledge of the tradition and their lack of *ijtihād* tools. See Muḥammad Salīm al-'Awwā, *Dawr al-Maqāsid fi al-Tashrī'āt al-Mu'āṣirah* (London: Al-Maqāsid Research Center in the Philosophy of Islamic Law, al-Furqan Heritage Foundation, 2006), 14.

³ Muhammad Khalid Masud, "Islamic Law and Muslim Minorities," *ISIM Newsletter* (December 2002): 17.

⁴ *Wahhābī* and *Wahhabism* denote the followers of Muḥammad b. 'Abd al-Wahhāb who joined forces with the Sa'ūd Family to establish the first Saudi state in the late 18th century. Since then the thoughts of 'Abd al-Wahhāb became the formal ideology of the Kingdom whether in its second rise in the mid 19th century or in the third Saudi Kingdom in the beginning of the 20th Century. For a positive review of the history of Muḥammad ibn 'Abdel-Wahhāb, see: Jamal al-Din M. Zarabozo, *The Life, Teachings and Influence of Muhammad Ibn Abdul-Wahhab* (Kingdom of Saudi Arabia: Ministry of Islamic Affairs, Endowments, Da'wah, and Guidance), 2003. For another review of Wahhābī Islam see: Natana J. Delong-Bas, *Wahhabi Islam from Revival and Reform to Global Jihad* (Cairo: The American University in Cairo Press, 2005). For a critical review see: Stephan Schwartz, *The Two Faces of Islam: The House of Sa'ud from Tradition to Terror* (New York: Doubleday, 2002). For illustrating the wider impact of Wahhabism on contemporary Muslims, including those in minority situation, see: Khaled Abou El Fadl, *The Great Theft*.

the late 1990s. Even until today its impact is felt in some Muslim circles in the West. However, a point of caution here should be noted: not all Saudi *imams*, scholars or institutions belong to this trend. There are a number of Saudi-based or educated *imams* and scholars whose discourse and contributions can be placed on a different point of the spectrum of the legal debate on the jurisprudence of Muslim minorities.

The focus here, however, is on the official Saudi religious institutions, and their endorsed *muftis* and *fatwa* collections. Specifically, the focus here is on the *fatwas* and publications of the Ministry of Islamic Affairs, Endowments, *Da'wah* and Guidance, the General Presidency of Research and *Ifta'* Administrations, and the Permanent Committee for Scientific Researches and *Ifta'*.

The Saudi Impact: Traveling Money and Ideology

The *Wahhābī*-Saudi's relations with Muslim minorities date as far back as the 1960s. However this relationship reached its peak between the late 1970s and the 1990s, particularly after oil revenues began to generate real wealth for the Kingdom of Saudi Arabia, through which it "could fulfill its ambitions of spreading the word of Islam to every corner of the world, of assisting Muslim countries less well endowed economically and of alleviating the suffering of Muslim minorities wherever they might live."⁵ The Saudi government and individuals generously supported Muslim minorities. They donated billions of dollars to help minorities build mosques, establish Islamic schools and organize Islamic work. They provided them with tutors and *imams*. They funded projects

⁵ <http://www.kingfahdbinabdulaziz.com/main/m000.htm> (accessed 8/10/2011)

for translation and publication of religious materials to be distributed to minority communities. In 1980, for example, the Department of Islamic Affairs, then affiliated with the Ministry of Treasury, donated around 37 million Saudi Riyals for various Muslim minority communities.

The Saudi government established a number of educational institutions as well such as King Fahd Academy in London, 1985; Islamic Academy in Washington, 1984-85; King Fahd Academy in Moscow, 1992; and the King Fahd Academy in Bonn, 1995. It also funded departments and chairs of Islamic studies in a number of European and North American universities such as Harvard, Oxford, Duke, Johns Hopkins, American University of Colorado, American University in Washington, Santa Barbara, School of Oriental and African Studies (SOAS), Institute of the History of Arab and Islamic Science in Frankfurt, Germany, etc. It also funded, either fully or partially, the establishment of a number of mosques and Islamic centers such as the Fresno Mosque in California; the Islamic Center in Columbia, Missouri; the Islamic Center of East Lansing, Michigan; the Islamic Center in New York; the Islamic Cultural Center in Chicago; the King Fahd Mosque in Los Angeles; the Islamic Center in Geneva, Switzerland; the Islamic Center of London; the Islamic Center of Rome; the Islamic Center of Madrid, etc.

The funds given by the Saudi authorities and organizations amounted to enormous sums of money in some countries: in London, 43 million riyal, in Rome, 50 million dollars, in Munich, 350 thousand Sterling, etc.⁶

The constitution of the Saudi Ministry of Islamic Affairs, Endowments, *Da'wah* and Guidance, established in 1993, stresses the Saudis' concern for the conditions of Muslim minorities. This concern developed into a working plan executed by the ministry's various departments. According to recent sources and statistics, the department of *Da'wah* and Guidance has twenty two offices spread in various world cities. This department dispatched *dā'iyah*, i.e. preachers, to more than 90 countries throughout the years until 1994. In addition, the Department of Printing and Publishing translated 77 books and distributed them, for free in some cases, to Islamic schools and institutions all over the world.⁷

The Saudi government led initiatives to establish a number of international Islamic organizations. In 1962, it established, along with 22 other Islamic countries, the Muslim World League (MWL) whose main tasks include supporting Muslim minorities and helping to resolve their problems. The MWL has 32 offices in the Muslim world countries, in addition to six offices in Europe. Moreover, the MWL has a special

⁶ For a review of the role and impact of the Saudi government on Muslim minorities and for other statistical information, see 'Abdel-Ḥakīm 'Abdel-Salām al-Madanī, *Dawr al-Mamlakah al-'Arabiyyah fī Khidmat al-Islām* (the Kingdom of Saudi Arabia: Dār al-Salām, 2003) 269-ff; see also King Fahd website: <http://www.kingfahdbinabdulaziz.com/main/m.htm>; for a critical evaluation of the Saudi impact on the American scene especially through the distribution of *Wahhābī*-oriented literature see: Center for Religious Freedom, *Saudi Publications on Hate Ideology Invade American Mosques* (Freedom House, 2005). Available online at: http://www.freedomhouse.org/uploads/special_report/45.pdf

⁷ 'Abdel-Ḥakīm al-Mādanī, *Dawr al-Mamlakah*. 284.

department devoted to preparing Islamic educational curricula for Muslim minorities. It also awards fellowships for Muslim minority students to study in the Saudi Kingdom or in other Islamic institutions. In 1994, there were 891 fellowships granted to students from 63 countries. In 1972, the World Assembly of Muslim Youth (WAMY) was established mainly through the funds of the Saudi government. WAMY helps establish mosques and other Islamic institutions. Every year it organizes youth camps in various parts of the world. In 1982, for example, they had at least 8 youth camps in Argentina, Gambia, Holland, France, Sudan, Cyprus (Turkish side), and the Philippines.⁸

Given such significant contributions and funds to Muslim minorities and the symbolic role of the Kingdom of Saudi Arabia as the Guardian of Muslim holy places, the center to obtain Islamic knowledge and guidance gradually shifted toward Saudi-*Wahhābī* religious institutions and *muftis*. This can be confirmed through a review of the official *fatwa* collection of the Ministry of Islamic Affairs. The thirteen-volume collection contains a considerable number of *fatwas* relevant to Muslim minorities and their interaction with wider non-Muslim societies.

The Ministry received questions coming from almost every country in the world, including Belgium,⁹ Bangladesh,¹⁰ Thailand,¹¹ They also received numerous questions

⁸ *Ibid.*, 295-ff.

⁹ Aḥmad ibn ‘Abdel-Razzāq al-Dawīsh, ed., *Fatawa al-Lajnah al-Dā’imah lil-Buḥūth al-‘Ilmiyyah wa-al-Iftā’*, vol. 9 (the Kingdom of Saudi Arabia: Dār al-‘Āṣimah, 1998), 6.

¹⁰ *Ibid.*, vol. 9, 72.

¹¹ *Ibid.*, vol. 9, 143.

from London,¹² America,¹³ Canada,¹⁴ France,¹⁵ Germany,¹⁶ and Bengal.¹⁷ It also received questions from Australia,¹⁸ Singapore,¹⁹ Brazil,²⁰ India,²¹ Russia,²² Denmark,²³ Ireland,²⁴ and Africa²⁵ among others. The questions dealt with virtually all aspects of life: immigration, citizenship, rituals, marriage, divorce, education, food, dress, interacting with non-Muslims, interfaith dialogue, etc.

The reference to *Wahhabism* in relation to the Saudi influence on Muslim minorities stems from a number of reasons. First, *Wahhabism* or, as commonly called by the Saudi institutions themselves, *Salafism*, is the state religious ideology that it attempts

¹² *Ibid.*, vol. 9, 446.

¹³ *Ibid.*, vol. 9, 420; vol. 10, 46-50, 131; vol. 12, 81, 151, 502; vol. 13, 48, 398, 530, etc.

¹⁴ *Ibid.*, vol. 10, 109.

¹⁵ *Ibid.*, vol. 10, 120-1

¹⁶ *Ibid.*, vol. 10, 235-6.

¹⁷ *Ibid.*, vol. 10, 132-33.

¹⁸ *Ibid.*, vol. 11, 131.

¹⁹ *Ibid.*, vol. 11, 138.

²⁰ *Ibid.*, vol. 12, 56-7.

²¹ *Ibid.*, vol. 12, 197.

²² *Ibid.*, vol. 12, 247.

²³ *Ibid.*, vol. 13, 364

²⁴ *Ibid.*, vol. 12, 381.

²⁵ *Ibid.*, vol. 12, 349.

to promote and export to other Muslim communities.²⁶ Second, the *fatwas*, under study in this chapter, were based on the Muḥammad ibn ‘Abdel-Wahhāb ideological stands. ‘Abdel-Wahhāb was hostile to non-Muslims, insisting that Muslims should adopt none of their customs or befriend them. He even asked Muslims to make visible and unequivocal their dislike, if not enmity, to non-Muslims.²⁷ The structure of the *fatwas* and the way they are drafted take a clearly *Wahhābī* position by affirming the literal ritualistic reading of the *Ḥanbalī* school. Third, the literature translated and distributed to Muslim minorities was either directly related to the *Wahhābī* school, authored by people who lived or studied in the Kingdom of Saudi Arabia, or supported by Saudi institutions.²⁸

Given the previous discussion on the Saudi efforts to engage with Muslim minorities, it becomes evident that the Kingdom played a significant role in shaping the understanding of Muslim minorities of the meaning and function of Islam in their lives.

²⁶ The advocates of the *Wahhābī* thought dislike the *Wahhābī* label and prefer to call themselves *salafīs*, the followers of the early Muslim generations. However in Western scholarship *Wahhabism* is more commonly used in reference to the Saudi ideology and thought in return to *Salafism* which is used in Arab and Islamic literature, especially from those who endorse or inclined to their ideological position. To review a history of the two terms and the difference between them, see Abou El Fadl, *The Great Theft*, 45-95.

²⁷ *Ibid.*, 49-50

²⁸ See for example: *Fatawa lil-Muslim fi al-Mughtarab* (Kingdom of Saudi Arabia: Cultural Attaché, Washington DC, n.d.); Najd Scholars, *Majmū‘at Rasā’il wa-Fatawa fi Masā’il Tamas Ilayhā Ḥajat al-‘Aṣr* (Kingdom of Saudi Arabia: Ministry of Defense, Aviation and General Inspection, n.d.) (Both aforementioned books were obtained for free from an Islamic Center in Canada); Muhammad b. Jamil b. Zino, *The Pillars of Islam and What Every Muslim must Know about his Religion* (Riyadh: Dār al-Salām Publishers and Distributors, 1998). This book was distributed for free at the Los Angeles King Fahd Mosque.

A Portrait of a Muslim Life in a non-Muslim Polity: A Literalist Approach

For the sake of brevity and focus, an attempt will be made in the following paragraphs to draw a portrait of a Muslim life in a non-Muslim polity according to the collection of *fatwas* of the Permanent Committee for *Fatwa* and Research, especially those *fatwas* of late Saudi *Sheikhs* *Sheikh* ‘Abdel-‘Azīz ‘Abdullah ibn Bāz and his colleague *Sheikh* Muḥammad ibn Ṣāliḥ al-‘Uthaymīn. *Sheikh* Ibn Bāz (1912-1999) was appointed Grand *Mufti*, the highest religious authoritative rank of the Kingdom by King Fahd in 1993. Ibn Bāz’s connection to the Saudi religious and political institution, however, goes back to the early years of the establishment of the Kingdom when he was chosen as the *qādī*, judge, of Dilam in 1938.²⁹ “From that moment, the two histories, i.e. the history of the Kingdom and the history of Ibn Bāz, interconnected and lived together until this very moment.³⁰ *Sheikh* Ibn al-‘Uthaymīn (1929-2000) was a student of Ibn Bāz and a member of the Council of Senior Scholars of the Kingdom. He was also a teacher in the Faculty of *Shari‘ah* and *Usūl al-Dīn*, Muḥammad ibn Sa‘ūd University. Both Ibn Bāz and Ibn al-‘Uthaymīn were titled “*al-Shaykhan*”, the two *sheikhs*.³¹ This title originally goes back to the famous scholars: *imam* Muḥammad ibn Ismā‘īl al-Bukhārī

²⁹ Dilam is a city in the governorate of Kharaj, which is affiliated with Riyadh Region.

³⁰ Jāsir al-Jāsir, *Al-Majallah*, issue 86, 1406 A.H., cf. ‘Abdel-‘Aziz M. al-Sad-ḥan, *Al-Imām in Bāz, Durūs wa-Mawāqif wa-‘Ibar*, (Cairo: Dār al-Bashā‘ir al-Islāmiyyah, 2009) 150. Ibn Bāz was also described as the *jurist of Aal Su‘ūd*. See: Ṣāliḥ al-Wirdānī, *Ibn Bāz: Faqīh ‘al Su‘ūd*, (Egypt: Dār al-Ḥusām, 1998). For a review of Ibn Bāz’ works and *fatwas* see: <http://www.binBāz.org.sa/fatawa>

³¹ For a review of Ibn al-‘Uthaymīn biography and works see: Walīd ibn Aḥmad al-Ḥusayn, *Al-Jāmi‘ li-Ḥayāt al-‘Allāmah Muḥammad ibn Ṣāliḥ al-‘Uthaymīn* (Leeds: al-Ḥikmah Magazine, 2002). See also: <http://www.ibnothaimeen.com/index.shtml>

(810-879) and *imam* Abū al-Ḥusayn Muslim ibn al-Ḥajjāj (821-875) of the second and third centuries of Islam. Giving them such a title indicates the authoritativeness these two *muftis* command in the eyes of their followers and their position in the Muslim world.

The *fatwas* of Ibn Bāz and Ibn al-'Uthaymīn are not only available for almost everybody through the formal Saudi published *fatwa* collection, but were also reproduced or elaborated upon in their own *fatwa* collections,³² and on the internet.³³ Some of their *fatwas* for Muslim minorities were compiled in two manuscripts: one in Arabic³⁴ and the other translated into English.³⁵ The Arabic collection is compiled from *fatwas* mostly published in *Majallat al-Ṣirāṭ al-Mustaqīm*. It includes the *fatwas* of other *muftis* as well, most of them Saudis. The English collection has two separate introductions by both *muftis* on the role and position of Muslim minorities. It is also worth noting that the *fatwas* of both scholars, especially those of Ibn Bāz, are circulated by Saudi Consulates to various religious institutions in the minority communities.³⁶

³² 'Abdel-'Aziz Ibn Bāz, *Min Fatawa wa-Rasā'il Samaḥat al-Sheikh 'Abdel-'Aziz ibn Bāz* (Cairo: Al-Farūq al-Ḥadīthah li-al-Ṭibā'ah wa-al-Nashr, 1988); 'Abdel-'Aziz Ibn Bāz, *Fatawā Islamiyyah*, 3 volumes, (Beirut: Dār al-Qalam, 1988); Muḥammad ibn Ṣāliḥ Al-'Uthaymīn, *Fatawa al-Mar'ah al-Mu'minah fi Fiqh al-Din Wa-al-Ḥayah*, ed. Nabīl Muḥammad Maḥmūd, (Alexandria: Al-Dār al-'Alamiyyah li-al-Nashr, 2006); Ibn al-'Uthaymīn, *Fatawa Arkān al-Islām*, ed. Fahd ibn Nāsir al-Sulaymān (Riyadh: Dār al-Thurayyah li-al-Nashr 2000/2001).

³³ <http://www.binBaz.org.sa/>; <http://www.ibnothameen.com/>

³⁴ *Sheikh* Ibn Bāz and *Sheikh* Ibn al-'Uthaymīn, *Muslim Minorities, Fatawa Regarding Muslims Living as Minorities* (U.K.: Message of Islam, 1998).

³⁵ Ibn Bāz, Ibn al-'Uthaymīn, and *et al*, *Fatawā al-Aqalliyāt al-Muslimah* (Dār al-Mustaqbal li-al-Nashr, 2001).

³⁶ As an example, the Saudi Cultural Bureau in Washington published a 16-page booklet on *Fatawa li-al-Muslim fi al-Mughtarab*, in which Ibn Bāz featured as the main authoritative *mufti*.

Ibn Bāz and Ibn al-‘Uthaymīn, as all other Muslim scholars regardless of their orientations, unquestionably believe that preservation of one’s faith and obedience to *Shari‘ah* are of primary importance and stand as the foremost duties of the Muslim individual regardless of when and where he/she might live. Ibn Bāz argues, “It should be stressed that one of the most important matters concerning Muslim minorities is, that they adhere to Allaah’s [sic] Religion, understand it well and cling to it whatever their situation, in times of difficulty and ease, health and sickness, travel and residence. Every Muslim man and woman wherever they might be, must hold firmly to Allaah’s [sic] Religion while being patient with it.” Ibn Bāz goes further and qualifies his statement by arguing: “This [obedience] is especially due in this [present] time of banishment and exile when Islaam [sic] itself has been exiled, has many enemies...”³⁷

According to the proponents of this trend, the best thing a Muslim can do, when in a minority position, is to immigrate to a Muslim country. A *fatwa* states, “Whoever has the means to immigrate and he does not and contents himself to live in the land of disbelief, then he harms his religion, himself as well as Muslims and it is assured that he will face the Hellfire...”³⁸ The *fatwa* quotes Ibn Kathīr’s *Tafsīr* for *sūrah* 4, verse 97. The verse reads, “Lo! as for those whom the angels take (in death) while they wrong themselves. (The angels) will ask: In what were ye engaged? They will say: We were oppressed in the land. (The angels) will say: Was not Allah's earth spacious that ye could have migrated therein? As for such, their habitation will be hell, an evil journey's end.”

³⁷ Ibn Bāz, *Muslim Minorities*, 15.

³⁸ ‘Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 69, 99.

Ibn Kathīr comments, “This verse is applicable to everyone residing among the disbelievers, having the means to immigrate and unable to manifest his religion. [In such a case,] he does injustice to himself and he committed *ḥarām* according to the consensus of Muslim scholars.”³⁹

A modern day *hijrah* is to depart the land of *kufr*, i.e. disbelief, to the land of Islam or to a land that has lesser level of disbelief.⁴⁰ If the Muslim cannot call for prayer in a microphone, this is a sign of inability to manifest one’s religion, therefore the Muslim should immigrate, and if he does not, then he commits a sin.⁴¹ If the Muslim is compelled to stay then he should isolate himself, having as limited contact as possible with non-Muslim society. A Muslim is not allowed to take the citizenship of the land of disbelievers because this is a form of paying them loyalty and showing consent to their disbelief.⁴²

A Muslim is not to visit disbelievers, love them, or take part in their celebrations, festivals, and gatherings.⁴³ A Muslim is not allowed to reside with a disbeliever, even if this helps him learn the language because such a stay would have a negative impact on him.⁴⁴

³⁹ *Ibid.*

⁴⁰ Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 12, 50-1.

⁴¹ *Ibid.*, vol. 12, 54.

⁴² *Ibid.*, vol. 2, 109-10.

⁴³ *Ibid.*, vol. 2, 95, 98.

⁴⁴ *Ibid.*, vol. 2, 96; vol. 12, 133.

A Muslim cannot study Islamic sciences with non-Muslim teachers.⁴⁵ Muslim children cannot attend mixed schools or intermingle in swimming pools.⁴⁶ It is generally *ḥarām* for Muslim women to learn in a mixed setting with men, and if this setting is in the land of disbelievers, the level of *ḥarām* is higher.⁴⁷ A Muslim is not allowed to study in a school that teaches the religion of disbelievers.⁴⁸

A Muslim is not allowed to enter non-Muslim churches or temples unless it is for the purpose of *da'wah*.⁴⁹ The unbelievers are not allowed to give speeches in mosques because they can raise doubts in the creed of Muslims or may earn prestige from speaking there.⁵⁰ A Muslim is not to look like their customs and dress.⁵¹ A Muslim does not initiate greetings with the unbelievers, unless there is a dire need to do so.⁵² A Muslim does not take part in burying an unbeliever or carrying his/her corpse, unless there is nobody else to do it.⁵³ A Muslim also cannot condole the family of the deceased, unless this is done with a view to inviting them to Islam or to avoid harm or to gain some

⁴⁵ *Ibid.*, vol. 12, 88.

⁴⁶ *Ibid.*, vol. 12, 168-9.

⁴⁷ *Ibid.*, vol. 12, 181-2.

⁴⁸ *Ibid.*, vol. 12, 197.

⁴⁹ *Ibid.*, vol. 2, 117.

⁵⁰ *Ibid.*, vol. 2, 100.

⁵¹ *Ibid.*, vol. 3, 428.

⁵² *Ibid.*, vol. 3, 435.

⁵³ *Ibid.*, vol. 9, 11, 14, 132.

benefits for Muslims.⁵⁴ A Muslim should not carry the Qur'an with him to the land of disbelievers and it is not permitted to hand it to a disbeliever. It is possible however to give it or mail it in translation.⁵⁵ If a Muslim is known to be in love with a disbeliever, other Muslims are not allowed to visit that Muslim except to give advice and to admonish.⁵⁶ A Muslim is not allowed to visit the land of disbelief for tourism or for work.⁵⁷ A Muslim is not allowed to give his *Zakāh* to disbelievers. Only charity, gifts and *uḍ-ḥiyyah*, *i.e.* sacrifice, meat can be given to the disbeliever, provided he is not in a state of combat with Muslims.⁵⁸

The bottom line of all these *fatwas* is to prohibit any kind of relationships that involve social or religious engagement with the disbelieving wider society. Business transactions, such as work engagement and selling and buying Islamically-lawful merchandise, are allowed.⁵⁹ However, to avoid partaking in business with non-Muslims is better in order to stay away from suspicion and doubts.⁶⁰ If there is a Muslim merchant, then he has a priority over the disbeliever. It is *ḥarām* to prefer a non-Muslim merchant

⁵⁴ *Ibid.*, vol. 9, 132.

⁵⁵ *Ibid.*, vol. 4, 62-64.

⁵⁶ *Ibid.*, vol. 2, 95.

⁵⁷ *Ibid.*, vol. 2, 108; vol. 12, 58.

⁵⁸ *Ibid.*, vol. 10, 28-30, 78; vol. 11. 424-5.

⁵⁹ *Ibid.*, vol. 12, 253-4; vol. 2. 67; vol. 13, 48-50.

⁶⁰ *Ibid.*, vol. 2, 99.

over a Muslim if there is no clear reason. If preferred, this is a kind of *muwālāh*⁶¹ which is *ḥarām*.⁶² Also eating, buying or accepting their invitation for food is permitted, especially if *da'wah* is intended.⁶³ A Muslim can invite non-Muslims to his house provided that it is guaranteed that they will not cause *fitnah*, i.e. seduction-- and they will maintain the *ḥurumāt*, i.e. the sanctity of the place. This will hopefully incline their hearts toward Islam.⁶⁴ A Muslim is allowed to learn English only if there is a need, otherwise it is *makrūh*, i.e. disliked.⁶⁵ A Muslim is allowed to receive education in non-religious fields from disbelievers' institutions provided that it involves good intention and benefits Muslims. If it is useless education or leads to *fitnah*, such as learning Darwinism, then it is not permitted.⁶⁶ Muslim women are permitted to learn English in a female-only class provided that the teacher is also a female and no intermingling between genders is involved.⁶⁷ A Muslim, especially a student, is not allowed to seek usurious loans from banks.⁶⁸ A Muslim can only use credit cards if no interest is involved.⁶⁹ It is also *ḥarām*

⁶¹ *Muwālāh* is one of the key words that will be frequently repeated. It means taking ally, befriending or loving non-Muslims.

⁶² 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 13, 18.

⁶³ *Ibid.*, vol. 12, 253-4.

⁶⁴ *Ibid.*, vol. 2, 99.

⁶⁵ *Ibid.*, vol. 12, 133; vol. 3, 113-4.

⁶⁶ *Ibid.*, vol. 12, 81, 88.

⁶⁷ *Ibid.*, vol. 12, 152.

⁶⁸ *Ibid.*, vol. 12, 151; vol. 13, 19-20, 274-5, 295, 364.

⁶⁹ *Ibid.*, vol. 13, 522-ff.

for Muslims to steal or cheat or do mischief in the land of disbelief, claiming that their money, property and women are *ḥalāl*.⁷⁰

Discourse of Isolation and Alienation

The advocates of the literalist discourse live in tension with the West.⁷¹ They regard its people, culture and products with suspicion. They continually recall the status of war and enmity that governed the interaction between the East and the West throughout past centuries. This fear and enmity of the West reveals itself in Ibn Bāz's introductory speech to young international Muslims attending the WAMY sixth conference held in Saudi Arabia in 1986. In his speech, Ibn Bāz called upon the young audience to "hold firm to the rope of Allah [his religion] and exhort each other ... in order that Allah will give them [the young people] victory over their enemies, elevate their conditions, answer their prayers, defeat their enemies and give them authority and leadership on earth..."⁷² Ibn Bāz invites them to seek victory over the enemy. One wonders who is this enemy and where it is located. Mostly, it is the land of disbelief, their homeland, since many of them came from non-Muslim polities. Although there is no mention of the "West" or of any other specific place, the message is not vague – the

⁷⁰ *Ibid.*, vol. 12, 320.

⁷¹ In fact the literalists live in tension with many other trends and schools in various places of the world. This tension goes as early as the turn of the century with the scholars of al-Azhar who criticized its religious stands and as late as 2009 with the critical remarks of the former Law Minister of India, Jethmalani, who accused *Wahhabism* of being a reason of terrorism. (<http://www.youtube.com/watch?v=PRbgewBFbpY>) The tension, however, in these cases is not derived towards isolation and disassociation. It is because of the domination over who has the right to the authentic form of Islam and the non-recognition of the other's right to interpret or apply Islam.

⁷² Ibn Bāz, *Muslim Minorities*, 9.

enemy is the ideological West and its governing system, rather than its people, that young Muslims need to “defeat”. The use of the term “*kuffār*” not only confirms the message, but it precludes any attempt for compromise or reconciliation between the two worlds.

Ibn Bāz gives young Muslims and those in minority situations a platform by which to live by and a list of the duties they should uphold. Minority Muslims, first and foremost, must maintain and apply the religion of Islam in their lives. They must understand their religion properly, devote themselves to the Qur’an, and learn Arabic so they can understand the message of the Qur’an. They should invite non-Muslims to adopt Islam in a gentle and kind way.⁷³ It is worthy to note here that with all these instructions, nothing is said about the obligations of these young Muslims toward their societies in terms of mutual cooperation and civic engagement. *Da’wah* is the main vehicle for dealing with the disbelievers, as will be explained shortly.

The attitudes of Ibn Bāz and other advocates of this trend toward the West emanate from the classical doctrine that the land is of two categories: the abode of Islam and the abode of war. The abode of Islam is the legally-chosen abode for Muslims to live where they would enjoy sovereignty and autonomy over their religious affairs. The land of war is the land of disbelief, non-believers, the enemy, the immoral, etc. This being the case, the logical outcome is that Muslims have to abandon this land. This abandonment is required physically through immigration to Muslim lands. If, however, this is not

⁷³ *Ibid.*, 18.

possible for a specific reason, then social abandonment of the society is required. In other words, a policy of segregation and isolation from the wider society is recommended.

Within this framework, one can understand the position of this trend's proponents regarding questions of *walā'*, i.e. loyalty, and *barā'*, i.e. disassociation. Muslims should allege their loyalty only to fellow Muslims and Muslim state and should disassociate themselves from non-Muslims. The only venue through which an interaction between a Muslim and a non-Muslim is *da'wah*. Ibn Jubayrīn (1933-2009) who was a member in the Saudi *fatwa* permanent committee said, "As for those who insist on their disbelief, neither is there hope that they will accept Islam nor have they a desire to embrace Islam, no Muslim should initiate them with greetings, nor stand for them [out of respect], nor give them priority or preferences in Muslims' gatherings. But if they wish to enter Islam then this is permitted."⁷⁴

The *fatwas* and opinions of the *muftis* that belong to this trend are replete with references to the immigrant land as a land of disbelief. One may argue here that this reference is doctrinally justified since it is used in reference to a society whose people are non-Muslims. But within this discourse, the land of disbelief is not just a label but a legal identification that represents the center of the argument and the main channel through which those *muftis* conclude their *ḥukm*, i.e. ruling. In other words, if the *fatwa*'s argument starts with identifying the wider society as *kāfir*, then the ruling is basically one of disassociation, detachment and discontent. In cases where the *muftis* want to provide

⁷⁴ Ibn Bāz *et al*, *Fatawa al-Aqalliyāt al-Muslimah*, 48.

less harsh *fatwas* or take milder position, a different referential term is used: *naṣārā* or *ahl al-kitāb*, Christians or the People of the Book. For example, when the issue is relevant to the purchase of food and meat, the *muftis* of this trend tends to make it *halāl*, permitted for Muslims to consume. In this case, they use ‘*naṣārā*’ to refer to the non-Muslim society. But when they discuss other issues, such as that of residence, the *muftis* designate the people of those lands as “*kāfir*” or “*mushrik*”, precluding any attempt to take milder positions. In a *fatwa* concerning the prohibition of celebrating Christmas, there is no mention whatsoever for Christians or People of the Book, although it is known that this celebration has a religious significance.⁷⁵ Even in a *fatwa* that has to do with visiting churches, Ibn Jubayrīn permits such a visit if the intention is to inform other Muslims about the life of the “unbelievers” and not that of the Christians.⁷⁶ Therefore the argument of the *kufir* of the land is the bottom line and the base upon which this trend builds its position.⁷⁷

The question of what to call non-Muslims, disbelievers or people of the book, is an old question. There are various references in the Qur’an for both terms, which are used to describe the same people. In one occasion, the Christians were described as non-believers because of their belief in Jesus as God.⁷⁸ Muslim theologians and interpreters of

⁷⁵ *Ibid.*, 40.

⁷⁶ *Ibid.*, 59.

⁷⁷ ‘Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 30, 143; vol. 3, 416.

⁷⁸ The term “People of the Book” is mentioned in the Qur’an more than thirty times in different contexts. (see for example: 2:105; 2:109; 3:65; 3:75; 4:153; 5:15; 29: 64)

the Qur'an subtly debated these verses in an attempt to define how to compromise between the two, apparently contradictory, descriptions. Al-Qaraḏāwī confirms that the *naṣārā* is non-believers as they do not believe in the message of Islam. Muslims are also non-believers in the eyes of the *naṣārā* because they do not believe in Jesus as God. Therefore identifying people as non-believers is a matter of theology and faith conviction that should not interfere with social life and lead to disassociate people from each other. The *naṣārā* are non-believers in terms of belief and the people of the book in terms of Muslims' interaction with them.⁷⁹ The Egyptian intellectual Muḥammad Salīm al-'Awwā argues that the Qur'anic verses that talk about the People of the Book as non-believers are describing their relationship to God and not to Muslims. He argues that "there is not one single Qur'anic verse [that indicates the *kufr* of the People of the Book] in contexts where the Qur'an talks about human relationships and our [Muslims'] relationship with them."⁸⁰

The literalist trend does not make such a distinction between worldly matters and religious conviction. Actually they did not make such a distinction for Muslims. If a Muslim, for example, does not pray, he is about to leave the fold of Islam.⁸¹ The

⁷⁹ See for example: Yūsuf Al-Qaraḏāwī, *Al-Shari'ah wa-al-Hayah*, Al-Jazeera Satellite Channel, July 21, 2001. Transcript is available at: http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=71&version=1&template_id=105&parent_id=1#top; see also: http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=3745&version=1&template_id=224&parent_id=17

⁸⁰ Al-'Awwā's comment came in the context of his response to a question by one of the audience in a TV talk show. See: <http://www.youtube.com/watch?v=7rYWq8TTPOI> (accessed in 8/10/2011)

⁸¹ 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 42, 44, 56-57.

superficial approach of dividing people and their actions into two groups, Muslims and *kuffār*, with monopolizing the definitions of what is Islamic and what is not, is troublesome for many Muslims, let alone non-Muslims. It creates a polarization in society that leads to tension.⁸² This polarization is taking place in Muslim land as well as in the land of Muslim minorities. If the land of the minority is a land of *kufr* and if the people are *kuffār*, then *barā`ah* has to be declared. A Muslim has to detach himself from the disbelievers. Detachment should be social, economic and political. An expression of love or a feeling of brotherhood leads the Muslim to a state of loyalty, a sign that he is about to leave the fold of Islam. Therefore the Muslim has to distinguish himself from them in terms of food, dress, conduct, festivals, holidays, etc. This is what it is referred to in the literature of this trend as the concept of *mukhālafah* or *barā`ah*, the former means being different and distinguished from others, especially non-believers and the later is to declare rejection and refusal of non-Muslim's religion, culture, traditions, etc. In a clear statement, it is argued, "it is also reported to do what disagrees with their customs and traditions, be they religious, social or national."⁸³

Muwālāh is a key argument in this trend's *fatwas*. Important as it is, the proponents of this trend did not attempt to define precisely what it means. It is always coupled with terms like loyalty, showing love, expressing brotherhood or revealing

⁸² As an example, googling the question "is the people of the book *kuffār*? [in Arabic]", the results come mainly from *salafi* forums, as they dominate the discourse and accuse others of ignorance.

⁸³ *Ibid.*, vol. 2, 73.

friendship.⁸⁴ One *fatwa* argues that relationships among people are of different types. If it reflects love and brotherhood from a Muslim to a disbeliever, then it is *muḥarramah*, i.e. prohibited, and in some cases it may lead to the *kufr* of the Muslim. A reference to *al-Mujādalah*, *sūrah* 58: 22, is used in this context.

The verse reads, “Thou wilt not find folk who believe in Allah and the Last Day loving those who oppose Allah and His messenger. even though they be their fathers or their sons or their brethren or their clan. As for such. He hath written faith upon their hearts and hath strengthened them with a Spirit from Him. And He will bring them into Gardens underneath which rivers flow, wherein they will abide. Allah is well pleased with them. And they are well pleased with Him. They are Allah's party. Lo! Is it not Allah's party who are the successful?”

But if the relationship and the interaction are limited to business transactions or the exchange of food, then it is permissible. If there is an intention of *da'wah* involved, then it is recommended.⁸⁵ In another occasion, it is argued that a disbeliever can be given from the meat of the *uḍ-ḥiyah*, i.e. sacrifice meat, if he is a relative, a neighbor or a poor person.⁸⁶ Food, business and gift exchange are all permitted.⁸⁷ These forms of interaction in themselves reflect a certain level of intimacy, tolerance and love so one wonders what will be the manifestation of *Muwālāh / mukhālafah* in the minds of the *muftis* of this

⁸⁴ *Ibid.*, vol. 2, 65, 73, 76-7.

⁸⁵ *Ibid.*, vol. 12, 253-4.

⁸⁶ *Ibid.*, vol. 11, 424-5.

⁸⁷ In numerous *fatwas*, see for example: *Ibid.*, vol. 2, 65-7.

trend. Basically, *mukhālafah* and non-*muwālāh*, according to their *fatwas*, are of three levels. First, a Muslim is not allowed to take their citizenship because this entails an agreement with their wrong beliefs and doings.⁸⁸ Second, a Muslim is commanded to disagree with their traditions, religious creed and rituals. Therefore a Muslim is to grow beard, not to eat with his left hand, nor to intermingle with the opposite sex or to attend mixed weddings.⁸⁹ A Muslim is not to celebrate or congratulate non-Muslims on their festivals and religious occasions because this is a form of aiding them in their sins and it also reflects one's content and love to them.⁹⁰ A Muslim should not follow the non-Muslim cultural traditions such as putting flowers on the graves of martyrs or standing a minute in memory of dead people.⁹¹ A third level of *mukhālafah* or non-*muwālāh* is the spiritual and internal rejection of the actions of the disbelievers. A Muslim has always to entertain a feeling of discontent and dislike for the disbelievers' creed and behavior. In other words, the interaction has to be superficial and any feelings of admiration should be avoided so as not to risk *fitnah*, i.e. being seduced, by their faith or tradition.⁹²

Da'wah is the key word that makes the existence of Muslims in non-Muslim countries permissible. The *muftis* envision the main purpose of Muslims' residing in non-Muslim territories to be that of making *da'wah*. Muslim minorities can attend non-

⁸⁸ *Ibid.*, vol. 2, 109-110.

⁸⁹ *Ibid.*, vol. 3, 428-9.

⁹⁰ *Ibid.*, vol. 3, 436; vol. 2, 103.

⁹¹ *Ibid.*, vol. 9, 89-91.

⁹² *Ibid.*, vol. 2, 67.

Muslim gatherings, participate in interfaith dialogues, and interact with non-Muslims with a view to inviting them to Islam. If Muslims are unable to perform this duty, they should immigrate to a Muslim country.⁹³ On the other hand, it is allowed for a Muslim to travel to the land of disbelievers for the sake of *da`wah*, in spite of the *kufir* status of this land.⁹⁴

“*Da`wah to Allah*” was the title of the speech given by Ibn al-‘Uthaymīn to the youth group at the sixth WAMY conference in Saudi Arabia. In his speech, Ibn al-‘Uthaymīn advised the gathered youth on the tools they needed to make *da`wah* among non-Muslims: acquiring knowledge, practicing this knowledge, appropriately handling *da`wah* issues, unity, sincerity, and graduality, to name a few. He advised the young people not to use “insulting words [such as] ‘you are misguided, you are from the people of fire, you are a devil’” “because no good will be achieved by this. Rather it causes alienation and repulsion.”⁹⁵

This trend attempts to create an absolutist literalist-centrist life-style. It relies on text without paying due attention to legitimate hermeneutic tools. It focuses on form rather than function. For advocates of this trend, the concept of history is static and circular, meaning that that the Muslim originality lies at the historical moment of the first century of Islam and not on the current moment’s values and principles. This forces

⁹³ This is reiterated in many of the *fatwas* that have to do with residence in non-Muslim land. See for example: Ibn Bāz *et al.* *Fatawa al-Aqalliyāt al-Muslimah*, 37; ‘Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 66, 68, 96.

⁹⁴ ‘Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 12, 260-1.

⁹⁵ Ibn Bāz *et al.* *Fatawa al-Aqalliyāt al-Muslimah*, 52.

Muslim intellectual history to regress to the first and maybe the second century and remain there, trying to emulate and reproduce the same image, disconnected from the ongoing changes of the present time. It recalls the historical jurisprudential legacy as valid mechanisms that work beyond space and time. This vision ignores the simple fact that history changes and Islam keeps adapting to these changes through a rich legal and traditional heritage that combines textual scrutiny, rational reflection, custom and societal approval in a conscious-search for an evidentiary basis of a *Shari'ah* ruling that at the end leads to the golden rule, to enjoin the good and forbid the evil. The good and the evil here are general, not limited to a certain group, restricted to certain practices or confined to a certain historical moment.

Such dialectical and contextual arguments are absent from the *fatwas*. The *muftis* do not provide technical or elaborate explanations or interpretations for their opinions. No reference is made to any other opinion that supports or opposes their position. For them it suffices to declare the *hukm* and use a Qur'anic reference or a *Hadith* without pointing out the context of revelation and to what extent this reference is applicable in other contexts and how it is used or debated in other jurisprudential sources. One may understand the absence of such legal discussion in a *fatwa* that is supposed to be brief and non-confusing to the *fatwa*-seeker, but on the other hand, if the issue at stake concerns a community and not a single individual, as is the case with questions about Muslim minorities, then the Islamic legal practice is to provide a comprehensive answer that negotiates the questioner's context and responds to other judicial positions and discourses. One may refer here to the *fatwas* of Rashīd Riḍa at the turn of the 20th century

or the *fatwas* of the late rector of al-Azhar Sheikh Jād al-Ḥaqq 'Ali Jād al-Ḥaqq. Both muftis provided, in most cases, detailed *fatwas* where various juridical opinions were presented and evaluated. The *muftis* conclude their *fatwas* with their own position and *ijtihād*.

Some *fatwas* of the literalist trend may be long. The length, however, is due to the amount of Qur'anic and *Hadith* references which are introduced without comments on their relevance to the question, as if these references are self-explanatory and do not require an elaboration, even on the linguistic level. The absence of such an elaboration, which is a basic component of the Islamic legal tradition, reflects the basic ideology for both the classical and contemporary literalist schools that the text, i.e. Qur'an, Sunnah, and the statements of early companions of the Prophet, is comprehensive and covers all aspects of human life and all its questions. According to them, Islamic legal schools are of little significance and that a *mufti* can reach his opinion drawing mainly from the Qur'an and *Sunnah*.⁹⁶ This lack of appreciation for the legal tradition subjected this trend to a severe criticism from many other Islamic trends.

In a nutshell, this methodology led the *muftis* of this trend to issue *fatwas* heavily based on a literal reading of the text without due regard to the context. The wording of their *fatwas* is very explicit and categorical in their conclusions, compared with other trends as will be explained later. They do not leave a room for interpretation, using

⁹⁶ Muḥammad 'Imārah, *Tayyārāt al-Fikr al-Islāmī*, 2nd ed. (Cairo: Dār al-Shūrūq, 2007), 141-150. Abou El Fadl, *The Great Theft*, 47.

unequivocal language such as: “No doubt it is prohibited”; “One has to...”; “It is not permitted to...”; “The prohibition of...”... etc.⁹⁷

If one looks closer and examines their Qur'an or *Hadith* references, one can notice that they frequently refer to a specific set of verses and *Hadiths* that, according to books of *tafsīr* and *Hadith* have causes of revelation that made them context-specific and historically-bound.⁹⁸ In formulating their answers, they do not stress this aspect of interpretation as if it does not exist or is irrelevant to the *fatwa*. Such a literal reading of the text does not even attempt to hint at the linguistic possibilities of a given term that may yield a different interpretation or position. To give an example, on a question on the meaning of *muwālāh*, the *fatwa* argues that Allah forbids Muslims to ally with Jews and other polytheists. Muslims must not show non-believers affection, love, brotherhood or support. To support this position, literalist *muftis* quote the following verses:

“Thou wilt not find folk who believe in Allah and the Last Day loving those who oppose Allah and His messenger, even though they be their fathers or their sons or their brethren or their clan. As for such, He hath written faith upon their hearts and hath strengthened them with a Spirit from Him...” (Qur'an 58:22)

⁹⁷ Numerous examples of this language are easily located in the 13 volume *Fatwa* publication. See: 'Abdel-Razzāq, *Fatawa al-Lajnah*.

⁹⁸ Qur'anic references include 3:118-120; 4:97-99; 5:51; 58:22; 60:1, 8-9. *Hadith* references include “whoever imitates a group of people he is one of them” (reported in *Musnad Aḥmad* 2:50, 92 and *Musnad Abū Dawūd* no. 4013), “I *bariy*’, do not bear the responsibility, of any one residing among the polytheists” (reported in Abū Dawūd’s *Musnad* no. 2645 and Tirmidhī’s *Jāmi*’ no. 1605 and Al-Nasā’i’s *Mujtabā* 8:36) and “...Do not enter the polytheists’ churches and temples because Allah’s wrath befalls them” (reported in Bayhaqī’s *Sunan* 9:234 and 'Abdel-Razzāq’s *Musannaḥ* no. 1609). The best place to locate these references combined in this trend’s *fatwās* see, 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 46-151.

“O ye who believe! Take not for intimates others than your own folk, who would spare no pains to ruin you; they love to hamper you. Hatred is revealed by (the utterance of) their mouths, but that which their breasts hide is greater. We have made plain for you the revelations if ye will understand. Lo! ye are those who love them though they love you not...”
(Qur’an 3:118-120)

Then the *fatwa* goes on to say that *muwālāh* is forbidden but it does not include legal transaction or gift exchange.⁹⁹

If we consider, for example, the first verse, which according to the *muftis* is a clear prohibition against befriending non-Muslims, one finds that the *muftis* do not attempt to explain the contradiction of simultaneously prohibiting *muwālāh* and permitting Muslim men to take Jewish or Christian women in marriage. How a marriage based on love and mercy might be permitted without a *muwālāh* bond between husband and wife. Linguistically, the verse stipulates clearly that the non-love is for those who *yuhād* Allah and his messenger. *Yuhād* here in Arabic means “at war with Allah and his messenger”. Therefore it does not include everyone. Generalization of the *fatwa* here does not stand on a firm ground of linguistic interpretation. This can even be more clearly affirmed by another verse which the *muftis* of this trend also use improperly. The verse reads, “O you who believe do not take my enemies and your enemies allies...” (Qur’an 60:1) The verse is very clear that enemies should not be taken as friends. Enmity in Islamic tradition does not refer to non-Muslims because even if they are not Muslims,

⁹⁹ ‘Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 64-5.

according to this tradition Muslims still respect their humanity and only hate the quality of their disbelief.¹⁰⁰

Conclusion

No doubt the Saudi-*Wahhābī* ideology has had an impact on Muslim minority life in the last quarter of the 20th century. This period was significant in the history of those minority communities. It was the time their numbers increased significantly, their identity-question became essential; an Islamic infrastructure was vital for their communal and religious life; and the host society felt their presence and drafted policies for their integration/assimilation. At this very moment, which required a sensitive, responsible legal treatment from Muslim scholars towards this unprecedented experience of Muslim minorities, the literalist puritan *wahhābī* voice penetrated the minority ranks with both funds and ideology. It is literalist because of its theological and hermeneutic stance of understanding the position of the text in the life of the individual and community, and it is puritan in the sense that its aspiration does not go beyond a certain moment of history. This moment represents the ultimate absolute goal of life, and consequently Muslim should replicate it, with little concern about the religio-social reality or the economic-political setting of the current historical experience.

According to the literalist tradition, the text becomes the conveyer of God's will and human beings can faithfully identify the divine determinations and consequently

¹⁰⁰ For an overview of the verses of *muwalāh*, their meanings and cause of revelations and their application to minority situation see: Khālid 'Abdel-Qādir, *Fiqh al-Aqalliyyāt al-Muslimah* (Lebanon: Dār Al-Imān, 1998), 622-649.

enforce it.¹⁰¹ Abou El Fadl describes this position of the text in the discourse of the literalists as if the text was created for human beings: human beings were not created for the text. He argues, “puritans imagine that human life with all its diversity richness and complexity can be imprisoned within a text and the divine will with all of its transcendence and omnipresence can be captured in a text, whatever the nature of this text and this text can be fully represented by human beings.”¹⁰² This approach produces a resolute authoritarian discourse that has become a subject of severe criticism from various Islamic Law experts. For example, Fathī Othmān, a well-known Muslim intellectual, argues (commenting on the *fatwas* concerning women given by the Saudi Permanent Committee for *Fatwa*), “I confess that I find the virtual slavery imposed on women by the Saudi Permanent Council for Scientific Research and *Iftaa* and like-minded to painful offensive and unworthy of *Shari‘ah*...”¹⁰³

Contrary to the claims that they rely mainly on the text without relating their *fatwas* to the context, the literalists’ *muftis* argue they are aware of the conditions and situations of the minority life and that they care about their life.¹⁰⁴ A counter argument would prove that they did not have firsthand experience with those minorities. They

¹⁰¹ Khaled Abou El Fadl, “The Place of Ethical Obligation in Islamic Law,” *UCLA Journal of Islamic and Near Eastern Law*, vol. 4 (2004-5); 35.

¹⁰² *Ibid.*, 37-8.

¹⁰³ Mathias Rohe, *Muslim Minorities and the Law in Europe: Chances and Challenges* (India: Global Publication, 2007), 156.

¹⁰⁴ ‘Abdel-‘Aziz M. al-Sad-ḥan, *Al-Imām ibn Bāz*, 108-114.

relied on reports and meetings with personnel representing those minorities.¹⁰⁵ One can imagine how misleading this may be. Most probably the people they met or received their reports had the same puritan inclination and attitudes. Therefore a reflection of real minority life, not alone experiencing it, is absent from their discourse.

Reading through this trend's *fatwas* provides more evidence to their lack of knowledge of minority problems and context. The peculiarities of the minority situation are absent from formulation of their *fatwas*. For example, according to one *fatwa*, the Muslim cannot gain a livelihood through any work that involves any *ḥarām* practices. This means abstaining, not only from working in Islamically-prohibited transactions, but also from work involving the mere mixing of men and women.¹⁰⁶ Marrying non-Muslims, greeting Christians or people of other faiths on their religious festivals and even appealing to the non-Muslim court system are signs of one's moral fault that reveal disobedience to one's religion and are therefore prohibited.¹⁰⁷ In case of dire necessity that may force Muslims to be involved in such transactions, such an involvement should be as brief as possible and should be carried out in accordance with the general provisions of Islamic law.¹⁰⁸ The hard-line positions of this trend included issues of special relevance to women: Muslim women are not allowed to learn English in mixed

¹⁰⁵ Both Ibn Bāz and Ibn al-'Uthaymīn did not travel to any European or American countries. The only time *Sheikh* Ibn al-'Uthaymīn left the Kingdom is in his death-sickness when he traveled to the United States for treatment.

¹⁰⁶ 'Abdel-'Aziz M. al-Sad-ḥan, *Al-Imām ibn Bāz*, 75.

¹⁰⁷ *Ibid.*, 66, 73, 83.

¹⁰⁸ Masud, "Islamic Law and Muslim Minorities."

settings,¹⁰⁹ if some women insist on not wearing the veil while attending the mosque activities, they have to be prevented from entering the mosque.¹¹⁰

The *muftis* of this trend are clearly restrained by both the methodology and the worldview of the old times. They use the term “enemy countries” for the abode of Muslim minorities. Clearly, Ibn Bāz did not use the term in its literal sense. “It is the compulsion of analogical reasoning to measure the modern situation in terms of the old categories of House of Islam and House of War.”¹¹¹ This position toward the West, as *dār ḥarb* has been a subject of critical revision by many contemporary Muslim scholars.¹¹²

The ideology of enmity and hatred toward disbelievers promoted by this trend penetrated deep into the psyche of some extremist groups who did not stop at detachment from and disassociation with non-Muslims, but crossed the line to physically use violence against them. In various *fatwas*, the proponents of this trend categorically affirmed the illegality to hurt or do un-justice to non-Muslims. They called upon Muslims to maintain the ethics of Islam in their daily life with non-Muslims. Some extremist groups, however, marginalized these rulings and developed their own “*salafi-jihadist*” *fatwas* of the legality of killing, robbing or hurting disbelievers.

¹⁰⁹ Ibn Bāz, *et al*, *Fatawa al-Aqalliyāt al-Muslimah*, 110-1.

¹¹⁰ *Ibid.*, 105-6; Ibn Bāz, *Muslim Minorities*, 72.

¹¹¹ Masud, “Islamic Law and Muslim Minorities,” 17.

¹¹² See Chapter VI in the present work.

One of the main objectives of this trend is to exert their utmost effort to preach for Islam. The *muftis* of this trend envision the main purpose of Muslims' residing in non-Muslim territories is to make *Da'wah*. Muslim minorities can attend non-Muslim gatherings, participate in interfaith dialogues, and interact with non-Muslims with a view to inviting them to Islam. Muslims unable to perform this duty should immigrate to a Muslim country.¹¹³ They regard Muslim minorities as an extension of the religious and cultural home-country tradition. They want to maintain a form of tradition in which an *amīr* runs the religious affairs of the community.¹¹⁴ This creates a hierarchy with a religious leader at the top. From where the community gets this knowledgeable leader? Most probably from the home country. This process of recruiting *imams* reproduces the same cultural and social organization of the home country. For example, the mosque boards rarely have women members. Children education is based on home country curriculum. This type of authority-authoritative structure cannot easily be comprehended or held by Muslim minorities for many reasons: the nature of societal organization in their "host" countries, the emergence of a free-of-home-country-tradition in second and third generations, and the living experiences in the new environment. At the time when *muftis* were seeking to impose a unitary global image of Islam, the real agents, the minorities, were driven to create their own local traditions. Over the course of time, tensions arose between the vision this trend promotes and the ambitions of the Muslim communities who were becoming key players in the organization of their new homes.

¹¹³ Ibn Bāz, *et al*, *Fatawa al-Aqalliyāt al-Muslimah*. 37.

¹¹⁴ Ibn Bāz, *Muslim Minorities*, 29.

This tension led to a re-consideration, if not a rejection, to the positions taken by the literalist trend. It produced its own response, represented in the emergence of a new school calling for the establishment of a new *fiqh* for minorities that considers the peculiarities of the Muslim minorities' situation. This does not mean that the literalist trend died. It does exist and is still active in certain circles and supported by some organizations, but not on the same level that it was a decade ago.

Chapter II

Voice of Tradition

Muslim Minorities and Application of Islamic Law

The presence of Muslim communities in non-Muslim polities is not a modern phenomenon. Since the first century of Islam, corresponding to the 7th century A.D., Muslims travelled, immigrated, and settled beyond their heartland. They have lived in Spain, Sicily, the Balkans, India, China, Brazil, South Africa, and more recently in Western Europe and America. This long interaction with the non-Muslim world has had its impact on Islamic theology, jurisprudence and philosophy. The case of Andalusia, for example, is significant, where Muslim scholars developed jurisprudential and philosophical orientation that were to a great extent a result for their interaction with the indigenous civilization.¹

The presence of Muslim communities, mostly as a result of immigration, in modern Western liberal democracies is another stage in this Muslim-non-Muslim interaction. Such a presence challenged the traditional convention of Muslims toward the position and meaning of *Shari'ah* in their lives. As a result of this challenge, ritual, moral, social, economic and even political questions have emerged and are being directed to Muslim jurists, *imams* and *muftis* who mostly live in the heartland of Islam. Those

¹ Al-Walīd ibn Rushd's *Faṣl al-Maqāl fi-mā Bayna Al-Ḥikmah wa-al-Shari'ah min al-Itiṣāl* is a good example here where Ibn Rushd attempted to explain the connection between jurisprudence and theology. Another example is the Andalusian scholar Maslamah ibn Aḥmad al-Majrīṭī (d. 1008 A.D.) who authored *Ghāyat al-Ḥakīm* where a synthesis of Platonism and Hermitic Philosophy was introduced.

jurists and *imams* responded with issuing *fatwas*. Examining these *fatwas*, three key trends, as mentioned in previous chapters, can be identified: the puritan-literalists, the traditionalists and the renewalists. The present chapter focuses on the second trend, i.e. the traditionalists, the ideology of its proponents and the extent of its impact on Muslim minorities.

The traditionalists treat minority questions as exceptional cases that require *rukhsah*, i.e. license-based rulings. In their *fatwas*, they consciously adhere to traditional classical juridical positions. At the same time, however, they attempt to appreciate changes in time and place and the need, in some situations, to depart from conventional positions through issuing what may be called “conditional *fatwas*”. One of the main characteristics of the traditionalists is their attempt to accommodate the new political reality of Muslim “minorityness” by searching the mines of jurisprudential manuals and historical precedents to support their *fatwas*. In the first trend, the puritans, the argument was mainly based on Qur’anic and Prophetic texts with no clear attempt to relate the text to the concerns or context of Muslim minorities. The second trend, the traditionalists, by contrast, starts with textual evidence, then continues to look for precedents that may support, limit or redefine the meaning of the text. They always stress the novelty of the question or the peculiarity of the questioner.

The traditionalist’s trend was dominant among Muslim minorities until the 1990s when a new trend calling for the establishment of Muslim minority jurisprudence

emerged.² The traditionalists' trend is best represented by *fatwas* given by members of al-Azhar *fatwa* committee³ and Egyptian *muftis* (also graduates of al-Azhar). This chapter attempts to explore their *fatwas* and study their methodologies. It tries to investigate the impact it has on the lives of Muslim minorities. The chapter examines how al-Azhar became an authority voice for the global Muslim community. It poses the question of how the Azharites looked at the West and how this vision impacted their ideological as well as their juridical stand towards it.

Al-Azhar: a Center for Islamic Guidance

Al-Azhar, established in Egypt in 970 A.C. by the Fatimids, soon became an important center of Islamic knowledge that not only received students of Islam but has also been a reference and source of religious authority for Muslims all over the world.⁴ This fact is ascertained on paper and in reality. The 1961 al-Azhar reform law states: "al-Azhar is the major Islamic scientific institution that preserves and disseminates Islamic heritage and traditions. It also carries the responsibility of conveying the Islamic message

² One may refer here to *fatwa* collections published during that period. See European Council for Fatwa and Research, *Qarārāt wa-Fatāwā*; M. Darsh, *Questions and Answers about Islam*; and early *fatwas* of *IslamOnline.net*, etc.

³ The *Fatwa* committee in al-Azhar was established in 1935. At the time it constituted a president and 11 members (three members were *Hanafites*, three *Shāfi'ites*, three *Mālikis* and two *Hanbalis*)

⁴ For a review of al-Azhar's history see: Bayard Dodge, *al-Azhar, A Millennium of Muslim Learning* (Washington: the Middle East Institute, 1974); Chris Eccel, *Egypt, Islam and Social Change: al-Azhar in Conflict and Accommodations* (Berlin: Klaus Schwarz Verlag, 1984); 'Abdel-'Azīz Muḥammad al-Shinnāwī, *al-Azhar Jāmi' wa-Jāmi'ah* (Cairo: Egyptian Anglo, 1983); Muḥammad 'Abdullah 'Anān, *Tārīkh al-Jāmi' al-Azhar* (Cairo: Mu'assasat al-Khāngī, 1958).

to all peoples of the world.”⁵ In reality, al-Azhar has a historical record of scholars and students coming in and out from the Muslim world and beyond. It has been the destination and meeting point for seekers of religious knowledge from every corner of the Muslim World. After obtaining their education in al-Azhar, those knowledge-seekers “dispersed; each back to his land of origin, to teach ... and to judge the affairs of their community in accordance with the principles and rules they acquired [from their stay at al-Azhar].”⁶

The intellectual life of al-Azhar and its impact on the Muslim world, however, have not always been on the rise. Al-Azhar went through stages of weakness and stagnation, mostly due to the political orientations and ideologies of successive Egyptian governments.⁷ Such stages, however, did not last for long and al-Azhar regained its leading position in the Islamic world because of two factors: The first is the substantial funding of *awqāfs* and state support.⁸ The second is al-Azhar’s internal diverse nature of accommodating various schools of thoughts.⁹ This second element specifically helped al-

⁵ Muḥammad ‘Awaḍ, *al-Azhar: Ayy Mustaqbal Yantaẓiruh* (Cairo: Wakālat al-Ṣaḥāfah al-‘Arabiyyah, 2007), 15.

⁶ Chris Eccel, *Egypt, Islam and Social Change*, 295.

⁷ For example, when Egypt became under the Ottomans, a policy of isolation was imposed on Arab countries and consequently the role of al-Azhar became less on the international forum. See: Muḥammad ‘Awaḍ, *al-Azhar*, 11.

⁸ The successive Egyptian governments used to have some sort of relationship with al-Azhar. This relationship, however, was based on partnership, i.e. the state uses al-Azhar to promote its status internally and internationally and al-Azhar interferes with the state, sometimes forcing its view upon it. This was the case until Nasser’s time when al-Azhar gradually became part of the state apparatus.

⁹ Al-Azhar curriculum taught the famous *sunni* and *shi’i* schools of jurisprudence. Its *fatwa* committee constituted of *mufiis* belonging to the four *sunni* schools of thought. This made al-Azhar a center for guidance for peoples of different jurisprudential and theological orientations.

Azhar occupy a position of unprecedented authority in the eyes of people all over the world.¹⁰

Internationally recognized as the center of the Muslim World, al-Azhar receives Muslim as well as non-Muslim delegations from around the world. *Majallat al-Azhar* reports that al-Azhar receives ambassadors, ministers, members of parliaments, members of international organizations, and so on, to discuss matters of relevance to Islam and Muslims.¹¹ The famous 2003 visit of the French minister, Sarkouzy, to seek al-Azhar's opinion on the French ban on the headscarf is a case in point. Although the Grand *Imam*, *Sheikh* Muḥammad Ṭanṭāwī's *fatwa* initiated a heated controversy, the fact remains that al-Azhar – even in modern times where the global religious market is relocating religious authorities everywhere – is still a constant center of religious authority for Muslims, even to those who live as minorities.

Another important element in the affirmation of the status of al-Azhar in the Muslim world, especially the world beyond the heartland of Islam, is its continuous support for non-Arab Muslim students to come and study in its schools. The statistics of foreign students studied in al-Azhar between 1986 and 1996 amounted to 57,189 students. Although most of them came from African and Asian countries, there were around 1000 students from Europe, especially from the Balkan region, and around 50

¹⁰ Malika Zeghal, "The 'Recentering' of Religious Knowledge and Discourse, the Case of al-Azhar in Twentieth Century Egypt" in *Schooling Islam, the Culture and Politics of Modern Muslim Education*, ed. Robert W. Hefner and Muhammad Qasim Zaman (Princeton: Princeton University Press, 2007).

¹¹ There is always a section in *Majallat al-Azhar* that publicizes the news of the Grand *Imam*. This section always carries the news of his meetings and communications with international bodies.

from Latin and North America as well as 16 from Australia.¹² It should be noted that the enrollment of non-Egyptian/non-Arab students in al-Azhar is not a twentieth century phenomenon. There were *riwāqs*¹³ for Chinese and South African Muslim students back in the nineteenth century.¹⁴ The history of overseas students coming to al-Azhar can even be traced back to earlier times.¹⁵

At this conjecture, it is noteworthy to argue that in the 1960s, the Egyptian state institutionalized al-Azhar and gradually organized it as one of its apparatuses. Al-Azhar has become a tool to propagate the foreign policy of the Egyptian state. This can be seen in al-Azhar's 1960s dissemination of socialistic ideas, the state ideology of that time. This political affiliation with the state, however, did not have a great impact on the position of al-Azhar beyond Egyptian borders. Actually the state's support was used to promote al-Azhar's status as a place where Muslim students could come to obtain their religious education and then return to their homelands and occupy prestigious positions in their countries.¹⁶ Even later on, when the state dominated the official discourse of al-

¹² For detailed statistics for this period, see: 'Ilāqāt al-'Āmmah, *Jāmi' at al-Azhar fi Suṭūr* (Cairo, 1996).

¹³ *Riwāq* is a designated place for the accommodation of students within the mosque space.

¹⁴ Al-Shinnāwī, *Al-Azhar Jāmi'*, vol. 1, 268.

¹⁵ For earlier statistics, see Chris Eccel, *Egypt, Islam and Social Change*, 298-309.

¹⁶ A brief overview of some of those Azharite-educated personnel was given in Dodge, *al-Azhar, A Millennium*, 176-ff. Also al-Shawārbī referred to two of al-Azhar-educated *imams* in America who were leading their Yugoslavian and Albanian communities. See al-Shawārbī, *Al-Islām fi Amrikā*, 18.

Azhar, the graduates of al-Azhar still enjoyed credibility in local and international settings.¹⁷

This highly esteemed position of al-Azhar in the eyes of the international Muslim community is best represented in *fatwa* correspondence between overseas Muslims and al-Azhar. In one of these, the questioners argued, “Herewith we resort to the honorable al-Azhar, the oldest Islamic university in the world, seeking [its] curing opinion in this matter: an opinion that cures the hearts of the believers. We hope that you would publish your opinion in *Majallat al-Azhar*.”¹⁸

Al-Azhar in the West

The interaction between al-Azhar and the West in modern times can be traced back to the 18th century. At that time, a number of Muslim countries, Egypt at the forefront, were trying to pursue the path of ‘Western’ modernity as they searched for their own modern identity. The West, on the other hand, represented in the colonial ambitions of some European countries, such as France, Great Britain, and Italy, endeavored to strengthen its grip over weak Muslim and Arab lands that were then torn apart by its internal conflicts and wars among kings, monarchs and others. Striving for Egypt’s progress in the midst of these challenging times, Muḥammad ‘Alī (1769-1894), who was appointed under the pressure of the ‘*ulama* to be the *wali* of Egypt in 1805, set out plans to establish modern Egypt through a process of administrative, industrial and

¹⁷ Although there are no official statistics on the number of al-Azhar-educated *imams* and scholars in the West, they are quietly visible within the religious space of Muslim minorities. My personal experience in Great Britain, the Netherlands, the United States and Canada testifies to this.

¹⁸ *Majallat al-Azhar*, vol. 59 (1987): 628.

educational reforms. His intention was to make Egypt a model similar to European states.¹⁹ He sent successive missions of outstanding Egyptian students to Europe to acquire knowledge. The first mission left to France from 1820. Although these scientific missions started with a focus on military education, in due time they opened up to other scientific fields such as medicine, agriculture, law and humanities. Al-Azhar students constituted an essential part of these missions, to the extent that Ṭaha Ḥusayn,²⁰ who was known for his severe criticism of al-Azhar's educational system, argued, "al-Azhar absorbed the European civilization and re-produced it in Egypt and the East. Al-Azhar is the foremost significant element in modern Egyptian life since Egypt started interacting with Europe in the late 18th century until today."²¹

It is recorded that since 1826, there have been students from al-Azhar in Europe. There were five Azharites out of 44 Egyptian students sent to Europe in 1826. In 1832 there was a full mission for al-Azhar medical students. In 1847, there was also a mission to study law. It is a fact that some went to accompany the missions as religious *imams* and spiritual guides, but soon they themselves became students. Rifā'ah Rāfi' Ṭahtay is a

¹⁹ William L Cleveland, *A History of the Modern Middle East* (Boulder: Westview Press, 2009); Hassan Hassan. *In The House of Muhammad Ali* (Cairo: American University in Cairo Press, 2000).

²⁰ Ṭaha Ḥusayn (1889-1973), the dean of the Arabic literature, is one of the prominent figures in *al-Nahḍah*, the Egyptian renaissance movement. He got his PhD from the Sorbonne and then instated as a professor of History in Cairo University until he was appointed a minister of Education in 1950. He advocated the principle of free education for Egyptians and made his motto, "Education is as indispensable as water and air".

²¹ Ṭaha Ḥusayn, Introduction to *al-Azhar wa-Atharuh fi al-Nahḍah al-'Arabiyyah al-Ḥadiithah*, by Muḥammad Kāmil al-Fiqqī, 2nd ed. (Cairo: Nahḍat Miṣr, 1965), 5.

case in a point.²² Although early missions were sent to acquire modern sciences, teaching about and guiding Europeans to Islam were explicit objectives of many of these students. In his address to King Fuad's²³ mission of al-Azhar students to Europe in 1936, al-Azhar's Grand *Imam*, *Sheikh* Muḥammad Mustafā al-Marāghī (1881-1945) who was known for his reform ideas and calls for the need of *ijtihād* in modern times,²⁴ stated that the mission of those students is immigration to Allah and His Messenger, and that their journey is a "peaceful conquest" to guide people to virtue and to correct their information about Islam. "In these countries, you are [spiritual] leaders first and students second."²⁵ In some cases there were Azharites who were sent for the sole purpose of preaching. In 1948, al-Azhar's Grand *Imam*, *Sheikh* Muḥammad Ma'mūn al-Shinnāwī (1878-1950),²⁶ who was known for his keen interest in sending Islamic missions to the Muslim world, sent some outstanding Azharites to Great Britain to learn English. Then they were charged to deliver the message of Islam to the world.²⁷ By the 1950s, there were at least 10 Ph.D. Azharite students in France, 10 in Great Britain, 3 in Germany and, 2 in the US.

²² See Muḥammad `Abdullah `Anan, *Tarīkh al-Jāmi' al-Azhar*, 2nd ed. (Cairo: Mu'assasat al-Khangī, 1958), 33-42.

²³ Fu'ād I (1868–1936) was the sultan and king of Egypt from 1917 to 1936.

²⁴ Al-Marāghī is one of the early Grand *Imams* of al-Azhar who advocated the addition of modern sciences into the traditional curriculum of al-Azhar education system.

²⁵ *Majallat al-Azhar*, vol. 7 (1936): 188-189.

²⁶ Muḥammad Ma'mūn al-Shinnāwī was appointed, due to his erudition in religious sciences, to many religious positions in Egypt until he became the Grand *Imam* of al-Azhar in 1948. He focused on spreading the Azharite education system in Egypt. He reached an agreement with the Minister of Education to include the subject of religion into the curriculum of public schools and appointed graduates of al-Azhar to teach it.

²⁷ Wazārt al-I'lām, *Shuyūkh al-Azhar* (Cairo: General Information Administration, no date), 39.

Soon after graduation and upon returning to Egypt, most of those students held teaching positions in al-Azhar University.²⁸

Moreover, Azharite scholars were invited to teach in some American and European universities such as *Sheikh* Muḥammad ‘Ayyād al-Ṭanṭāwī (1810-1916). *Sheikh* al-Ṭanṭāwī became known as al-Azhari. He is considered the pioneer of orientalism in the West. He travelled to Russia in 1840 to teach Arabic in the Institute of Eastern Languages, Petersburg University. In 1847 he was appointed the chair of Arabic Language in the university and occupied it for 14 years. He had a great impact on the Russian orientalism studies and many of the famous Russian orientalists of this time studied with him.²⁹ Another example is Dr. Maḥmūd al-Shawārbī.³⁰ He was invited to teach in the Maryland and Fordham universities through the Fulbright program in the mid 1950s. During his two year visit to the US, he was very active member of the Muslim community, and contributed tremendously to the intellectual growth of the nascent Arab immigrant community. He delivered the Islamic speech in the ten year anniversary of the

²⁸ ‘Anān, *Tarīkh al-Jāmi‘ al-Azhar*, 307-9.

²⁹ Muḥammad ‘Abdel-Min‘im Khafājī and ‘Ali Ṣubḥ, *Al-Ḥarakah al-‘Imiyyah fī al-Azhar fī al-Qarnayn al-Tāsi‘ Ashar wa-al-‘Ishrīn* (Cairo: Al-Maktabah al-Azhariyyah li-al-Turāth, 2007), 103-ff.

³⁰ There is not enough information about the biography of Dr. Maḥmūd Yūsuf al-Shawārbī other than being a professor in Cairo University and the secretary of the Society of Introducing Islam to the World that was established in 1950s under the directorship of the Azharite *sheikh* Muḥammad ‘Abdel-Laṭīf Dirāz. (d. 1977). He was also a member in the Supreme Council of Islamic Affairs. Muḥammad Yūsuf al-Shawārbī, *Al-Islam fī Amrīkā* (Cairo: Lajnat al-Bayān Al-‘Arabī, 1960).

United Nations in San Francisco, 1955. Dr. Muḥammad al-Bahy is another Azharite scholar who taught in McGill in 1955-56.³¹

Furthermore, a number of al-Azhar's Grand *Imams* of the twentieth century studied or lived in the West such as *Sheikh* Mustafā 'Abdel-Rāziq, *Sheikh* Muḥammad al-Khidr Ḥusayn, *Sheikh* 'Abdel-Raḥman Tāj, *Sheikh* Muḥammad al-Faḥḥām, *Sheikh* 'Abdel-Ḥalīm Maḥmūd, and *sheikh* Biṣār. *sheikh* Mustafā 'Abdel-Rāziq (1885-1947) was appointed as a Grand *Imam* of al-Azhar in 1945. He attended the Sorbonne before he got his PhD from Leon University with a dissertation on *Imam* al-Shāfi'ī. *Sheikh* Muḥammad al-Khidr Ḥusayn (1876-1958) is a Tunisian scholar who fled Tunisia to Germany in 1934 where he studied for a while before he settled in Egypt in 1939. He acquired the Egyptian nationality and became a member in the Senior '*Ulama* Committee. He was appointed as the Grand *Imam* of al-Azhar in 1952. *Sheikh* 'Abdel-Raḥman Tāj (d. 1975), at the age of 40, was one of the members of al-Azhar mission in 1936, to the Sorbonne to read for his PhD which he got in 1943, despite the eruption of World War II. He was appointed as the Grand *Imam* of al-Azhar in 1954. One of his main decisions after appointment was to instate languages as an obligatory part of the curriculum of al-Azhar students. *Sheikh* Muḥammad al-Faḥḥām (1894-1980) was one of the Azhar mission students in 1936 to the Sorbonne. In the beginning he earned diplomas in Latin, Greek and Spanish languages before obtaining his PhD in literature in 1949. He was appointed as the Grand

³¹ Dr. Muḥammad al-Bahy (1905-1982) got his PhD in philosophy from Hamburg University, Germany. He was fluent in German, English, Latin and Ancient Greek. In 1958, he was appointed the general director of Islamic Culture Department in al-Azhar and later to be appointed the first rector of the "modern" University of al-Azhar in 1961. Muḥammad al-Bahy, *Ḥayātī fī Rihāb al-Azhar* (Cairo: Maktabit Wahbah, 1983).

Imam of al-Azhar between 1969 and 1973. He was known to be the owner of the largest personal library, 100,000 thousand titles. *Sheikh* `Abdel-Ḥalīm Maḥmūd (1910-1978) got his PhD from France in 1940. He occupied important positions in the religious circles in Egypt. He was the Secretary General of the Assembly of Islamic Research, the Minister of Endowment and then the Grand *Imam* of al-Azhar between 1973-1978. He earned a memorable reputation among Muslims due to his reforms in al-Azhar and because of his firm stand in many of Islamic issues. *Sheikh* Muḥammad `Abdel-Raḥmān Biṣār (1910-1982) studied in Cambridge before getting his PhD from Edinburg. In 1955 he was appointed as the director of the Islamic center in Washington D.C. Later in 1978, he was the Minister of Endowment and a year later he became the Grand *Imam* of al-Azhar.

As far as my research indicates, there is no detailed information about the lives of these Azharite students and scholars in their non-Muslim environments. The only exception to this is al-Shawārbī's monograph on his visit to the United States in the mid 1950s.³² The absence, however, of such information is positive evidence that they adapted to the new cultural Western milieu. Before travelling to Germany, the interview committee asked Dr. al-Bahy about his reaction if he were to attend a co-ed class. He simply replied that his main goal is acquiring knowledge and his main focus should be on the teacher's explanation. It is interesting that the question was about his personal attitude, and not on the Islamic ruling pertaining to mixed education classes. During his journey to Russia, *sheikh* Muḥammad `Ayyād al-Ṭanṭāwī attended the German opera twice wearing his Azharite dress, in a clear indication of accommodating the new culture,

³² Al-Shawārbī, *Al-Islām fī Amrikā*.

if not accepting it. In their journeys to Europe, Azharite students ate food, without asking how it had been slaughtered.³³ The point here is that the Azharite students and scholars of the nineteenth and twentieth century accommodated to the European and American way of life. If this had not been the case, one would have found traces of their objections or criticism in their writings, memoirs, *fatwas*, or even on the pages of the *Majallat al-Azhar*. In fact, reviewing the various volumes of *Majllat al-Azhar* reveals that there were no significant negative news pieces or articles about these missions or the hardship lives the students encountered in their non-Muslim host land that would result in terminating the missions or criticizing them.³⁴

The absence of negative feedback from al-Azhar mission students to their non-Muslim environment should not mean that they were not committed Muslims or that they ignored the prescriptions of their religion. On the contrary, reports have been found that indicate the commitment of those students and scholars to their religion and their efforts to convey the message of Islam. Dr. Muḥammad al-Bahy was the first to organize Friday Congregational Prayer in one of the halls of the Islamic Studies Institute in the School of Theology, McGill University in 1955. He declined the post of the Egyptian ambassador to Canada because he would not have been able to accommodate the protocols of attending parties where alcohol is served or where there is dancing. Dr. Maḥmūd al-Shawārbī urged American Muslims in New York to establish their own *ḥalāl* groceries.

³³ Al-Bahy, *Ḥayātī*, 28.

³⁴ It is noteworthy to mention that the Grand *Imam* of al-Azhar *sheikh* al-Zawāhirī (1878-1944) was against sending students of al-Azhar to Europe lest they learn atheistic philosophies. But his case was exception. See: Al-Bahy, *Ḥayātī*, 37-8.

He called upon them to convey to the American army the necessity to offer *halāl* food to Muslim recruits. Furthermore, as an *imam* of the Muslim community, he was asked to present the Islamic Call at the ten year anniversary of the United Nations. In his speech he introduced the Islamic concept of international relations. It becomes evident that the presence of Azharite students and scholars in the West at this formative stage in the life of Muslim immigrants helped to raise the consciousness of those immigrants concerning their Islamic identity and provided them with a channel to voice their religious concerns and Islamic aspirations. This channel can be noted on the pages of *Majallat al-Azhar* and in *fatwa* records.

Majallat al-Azhar is the official voice of al-Azhar. It provides its reader with not only educational and spiritual guidance but it also gives him information about the Muslim world community. It also reveals al-Azhar's position on various important issues that are encountered by the Muslim world. *Majallat al-Azhar* plays a significant role in terms of al-Azhar's concerns with Muslim minorities. If necessary, it publishes their news and comments on these issues. From its early issues, it has a section on "News of the Muslim World" which basically covers the entire world. For example, it published news about the abolishment of the Islamic courts in Yugoslavia,³⁵ the establishment of the first Chinese Islamic company, and the establishment of Islamic University in Switzerland.³⁶ The *Majallah* dedicates articles to the history, the life of those

³⁵ *Majallat al-Azhar*, vol. 17 (1945): 329.

³⁶ *Majallat al-Azhar*, (October 1986): 263.

communities, and other relevant issues.³⁷ It offers reviews of books that were originally published in foreign languages and comments on them.³⁸ It has an English section at the end of each issue that introduces some Islamic concepts to its English-speaking readers. Reviewing the English section in *Majallat al-Azhar*, one may notice in its early issues, it started with mere translation of Qur'anic passages and Prophetic statements, then it moved on to incorporate articles on other general subjects, such as peace, tolerance, justice, etc. Sometimes it introduced some historical events like *ghazawāt* and biographies of the companions of the Prophet. In the 1950s, the *Majallat* decided to publish only 10 issues a year in Arabic and then dedicates the last two issues to English.³⁹ This suggestion did not last long and the earlier formatting was kept. It also publishes *fatwas* that are concerned with the lives of people living as minorities.⁴⁰

The above-mentioned review briefly highlights the inter-relationship between al-Azhar, the West and Muslim minority communities. This interaction is most clearly manifest, however, when one traces the correspondence between Muslim individuals, groups or institutions and al-Azhar asking about legal Islamic opinions on various issues.

³⁷ *Majallat al-Azhar* reviewed the history of Muslims in Uganda (vol. 33, 1961-2, 39-ff), America (vol. 33, 1961-2, 468,1134), Greece and Japan (vol. 47, 1975, 164), India (vol. 8, 1937, 444; 520, 586, 659, 732), Russia (vol. 3, 1932, 74-ff, 145-ff, 225-ff), Eastern Europe (vol. 2, 1931, 526, 575), Australia, vols 9-10, 1986, 53-55, Great Britain, vol. 41, June 1969, English section, 14) and many others.

³⁸ See for example, "Al-Islām fī 'Uyūn al-Gharb", vol. 5 (1934): 173,204; "Al-Islām fī Naẓar Bahḥāthī Urūbbā", vol. 3, 1932, 362-ff; "Tārīkh Ḥayāt Muḥammad", vol. 7 (1936): 392, 532.

³⁹ *Majallat al-Azhar*, vol. 23 (1951).

⁴⁰ The *fatwas* published in *Majallat al-Azhar* will be reviewed in the following section.

Fatwa Review

Al-Azhar, due to its historical and religious significance, has been a source of religious guidance for Muslims. Muslim individuals, social organizations and political entities resort to al-Azhar seeking what they believe to be proper legal Islamic verdicts related to issues of concern to them. Muslim minority communities are not an exception in this regard. They have a long history of approaching al-Azhar for reliable authoritative responses for their religious questions. Literature shows questions coming to al-Azhar as early as the 1900s from Western countries. Throughout the century, one can easily locate *fatwas* coming from Germany, Italy, Great Britain, America, France, South Africa, Brazil, and so on. For the sake of brevity and focus, this chapter will briefly review the official *fatwa* publications of Egyptian *Fatwa* House, *Al-Fatawa al-Islāmiyyah min Dār al-Iftā' al-Maṣriyyah*,⁴¹ *fatwas* published by *Majallat al-Azhar*, and other *fatwa* collections by the Grand *Imams* and well-known scholars of al-Azhar.⁴² It is worthy to note here that for quiet sometime al-Azhar *fatwa* committees used to have representatives of the four *sunnī* schools of jurisprudence who would respond to the questions based on

⁴¹ Muḥammad 'Abdū, et. al., *Al-Fatawa al-Islāmiyyah min Dār al-Iftā' al-Miṣriyyah*, Higher Council of Islamic Affairs, Ministry of Endowments, Egypt. The publication of the *fatwa* started in 1980 and so far reached 20 vols. It has a huge collection of *fatwas* given by the various major *muftis* in Egypt over a hundred years, starting from well-known *mufti* Muḥammad 'Abdū based on the official records of the House of *Fatwa* in Egypt. Although the collections and the *fatwas* have been produced by the state-run House of *Fatwa*, the absolute majority of the *muftis* was trained and graduates of al-Azhar, a matter which makes their *fatwas* a reflection of their training and education in al-Azhar educational system. The *fatwa* collection was digitalized and became available to the public through al-Azhar distribution offices. In the present chapter, the researcher relied extensively on the digital version. The reference is cited in the following format: *Al-Fatawa al-Islāmiyyah*, *Fatwa* no., name of the *mufti*, year of the *fatwa*.

⁴² Such as Jād al-Ḥaqq 'Ali Jād al-Ḥaqq, 'Abdel-Ḥalim Maḥmūd, Abū Zahrah, etc.

the school of the *fatwa* seeker. In controversial questions, the *muftis* of the various schools may consult one another before deciding upon the case.

To review minority *fatwas* in such varied and voluminous sources, one has to be aware of the historical settings of the *fatwas* which expand over a century, the position of the *mufti* and its school of thought, as well as the concerns of the *fatwa* seeker. Still, however, one may be able to draw the framework through which al-Azhar *muftis* and *imams* are working.

A review of the minority *fatwas* in the above-mentioned sources illustrate that the content of minority *fatwas* has changed over time. Through the beginning of the century up to the 1970s, the *fatwas* were mainly asked by immigrants and mostly covered personal status issues and ritual practices. During the last decades of the twentieth century, the *fatwa*-seeking process witnessed a significant change. In addition to personal status and ritual-related questions, one can notice the appearance of a new category of questions and questioners. In the post-1970s, Islamic organizations, social institutions, and political entities became an identifiable source of different uncommon minority questions covering social and political issues of concern to the growing Muslim minority communities.

1900s-1970s *Fatwa* Review

Minority Muslims were concerned about using a language other than Arabic in their rituals. Are they allowed to translate the Qur'an? Is it possible to transliterate the *mushaf*? Are they allowed to translate their Friday Congregational sermon to another

language? Can a Muslim pray in a language other than Arabic? Al-Azhar engaged in the debate over such questions. The given *fatwas* tended to take tolerant positions. The meaning of the Qur'an can be translated.⁴³ Al-Azhar even launched a project with the Egyptian Ministry of Education to translate the Qur'an into English.⁴⁴ The Friday sermon can be translated, provided that it is delivered in Arabic first, because the sermon is meant for education, a matter which will not be fulfilled if it is only given in Arabic. If no one in the congregation knew Arabic, then the sermon can be delivered in another language, on the condition that the Muslims entrust some of them to learn Arabic. If they failed to do that, they would have committed a sin.⁴⁵ The transliteration of the Qur'an is, however, not permitted because there are no equivalent symbols of Arabic sounds in other languages, a matter which may result in incorrect pronunciation.⁴⁶ To pray in a language other than Arabic is also not allowed because prayer is a ritual and using other languages would be like using exegesis; something that is not acceptable in prayer.⁴⁷

Minority questions related to prayer also frequently appeared in al-Azhar-published *fatwa* literature. How should a Muslim pray in a city where the red horizon

⁴³ *Nūr al-Islām (Majallat al-Azhar)*, vol. 3, (1932): 29, 57, 66, 368; see also vol. 2, (1931): 122-ff.

⁴⁴ *Majallat al-Azhar*, vol. 7, (1936): 78-112 (This reference includes the Grand *Imam* of al-Azhar Muḥammad Muṣṭafā al-Marāghī treatise on "the translation of the Qur'an and its religious rulings" based on the Hanafi school of thought.); *Majallat al-Azhar*, vol.7 (1936): 123. (This refers back to his later-to-be Grand *Imam* of al-Azhar Maḥmūd Shaltūt on" the translation of the Qur'an: the opinions of the scholars.); *Majallat al-Azhar*, vol. 7 (1936): 188-9 (Article by the Moroccan Minister of Education on the translation of the Qur'an). For later debates see, *Majallat al-Azhar*, vol. 26 (1954): 295, 281.

⁴⁵ *Nūr al-Islām (Majallat al-Azhar)*, vol. 2 (1931): 312; *Majallat al-Azhar*, vol. 36 (1964): 123-4; *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 744, given by *sheikh* Aḥmad Harīdī in 1969.

⁴⁶ *Majallat al-Azhar*, vol. 7 (1936): 45-46.

⁴⁷ *Majallat al-Azhar*, vol. 46 (1974): 900.

does not disappear until after the time of the Morning Prayer? How should a Muslims pray in a country where night/day may extend over 24 hours? How should a Muslim pray on board an airplane? Can a Muslim combine prayers if work does not allocate time for prayer? Can the Friday Prayer be delayed to allow more people to come to the congregational area? The general position of al-Azhar *muftis* was always that God did not intend to make things difficult for believers. If Muslims do not see the red horizon, then according to the *Hanafi* School, the Evening Prayer is no longer an obligation; i.e. may not be performed. Other jurists argue that it can be made up after the Morning Prayer and the Muslim will not incur any sin.⁴⁸ If night/day exceeds more than 24 hours, the Muslim may calculate prayer times according to another country where the night/the day is of regular length.⁴⁹ If it happens that the Muslim needs to pray on board an airplane, he can pray on board in any possible position: standing, sitting or even by nodding his head.⁵⁰ If there is any reason, including work, that prevents the Muslim from praying on time, he can combine prayers in a way that fits his schedule.⁵¹ Friday Congregational prayer can be delayed to help people gather for it.⁵²

⁴⁸ *Al-Fatawa al-Islāmiyyah*, fatwa no. 15, given by *sheikh* 'Abdel-Majid Salīm in 1935. Interestingly here at the end of the *fatwa*, the *mufti* referred the question to the *Shafi'i mufti*, at that time the *sheikh* of al-Azhar, for elaborating on the *Shāfi'ī* position.

⁴⁹ *Majallat al-Azhar*, vol. 46 (1974):895-6.

⁵⁰ *Majallat al-Azhar*, vol. 3 (1932): 356.

⁵¹ *Majallat al-Azhar*, vol. 46 (1974): 895-6.

⁵² *Al-Fatawa al-Islāmiyyah*, no. 9, given by *sheikh* Muḥammad Bakhīt in 1917.

Questions on Fasting during the month of Ramadan were also asked by Muslims living in non-Muslim polities. Do Muslims in remote areas follow the moon sighting of a certain Islamic country? How should Muslims fast in a city where the day is very long? The question of moon sighting and the beginning of Ramadan is common and continues to occupy Muslims until our present time without a solution. Recognizing the juristic debate and the differences of opinion on the issue, al-Azhar - hoping for the unity of Muslims at a time that was very close to the memory of the Ottoman Caliphate - always favored the unification of moon sighting for Muslims all over the world. So, if a Muslim community declared it had seen the moon, Muslims should follow it and fast.⁵³ In 1952, a question was asked about fasting in Northern Europe where daylight extends for more than 19 hours. *Mufti Ḥasanīn Makhlūf* argued that the length of the day does not matter as long as one can distinguish between day and night. But, if it is sure that fasting such long hours will result in severe illness, then Muslims should not fast, and the rules of the sick are to be applied in this case - making up the missed days later on or paying a *kaffārah*.⁵⁴ Although he argued that there was no clear rule for this in the *Ḥanafī* School, an earlier *fatwa* was given to the same effect.⁵⁵

Besides questions on rituals, Muslim minorities directed a sizeable number of inquiries on personal status to *muftis* affiliated to al-Azhar. The answers were given

⁵³ This position is no longer defended extensively as it was in the past after the establishment of Muslim nation states and their preference to follow their own moon sighting. For earlier positions see: *Majallat al-Azhar*, vol. 9, 523; *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 760, given by *sheikh* Aḥmad Harīdī in 1963; *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 3315, given by *sheikh* Jād al-Ḥaqq in 1979.

⁵⁴ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 3312, given by *sheikh* Ḥasanīn Makhlūf in 1952.

⁵⁵ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 15, given by *sheikh* 'Abdel-Majid Salīm in 1935.

according to the 'book', i.e. they followed traditional juristic opinions to the letter. In such cases, there were no exceptions made. A Muslim man can only marry from the People of the Book, but a Muslim woman is not permitted to initiate marriage with a non-Muslim.⁵⁶ If she is a convert, she has to leave her husband until he embraces Islam, otherwise separation is final.⁵⁷ If one of the parents converted to Islam, then his or her children must be raised as Muslims.⁵⁸ The children may stay with their non-Muslim mother, if she would not try to spoil their religion or convert them to her religion. If so, she will not be given custody of the children.⁵⁹ If a Muslim marries a non-Muslim in a civil non-Islamic court, then the marriage is valid but the husband, in case of divorce, may follow the Islamic way.⁶⁰ A Muslim cannot inherit from a non-Muslim.⁶¹ A Muslim cannot adopt children according to the European system.⁶²

Questions on social interaction with non-Muslims early in the 20th century up to the 1970s were not as complicated as they were at the turn of the twenty-first century. They were limited to questions concerning food, bequest, being buried in non-Muslim cemeteries, and the like. The *fatwas*, given to such questions, relied greatly on Islam's

⁵⁶ *Majallat al-Azhar*, vol. 33 (1961/2): 84, 192, 354; vol. 26 (1954): 18; *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 52, given by *sheikh* Muḥammad 'Abdū in 1900; *Fatwa* no. 826, given by *sheikh* Aḥmad Harīdī in 1962.

⁵⁷ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 3431, given by *sheikh* Aḥmed Harīdī in 1966.

⁵⁸ *Majallat al-Azhar* (October 1986): 206.

⁵⁹ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 3410, given by *sheikh* 'Abdel-Laṭīf Ḥamzah in 1982.

⁶⁰ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 73, given by *sheikh* 'Abdel-Raḥman Qura'ah in 1925; *Fatwa* no. 905, given by *sheikh* Aḥmed Harīdī in 1965.

⁶¹ *Majallat al-Azhar*, vol. 26 (1954): 247.

⁶² *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 1221, given by *sheikh* Jād al-Ḥaqq in 1979.

tolerant attitude and acceptance of the other, as long as there is no clear textual evidence that prevents a Muslim from certain practices. The Muslim can eat the food, including the slaughtered animals, of the People of the Book, even if they did not mention the name of God at the time of slaughtering. If the animal was killed by a strike from hard instruments and it was confirmed that it was killed because of being struck then the animal is not *ḥalāl*.⁶³ A Muslim can include a non-Muslim in his bequest and he can also accept the bequest of a non-Muslim.⁶⁴ A Muslim can ask non-Muslims to be witnesses on his contracts if he is traveling.⁶⁵ A Muslim can work in a business owned by a non-Muslim but he should avoid dealing in things that are prohibited in Islam like alcohol. In case of necessity, such a job, involving *ḥarām* items, may be permitted.⁶⁶ A deceased Muslim cannot be buried in a non-Muslim graveyard.⁶⁷

Business transactions did not appear in the *fatwa* literature of that time. This was most probably due to the fact that Muslim immigrants did not have the ability to venture

⁶³ *Majallat al-Azhar*, vol. 21, 1949; vol. 46, 1974, 895-6; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1109, given by *sheikh* Aḥmad Harīdī in 1962; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1108, given by *mufti* Ḥasan Ma'mūn in 1955; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1290, given by *mufti* Jād al-Ḥaqq `Ali Jād al-Ḥaqq in 1978; *Al-Fatawa al-Islāmiyyah*, Fatwa no. 625, given by *mufti* Muḥammad `Abdū in 1903.

⁶⁴ *Al-Fatawa al-Islāmiyyah*, fatwa no. 3417, given by *sheikh* Ḥasan Ma'mūn in 1936; *Al-Fatawa al-Islāmiyyah*, fatwa no. 949, given by *sheikh* `Abdel-Rahman Qura`ah in 1923; *Al-Fatawa al-Islāmiyyah*, fatwa no. 501, given by *sheikh* `Abdel-Majid Salim in 1934.

⁶⁵ *Al-Fatawa al-Islāmiyyah*, fatwa no. 988, given by *sheikh* Aḥmad Harīdī in 1968.

⁶⁶ *Al-Fatawa al-Islāmiyyah*, fatwa no. 853, given by *sheikh* Muḥammad Khāṭir in 1978.

⁶⁷ *Majallat al-Azhar*, vol. 4 (1933): 697; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1045, given by *sheikh* Aḥmad Harīdī in 1964.

into long-term businesses that involve dealing extensively with the economic system of the non-Islamic environment.⁶⁸

At this conjecture, one can argue that *fatwas* from the period 1900-1970 were traditional in the sense that they have precedents in jurisprudence literature. The *muftis* explored this literature, and presented the various positions taken by jurists to the *fatwa*-seeker and then made recommendations according to their judgment of the questioner's condition. The final recommended opinion is mostly that of the majority of jurists or at best, the dominant position of a certain juristic school, based on the affiliation of the *mufti* or the preference of the *fatwa*-seeker. In certain situations, however, the *mufti* may recommend a certain marginal opinion over the dominant position, if he deems it more practical in the case of the *mustafti*. Examples of such *fatwas* may include, but are not limited to, the preference of the *Shāfi`ī* School to take unlawful bank interest with a view to spend it on charity;⁶⁹ the preference of the *Hanbalī* School to acknowledge the legality of taking *dhimmi* witnesses in contracts concluded by Muslim travelers;⁷⁰ and the preference of the *Hanafi* School to acknowledge bequests between individuals who include Muslims and non-Muslims.⁷¹ Generally speaking, however, the given *fatwas* of that period were traditional and reflect the basic concerns of the small Muslim minority in their early stages in their host countries.

⁶⁸ The few questions asked in this regard had to do with keeping the money in bank accounts that give interests. See for example, *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 744, given by *sheikh* Aḥmad Harīdī in 1969.

⁶⁹ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 744, given by *sheikh* Aḥmad Harīdī in 1969.

⁷⁰ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 988, given by *sheikh* Aḥmad Harīdī in 1968.

⁷¹ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 3417, given by *sheikh* Ḥasan Ma'mūn in 1936.

Post-1970s *Fatwas*

By 1980, the presence of a Muslim minority in the West witnessed a drastic change. In terms of numbers, Muslim immigrants increased by millions in some countries. They established themselves and started to become visible citizens in the no-longer-host land. The ongoing transformation and interaction of Muslim minorities with their non-Muslim environment raised their consciousness about their identities, of which Islam is an essential part. At each turn in this interaction, questions were raised and concerns were expressed. Are we allowed to settle permanently in a non-Muslim land? Can we take a non-Muslim nationality? Can we take part in the political election of a non-Muslim secular government? To what extent can we interact with non-Muslim neighbors? Can Muslim children go to public schools where they may be exposed to non-Muslim ideas?

It should be noted that not all Muslim individuals in the minority community were concerned with such questions. Some even distanced themselves from their previous ethnic or religious affiliations and tried to completely assimilate in the new land, to the extent that some changed their names to sound American or European. However, there remained a sizeable number who tried to seek answers for these questions, at least to feel comfortable psychologically. Even if individuals were not really aware of the problematic nature of the questions, the newly-established Islamic institutions and organizations at the time were concerned about them and discussed them openly, simply because the legitimacy of these institutions were indirectly based on the answers to these questions. That is why on many occasions, a number of questions from this period came from

Islamic organizations, and not from individuals. As institutions, they needed to obtain an authoritative opinion and they could not find a better source of knowledge, support and guidance than al-Azhar.

Al-Azhar played a significant role in the religious psyche of immigrant Muslims at that time. It was one of the major resources where the religious concerns of Muslim minorities were directed. The best way to prove this argument is to review the *fatwas* given by the Grand *Imam* of al-Azhar at that time, Jād al-Ḥaqq 'Alī Jād al-Ḥaqq (1917-1996). Jād al-Ḥaqq has a combined degree from al-Azhar in *Shari'ah* and Law. After graduation he worked in *Shari'ah* courts and then a *mufti* in the Egyptian *Fatwa* House in 1953. Then he was appointed as a judge in the *Shari'ah* courts, 1954, and then a general judge in the public courts, 1965, and then a counselor in the tribunal court, 1967. He was appointed the *mufti* of Egypt in 1978, then a minister of Endowment in 1980 and later the Grand *Imam* of al-Azhar in 1982.

Jād al-Ḥaqq's three volume *Buḥūth Islāmiyyah fī Qaḍayā Mu`āshirah* is a rich source and an important reference of *fatwas* given to minorities. Besides the frequently repeated questions about rituals and personal status, there were questions that may be considered 'new' in the context of contemporary Muslim minority experience. They reflect the tensions of the new life that was forming within the framework of liberal systems of governance. There are questions on the role of *ijtihād* in the West,⁷² political

⁷² *Majallat al-Azhar*, vol. 68 (1995): 784-785.

participation in non-Muslim polity,⁷³ the role of immigrant parents towards their children,⁷⁴ praying 'Id in a rented hall that is commonly used for dancing parties,⁷⁵ and so on. These questions clearly reflect a change in the Muslim mindset towards their new life: they do not want to live in isolation or getting assimilated. Instead they wanted to establish a comfort zone where they positively engage the wider society. This process was not as easy as it may sound. These and similar questions were directed to various Islamic entities, not only to al-Azhar, by different people/organizations whose understanding of Islam varies from radical to moderate to liberal. As seen in the previous chapter, one position was the rejection of the West and the necessity to depart the evil land for the abode of Islam.

Al-Azhar, represented in the views held by its scholars and *muftis*, adopted a cautious methodology, in which the *mufti* does not give a direct answer to the question but actually investigates the question. The *fatwa* is like a research-paper that has an introduction, a definition of the specific question asked, a presentation of the arguments of various Muslim Schools of thought, recommendation of one of these arguments, or suggesting an alternative that may be a combination of two opinions from two different schools. At the very end, a conclusion is given, combined in most cases with pedagogical advice beyond the scope of the *fatwa* itself. This methodology was one of the features of Azharite scholars, both in modern and earlier times. One may refer here to the *fatwas* of

⁷³ *Majallat al-Azhar*, vol. 63 (1991): 617-9; Jād al-Ḥaqq, *Buhūth*, vol. 4, 337-347.

⁷⁴ *Majallat al-Azhar*, vol. 67 (1994): 8-10.

⁷⁵ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 1126, given by Jād al-Ḥaqq in 1980.

Rashīd Riḍā at the turn of the century and Jād al-Ḥaqq at the end of the century. In the following paragraphs an attempt will be made to elaborate on how Jād al-Ḥaqq applied this methodology in his *fatwas*.

In his *fatwa* on fasting in places near the North Pole, Jād al-Ḥaqq introduces his research *fatwa* by first stressing a number of principal juridical rulings, such as fasting being an obligation; God does not impose hardship on man; and sanctity of life is prior to sanctity of religion. Jād al-Ḥaqq follows this by a concise review of rulings related to fasting that are laid down according to the conditions of the majority of jurists. Some individuals, for example those living at the North Pole, have different rules. Jād al-Ḥaqq then goes on to review the opinions of various Schools of Jurisprudence and famous *muftis* to end up with the conclusion that North Pole-based Muslims should estimate the time for their prayers and fasting. It is the same traditional conclusion that was presented earlier but here it is produced in a way that gives the Muslim minority community peace of mind, through a detailed answer that is based on traditional legal principles. On the question of using *Zakah* money to build mosques or to educate young Muslims, Jād al-Ḥaqq gives a lengthy *fatwa*, again following the same detailed research methodology, but this time ending with a ruling that is against the traditional position of the majority of jurists. He approves spending *Zakah* money in these ways, arguing that "in the way of Allah" in *Zakah* verses (Qur'an, 9:60) in our age and time, should be expanded beyond the specific meaning of *jihad* in war. It should mean the comprehensive *jihad*, which is any form that helps to protect one's creed and faith like teaching the Qur'an, preparing the preachers, and so on.

Reading Jād al-Ḥaqq's *fatwas* as a representative sample of this trend, a number of observations can be made. Al-Azhar as a representative of the traditionalist trend, appreciates the unique position of minority Muslims and their need to interact with their non-Muslim environment. After quoting verses on the legality of marrying with and eating the food of the People of the Book, Jād al-Ḥaqq concludes that "this is a clear indication to the permissibility of dealings in all affairs of life between Muslims and non-Muslims, as long as there is no harm done to Islam or Muslims in matters related to Islamic belief."⁷⁶ Such appreciation, however, does not negate the obligation to follow the teachings of Islam regardless of where one lives.⁷⁷ The balance between these two elements, the appreciation of minority situation and the need to abide by the teachings of Islam, can be achieved through a detailed analysis of the questions and knowledge of the various positions of different jurisprudential schools and hence, arriving at a better and well-grounded argument.⁷⁸

The West: A Residence

A review of al-Azhar *fatwas* demonstrates that the theme of *hijrah* – immigration back to the home country; the land of Islam – which was at the core of the debate among Muslim minorities did not appear to have that much weight in the eyes of al-Azhar *muftis*. They take for granted the permissibility of a Muslim residing in non-Muslim

⁷⁶ Jād al-Ḥaqq, *Buḥūth*, vol.4, 342.

⁷⁷ Jād al-Ḥaqq 'Ali Jād al-Ḥaqq, "Dawr al-Ijtihād fī al-Gharb," *al-Azhar*, vol. 68 (November 1995): 784.

⁷⁸ One may refer here to Jād al-Ḥaqq's detailed overview of the different positions of jurists in his *fatwa* on Praying 'Id in a place that is designed for singing and dancing events (see: *Fatawa Dār al-Ifā'*, vol. 8 (1993): 2745), or his *fatwa* on rulings on fasting in Norway (*Ibid.*, 2799).

lands. In the *fatwas* presented in the previous chapter on the puritan ideology, it is noted that the *muftis* stress the need to reside in a Muslim land, even if the question did not focus on immigration. In the *fatwas* presented in this chapter, *muftis* rarely raised the need of a Muslim to leave his place of residence to seek another Muslim land. Rather, the focus is more on the need to commit oneself to the regulations of one's "new" country and to adapt to its environment as long as Muslims are able to manifest their religion in an atmosphere that does not deny their rights or mock their religion or result in denying the fundamental tenets of one's religion. The continuous missions of Azharite students and scholars, as noted earlier, to the West exemplify this position. Moreover, some of Azharite scholars even settled for good in the non-Muslim land. The example of *Sheikh* Muḥammad 'Ayyād al-Ṭanṭāwī, referred to earlier is a case in a point. He settled in Russia in the 1850s. Another example of Azharite scholars who settled in non-Muslim territories is the researcher's secondary school personal tutor, *Imam* Mabruk Al-Ṣawī who travelled to Brazil in early 1990s and ended up living there for the rest of his life as an *imam*.

In 1989, al-Azhar inaugurated a new program of Islamic Studies in English in the Faculty of Languages and Translation to graduate students who would be able to live among Muslim minority communities to guide, educate and spread Islam. During the last ten years, the program expanded to include French, German, Chinese and African languages. A good number of the program graduates now live among Muslim minority communities, and some of them already obtained Western citizenship. A few years after the tragedy of 9/11, al-Azhar sent delegates to various academic centers in Western

countries (Germany, Britain, and the United States) to hold dialogues with educated Westerners about the role of Islam in the contemporary world. All these efforts reinforce the settlement of Muslims in their non-Muslim polities.

Citizenship was another problematic question for Muslim minorities in the last quarter of the twentieth century. Al-Azhar looked at it as a natural element for those Muslims who were born into the land and the culture of non-Muslims like Chinese, Russian or even African American Muslims. In the 1950s, Dr. Maḥmūd al-Shawārbī, a member of the committee of Introducing Islam, voiced his concerns about the failure to permit African American Muslims to join the American army. He confirmed that they, as American citizens, should join the army. They have the same obligations, rights and duties as any other American. He argued that the teachings of Islam do not contradict cooperation for the welfare of their own country.⁷⁹ In 2009, almost fifty years later, the Grand *Imam* of al-Azhar, *sheikh* Muḥammad Sayyid Ṭaṇṭāwī, reaffirmed the same message, "... we believe that any Muslim who goes to live in the United States of America, should join ranks with other sons and daughters of America to enrich its culture, to spread peace and welfare and to benefit from the goodness with which God blessed the residents of those lands."⁸⁰ He also argued, "Citizenship is the basis for equality among citizens, regardless of their beliefs, ideologies and numbers."⁸¹ The tense political situation and colonial history of some Western countries, however, made

⁷⁹ Al-Shawārbī, *Al-Islām fī Amrikā*, 135.

⁸⁰ Muḥammad Sayyid Ṭaṇṭāwī, *Ta'āmmulāt fī Khitāb al-Ra'īs Barak Obama min Manẓūr Islāmī* (al-Azhar Magazine gift, August, 2009), 18.

⁸¹ *Ibid.*, 46.

permission to immigrate and acquire citizenship context-specific. When some Muslims sought to obtain citizenship from the colonial power of their country, al-Azhar scholars issued a *fatwa* that prohibited acquiring citizenship on the plea that it shows, among other things, alliance and support to non-believers which God prohibited in His Book.⁸² This position is a reaffirmation of an earlier position of Rashīd Riḍā who responded to the question of the Tunisian Nationalist Party pertaining to some Tunisian seeking French naturalization. Rashīd Riḍā responded that those whoever accepts French naturalization is an apostate.⁸³

The question of *muwālāh*; alliance, support and befriending non-Muslims, is an intriguing question in the case of minorities because it is not just a mere question of *halāl* or *ḥarām*; it is the basis upon which all other *fatwas* are established. The answer of this question reflects the ideology and the worldview of the *mufti*. It informs how he reads the text and whether he is a literalist, a traditionalist or a renwalist. It sheds light on his vision of the world and how it is divided, i.e. his position toward the world division into *dār Islām* and *dār ḥarb*. If the *mufti* thinks that the concept of *muwālāh* is applicable only towards the people who are in a state of war against Muslims, then his *fatwas* on immigration, citizenship, and interaction with non-Muslims tend to be permissible. It is a fact that the question of Muslim's *muwālāh* and imitation of non-Muslims is an age-old question that goes back to the Prophet Muḥammad's time. There were various reports that the Prophet commanded Muslims not only not to imitate non-Muslims, but also to

⁸² Yūsuf al-Dijwi, "Mas'lat Tajannus al-Muslimīn bi-al-Jinsiyyah al-Firinsiyyah", republished in *Al-Sunnah Magazine* (Birmingham: Islamic Studies Center, Muharram 1416 A.H./ 1995 A.D.): 90-96.

⁸³ Rashīd Riḍā, *Al-Manar*, vol 25:1 (January 1924): 21-32.

intentionally do things differently in order to be distinguished from them. For example, the Prophet ordered Muslims to shave their moustaches and grow their beards against the customs of the People of the Book. He even warned Muslims, "Whoever imitates a certain people, i.e. the People of the Book, is one of them", meaning that he no longer belongs to the Muslim community. Muslim jurists debated the significance of such commands and to what extent they are context-specific, if at all. This debate has continued until our present time and has produced various, sometimes contradicting, positions. Some argue for a literal follow-up of the commands, while others hold that they are inapplicable in our present time and conditions. A third group argues for a case by case study. Al-Azhar scholars had also to engage in the debate, not as a response to a question coming from Muslim individuals, but rather as a question of concern to the Egyptian and Arab community who witnessed, at the turn of the 20th century, a heated debate on questions of identity and affiliation.

On the question of Westernization and imitating the West, many Azharite scholars made the distinction between religious matters and everyday affairs. Grand *Imam* of al-Azhar Muḥammad al-Khiḍr Ḥusayn argued that there are five cases where Muslims imitate non-Muslims: First, is to imitate them in things that are not against the teachings of Islam and at the same time are clearly beneficial for Muslims, such as applying the Western administrative apparatus in Muslim lands. Such "imitation" is not only permitted but also affirmed by Islam. Second, is to imitate the non-Muslims' religious tenets and rituals, such as following their model of prayer. In this case, the person who does so, rejects Islam. Third, is to imitate them in things, though not religious, that are not

permitted according to the Islamic faith. Imitation in this case is also prohibited. Fourth, is to imitate them in things that do not have a religious connotation, like clothing and furniture. If Muslims see a benefit in such practices, then they may follow suit. Fifth, is to imitate them in things that have no religious significance or mundane benefits, such as using certain colors in their clothing. Adopting these things (colors, for example) is permitted in Islam provided that it does not have national or religious implications.⁸⁴

Given this framework one may understand the *fatwas* and opinions given by Azharite scholars on questions of *mushābahah*, *mukhālafah* and *muwālāh*. Muḥammad `Abdu argued that a Muslim may befriend non-Muslims and even may seek their help in worldly affairs as long as this does not involve humiliation or consent of the non-Muslims' beliefs. Therefore, Muslims are allowed to wear, for example, Western-styled hats and clothing, if they help Muslims to avoid the heat or the cold.⁸⁵ Prophetic reports that indicate otherwise were abrogated or are context specific in the light of other confirmed reports that the Prophet sought help from non-Muslims, even during times of war.⁸⁶

It should be noted here that, according to the majority of the *fatwa* literature presented in this chapter, there is no objection to Muslims residing in non-Muslim territories, taking their citizenship and befriending them as long as they are able to

⁸⁴ Muḥammad al-Khidr Ḥusayn, "Muḥakāt al-Muslimīn li-al-Agānib" *Majallat al-Azhar*, vol. 3 (1932): 375-ff.

⁸⁵ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 625, given by *sheikh* Muḥammad `Abdū in 1904. See also *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 683, given by *sheikh* `Abdel-Majīd Salīm in 1928.

⁸⁶ *Al-Fatawa al-Islāmiyyah*, *fatwa* no. 673, given by Muḥammad `Abdū in 1904.

practice their religion and protect the faith of their families. Basically this was the main goal of the missions sent by al-Azhar to Muslim minorities. Al-Azhar scholars were sent to educate, guide and advise the Muslim community, in the first place, more than being missionaries seeking to convert non-Muslims to Islam.⁸⁷ Even though it is officially stated that these Azharite missions were sent to correct people's misunderstanding and misconceptions of Islam, the main task, however, was the hearts and minds of Muslims. Addressing this concern, Grand *imam Sheikh* 'Abdel-Ḥalīm Maḥmūd criticized members of al-Azhar missions that they were sent to only teach Arabic and math. "If compared with Christian missionaries we do not have real missionaries," he argued.⁸⁸ In the 1958 bill to add European languages into the curriculum of the al-Azhar educational system, it was stated that many Muslim communities ask for al-Azhar's teachers and scholars to help them with their religion. Since this task cannot be achieved without the scholars being able to communicate with those communities in their native languages, then it becomes a must to add foreign languages to the al-Azhar curriculum.⁸⁹

Keeping this priority in mind, i.e. strengthening the faith of the Muslim community itself, one of the main concerns that these scholars tried to address is how to unify minority communities regardless of their juristic schools or religious sects. The 1930s al-Azhar mission's report to India argues that scholars should work to eliminate

⁸⁷ *Majallat al-Azhar*, vol. 41 (1969): 639. This page carries a piece of news that the Islamic Research Assembly sent delegations to Europe and America to teach Islamic studies and Arab culture and to provide books for al-Azhar centers overseas.

⁸⁸ *Majallat al-Azhar*, vol. 50 (1978): 520.

⁸⁹ *Majallat al-Azhar*, vol. 30 (August, 1958).

differences between Indian Muslim groups who had split mosques on a sectarian basis and remind them that al-Azhar students pray together regardless of their sectarian differences.⁹⁰

Given the above-mentioned review and analysis, it becomes evident that al-Azhar has always maintained a positive position towards the residence and life of Muslims living among non-Muslims but this must not result in the Muslim neglecting the teachings of religion. If under certain circumstances, a Muslim is not able to protect his faith, then he should leave the land. It is significant to note that leaving the non-Muslim polity is not an inherent requirement of a Muslim. Rather, it is a transient stage that is subject to negotiation and a case by case evaluation. Islamic jurisprudence is rich and can accommodate all situations based on the basic principle of moderation and tolerance. This moderate way, however, should be seen as a life between the two worlds; the abode of Islam and the abode of Disbelief.

Conclusion

Since its inauguration in the eighth century, al-Azhar and its scholars have always been part of the global intellectual religious heart of Islamic knowledge. It functions as “a structure of mediation between the Divine and the human that offers an interpretation of the scriptures to the faithful, manages religious ritual and transmits religious knowledge.”⁹¹ Moreover, the history of al-Azhar reflects the socio-political

⁹⁰ *Majallat al-Azhar*, vol. 8 (1937): 596.

⁹¹ Malika Zeghal, “The ‘Recentering’ of Religious Knowledge,” 108.

manifestations of the Muslim world due to its constant engagement with ongoing debates and discourses whether local, national or transnational. It has been working as a conflict-resolution center to which any individual, group or country may resort for an expert reliable opinion. This can be attested in the *fatwa* literature of the twentieth and twenty-first centuries where one can see questions coming from individuals, Islamic or social organizations, politicians, embassies and even states.

The *fatwas* given by al-Azhar represent the voice of tradition. They regenerate tradition by reviewing multiple opinions of classical schools, and investigating arguments and counter-arguments with a view to recommending one over the other. In doing so, the *fatwas* utilize a legal language that keeps the door open for the *fatwa*-seeker to follow that which fits his/her condition. The *fatwas*' linguistic preferences are limited to terms like "it is permissible", "I am inclined towards this opinion", "my own preference is that...", and so on.

In his introduction to *Al-Fatawa al-Masriyyah*, Jād al-Ḥaqq states that the *fatwas* of al-Azhar follow the tradition of the great *mujtahids* in terms of their piety "to identify as '*makrūh*', despicable, what they may consider as *ḥarām*, (unlawful), lest they say something is *ḥarām* without having a clear-cut legal text."⁹² This approach made their *fatwas* look like what one may call conditioned-*fatwas* or license-based *fatwas*. This means that the *fatwas* take a tolerant position by permitting certain practices provided that certain conditions are observed. This technically means that the final decision was

⁹² See the introduction to *Al-Fatawa al-Islāmiyyah*. This statement implies that there are only a limited number of legal rulings that can be identified as categorically *ḥarām* based on a clear linguistic reference of a textual evidence, rather than the interpretation of a jurist.

left to the *fatwa*-seeker to determine which way to go. Some researchers regard this approach as “ambiguous”.⁹³ I would like to argue here that this is one distinctive feature of traditional jurisprudence whose function is not to issue legal court verdicts to be executed by force; rather, it is a process in which the *mufti* tries to bring the questioner close to the fold of *Shari'ah* and sometimes attempts to reach a compromise between ideal Islamic propositions and the urgencies of time and place. This is exactly the tradition of the trend that has been presented in this chapter. Traditionalist *muftis* recall juridical concepts of necessity, *rukhsah*, coercion and the abode of non-Muslims to justify their unorthodox positions.

The subtlety of the traditionalist trend is that it issues *rukhsah*-based *fatwas*, while at the same time keeping a positive attitude towards the Muslim minority host countries. They do not only permit Muslims to reside in non-Islamic environment, but also to follow and abide by their laws and regulations. This position can be justified by many reasons, including a long history of the proponents of this tradition, al-Azhar in this case, in dealing with minority Muslims through mutual visits and correspondence, expertise in the legal tradition that makes them able to contextualize their *fatwas*, positive interaction with non-Muslim traditions and communities, awareness of contemporary politics of the nation-states and how they influence relations between people, law and the state, and the role of the Egyptian state, in the case of al-Azhar, to maintain good relations with other countries by directing the official position of al-Azhar not to issue *fatwas* that may create social or political disturbances in other countries. For such reasons, traditionalists

⁹³ Malika Zaghal, “The ‘Recentering’ of Religious Knowledge,” 108.

attempted to take the middle way and to strike the *wasatiyyah* balance. This balance, however, was framed in a language of the “minorityness” of a religious group in a “host” country where the position, for example, of the *Hanafis* in permitting non-*Shari’ah* transactions in the abode of disbelievers can still be applied.⁹⁴ This trend prevailed in the 1990s as indicated by *fatwa* collections that were presented here and also of Muslim *imams* living in the West and early online *fatwas* such as that of Islamonline.net.

The process of “the regeneration of tradition” was shaken by the emergence of second and third generation Muslim youth in the ‘host’ lands and the formation of new Western Islamic identities. Moreover, ‘minority’ Muslims started to create their own Islamic infrastructure, including *fatwa* institutions and religious authorities. Gradually, throughout the 1990s, the regeneration of tradition was not enough to accommodate the aspirations of growing Muslim communities in the West. A trend of “reinvention of tradition” was pressing ahead. A growing challenge for the establishment of *fiqh* of Muslim minorities was on the rise.

⁹⁴ See the *fatwa* of the *mufti* of Egypt *sheikh* ‘Ali Jum’ah on the permissibility of void transaction in the abode of non-Muslims. ‘Ali Jum’ah, *Al-Kalim al-Tayyib, Fatawa ‘Asriyyah*, vol. 2 (2007): 205-9.

Chapter III

Yūsuf al-Qaraḏāwī: an Ideologue for Muslim Minorities

Yūsuf al-Qaraḏāwī (b. 1926) is one of the most prominent Muslim figures and Sunni religious authorities in contemporary time. His authority derives from a complex combination of credentials. Early in his life, he was a graduate of al-Azhar,¹ the most prestigious Islamic university in the world; the head of the *Imam's* Institute, Egyptian Ministry of Endowments; a staff member in the Department of Islamic Culture at al-Azhar; a member of the Muslim Brothers, one of the leading Islamic activism organizations in the twentieth century.² In 1961, his authority became more pronounced after his settlement in Qatar and going on the air with a T.V. program and a Radio *fatwas* broadcast, not to mention the proliferation of his writings. These writings would include *Al-Ḥalāl wa-al-Ḥarām*, *Fiqh al-Zakāh*, and *Fatawa Mu'āshirah*. Al-Qaraḏāwī's scholarship, books, research papers and articles, exceed 120 titles and many of his works were translated into various world languages.³ In the 1990s and the 2000s, al-Qaraḏāwī's authority went international after becoming the president of transnational organizations such as the European Council for *Fatwa* and Research (ECFR) and the International Union of Muslim Scholars (IUMS). He was also a forerunner in utilizing modern technology in his *da'wah* activities.

¹ He graduated from al-Azhar, Faculty of *Uṣūl al-Dīn* in 1952-53.

² His affiliation with the Muslim Brothers put him in prison four times; in 1949, 1954 (twice), and 1963.

³ According to qaradawi.net, Al-Qaraḏāwī has so far 120 published works.

Given his growing impact on Muslim contemporary thought, Yūsuf al-Qaradāwī has become a subject of interest for researchers and a focus of attention for media people in both the Muslim and the non-Muslim world. In their 2009 edited monograph *Global Mufti, the Phenomenon of Yusuf al-Qaradawi*, Bettina Gräf and Jakob Skovgaard-Petersen briefly review the available literature on al-Qaradāwī, his activities and his publications.⁴ They also introduce papers that examine various dimensions of al-Qaradāwī's thought and impact on Muslim scholarship and life. The title of the monograph reveals how al-Qaradāwī is seen in today's world; *global* reflects the landscape his message/voice covers and *mufti* suggests the level of authority his opinion carries. The present chapter, however, explores the role of al-Qaradāwī in the growing discourse of *fiqh al-aqalliyāt* and the place of *Shari'ah* in Western liberal democracy through an attempt to answer the following questions:

- How has the Egyptian-born Qatari-based *sheikh* al-Qaradāwī become a reference point for Muslim minorities?
- How al-Qaradāwī sees the relationship between Islam and the West; Muslim minorities and western societies?
- To what extent this relationship has shaped the authority of al-Qaradāwī in the eyes of his followers and his critics?
- How al-Qaradāwī situates the modern Muslim life, especially that of Muslim minorities, in Islamic discourse of *Shari'ah*, *fiqh* and *ijtihād*?
- Why al-Qaradāwī was the running force behind the jurisprudence of Muslim minorities? According to him, what are the main sources and methodology for this jurisprudence? And what is its ultimate goal?

⁴ Bettina Gräf and Jakob Skovgaard-Petersen, eds., *Global Mufti, The Phenomenon of Yusuf al-Qaradawi* (New York: Columbia University Press, 2009), 1-26.

Building a Minority, Creating an Authority

Yūsuf al-Qaraḏāwī's interest in *fiqh al-aqalliyyāt* and the life of Muslims in the West started as early as 1960 when he was asked by the General Department of Islamic Culture to participate in a project that would involve the production of more than thirty books, written in a simple non-technical language, that would introduce the teachings of Islam to Muslims and non-Muslims in Europe and America.⁵ Al-Qaraḏāwī was assigned to write about *Al-Ḥalāl* (the lawful) and *al-Ḥarām* (the prohibited) in Islam, which became the title of one of his most famous and enduring books.⁶ In his introduction to the book, al-Qaraḏāwī states that such an interest in educating Muslims living in the West about Islam should have been started earlier. He argues that Muslims there know very little about their religion. Some of them, he was told, earned their living by trading in alcohol, unaware that it is one of the major sins in Islam. If this is how Muslims saw their religion, he argues, then the image of Islam among non-Muslim westerners would surely be much worse.⁷ Although *Al-Ḥalāl wa-al-Ḥarām* was intended to be published and translated into English through al-Azhar, eventually it was published by a different publishing house⁸ and was translated in the seventies by the Federation of Islamic

⁵ Al-Qaraḏāwī was then, 1959, working in *al-Maktab al-Fannī* (research desk) in the Department of Islamic Culture at al-Azhar. He was charged with responding to what the press and the media published about Islam. The department of Islamic Culture at that time was under the directorship of Dr. Muḥammad al-Bahiy, one of al-Qaraḏāwī's teachers. See: Akram Kassāb, *Al-Manhaj al-Da'awī 'ind al-Qaraḏāwī, Mawāhibuh wa-Adawātuh, Wasā'iluh wa-Asātibuh, Simātuh wa-Athāruh* (Egypt: Maktabat Wahbah, 2007), 80.

⁶ *Al-Ḥalāl Wa-al-Ḥarām* has been published more than 30 times since its first inception.

⁷ Yūsuf al-Qaraḏāwī, *Al-Ḥalāl Wa-al-Ḥarām* (Cairo: Dār al-I'tisām, 8th ed., 1974), 7.

⁸ Dār Iḥiyā' al-Kutub al-'Arabiyyah. Cairo, 1960.

Organizations (FIO). Although the book was written in 1960, it remains popular among Muslim minorities until our present time. In May 1995, the book was banned in France by a decree from the then French Interior Minister Charles Pasqua on the claim that the book represented a threat to the national security due to his hostile tone against the West. French Muslims rallied successfully against this decision until it was annulled shortly after.⁹

Other than the publication of *Al-Ḥalāl wa al-Ḥarām*, it seems that al-Qaraḍāwī did not have a strong relation with Muslims in the West from 1960 through the early 1980s. This period in al-Qaraḍāwī's life was transitional. In 1961, he relocated himself in Qatar for fear of political persecution due to his active membership in the Muslim Brothers. In Qatar, he gradually established himself as a scholar and was a host in two broadcast programs, *Nūr wa-Hidāyah* 'Light and Guidance' (Radio) and *Hady al-Islām* 'Guidance of Islam' (T.V.). Al-Qaraḍāwī did travel outside Qatar in the 1960s and the 1970s for educational and *da'wah* purposes, but his travels were mainly to Muslim countries. His few trips to the West were only to attend events organized by members of the Islamic movement who at the time started to establish themselves in the West and use it as a platform for their political activism. One of al-Qaraḍāwī's earliest trips to Europe was to Switzerland, in 1977 to attend a conference on Islamization of Knowledge and

⁹ Yūsuf al-Qaraḍāwī, *Liqā'āt wa-Muḥawarāt Hawl Qaḍayā al-Islām wa-al-'Aṣr* (Cairo: Al-Risālah, 2001), 68.

Muslim's presence in the West. The conference focus was how to promote unity among western Muslims and how to integrate them in their host society.¹⁰

With the increase of al-Qaraḏāwī's reputation, he used to receiving questions from Muslim in the West, and gradually in the 1980s and the 1990s the subject of Muslim minorities became central in his writings. He used to call upon Muslims to support Muslim minorities through funding their Islamic schools, providing them with Islamic books in foreign languages, sending them *imams* and granting their children scholarships to come and study Arabic and Islam in Islamic universities.¹¹ During the last two decades, al-Qaraḏāwī was invited by Muslim communities from various world regions: North America, Western and Eastern Europe, Asia, North Africa, etc., to the extent that he was named the "flying jurist".¹² In 1989, for example, he was approached by the organizers of Arab Muslim Youth Association in America to present a paper on how to resolve disagreement among Muslims, especially within the ranks of various competing forces in the Islamic movements. Al-Qaraḏāwī responded by writing his famous work: *Al-Ṣaḥwah al-Islāmiyyah bayna al-Ihktilāf al-Mashrū' wa-al-Tafarruq al-Madhmūm*, i.e. The Islamic Movement between legitimate differences and despised disagreements.¹³

¹⁰ Alexandre Caeiro and Mahmoud al-Saify, "Qaraḏāwī in Europe, Europe in Qaraḏāwī," in *Global Mufti, The Phenomenon of Yusuf al-Qaradawi*, eds. Bettina Gräf and Jakob Skovgaard-Petersen (Columbia University Press, 2009), 112.

¹¹ *Ibid.*, 112-3.

¹² 'Iṣām Tilīmah, *Yusūf al-Qaraḏāwī, Faqīh al-Da'wah wa-Dā'yat al-Fuqāhā'*, a series on 'Ulamā' wa-Mufakkirūn Mu'āṣirūn, (Damascus: Dār al-Qalam, 2001), 129.

¹³ *Ibid.*, 133.

In the 1990s, Muslims living in the West were heading toward more participatory and active engagement with their non-Muslim host societies. This led to internal debates among Muslims about the position of Islam towards such an engagement and towards their life in general. They sought guidance from various contemporary scholars and jurists. The Federation of Islamic Organizations (FIO) held two symposiums and invited well established Muslim jurists, mainly from the Arab world, to come to France and discuss certain critical questions related to the life of Muslims in the West. Among those scholars invited were al-Qaraḍāwī, Mustafā al-Zarqā,¹⁴ ‘Abd al-Fattāh Abū Ghuddah,¹⁵ Mannā’ al-Qaṭṭān,¹⁶ ‘Abdullah ibn Bayyah,¹⁷ Fayṣal Mawlawī,¹⁸ and others. It is interesting to note here that those scholars had strong connections with the Muslim Brothers, if not members of the movement. An observer may conclude that this gathering had deeper concerns than that of finding answers for minority questions. It informs that

¹⁴ Mustafā Aḥmad Muḥammad al-Zarqā (1904-1999) is a Syrian jurist who is known for his merits as one of the *mujtahids* in contemporary age. He taught in many Syrian, Jordanian, and Gulf countries and is one of the authors of the Kuwaiti Encyclopedia for Islamic Jurisprudence.

¹⁵ ‘Abdel-Fattāh Muḥammad Bashīr Ḥasan Abū Ghuddah (1917-1997) is a Syrian scholar who graduated from Al-Azhar, Faculty of *Shari’ah* in 1948. He taught in a number of Islamic universities in Saudi Arabia, Sudan and India. He was also the *murshid*, i.e. the guide, of the Syrian Muslim Brothers for a while in Syria.

¹⁶ Mannā’ Khalīl Al-Qaṭṭān (1925-1999) is an Egyptian scholar who graduated from al-Azhar, Faculty of *Shari’ah*. He left Egypt to Saudi Arabia in the 1950s to work in its universities. He was also appointed as a judge in the Saudi courts. He had a strong affiliation with the Muslim Brothers

¹⁷ ‘Abdullah ibn al-Maḥfūz ibn Bayyah (1935-) is a Mauritanian jurist who currently works in King ‘Abdel-‘Azīz University in Saudi Arabia and the vice-president of the International Union of Muslim Scholars. He was the first minister of Islamic Affairs in Mauritania and served also as a minister of Education and Religious Affairs. His *fatwas* are quite famous among certain groups of Muslims in the West.

¹⁸ Fayṣal Mawlawī (1941-) is a Lebanese judge and jurist. He graduated from Faculty of *Shari’ah* in Damascus and received a Diploma from La Sorbonne. He is quite known for his efforts in the field of Islamic *da’wah* in the West. He is the founder of the European College for Islamic Studies in France and the vice president of the European Council of *Fatwa* and Research. He served also as the secretary general of the Lebanese Islamic Group, the Lebanese Branch of the Muslim Brothers.

Islamic activism was starting to organize and coordinate itself. Muslim activists around the same time, 1990s, started to engage with political and social organization and ask for certain religious concession or rights, such as taking time off for prayers or getting concessions for their daughters not to take co-ed swimming classes at school. Their activism made Islam politically visible to the wider society. In order to prove its authoritative position to Muslims and non-Muslims, they used the *fiqh* discourse through their religious scholars. This *fiqh* discourse gave them ground to appeal to the Muslim public, to negotiate with the non-Muslim politics and to encounter other religious trends that may oppose such interaction.

In their meeting, the conference assembly debated questions of immigration, citizenship, paper marriage, unemployment aids, etc. The meetings produced a number of *fatwas* but it seems they were not published.¹⁹ Few years later, 1997, the FIO, almost with the same group of people invited to the French meetings, established the European Council for *Fatwas* and Research (ECFR) that aimed at, according to the Council's Constitution, creating an institution that brings Muslim scholars living in Europe together with a view to issuing collective *fatwas* that meet the need of European Muslims, along with publishing studies that discuss Western Muslim issues in depth to provide proper Islamic guidance.²⁰

As a president of the ECFR, al-Qaraḍāwī became immensely involved in issues related to Muslims in the West. He became the pronounced authority for many of them.

¹⁹ Al-Qaraḍāwī, *Fi Fiqh al-Aqalliyyāt al-Muslimah* (Egypt: Dār al-Shurūq, 2001), 6.

²⁰ See: the ECFR website http://www.e-cfr.org/ar/index.php?cat_id=005 (accessed 8/10/2011).

He achieved this authoritative status for various reasons: he had a religious traditional affiliation as a graduate of al-Azhar; he had an affiliation with the political activist organization of the Muslim Brotherhood; his methodology of moderation and consideration of people's needs and necessities made him different from other hardliner *muftis* who were on the rise at the time; and he was one of the first accessible scholars through various mediums, such as al-Jazeera Channel program "*Al-Shari'ah wa-al-Hayāh*", the Abu Dhabi Satellite Channel program "*Al-Muntadā*", Islamonline.net website and his qaradawi.net. His *al-Shari'ah wa-al-Hayah* became so famous that many Muslims who live in minority conditions used to wait from week to week to watch it. When al-Jazeera wanted to change the times of the program, he objected because the new timing slot would not allow Muslims in Europe and America to follow it. Al-Qaradāwī confirms that this program is a good chance for his voice to reach Muslims in other places of the world.²¹ As for his website, it served as a platform for al-Qaradāwī's aspiration to recognition as a global authority for Muslims.²²

With the growing interest of Western Muslims in debating their religious life and affiliations in the West, al-Qaradāwī has become an influential voice and a well-received guest speaker in their activities and conferences. For example, al-Qaradāwī visited the United States at least 6 times during the 1980s and the 1990s to participate in conferences

²¹ Kassāb, *Al-Manhaj*, 229-30, 441.

²² Bettina Gräf, "Sheikh Yusuf Al-Qaradāwī in Cyberspace," *Die Welt des Islams*, vol. 47, No 3-4 (2007): 403.

organized by Muslims.²³ He became an ideologue and an opinion-maker for Western Muslims, even for those living in Iberia.²⁴

Al-Qaraḍāwī's popularity, especially among Muslims living in the West, has gone sky-high with the vast spread of modern technology. Although al-Qaraḍāwī's publications are in Arabic, some publishing houses exerted great efforts to make them available to non-Arabic speaking readers. Al-Falah Foundation for Translation, Publication and Distribution, Egypt, dedicated most of its translation projects to publish al-Qaraḍāwī's works in other languages, especially English and French.²⁵ His satellite program, *al-Shari'ah wa-al-Hayāh*, i.e. *Shari'ah* and Life, first broadcasted in 1997, received millions of audience. Al-Jazeera Channel estimated al-Qaraḍāwī's audience to range between 35-45 millions.²⁶ Al-Qaraḍāwī's promotion and leadership of Islamonline.net opened new spaces for his presence in the private sphere of Muslim homes in the West, at a time when there were no equivalent authority alternatives. Al-Qaraḍāwī advertised his website as a "trustworthy global pulpit".²⁷ As an indication of how the internet played a significant role to promote his authority, al-Qaraḍāwī's

²³ However, since 1999 al-Qaraḍāwī was not allowed entry to the United States because of his political views on the Palestinian-Israeli conflict.

²⁴ Andrew C. Gould, "Muslim Elites and Ideologies in Portugal and Spain," *West European Politics*, vol. 32, No. 1 (January 2009): 66-ff.

²⁵ falahonline.net

²⁶ Abdo Jamil Al-Mikhlaḍy, *Al-Jazeera. Ein regionaler Spieler auf globaler Bühne* (Marburg: Schüren Verlag, 2006), 112-ff, C.F. Gräf and Skovgaard-Petersen, eds., *Global Mufti*, 157.

²⁷ *Al-Shari'ah wa-al-Hayāh*, Al-Jazeera, October 13, 1999. According to Alexa.com, Al-Qaraḍāwī's Islamonline ranks 25,513 in the online traffic ranking in the United States and 12,130 in Britain. <http://www.alexa.com/siteinfo/islamonline.net> (May 4, 2009).

supporters voted intensively online for him in the Foreign Policy referendum of the world's top 20 public intellectuals. He ranked third in the list.²⁸

Al-Qaraḏāwī's strategic and pragmatic use of the emerging virtual space, satellite channels and internet, for communication and organization was a prelude for a massive use of this modern technology that created what Mandaville called, "the virtual Caliphate".²⁹ This cyber *ummah*/virtual *caliphate* requires a caliph/a leader who can be a reference point for legal and communal authorization. Mandaville argues that al-Qaraḏāwī is the strongest candidate for the position. Although this conclusion overestimates the place and the impact of al-Qaraḏāwī on Muslim's life, especially in a world that has become known for notions of fragmented and competing authorities, it does reflect how al-Qaraḏāwī has become an authoritative figure in the Muslim World.

It should be noted here that al-Qaraḏāwī's authority does not cease at the individual level as a "global *mufti*", but, has become institutionalized through establishing and leading the growing entities of the ECFR and IUMS. It is very significant to note that these two institutions were created on the periphery of the heartland of Islam, Ireland. Still these organizations, especially the IUMS, claim to represent and speak of the concerns of the *ummah*. This is a critical shift in understanding concepts like *ummah* and abode of Islam. Here the concept of the *ummah* is disconnected

²⁸ *Foreign Policy*, "The World's Top 20 Public Intellectuals," (July-August 2008): 55. Available online at: http://www.foreignpolicy.com/story/cms.php?story_id=4349 (accessed in 8/10/2011).

²⁹ "Virtual Caliphate" refers to an ideal of pan-Islamic ecumenism instead of the old sovereign political institution. Peter Mandaville, "Toward a Virtual Caliphate," *Yale Global Online*, Yale Center for the Study of Globalization, <http://yaleglobal.yale.edu/content/toward-virtual-caliphate> (Accessed 8/11/2011)

from the concept of land and the *ummah* representative figure, the caliph, loses its authoritative status. The *ummah* becomes the “imagined community” of the believers whose meeting ground becomes virtual more than political. In other words, far from being able to create a political or a material unity on the ground, Muslims transform their religiously bond (*ummah*) into a spiritual-social construct that focuses on creating a transnational social and religious networks/organizations to maintain an Islamic-*ummah* identity. Here comes al-Qaraḏāwī and his institutions as key players in the struggle for modeling an inclusive transnational Muslim identity through a normalization of Muslim’s life in the West via institutional endorsement of *fiqh al-aqalliyyāt*.

Al-Qaraḏāwī is the first one who wrote an independent research paper on *fiqh al-aqalliyyāt*. After presenting this paper in the first session of the ECFR, other scholars started to contribute to the subject matter. Gradually *fiqh al-aqalliyyāt* has become a focus of a heated legal discourse of a growing field that jurists, intellectuals and activists are writing and debating to this day.

Al-Qaraḏāwī : a Liberalist, a Fundamentalist, or a *Mujtahid*

In many occasions, al-Qaraḏāwī’s *fatwas* and opinions provoke debate not only in Muslim intellectual circles but also among the public. For example, in the political arena, his recent severe criticism of the Iranian *shi’ite* attempts to spread *shi’ism* in the *Sunni* world³⁰ caused considerable controversy in the Muslim world, both among those in favor

³⁰[http://www.aawsat.com/english/news.asp?section=3&id=14235;](http://www.aawsat.com/english/news.asp?section=3&id=14235)
[http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1221720332665&pagename=Zone-English-Living-Shariah%2FLSELayout;](http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1221720332665&pagename=Zone-English-Living-Shariah%2FLSELayout) http://www.metimes.com/International/2008/09/26/cleric_reignites_age-old_sunni-shiite_disputes/1578/ (Accessed in 6/4/2009)

of or against his position. His earlier *fatwa* against the Israeli occupation of Palestine and the legality of the martyrdom operation added to his prestigious position among the Muslim populace but at the same time it made him a notorious figure in the world news.³¹ In the jurisprudential arena, his recent *fatwa* over the permissibility of drinking a beverage that contains a certain percentage of alcohol (0, 05%) received media wide coverage.³² Given his intellectual history, political orientation, and educational background, al-Qaradāwī, ideologically, is difficult to categorize. On the one hand, he is praised by his students or colleague for his erudite knowledge of Islamic sources, for his methodological approach and for his candid *fatwas*. Some call him “*al-imam al-akbar*”, i.e. the grand *imam*, and others argue that he has reached the stage of absolute *ijtihād*.³³ On the other hand, another Muslim group, who are mostly “*wahhābī-salafī*”-oriented, severely criticizes him to the extent that they accuse him of being “the devil” and a secret agent for the West and Zionism. They argue that his real intention is to abrogate *Shari‘ah* under the cover of revivalism.³⁴ Many westerners, including some Muslims who live in the West, see him as a fundamentalist for his *fatwas* against Israeli and American troops in Palestine and Iraq. They tag him as one of “the theologians of terror” in their campaign

³¹ See for example: <http://www.investigativeproject.org/profile/167> (accessed 8/10/2011). Googling “Qaradawi”, one will get more than a million hits. A good deal of them has to do with his views on the Palestinian-Israeli conflict.

³²http://news.bbc.co.uk/2/hi/middle_east/7342425.stm (accessed 8/11/2011);
<http://www.gulfnews.com/News/Gulf/qatar/10205203.html> (accessed 8/11/2011)

³³ Kassāb, *Al-Manhaj*, 16-17; 347-ff.

³⁴See: <http://www.amislam.com/qaradawi.htm> (accessed 8/11/2011);
<http://www.islamicweb.com/beliefs/misguided/qaradawi.htm> (accessed 8/11/2011).

“Stop Terror *Sheikhs*”.³⁵ Within Western intellectual circles, his thought defies characterization. Some see him as a liberal,³⁶ or a fundamentalist,³⁷ or an extremist,³⁸ or an anti-modernist/anti-liberalist,³⁹ or a *Salafī*-reformerist,⁴⁰ or a latter-day *Salafī*.⁴¹ In *Encyclopedia for Islam in the United States*, he is defined as “ultimately an Islamist, committed to the application of Islamic law in all areas of life”.⁴²

It becomes clear that politics is the lens through which al-Qaraḍāwī’s thought is approached. In the following pages, an attempt will be made to review some of al-Qaraḍāwī’s major ideas with a view to having a better understanding of the man and his ideology, especially in the context of *fiqh al-aqalliyāt*. However before getting into this discussion, a reassessment of the claim of his authority needs to be discussed.

Al-Qaraḍāwī: The Popular *Sheikh* or the Authoritative ‘*Ālim*

The question of what constitutes a religious authority, ‘*ālim*, in the present time is hotly debated in various circles, Muslim and non-Muslim alike. The baseline for this

³⁵ See: <http://www.arabnews.com/?page=4§ion=0&article=53683&d=30&m=10&y=2004> (accessed 8/11/2011); for a review of the Western campaign against him, one may check the literature of the following groups: Jihad Watch, Middle East Media Research Institute (MEMRI), and Middle East Forum.

³⁶ Charlez Kurzman (ed.), *Liberal Islam, a Source Book*, (Oxford University Press, 1998).

³⁷ Peter Tatchel, “Does Ken Believe in Killing Gays,” *Newstatesmen*, (July 19, 2004): 22.

³⁸ Henry Newman, “Al-Qaradawi, Yusuf,” *Encyclopedia of Islam in the United States*, ed. Jocelyne Cesari, vol. 1 (London: Greenwood Press, 2007): 43.

³⁹ Jyette Klausen, *The Islamic Challenge: Politics and Religion in Western Europe*, (Oxford, Oxford University Press, 2005), 210.

⁴⁰ Gould, “Muslim Elites and Ideologies in Portugal and Spain,” 73.

⁴¹ Gräf, *Global Mufti*, 165.

⁴² Newman, “Al-Qaradawi, Yusuf,” 41.

debate is that the authority of a ‘modern’ *‘ālim* is by no means taken for granted today. Religious authority has become a field of competition among various rivals – lay preachers, intellectuals, activists, and politicians, along with others who claim ability to read original sources and reach a proper legal determination with no less authority than the traditional *‘ālim*.⁴³ This absence of clear powers of authority is a result of various factors, such as the deterioration of religious education, state hegemony over religious institutions, the rise of individualization sentiments, the spread of liberal thoughts and the proliferation of modern technology. Delineating these factors lies outside the scope of this research; however, it is noteworthy that al-Qaraḍāwī responds to these factors and sometimes utilizes them to strengthen his claim of authority. On the question of the deterioration of traditional religious education, al-Qaraḍāwī, on the one hand, associates himself with the well-established Muslim *‘ulamā* of his time. He is a student of *sheikh* Maḥmūd Shaltūt, the ex-rector of al-Azhar, *Sheikh* al-Bahy al-Khūlī,⁴⁴ as well as *sheikh* Muḥammad al-Ghazālī.⁴⁵ At an early stage of his career, al-Qaraḍāwī was entrusted by *sheikh* al-Azhar Maḥmūd Shaltūt with the drafting of *fatwas* he was going to sign.⁴⁶ Al-Qaraḍāwī, on the other hand, was one of the people who called for reforming al-Azhar

⁴³ Bettina Gräf, “Sheikh Yusuf Al-Qaraḍāwī in Cyberspace,” 403.

⁴⁴ Al-Bahiy Najā Ibrahīm al-Khūlī (1901-1977) is a graduate of the Faculty of *Dār al-‘Ulūm* and worked as a general director of mosques in the Ministry of Endowments. He was nominated as a member of the Higher Council of Islamic Affairs and was appointed to teach in the Faculty of *Uṣūl al-Dīn* at al-Azhar. He was one of the prominent figures in the Muslim Brotherhood.

⁴⁵ Muḥammad al-Ghazālī (1917-1996) is one of the most prominent figures in contemporary Islamic thought. He is a graduate of the Faculty of *Uṣūl al-Dīn* at al-Azhar. He has various publications that mostly respond to the challenges that encounter Muslims in our modern time and the urgent need of Muslims to revive the religion. He was a member in the Muslim Brotherhood in the 1950s -1970s.

⁴⁶ Kassāb, *Al-Manhaj*, 53.

system.⁴⁷ In terms of state affiliation, al-Qaraḍāwī was imprisoned and was known for his state opposition. As for the liberal ideas of modernity like democracy, justice and human rights, al-Qaraḍāwī islamizes them. He makes clear that Islam calls for democracy, advocates human rights and promotes justice in the society.⁴⁸ In terms of using modern technology to promote his authority, his website and satellite program *al-Shari'ah wa-al-Hayāh* pioneered the airwaves by being among the first to cross national borders.

Moreover if one attempts to construct a typology of religious authority in present time, one can note that al-Qaraḍāwī's authority is firmly grounded. Authority is determined through several factors such as ability to deal with the text (*Mujtahid/mujaddid* or knowledge-transmitter), affiliation (religious or social or political), qualifications (charisma, origin, education, lineage), accessibility (available all the time, often, not accessible), means of communication (class, sermons, printed materials, radio, TV, Internet), audience (new generation, old generation), profession (*imam*, intellectual, journalist), range of audience (local, transnational, virtual). If these factors reflect a potential construct of a religious authority, one can plausibly argue that al-Qaraḍāwī is a well established authority in many circles in the Sunni world. He claims to be a *mujaddid/mujtahid*. He has various affiliations and is involved in, and actually resides over, a number of international networks of scholars. He uses various means of communication, and is received well by various audiences.

⁴⁷ *Ibid.*, 36-ff.

⁴⁸ Yūsuf al-Qaraḍāwī, *Nahnu wa-al-Gharb, As'ilah Shā'ikah wa-Ajwibah Ḥasimah* (Egypt: Dār al-Tawzī' wa-al-Nashr al-Islāmiyyah, 2006), 117.

The question to be posed here is what kind of authority al-Qaraḍāwī has and what it can accomplish. The present researcher argues that al-Qaraḍāwī's authority is of the traditional category with a charismatic touch. Traditional means that he derives his authority from the long-established religious tradition and customs of learning at the hands of earlier scholars and getting their approval. Since early stages of his life al-Qaraḍāwī was praised by many of his teachers.⁴⁹ Then al-Qaraḍāwī himself establishes his own circle of students who promote his ideas and thoughts.⁵⁰ Although al-Qaraḍāwī uses the state of the art technology, his technology is dressed in a traditional attire. In his TV program, for example, he sits dressed with his Azhari attire and addresses the questions of listeners, exactly as if he sits in a mosque talking with his students. Although he does not have the power to execute his *fatwas*, but his claim of legitimacy is based on the tradition he represents. As for al-Qaraḍāwī charismatic authority, it is derived from the aura of his religiosity, the power of his language, his affiliation with the Muslim Brothers, and his stand in questions pertaining to the Muslim nation. With this type of authority, al-Qaraḍāwī's *fiqh* appeals to Muslim activists. They often use his positions to empower their discourse. Also, it appeals to the ordinary people who used to trust and follow such a discourse. However, at the same time, it does not appeal to groups affiliated ideologically with other religious or political orientation. One may refer her to the *Wahhābi* trend, and *Ḥizb al-Tahrīr*.

⁴⁹ Mas'ūd Ṣabrī, "Al-Ifṭā' 'Ind al-Shaykh al-Qaraḍāwī: al-Manhaj wa-al-Ṭaṭbīq" in *Multaqā al-Imam al-Qaraḍāwī: Ma`a al-Aṣ-ḥāb wa-al-Talāmīdh*, a conference held in Doha, Qatar (2007): 14, 15, 19.

⁵⁰ A special conference was held in Doha, Qatar, 2007, by his students to study his works and contribution to the Muslim world. The title of the conference is *Multaqā al-Imam al-Qaraḍāwī: Ma`a al-Aṣ-ḥāb wa-al-Talāmīdh*

At this conjecture, a question may be posed, if al-Qaraḏāwī have not been supported by the Qatari government and Gulf funds, could he have achieved this 'global' presence? Would his affiliation, for example, with the Muslim Brothers have been enough to establish his authority? A difficult question to respond to, but the fact remains that his early settlement in Qatar was instrumental in the growth of his authority. To put it in other words, his popularity soared through the support he received from Qatar but his authority continued over the years due to the nature of the message he conveys. *Gräf*'s argument that al-Qaraḏāwī "claims global authority rather than possessing it"⁵¹ is understood in light of the various competing trends, sects and orientations in the Muslim world, but on the other hand, al-Qaraḏāwī possesses a global authoritative presence, at least through the positions he holds as president of the International Union of Muslim Scholars, the president of the ECFR and a member of the Islamic *Fiqh* Academy, to list a few. His honorary titles and awards testify for this authority position. He was given the International Award of King Faysal in Islamic Studies, along with *Sheikh* Sayyid Sābiq; Sultan Hasan of Brunei Award, 1997; and the Islamic Personality of the Year, 2000, to name a few.

There is no doubt that the majority of al-Qaraḏāwī's followers in the West belong to Arab immigrants, especially those in relationship to Muslim Brothers and other Islamic movements. But this does not negate that he is received well in other circles. The rector of the French Grand Mosque, Dalil Boubekou, submitted a Muslim charter to the French ministry of Interior in which he invoked al-Qaraḏāwī's authority in a number of

⁵¹ *Gräf, Global Mufti, 41.*

instances. Muslim Council of Britain endorsed al-Qaraḏāwī as a “force of moderation”. Interestingly, even *Hizb al-Tahrīr*, a severe critic of al-Qaraḏāwī, addressed him as “Our Noble *Sheikh*”, in a move that was interpreted as a strategic step to broaden the party support base, but still indicative to the respect and authority al-Qaraḏāwī enjoys.⁵² Moreover, al-Qaraḏāwī’s name is used as a trademark to ensure potential marketing opportunities or as an authoritative stamp for some publishing houses or research centers. *Allo Fatwa*, a short-lived payphone line established in Qatar in 2003 to give *fatwas* for those who call in from everywhere in the world, displayed list of its muftis, of whom al-Qaraḏāwī comes first.⁵³ Al-Falah Foundation for Translation, Publication and Distribution, an Egyptian publishing house for Islamic materials in foreign languages, named al-Qaraḏāwī as one of its editorial board. *Al-Tanwīr al-Islamī*, a series in modern Islamic thought, lists al-Qaraḏāwī as one of its board members. In a nutshell, al-Qaraḏāwī has become a voice of authority and authenticity for a large number of audiences in the *sunni* world.

Al-Qaraḏāwī: Perspective on *Shari’ah*, *Fiqh* and *Ijtihād*

Reading al-Qaraḏāwī’s various publications, especially the ones produced in the last two decades, one may realize that his work on *fiqh al-aqalliyāt* does not represent a new line of thought. Rather it is a reassertion of what he has already written and produced. In the following paragraphs, al-Qaraḏāwī’s perspective on *Shari’ah*, *fiqh* and

⁵² Alexandre Caeiro and Mahmoud al-Saify, “Qaraḏāwī in Europe,” 120.

⁵³ *Ibid.*

ijtihād will be presented in an attempt to understand his position and *fatwas* for Muslim minorities.

Shari'ah, according to al-Qaraḏāwī, is divine, complete, comprehensive and permanent until the Day of Judgment. It governs all affairs of individuals, groups and states throughout time and space. Although *Shari'ah*'s texts are fixed, they are flexible enough to embrace every new situation.⁵⁴ Even if a Muslim lives outside the land of Islam, *Shari'ah* does not leave him until it makes clear to him/her what is *ḥalāl* and what is *ḥarām*, what is recommended and what is not.⁵⁵ *Shari'ah*, however, has two categories. First is the affirmative one which is based on clear-cut texts from the Qur'an and Sunnah. Although, this category constitutes a small portion of the Qur'an, it covers the fundamentals of one's belief. Second is the non-affirmative category which is based on the work of the intellect of jurists. This category is known as *fiqh*.⁵⁶ The affirmative category of *Shari'ah*, al-Qaraḏāwī argues, does not establish rules without identifying first the wisdom behind them. The jurists generally identify the ultimate wisdom of these rules as *taḥqīq maṣāliḥ al- 'ibād*, fulfilling the interests of people. Jurists specified three levels of these *maṣāliḥ*, interests, of the people: the necessities, the needs, the luxurious. At this conjecture, al-Qaraḏāwī asserts that such a classification of levels of human interests according to the demands of *Shari'ah* is a result of the human attempt to

⁵⁴ Yūsuf al-Qaraḏāwī, *Madkhal li-Dirāsāt Maqāṣid al-Shari'ah al-Islāmiyyah* (Beirut: Al-Risālah, 1993), 25-26.

⁵⁵ Al-Qaraḏāwī, *Liqā'āt*, 101.

⁵⁶ Al-Qaraḏāwī, *Madkhal*, 22.

understand the divine wisdom. It is a product of the human intellect. Therefore, jurists may add to or modify this classification as long as what is added has a basis in *Shari'ah*. Early jurists, al-Qaraḍāwī continues, recognized these interests based on their position that the welfare of the individual was at the center of their investigations. This position needs to be reconsidered in the light of societal, political and economic changes in our contemporary life. More focus on the interests of the community as a whole needs to be given preference. Social values, for example, should be part of these basic necessities that *Shari'ah* guarantees. These values would include justice, freedom, solidarity, equality, human rights and brotherhood.⁵⁷

To further support his argument on the flexibility of *Shari'ah* and the rule of the human intellect, al-Qaraḍāwī asserts that definite rulings of *Shari'ah* are limited, leaving a huge space for the human intellect not only to decide for each case, but also to develop some methodological tools, such as *qiyās* (analogy), *istiḥsān* (discretion in legal matters), *maṣāliḥ mursalah* (public interest), to help him reach proper rulings.⁵⁸

This presentation of the role and position of *Shari'ah* conceals the tension on the relationship of *Shari'ah* and *fiqh* and where one can draw the border line between the two. Al-Qaraḍāwī always asserts the divine nature of *Shari'ah* but he does not attempt to define it. He suffices himself with the general qualification of *Shari'ah* as divine, comprehensive and flexible, etc. On one occasion he referred to *Shari'ah* as having two

⁵⁷ *Ibid.*, 67-70; See also: al-Qaraḍāwī, *Dirāsah fi fiqh Maqāṣid al-Shari'ah Bayna Al-Maqāṣid al-Kulliyah wa-al-Nuṣūṣ al-Juz'iyah* (Egypt: Dar al-Shurūq, 2006), 28.

⁵⁸ *Ibid.*, 140.

meanings: 1) a meaning that includes all tenets of religion, creed and morals; 2) a meaning that covers rituals and transactions.⁵⁹ This attempt complicates the issue rather than solving it, especially when combining rituals and transactions together.

By widening the gate of *fiqh* and describing it as a product of the human intellect, al-Qaraḍāwī gives himself the right to critically approach it, rejecting, approving, or modifying its rulings to fit his understanding of contemporary life. *Fiqh*, according to al-Qaraḍāwī, is not what is frequently repeated in jurisprudential literature or what is currently taught in colleges of *Shari'ah*. Rather it is the Qur'anic *fiqh* that is based on *fiqh* of God's signs in the universe, community and oneself. It is the science of understanding the content and the wisdom of the subject-matter.⁶⁰ The Qur'anic reference to *tafaquh fi al-dīn*, i.e. understanding one's religion,⁶¹ does not mean the traditional *fiqh* in the eyes of al-Qaraḍāwī. Such a traditional understanding of *fiqh* does not result in an increase of *imān* or elevation of faith. The verse, according to al-Qaraḍāwī, refers to gaining *baṣīrah*, an insight, into the reality of religion, its secrets and objectives.

This understanding of *fiqh* reflects al-Qaraḍāwī's affiliation with and promotion of Islamic activism. It reflects what is called in the literature of Islamic movements "al-*Fiqh al-Ḥarakī*", in which *fiqh* does not merely relate to the technical imperatives and

⁵⁹ *Ibid.*, 19-20.

⁶⁰ Akram Kassāb, *Al-Qaraḍāwī: Murtakazāt Da`watihi wa-Jabahātih al-Da`awiyyah* (Egypt: Wahbah, 2007); 'Iṣām Tilīmah, *Yūsuf Al-Qaraḍāwī, Faqīh al-Da`wah*, 111.

⁶¹ *Tafaquh* is a verb form derived from *fiqh*, meaning that one should exert his maximum effort to understand and comprehend something. Al-Qaraḍāwī refers here to the Qur'anic verse, "...Of every group of them [Muslim], a party only should go forth and gain some knowledge of faith..." (Qur'an, 9:122)

determinations of jurists, but it opens up for every one's input and understanding of his/her religion. There is a sense here of inviting people to take off the garb of submission to both the traditional literalist scholars and to the state-dictated form of Islam. This understanding of *fiqh* may be rooted in the thought of Muḥammad 'Abdūh and Rashīd Riḍā at the turn of the twentieth century. In their struggle against colonial powers as well as the political and economic conditions of the Muslim world, they called for a social and religious reform that revives the true spirit of religion and not the blind imitation of juridical rules. Here al-Qaraḍāwī recalls similar type of activism to encounter the corrupt political and to embark on religious reform.

Al-Fiqh al-Ḥarakī is a term that is used effectively and with subtlety in al-Qaraḍāwī's discourse. At the same time it indicates an affiliation with Islamic activism, it also opens up a wide range of other *fiqh* categories: *fiqh al-muwazānāt*, *fiqh al-awlawiyyāt*, *fiqh al-sunan*, *fiqh al-ikhtilāf*, *fiqh al-tadarruj*, *fiqh al-dawlah*, *fiqh al-maqāṣid*, etc.⁶² Al-Qaraḍāwī contributed to all these categories, if he is not the first to introduce and label them in contemporary time. *Al-Fiqh Al-Ḥarakī*, however, is not left for personal individual choices. Its determinations lie in the hands of the 'ulamā who will provide a mature leadership to the movement members and a proper guidance for the Muslim community at large. The reference to 'ulama in this context is significant. 'Ulama is the link between the tradition, the reality and the change, or as Qasim Zaman describes, "Custodians of change" in a "discursive tradition". 'Ulama work as agents of

⁶² Al-Qaraḍāwī, *Dirāsah*, 14-15.

change that enables the community to meet the ongoing challenges of its time, place and condition and at the same time defends the tradition's core and guards its values.⁶³

Al-Fiqh al-Ḥarakī represents also another layer of debate in al-Qaraḍāwī's methodology. *Ḥarakī* indicates moving, changing, and alive. This is against the common understanding of traditional *fiqh* and the question of *taqlīd* of a certain *imam* or school of thought. Al-Qaraḍāwī considerably elaborates on this point, making clear the distinction between *fiqh al-naṣṣ*, jurisprudence of the text, and *fiqh al-wāqi'*, jurisprudence of real life. Al-Qaraḍāwī criticizes *imam* Shawkānī's view⁶⁴ for his reliance on the text. i.e. Qur'an and hadith, as the main source of legislation and rejecting the "legal opinion" that is derived from intellectual reasoning. Using intellect to understand the text in light of the real life conditions is one of the objective of *Shari'ah* and the purposes of religion.⁶⁵ To argue further for his position, al-Qaraḍāwī refers to Ibn Taymiyyah's opinion on not forbidding the Tatars soldiers from getting drunk. Ibn Taymiyyah argued that in their case it is better to let them get drunk. Drinking is forbidden due to its effect on the mind that causes negligence of one's prayers. But for those soldiers, drinking prevents them from killing people and taking their money. Ibn Taymiyyah implies that it is better to let

⁶³ See: Muhammad Qasim Zaman, *The Ulama in Contemporary Islam, Custodians of Change* (Princeton University Press, 2007); Muhammad Qasim Zaman, "Consensus and Religious Authority in Modern Islam: The Discourses of the 'Ulama," in *Speaking for Islam: Religious Authorities in Muslim Societies*, eds. Gudrun Kramer and Sabine Schmidtke, (Brill: 2006).

⁶⁴ Muḥammad ibn 'Alī ibn Muḥammad ibn 'Abdullah al-Shawkānī (1759-1834 CE) is a Muslim jurist and reformer. He is known for his authority in Ḥadīth and for his severe criticism for *taqlīd* and his call for *ijtihād*. For a critical study of his life and his works see: Bernard Haykal, *Revival and Reform in Islam, the Legacy of Muhammad al-Shawkani*, (Cambridge University Press, 2003).

⁶⁵ Kassāb, *Al-Manhaj*, 56.

them drink and neglect prayers than to forbid them, according to the Qura'nic injunctions, and let them kill Muslims or to take people's property without due rights.

Al-Qaraḍāwī comments that Ibn Taymiyyah's position illustrates the difference between *al-faqīh al-ḥarfī*,⁶⁶ the literalist *faqīh* or the *faqīh* of papers and the *faqīh* of life or of *mīdān*, battlefield. The former condemns the sin without taking into consideration the objective and the reality of things while the latter looks at the real objective of *Shari'ah* in maintaining people's quality of life.⁶⁷ The former is not really a *fiqh* because the real *fiqh* is based on the life of people, their experiences and their sufferings. *Fiqh* of religion should not be disconnected from *fiqh* of life which is the *fiqh* of Qur'an.⁶⁸

Al-Qaraḍāwī warns that his methodology of accommodating the reality of specific situations does not imply that he negates or ignores the cumulative *fiqh* legacy and sticks only to the *Shari'ah* itself. He argues this is practically impossible. He stresses that *fiqh* is a science that grows and develops with every generation and it is unimaginable to interpret the Qur'an without the classical legacy of earlier generations. *Ijtihād* means to re-read the available juridical literature with all its schools and in all its ages in order to be able to reach a proper ruling based on objectives of *Shari'ah* and contemporary people's interests. This should not lead us to permit what God forbids such as usury and

⁶⁶ In other occasions Al-Qaraḍāwī uses Sayyid Quṭb's label "*fiqh al-awraq*", i.e. jurisprudence of papers. See: Kassāb, *Al-Qaraḍāwī*, 98; Cf. 'Ubayd Ḥasanah, *Fiqh al-Da'wah Malāmiḥ wa-Afāq*, vol. 2. Kitāb al-Ummah series, (Qatar: Legal Court and Religious Affairs Department). Available online at: <http://www.sheikhali-waqfia.org.qa/SF/AR/BookShow/BookShowTree.aspx?BookId=216> (accessed 8/11/2011)

⁶⁷ Kassāb, *Al-Qaraḍāwī*, 73.

⁶⁸ Al-Qaraḍāwī, *Liqā'āt*, 116-7.

gambling. A jurist should try to bring *wāqī'* as close as possible to *shar'* and not vice versa.⁶⁹

Given this perspective on the role and function of *Shari'ah* and *fiqh*, al-Qaraḍāwī delineates three trends among Muslims in their attempt to understand *Shari'ah*.⁷⁰ The first trend is the neo-Zaherites who do not recognize the connection between the text and people's life. They dismiss the role of intellect in concluding legal determinations. The second trend is the neo-Mu'tazila who want to do away with legal heritage and maintain only the objective of *Shari'ah*, only to legitimize their actions. They are mostly oriented toward the West and call for the suspension of *hudūd*, legal punishments. The third trend is the moderate trend that recognizes the *thawābit*, fundamentals of religion. It distinguishes between the objectives and the mechanisms. The former is basic and determines the direction of the legal ruling while the latter is changing and open for *ijtihād*. Al-Qaraḍāwī holds that the middle way trend⁷¹ is the true Islamic one.⁷² This approach of categorizing the people or their orientation into groups is typical of Qaraḍāwī. For example on the question of *jihad* in Islam, he distinguishes between three trends; the first group is those who deny the need for *jihad* in the present time, the second

⁶⁹ Al-Qaraḍāwī, *Madkhal*, 242-ff.

⁷⁰ Yūsuf Al-Qaraḍāwī, *Fiqh al-Jihad, Dirāsah Muqāranah li-Ah-kāmih wa-Falsafatih fi Daw' al-Qur'an wa-al-Sunnah*, (Cairo: Wahba Bookstore, 2009), 12.

⁷¹ To study the concept of the Middle-Way for al-Qaraḍāwī, see Bettina Gräf, "The Concept of Wasatiyyah in the Work of Yūsuf Al-Qaraḍāwī" in *Global Mufti, The Phenomenon of Yusuf al-Qaradawi*, eds. Bettina Gräf and Skovagaard-Petersen, (New York: Culumbia University Press, 2009), 213-238.

⁷² Al-Qaraḍāwī, *Dirāsah*, 64-ff; Al-Qaraḍāwī, *Madkhal*, 90-ff.

are those who declare war against the whole world, and the middle group which redefines the meaning and scope of *jihad* in modern world.

This exposition of al-Qaraḍāwī's position on the relationship between *fiqh* and *Shari'ah* reveals a number of issues. First it demonstrates the level of involvement of al-Qaraḍāwī in Islamic activism through first his strong affiliation and participation in the Muslim Brotherhood, especially at the early stage of his life. The impact of Ḥasan Al-Bannā's ideas was like the seed that grew as al-Qaraḍāwī's matured. It provided him with a different perspective that he was exposed to in the traditional Azharite education. This combination of traditional education and Islamic activism produced a mix that is hardly to be categorized. For some, al-Qaraḍāwī represents a new ideologue of renewed *salafism*. For others, he belongs to the moderate trend of Islam. For a third group he represents a certain layer of liberal Islam, and finally for another group he is counted among the fundamentalists. I would argue that he is all that. He belongs to the multi-layer hyper category of intellectuals. He is like his *fiqh*, changing and flexible. This should not be taken as a negative criticism of him but rather as an attempt to read him in an objective way. This flexible changing quality creates ambiguity in analysis. For example, the question of *ijtihād* was exhaustively explored in his writings. He elaborated on its definition, types, categories, conditions and roles. He even referred to examples of his and other jurist's *ijtihād*. But still ambiguity and complexity remain. Questions are yet to be solved: How to develop a framework of the objectives of *Shari'ah* or are they open-ended? How to choose between *ijtihād inshā'ī*, i.e. *ijtihād* based on text and analogy, and *ijtihād ibdā'ī*, i.e. creative *ijtihād*? How to determine the relationship between the legal

opinions of the majority of jurists and those of the minority? How to lay out the relationship between the text, the human intellect and life conditions? Which one of them has precedence over the other? Is it possible to textualize the context or is it legitimate to contextualize the text?

The West: *Jihad* of the Age

After having examined the relationship of al-Qaraḏāwī with Muslim minorities and his understanding of the role of *Shari'ah* and *fiqh* in modern life, al-Qaraḏāwī's position toward the West needs to be examined, as it is the ground upon which al-Qaraḏāwī's discourse/ *fatwas* will be tested. How does al-Qaraḏāwī view the West? Has it become part of the self or is it still "the other" and "the enemy"? Can Muslims be integrated or shall they stay isolated? What does *jihad* mean for those Muslims living in the western non-Muslim polity?

Al-Qaraḏāwī's position toward the West is complex. At the same time he affirms that the people of the West are *kāfirs*, unbelievers, he uses all his juristic abilities to negate the need to declare *jihad* against them. The westerners' *kufr*, al-Qaraḏāwī's argues, is a linguistic identification, that simply means that they do not believe in the prophet of Islam and his message. Such a reason is not enough to wage war or declare *jihad* against them.⁷³ *Jihad* is declared not to convert people but to convey the message of Islam. In the present time world, due to the proliferation of information technology, no political power can stand against the propagation of the Islamic *da'wah* or prevent people

⁷³ Yūsuf Al-Qaraḏāwī, *Fiqh al-Jihad*, 239

from recognizing what is right and what is wrong.⁷⁴ If the message of Islam becomes known for everyone, then it becomes the responsibility of the receiver to accept it or not. No force can ever be applied to coerce people to convert. In another way, *jihad al-talab*, i.e. War for *da'wah*, is no longer needed to convey the message of Islam.⁷⁵ So doing al-Qaraḏāwī neutralizes the abode of the West: It is not the abode of Islam and it is not the abode of war.

Al-Qaraḏāwī, however, to maintain the legal categorization of land in the Islamic tradition, he called the West *dār al-'ahd*, an abode of contract, which means that there exists a kind of contract of peace between the abode of Islam and the West. So doing, al-Qaraḏāwī problematizes his previous argument. *Dār al-'ahd* implies that if a Western country carried on a certain policy or action that is considered by some Muslims as a breach of contract, then the abode of contract becomes an abode of war. This understanding leaves western Muslim communities in uneasy situation and threatens their conceptualization of what home means. Although al-Qaraḏāwī realizes that such classical categorization of lands has negative implications in modern day life, he does not try to suggest an alternative. He rather appeals to Muslim scholars to make collective *ijtihād* to find better descriptive terms.⁷⁶

Apart from this legal discussion, al-Qaraḏāwī resorts to more pragmatic approach when it comes to the question of the relationship between Muslim minorities and their

⁷⁴ *Ibid.*, 402.

⁷⁵ *Ibid.*, 1195.

⁷⁶ *Ibid.*, 908-9.

Western home on one hand and their relationship to the rest of the Muslim world on the other. He affirms the possibility of dual identities. A Muslim belongs to both the Muslim *ummah* and to his own residential community, wherever this community is. This notion of dual identity is based on a concept of “reverse necessity”. Traditional Islam requires Muslims to depart the land of the unbelievers’ “Western” land and to settle in a Muslim land. For al-Qaraḏāwī, this position lacks the comprehension of the present reality, that is the West has become the center of world. This reality requires “a reverse necessity”, that Islam should not only immigrate to the land of the West but also interact with it.⁷⁷ This position represents a paradigm shift in the Muslim legal tradition where *jihad* turns into the search for an Islamic role model in an open world.

The necessity of interaction with the West requires first and foremost the accommodation and the normalization of Muslim’s life in the West. The way to normalization is through the development of a theory of a jurisprudence for Muslim minority.

Theory of *Fiqh al-Aqalliyyāt*

At the outset of drafting his theory, al-Qaraḏāwī argued that Muslims have a comprehensive religion: It is comprised of a divine creed, purified rituals, high morals and guiding *Shari’ah*. Comprehensive and realistic as is, *Shari’ah* is binding upon every Muslim; wherever, whenever, and however s/he might be. It is enacted upon all people of

⁷⁷ Med-ḥat Māhir, “Jadīd Fiqh al-Aqalliyyāt fī Mawḏū’ al-Mar’ah,” in *Murāja’ah Fī Khīṭabāt Mu’āṣirah Ḥawl al-Mar’ah*, ed. Amanī Ṣaliḥ, (Cairo: Dialogue of Civilization Program, Faculty of Economics and Political Science, Cairo University, 2007), 55.

all generations. It does not promote secularism or separation between worldly and religious matters. However, one's commitment to *Shari'ah* is based on his ability to abide by it in the light of the urgencies of his place, time and condition. In other words, no Muslim can live outside the boundaries of *Shari'ah* or assume that he is exempted from observing its principles unless the *Shari'ah* itself exempts him according to its principles, rules and proofs. The jurist cannot ignore this principle, even if he deals with "the jurisprudence of minorities" or "the jurisprudence of expatriates" or the jurisprudence of "Muslims in non-Muslim polity".⁷⁸

With such an introduction, al-Qaraḍāwī outlines the conceptual framework for his contribution. *Shari'ah* is binding upon every Muslim, including those who live outside the land of Islam. However, according to the comprehensive realistic *Shari'ah*, the binding rules change according to place, time and conditions. The *'ulama* are the only ones who has the authority to delineate when the rules are bound and when they may be relaxed.

Al-Qaraḍāwī begins his analysis with an overview of the meaning of the word "minority". It refers to a group of people who live in a certain country, distinguished from the majority of the population of that country in terms of religion, sect, race or language or any other trait that is used to differentiate between groups of people. One basic characteristic of being a minority is mostly the state of *da'f*, i.e. weakness, in face

⁷⁸ Yūsuf al-Qaraḍāwī, *Fī Fiqh al-Aqalliyyāt*, 12-13.

of the majoritarian power.⁷⁹ Al-Qaraḏāwī's identification of the state of weakness for "minority" people explains his attitude towards Muslims in the diaspora. *Da'f* becomes a key word in his analysis and frequently appears in his *fatwas* for Muslim minorities. His concern is how to relieve Muslims in minority situations from their condition of weakness and empower them to stand on firm ground in their relationship to the authority of the majority.

Al-Qaraḏāwī then focuses his analysis on Muslim minorities in the West, because there the state of "weakness" is apparent. Eastern Muslim minorities, e.g. Indian Muslims, should not be considered minorities per se because they are natives of these lands, although they may be minorities in terms of their numbers compared to other groups of population. These indigenous eastern Muslims, such as in China, India, and Thailand, are part of the heritage, culture and institutions of their lands. In contrast, early immigrant Muslims came to the West in a critical historical moment when many countries of the Muslim World were suffering from (post) colonization problems, let alone internal political and economic tensions. Many of them came mainly for work and had little religious commitment.⁸⁰ However, after two generations and for various reasons, including the rise of Islamic Awakening in the Muslim world, and the arrival of a new wave of educated immigrants who fled their countries for fear of political or religious persecution, Muslim minorities started a new age of their existence in the West:

⁷⁹ *Ibid.*, 15.

⁸⁰ *Ibid.*, 16-20.

the age of Islamic awareness.⁸¹ This new age of Islamic awareness, according to al-Qaraḏāwī, went through different stages: 1) Identity awareness, 2) Awakening stage, 3) Action initiation, 4) Grouping process, 5) Congregation building, 6) Settlement process, 7) Interaction. As they are in the last stage, Muslims immigrant can no longer isolate themselves. They have to face their challenges, whether they be political, economic, cultural, or social. It no longer suffices to build mosques, which at one point was an inevitable step for early immigrants. But given the numerous changes that the Muslim community has undergone, the focus shifted to the development of scientific, educational, professional and outreach institutions.⁸² Many of these challenges have jurisprudential dimensions which required Muslims to seek answers from qualified religious authorities. The main concern of those minorities is: how to lead an Islamic life? This concern, al-Qaraḏāwī argues, should not worry Muslims. Rather it is a positive sign that Islam still has an impact on the Muslim's conduct and actions, even if the Muslim is an expatriate, away from his native Islamic community.⁸³ Here it becomes clear that al-Qaraḏāwī is talking specifically about immigrants from Muslim countries.

The questions posed by those who live as a minority were answered by a good number of Muslim scholars. Those scholars were mainly located in the immigrants' home countries and were known for their piety, knowledge and perhaps political orientation. Al-Qaraḏāwī, however, does not endorse much of these *fatwas*, arguing that the scholars

⁸¹ *Ibid.*, 23.

⁸² *Ibid.*, 23.

⁸³ *Ibid.*, 28.

who responded to these questions lack the specific knowledge of the immigrants' conditions and their sufferings in their non-Muslim. In their answers, those jurists rely on *fiqh* manuals, which is not enough to provide proper answers. Muslim minorities need a jurisprudence that is based on three pillars: reality, text, and *Shari'ah* deductions rules.⁸⁴

After stating the need for a special consideration, a new *fiqh*, for Muslim minorities, al-Qaraḍāwī puts down his theoretical framework which is based on three main principles.

- The role and nature of *fiqh*
- The significance of the contemporary Muslim presence in the West
- A methodological framework

The Role and Nature of *Fiqh*

Fiqh is a science that guides the practical life of a Muslim. It helps the Muslim seek the right solution for his every-day life. *Fiqh* is not enough to make someone a Muslim. The internal dimension in one's life, which is the focus of the science of purification and ethics, is more significant than his external application of jurisprudential rules.⁸⁵ Al-Qaraḍāwī's stress on the secondary position of *fiqh* in relation to ethics is important and represents a departure from other jurisprudential attitudes that stress the literal dimension of *Shari'ah* and make following a *fiqh* ruling a merit of its own. This position toward the role of *fiqh* in a Muslim's life explains al-Qaraḍāwī's stand on the necessity of better holding to one's belief in Islam, a creed of the heart, than the

⁸⁴ *Ibid.*, 29.

⁸⁵ *Ibid.*, 31.

relaxation in some jurisprudential rules that may lead to deserting one's belief. This is reflected in many of al-Qaraḍāwī's *fatwas* and positions. For example, in his *fatwas* on a Muslim convert staying with her non-Muslim husband, al-Qaraḍāwī gives a detailed answer reviewing at least nine opinions on the issue, including those of well-known jurists Ibn 'Umar, Sufyān al-Thawrī and Ibn Taymiyyah. He concluded that the convert woman can stay with her non-Muslim husband. As one of his arguments, he stated that if the juristic majority opinion that she has to be separated from her husband is decided for her. She may renounce the faith because of her love to her children or husband. But if one gives her the option of the possibility of staying with her husband, the worst case, if this ruling is wrong, is that she would commit *zinā*, i.e. adultery. Which is better, al-Qaraḍāwī argues, to commit *zina* or to denounce the faith? For him to keep someone under the fold of Islam is more important than to follow a certain *fiqhi* jurisdiction, even if it is the majority opinion.

Given this understanding of the position of *fiqh*, *fiqh* of minority is not a unique type of its own. It is part of the general *fiqh*, with the same sources and methodologies. The only difference is that it focuses on a certain subject matter that was not known to previous jurists in such a pressing way or with such present day world changes in the realms of politics, society structure and religion. In searching the question about the role of *fiqh* in the life of a Muslim, the jurists always argue that *fiqh* is the science that guides the life of a Muslim.⁸⁶

⁸⁶ *Ibid.*, 32.

Al-Qaraḏāwī interestingly argues that the role of *fiqh* in the life of Muslim minority exceeds this normal description. It helps Muslims become flexible and positively interact with the society they live in. It helps them recognize, practice and maintain their religious, cultural, economic and political rights that they were entitled to in the constitutions. It helps them perform their duties, religious, cultural and social, without being held back by a religious fanatic or being left to their whims and desires. It helps them also preach the message of Islam within their society due to their understanding of the culture of the place and its language.⁸⁷

Al-Qaraḏāwī's use of terms like "interaction" and "constitution" in describing the role of *fiqh* suggests two readings. The first is that al-Qaraḏāwī is utilizing a "modern" language to relate to the role of law in society which used to be in classical books: achieve justice and maintain order. Positive interaction cannot be but through mutual respect and justice. Constitution is meant to maintain order. The second is that al-Qaraḏāwī wants to open the door wide without barriers, and even to make it obligatory upon Muslims living in the non-Muslim polity to integrate with the non-Muslim society. This engagement is not based on religious superiority but on concepts of constitutional rights and duties. Any fanatic religious understanding of isolating oneself has to be ignored. This understanding and such a formulation of the role of *fiqh* in the life of the Muslim minorities represent a paradigm shift in the contemporary legal debate. It departs from traditional jurisprudential legacy of limiting the minority questions to the legality of staying in a non-Muslim territory and what it follows of rules pertaining to the *hijrah*

⁸⁷ *Ibid.*, 35.

from these lands. Reading his works for minority, one does not see the classical debate on questions of Islamic jurisdiction (if it territorialized or extra-territorialized, i.e. applied only within the Islamic state or also applicable outside), or on the issue of *Izhār al-Dīn* (manifesting one's religion) and its different interpretation (is it limited to rituals, or mundane practices or to legal punishments?). The absence of the various juridical debates of these issues from his discourse indicates his unwillingness to reproduce the controversy in an era that has different rules, i.e. constitution, civil society, human rights, minority rights, etc.

The Significance of the Contemporary Muslim Presence in the West

For centuries, the relationship between Islam and the West had been based on war, enmity and hatred. The image of “the enemy other” was prevailing in their minds and governed their positions. No Muslim was allowed to stay in “the Other's” land but for a strong justifiable legal reason. Trade and education were not enough reasons to stay permanently in the non-Muslim territory, especially those in war against Muslims.⁸⁸

Al-Qaraḏāwī rejects this historical position. He argues that Muslims should realize that their presence in the contemporary West has become an obligation. Muslims are carriers of a universal message that has to reach the West, the leading power of our present time. If Muslims don't have this presence, they should exert their utmost efforts to create it. Muslims should have an influence like that of the Jews, who are a religious

⁸⁸ For a review of early history of Muslim minorities in Europe see: Bernard Lewis, “Legal and Historical Reflections on the Positions of Muslim Populations under non-Muslim Rule” in *Muslims in Europe*, eds. Bernard Lewis and Dominique Schnapper (New York: Pinter Publishers, 1994)

minority like them, on the cultural and political life of the West. Al-Qaraḏāwī concludes, “There is no space to ask a question about the legality of residence in a non-Muslim country, or as some jurists call it “the abode of disbelief”. If we prohibit that, as some scholars might want us to do, we will close the door for conveying the message of Islam to the world. If this was the case, Islam would have been confined to the Arabian Peninsula and would not have spread beyond it.”⁸⁹

The notion of the universality of Islam is a basic element in the process of theorization for *fiqh al-aqalliyyāt*. It will be frequently referred to it in the literature and analysis of that *fiqh*. The use of this notion would yield a three-step conclusion. First Islam, the message, knows no borders, no territorial categorization, and no people. Second, Islam, the universal message, supersedes the local *fiqh*. Third, then a new local *fiqh* needs to be established for the Muslim minorities. Here we see a dynamic shift and interaction between two conceptual frameworks: universality versus locality. Both produce one another. The universal message, on one hand, considers the place, the time and the condition of people, i.e. producing a local *fiqh*. On the other hand, the local *fiqh* is meant to facilitate the process of conveying the universal message. Here one can refer to one of the principles used by the advocate of this *fiqh* which is the principle of graduality in applying the rules of *Shari'ah*. So it is not only a local *fiqh*, but even this local has to be gradually considered.

⁸⁹ Yūsuf al-Qaraḏāwī, *Fī Fiqh al-Aqalliyyāt*, 33.

Formulating this argument, i.e. the importance of Muslim's presence in the West, in such a way serves two purposes. First it leaves the anti-*fiqh* of minority jurists with the burden to prove that they can maintain this important component of the Islamic message in the present modern democratic world. Second, it allows the jurists of the minority *fiqh* to put aside or at the best to use the *fatwas* given to minorities over the centuries as guiding precedents and not as must-follow rules. This gives them the space to establish their own legal position.

A Methodological Framework

The main challenge that the advocate of *fiqh al-aqalliyāt* encounters is how to develop a concrete methodology that allows them to both achieve their goals and at the same time not to depart from the traditional juristic framework and style. Al-Qaraḍāwī was the first one to draft a methodology on this line. Within more than twenty pages, he laid down the basic framework of his methodology.

He distinguished between the methodology and sources of *fiqh al-aqalliyāt*, which in most *uṣuli* contemporary *fiqh* literature is not highlighted. The *fiqh* of minority sources are the same as the general traditional *fiqh*: Qur'an and Sunnah come first, with the Qur'an having the leading power. Then follows *Ijmā`* and *Qiyās* respectively. After that comes the contested sources of *Istiṣlāḥ*, *Istiḥsān*, *Sadd al-Dharā`i*, *Urf*, and other similar categories.⁹⁰ After outlining the sources, al-Qaraḍāwī then embarks on the task of elaborating on his methodology which qualifies the use of these sources and direct them

⁹⁰ *Ibid.*, 37-9.

to serve his general position. The baseline of his methodology upon which other methodological principles are built is the need for sound contemporary *ijtihād*. Whatever the question posed in a minority context it does not leave the circle of *ijtihād*. The question either exists in *fiqh* manuals or not. If it exists, then the *mufti* has to apply “elective *ijtihād*”, i.e. to select the best opinion that corresponds to the present reality, even if it is the opinion of an individual jurist and not the one that is consensually agreed upon by jurists. If the question does not exist then a “creative *ijtihād*” is sought.⁹¹ One should approach the process of *ijtihād* not as an innovation in religion but as a part of the renewal process of religion that the Prophet envisioned.⁹² If *ijtihād* is the baseline then the general comprehensive jurisprudential rules are the pillars. Rules such as “Matters are judged with their objectives”, “Custom is legislative”, “What leads to a *wājib*, an obligation, is *wājib* in its own right”, “Hardship requires easiness”, etc., have to be considered and utilized by the jurist when he investigates the questions.⁹³ *Ijtihād* and general comprehensive jurisprudential rules have to be tied with the jurisprudence of reality. Text does not lead to solutions if disconnected from real facts on the ground. If the text informs us about the illegality of bank loan transactions because it might entail dealing with usury and then the reality, as defined by experts, informs us that purchasing houses in the West is a necessity for the Muslim community to support itself, and the

⁹¹ *Ibid.*, 40-1.

⁹² *Ibid.*, 41.

⁹³ *Ibid.*, 42-44.

only way to purchase the house is through a bank loan, then the jurist has to consider this reality and suspend the text because of the factual necessity.⁹⁴

The question of reality-based *ijtihād* in minority situations complicates the analysis. The reality changes from one minority to the other and even from one group of a certain minority to the other. This means that one will have multiple *ijtihāds*, resulting in multiple rulings. That is why some advocates of this *fiqh* call for case-by-case studies/*fatwas*. This constitutes a problem because one of the goals of *fiqh* is to provide rules so as to unite people but it seems in the minority situations the *fiqh* will be localized / individualized, exactly as the nature of the society structure in the West.

Along with the principle of multiple *fiqhs* comes another methodological focus, i.e. the community is the center of this *fiqh* and not the individual. Since *fiqh al-aqalliyyāt* deals with a special case of necessities, it entails a reconsideration of the traditional jurisprudential framework in which jurists' focus in cases of necessities was mainly the practice of the Muslim individual in the Muslim state. In the context of Muslim minorities the community as a whole, al-Qaraḍāwī argues, should be seen as a collective entity and the ruling could and should consider their collective interests, and not only the interests of certain individuals.⁹⁵

At this conjecture one can see the dilemma of al-Qaraḍāwī. He wants to empower the minorities and extend his intellectual support to them, but he cannot do that but

⁹⁴ *Ibid.*, 44-6.

⁹⁵ *Ibid.*, 46-7.

through the reality of their disempowerment as minorities which means weakness, exceptions, and necessities. The result is somehow a confusing methodology that on one side calls for a well-defined category of *fiqh*, but on the other hand when asked about its framework, subjects or parameters, he does not provide a clear answer. The question poses itself of how a legal framework can be based on exceptions and cases of necessities.

Another question may still be raised here. These above-mentioned sources of *fiqh* are accepted and will not be mostly challenged by other jurists. If so, why Muslim minorities still feel unprivileged and not at ease with *fatwas* given to them. Here al-Qaraḍāwī adds a couple of other methodological points that distinguishes his approach and at the same time responds to the various concerns of minorities. The first is the adoption of the principle of *taysīr*, literally. easiness, i.e. the choice of the easier of two things. He argues that people due to their concern and fear of going beyond the limits of their religion used to make things hard upon themselves till it becomes normal to choose the hard position. This is against the nature of Islam which calls upon its followers to always choose the easy and to avoid hardships.

Here it is worthy to note that this approach of al-Qaraḍāwī is not only adopted in minority questions. It is actually a basic principle in al-Qaraḍāwī's thought that he did stress in many of his publication. Al-Qaraḍāwī always states that materialistic life derives people into hardships. It is, therefore, the role of the *mufti* to facilitate things and to take

the side of licenses so as to encourage people to stick to their religion.⁹⁶ For him, the principle of *taysīr* should take two parallel lines; *taysīr* in understanding and *taysīr* in application. On one hand, people in contemporary time are not familiar with the language or the methodology of traditional *fiqh* discourse. There is a pressing need to rewrite the *fiqh* in an easy tangible language that avoids technical ambiguous terms so as to make it accessible for the contemporary Muslims. On the other hand, this *taysīr* in understanding should be paralleled with *taysīr* in application through a consideration of license-based rulings that take into considerations people's needs.⁹⁷ This principle, however, should not contradict with the clear-cut texts of *Shari'ah*.⁹⁸ Although this argument may be theoretically accepted, practically it raises many questions such as what is meant by a clear-cut text, who would define such a text? How to relate this rule to other rules of *ḍarūrah*? And to what extent a legal-ruling based on *taysīr* can live? In other words is such a rule permanent? This approach made al-Qaraḍāwī a target for criticism from certain jurists and trends, to the extent that they called his book *The Lawful and the Prohibited in Islam* "the lawful and the lawful in Islam".

Another problem with al-Qaraḍāwī's notion of *taysīr* is that it makes *fiqh* egalitarian and open source for everyone not only to learn from but also to teach others. In this type of *fiqh* manuals, *fiqh* becomes as a codified law book with specific rules and

⁹⁶ Kassāb, *Al-Manhaj*, 240-ff

⁹⁷ Tilīma, *Yūsuf Al-Qaraḍāwī*, 118-9.

⁹⁸ Kassāb, *Al-Manhaj*, 238; see also: Yūsuf Al-Qaraḍāwī, *Al-Fatwa Bayn Al-Inḍibāt wa-al-Tasayyub* (Egypt: Dār al-Ṣaḥwah li-al-Nashr, 1994), 111-ff.

regulations. This makes everyone a jurist and results in losing the integrity, the subtlety and creativity of jurisprudence. Al-Qaraḍāwī unconsciously reproduce the era of *taqlīd*, i.e. imitation, but this time it is not a *taqlīd* of a deceased *imam* but a book. At the same time, al-Qaraḍāwī calls for *taysīr*, he demands special position for jurists and *fiqh*. This situation will always create a tension between the expert jurist and the “lay” jurist. This is actually one of the main problems in modern time Islamic discourse, where the voice of lay jurists is followed more than the real experts.

A second methodological point in al-Qaraḍāwī’s discourse is his call for gradual application of rulings of *Shari‘ah*. He argues if the conditions of some groups of Muslims require applying the rulings gradually, then one can follow the early example of the Qur’an and the practice of the Prophet to do the same. Here again, this methodology is not limited to Muslims in minority positions. Al-Qaraḍāwī actually calls in various occasions for the gradual application of *Shari‘ah* even within Muslim countries.⁹⁹ Al-Qaraḍāwī’s stress on gradual application in the case of Muslim minorities, especially for the new converts, is voiced in many of his publications. For example in his defense of Sayyid Sābiq’s book *Fiqh al-Sunnah*, al-Qaraḍāwī argues that such types of books that do not stick to one *madh-hab* are essential, especially for new Muslims who come to Islam with no commitment towards a school or a certain sect.¹⁰⁰ In another occasion, he was asked about Japanese converts who love to drink alcohol and if they are commanded to stop drinking, they may leave Islam. Al-Qaraḍāwī responded that it is better to teach

⁹⁹ Al-Qaraḍāwī in Al-Ahram newspapers, Egypt, 1986, c.f. Al-Qaraḍāwī, *Liqā‘āt*, 60.

¹⁰⁰ Kassāb. *Al-Manhaj*, 46-7.

them first the fundamentals of faith before *furū'*, i.e. sub-rules. He advises the Muslim *imams* to follow a gradual path with new converts. After that, if they still do not give up drinking, they should be left to Allah without forcing them or leading them to leave the religion. It is better, al-Qaraḍāwī affirms, to leave them die while they are still Muslims and leave their accountability for God.¹⁰¹

Freeing oneself from following a certain *madh-hab* is a basic tenet in al-Qaraḍāwī's thought. In his first book, *Al-Halāl wa-al-Harām*, he states, "it is not proper for a Muslim scholar who has the ability to balance among the opinions of jurists to be a captive of one *madh-hab* or one *faqīh*."¹⁰² *Ijtihād* is never final, al-Qaraḍāwī argues. If this is so, Muslims should free themselves from fanatic obedience to one *madh-hab* or sect.

Using the no-sect-based *fiqh* argument in Muslim minority context is significant for three reasons: First, Muslims in the minority situations do not have the basic knowledge of *madh-habs'* debates and arguments to stick to one only. Even if Muslims come to follow, say the *madh-hab* of a certain country, Muslims will have a wide array of *madh-habs* since they come from different places, a matter which will create disputes among them. So it would be more reasonable to free oneself from following a certain *madh-hab*. Second, applying this principle will allow al-Qaraḍāwī himself to choose and

¹⁰¹ Yūsuf Al-Qaraḍāwī, *Min Hady al-Islām, Fatawa Mu'āshirah*, vol. 3, (Kuwait and Egypt: Dār al-Qalam), 650-1.

¹⁰² Al-Qaraḍāwī, *Al-Halāl wa-al-Harām*, 12.

combine opinions of different *madh-habs* without having the burden to justify his jumping from one *madh-hab* to the other, other than the fact that he is relying on a jurist.

It should be noted here that in defining his methodology al-Qaraḏāwī presented his mastery of sources by quoting Qur'anic rulings, Prophetic traditions, jurists' and early Muslims' opinions, and even presented examples of difficult questions that this *fiqh* is trying to respond to.

Al-Qaraḏāwī's *Fatwas*

An overview of the minority *fatwas* that are included in al-Qaraḏāwī's books reveals a number of points. First, in many occasions the minority's questions are identical with questions asked by Muslims everywhere. There are questions about 'stealing' the spirit of the prayer, shortening of woman's hair, intermingling between men and women, etc. Second, almost 40% percent of the questions raised by minority Muslims have to do with family issues, mainly those questions about the relationship between husband and wife in terms of rights and duties.¹⁰³ In many of such questions, the *fatwas* given represent a sort of social counselor advice rather than a religious ruling. Third, the peculiarity of Muslim minority questions appears when the question has to do with Muslim-non-Muslim interaction, be on the personal level or on business or political level. In this case, the *fatwas* present a challenge for the *muftis* and reveal his/her knowledge and expertise in the field as well as his/her methodological approach. Given these three

¹⁰³ For example there is a total of 23 questions on family issues out of 51 questions in his section on *Fatwa al-aqalliyyāt* in Al-Qaraḏāwī's *Fatawa Mu'āshirah*.

remarks, one may wonder if the term “*fiqh al-aqalliyāt*” fits more than *fiqh* of Muslim-non-Muslim interaction.

Al-Qaraḏāwī’s *fatwas* for Muslim minorities are available in various sources. His book *Fī Fiqh al-Aqalliyāt* has a collection of his detailed and controversial *fatwas* that to a great extent outline his position. The collection includes a *fatwa* of the permissibility of a Muslim female convert to stay with her non-Muslim husband, a *fatwa* on the permissibility of taking usurious loans to buy a house, a *fatwa* on the permissibility of congratulating non-Muslims on their religious festivities, and a *fatwa* on the permissibility of inheriting from a non-Muslim relative. His *Fatawā Mu’āṣirah* has a special section for Muslim minorities’ questions that include in addition to the same questions in his *Fī Fiqh al-Aqalliyāt*, other questions that are mostly related to family issues. Al-Qaraḏāwī’s *fatwas* can also be found in islamonline.net, qaradawi.net. and aljazeera.net/channel/.

Generally speaking al-Qaraḏāwī’s *fatwas* correspond with his general approach: an approach of easiness combined with a pragmatic discourse that focuses more on “wisdom-narrative” rather than “closed textual reading”. For example, in the case of taking usurious loans to buy a house, al-Qaraḏāwī argues that usury is categorically *ḥarām*, but since there is no other equal-in-benefit alternative, and based on the jurisprudential rule “necessities renders the unlawful lawful” and in order to free Muslims from the economic burden and to empower them as a community and to enable them to convey the message of Islam, bank loans may be taken. The *wisdom-narrative* overcomes other traditional juristic legacies. The Muslim can inherit from his non-Muslim relative,

especially if he is in need for the money. The newly convert *muslimah* may stay with her non-Muslim husband, *especially if he is caring and is expected to convert to Islam.* The new convert should not be forced to do all Islamic law rulings at once. If s/he could not, for example, stop drinking, *s/he should be left as such with no accountability from the Muslim community other than kind advice and admonition.* A main argument presented in the previous three *fatwas* is the need *to maintain people's Islam* even if they committed an act that is deemed *ḥarām* by many Muslim jurists.

Al-Qaraḏāwī's pragmatism appears in giving two different *fatwas* for two almost identical questions. The first question comes from a Muslim student writing a research paper on the issue of dealing with non-Muslim neighbors in a non-Islamic polity. To complete his research the student asked Al-Qaraḏāwī about the legal ruling pertaining to an invitation of a non-Muslim to his Muslim neighbor to have food with him. Having the possibility of serving alcohol on the table, the student asked, what the Muslim should do. Can he accept the invitation and sit at the table with the intention of making *da`wah*? Al-Qaraḏāwī responds that a Muslim should not accept the invitation if he knows that there will be prohibited things served, especially if he cannot change that. Then al-Qaraḏāwī concludes that if there is a great hope that the neighbor will convert to or come close to Islam if his invitation got accepted, the Muslim may accept it.¹⁰⁴ Here the *fatwa* structure suits the purpose of a research paper and come close to the traditional position of the majority of jurists. The second question comes from Muslim immigrants in Japan asking about accepting an invitation from their non-Muslim co-workers or neighbors to attend

¹⁰⁴ Al-Qaraḏāwī, *Fatawa Mu'āṣirah*, 639.

their social gatherings. The questioner indicates that accepting the invitation will strengthen the relationships and facilitate the *da'wah*. Al-Qaraḏāwī's approach is completely different. First he elaborated the different categories of prohibited commandments to end up arguing that that the prohibition of attending the gatherings that have for example wine served is meant "to block the forbidden" and not forbidden in itself. If this is the case, al-Qaraḏāwī argues, "it is permissible [to attend such gatherings] due to the need to befriend the people and strengthen their relationships with Muslims as well as freeing Muslims from the prison of isolation so that they would have a presence and an impact in the society"¹⁰⁵

It is clear that the driving thought of al-Qaraḏāwī in the first *fatwa* is to warn, if not to forbid, the Muslims from taking this step while in the second the attitude was clearly toward empowering Muslims to engage in their non-Muslim community. Al-Qaraḏāwī's electivism in issuing his *fatwas* is clear. Such electivism is based on the place, the purpose of the question, and the end-result. It seems that the place has a say in al-Qaraḏāwī's conclusion. The first question comes from France where there is a large Muslim community that is already empowered with its institutions and infrastructure. In the second case, Muslims in Japan constitute a small community that is working to build itself. This is clear in al-Qaraḏāwī's other *fatwas* on the need to do more *da'wah* in Japan and be optimistic about it.¹⁰⁶ Also the question determines the direction of the answer. The first question is for a research paper so the answer is textually oriented. In the second

¹⁰⁵ Qaraḏāwī, *Fatawa*, 646.

¹⁰⁶ *Ibid.*, 648

case it was a real problem that will have further consequences. Therefore it was more contextual-based.

Al-Qaraḍāwī's *fatwa* structure is complex. Although the language used is simple and clear, al-Qaraḍāwī follows a subtle structure that serves two purposes. First, it attempts to convince the reader of the ruling, proving that it is based on proper understanding of *Shari'ah*. Second it responds to other scholars' objections and criticism, in case there is any. Normally he starts with identifying the general outline of the subject matter of the question. Then he presents the opinions of the various schools, ending up usually with the opinion of Ibn al-Qayyim or Ibn Al-Jawziyyah, if there is any. He ends this overview with what he thinks right in the present context. In conclusion, al-Qaraḍāwī blends the text and the context, trying to maintain the integrity of them both. To create the balance he mostly does not use any of the categorical *aḥkām* labels: *wājib* or *ḥarām* in his conclusions. He maintains the balance by arguing it is "permissible", "It is not a must", "It is the priority to", etc. Also the presence of exceptionality, lifting hardships, making *da'wah*, and utilizing the legal license are felt in almost all the *fatwas*. One here may pose the question, if necessity is the determinant factor in this *fiqh*, why such extensive efforts to establish a minority *fiqh*? Is it to legalize necessities? Is not that like legalizing the already-legalized?

The interactive dynamism between the text and the context is a key feature in Al-Qaraḍāwī's *fatwas*. On one hand, one can note an "apologetic relationship", where the context limits the application of the text. An example of this case is his *fatwa* that Muslims should respect the laws and regulations for the country they live in, even if these

rules may prevent them from enjoying rights given to them by Islam, say for example the right to polygamy.¹⁰⁷ On the other hand, one can note “an exploitation relationship”, where the context is indirectly utilized to put the text into action. In one *fatwa*, the questioner explains that his British wife suffers from ovarian cancer and has to undergo a surgery. As a result she cannot get pregnant and does not feel sexual desire. Then the questioner argues that he wants to marry another woman but the law in the country where he lives does not allow that. So he wonders if it is possible to divorce his wife in order to get a permission to marry another woman. He suggests also that after a while he will take his first wife back, i.e. officially he will be married to the second wife and religiously he will be married to both the first and the new wife. The questioner confirms that his wife is content with this solution. If one follows al-Qaradāwī’s above-mentioned *fatwa* that one should follow the rules of the countries he lives in, then the answer should be clear that this is not possible. Actually in other *fatwas*, al-Qaradāwī ruled illegal of what is called “paper marriage”. However, in the present situation, al-Qaradāwī issued a contesting *fatwa*. He argues that.

“There is no Islamic objection for that person to officially divorce his wife in order to be able to get married to another wife ... and it is permissible for this same husband, outside the official bureaucracy, to take his first wife back immediately or after a while as he wishes as long as she is still observing her waiting period ... the laws of western countries do not prevent the man from intimate relationship with a woman, even if there is no marriage contract. The laws of these countries do not have any

¹⁰⁷ *Ibid.* 642.

authority over him or the woman. [so our case here], the woman is his wife in front of Allah and among Muslims, even if not considered as such by the law. The man, however, has to guarantee the rights of this woman [the first wife] ...”¹⁰⁸

In this *fatwa*, one can realize how the *mufti* used the context, i.e. the nature of man-woman relationship in Western societies and the need of the man to have another wife without divorcing his sick wife, in order to strike a balance that may seem for some an unacceptable compromise.

Although this *fatwa* uses a subjective reading of the text and the context, it raises many questions. To what extent al-Qaraḏāwī knows the laws and the culture of the Western country? If the laws does not prevent the practice of “out-of-marriage” intimate relationship, how about the culture itself? Does it accept such a practice as normal? Also how is it possible to guarantee the rights of the second wife? It seems that al-Qaraḏāwī is following the rule of the least two harms, i.e. it is better for the man to get married through a legal trick so as not to commit adultery. This logic may be accepted when it has to do with one’s personal choice (such as wearing the veil or not wearing it), but when it has to do with the legal system and with the image of Muslims, his *fatwa* becomes controversial.

The two collections of al-Qaraḏāwī’s *fatwas* for minorities should be seen as an outcome of al-Qaraḏāwī’s long involvement with minority communities. One can easily notice a transformation in his style, arguments, approach and even in his *fatwas* from his

¹⁰⁸ *Ibid.*, 603-604.

earlier works. Comparing for example his famous book *Al-Ḥalāl wa-al-Ḥarām*, which is still a reference book for some Muslims living in the West, with some of his later *fatwas*, one can note that transformation. In approach and argument, one can see the earlier book was intended to give direct rulings with more concern towards making these rulings accessible and easy to apply rather than focusing on specific minority questions. This may be due to the nature of immigrant Muslims at that time. They were in the first immigrating stages where there was no clear involvement with the larger society. They were still also unaware of the nature and policies of their host societies. Also al-Qaraḍāwī himself had not established contacts with them yet. In his later *fatwas*, al-Qaraḍāwī clearly redirects his message not only to go beyond the mere concern of easing the minority life but also to propagate Islam and empower Muslims in their now-home countries. This shift can be seen in his *fatwas* concerning the Japanese addiction to wine and the permissibility of a convert Muslim woman to stay with her non-Muslim husband.

It is noteworthy also to remember here that by the time al-Qaraḍāwī introduced his project of *fiqh al-aqalliyyāt*, he became more aware of the minority contexts, well-known for his “global” authority and *fatwa* expertise. Al-Qaraḍāwī’s authority and *fatwas* for Muslim minorities might not have received such a wide circulation if they did not become the focus of research of the ECFR. Being one of its founders, al-Qaraḍāwī’s discourse and *fatwas* are institutionalized. ECFR was established with a view to bring Muslim scholars together to issue collective *fatwas*, but it seems the Council is centered on the person of al-Qaraḍāwī. It becomes not surprising that many of the *fatwas* in the

ECFR *fatwas* collections are identical with, even verbatim to, al-Qaraḏāwī's published *fatwas*.¹⁰⁹

Given the above-mentioned analysis, it becomes evident that Qaraḏāwī's discourse on Muslim minorities has led to a heated debate on a subject that once was thought of to be a subject that its rules are already determined.¹¹⁰

Conclusion

Undoubtedly al-Qaraḏāwī is a pioneering figure in the discourse on the role of *Shari'ah* in modern life. For Muslim minorities, he is more than a *mufti* or an authority. His positions are like the bridge that connects their life to *Shari'ah*. Although his name might not be known to every Western Muslim individual, especially the young generation, his discourse has been a point of reference to many intellectuals, activists and *imams*. The prevalence of al-Qaraḏāwī's discourse emerges as a central criterion by which Muslims' integration and cultural assimilation are measured,¹¹¹ along with maintaining a level of religiosity, that has been called civil Islam.¹¹² Based on *Shari'ah*, *ijtihad*, and reality, al-Qaraḏāwī attempts to build a discourse of a normative Western Islam from within.

¹⁰⁹ Compare *Qarārāt wa-Fatāwā al-Majlis al-'Urūbī lil-Iftā' wa-al-Buhūth* (Cairo: Dār al-Tawzī' wa-al-Nashr al-Islāmiyyah, 2002). (Especially *fatwas* numbers: - from the first collection - 5, 6, 13, 19, 21, 23 and *fatwas* numbers, from the second collection: 21, 25, 33) with Al-Qaraḏāwī, *Fatawa*.

¹¹⁰ Pre-Qaraḏāwī writings, publications and *fatwas* were mostly a reassertion to what was already available in *fiqh* manuals. The author's work was limited to data collection and their reorganization. See for example, Khālid 'Abdel-Qādir, *Fiqh al-Aqalliyāt al-Muslimah* (Lebanon: Dār al-Imān, 1998).

¹¹¹ Gräf, *Global Mufti*, 128.

¹¹² *Ibid.*, 133.

Chapter IV

Ṭaha Jābir al-‘Alwānī

Fiqh al-Aqalliyyāt, a Model of Islamization of Knowledge

Ṭaha Jābir al-‘Alwani is one of the first pioneers who called for the establishment of *fiqh al-aqalliyyāt*. He not only triggered the debate to develop a special *fiqh* for Muslim minorities,¹ but was also the first to contribute a scholarly work on the subject.² After his arrival to the United States in 1983, al-‘Alwānī was faced with the dilemma of “imported” *fatwas*, i.e. *fatwas* issued by *imams* and *muftis* tied geographically or politically with the Muslim or the Arab world to American Muslims. Al-‘Alwānī argues that these *fatwas* are based on medieval juristic discourses and do not correspond to the contemporary conditions of American Muslims. According to al-‘Alwānī, Muslim minorities need to develop a model of *fiqh* that transforms them from minority stereotypes of weakness, isolation and exceptionalism into an engaging community of citizens.

This chapter attempts to explore the reasons that made al-‘Alwānī strongly advocate this *fiqh*, and the relationship of such a position to his thought on Islamic reform. This chapter also examines to what extent al-‘Alwānī’s contribution influenced

¹ Muhammad Khalid Masud considered him the first to use this term in his *fatwa* about Muslim participation in American secular politics in 1994. Masud, "Islamic Law and Muslim Minorities".

² Taha Jābir Al-Alwani, *Towards a Fiqh for Muslim Minorities* (London, Washington: The International Institute of Islamic Thought, 2003). This same study first appeared in various journals and publications since the late 1990s. See for example: Ṭaha Jābir Al-‘Alwānī, “Madkhal Ilā Fiqh al-Aqalliyyāt,” *Islāmiyyat al-Ma’rifah* 19 (1999): 1-29; Ṭaha Jābir Al-‘Alwānī, “Madkhal Ilā Fiqh al-Aqalliyyāt,” *Al-Rashād* 12 (2001): 9-28.

the debate on *fiqh al-aqalliyyāt*. In order to investigate these issues, this chapter is organized in the following format. First a brief outline of al-‘Alwānī’s academic life is presented. This section is not intended to present a biography of al-‘Alwānī but rather to focus on how the issue of the *fiqh* of minorities carved its way into his thinking. The chapter will then briefly introduce al-‘Alwānī’s intellectual project of the Islamization of knowledge, with a view to examining the relationship between his project and his theoretical framework of *fiqh al-aqalliyyāt*. The chapter then focuses on al-‘Alwānī’s contribution to *fiqh al-aqalliyyāt* and to what extent it differs from current and earlier trends. A review of some of al-‘Alwānī’s *fatwas* will be also provided to see to what extent his theoretical writings can be applied to real questions. Finally, a conclusion will be furnished to summarize the argument of this chapter.

Seeking an “Intellectual Home”

Although al-‘Alwānī was born in Iraq in 1935, his career as an intellectual and Muslim jurist flourished in Egypt where he studied in al-Azhar for almost twenty years (1953-1973). His main field of specialization was *Shari‘ah* and law - the name of the same university from which he obtained his BA in 1959, MA in 1968 and PhD in 1973. In 1975, al-‘Alwānī moved to Saudi Arabia where he became a professor of Islamic jurisprudence and its principles in the Faculty of *Shari‘ah*, Muhammad bin Saud University. In addition to his position at the University, al-‘Alwānī also served as a legal counselor in the Saudi Ministry of Interior in 1975-76 and a teacher of Islamic Culture at the Police Institute in Riyadh (1977-1983). At this stage in al-‘Alwānī’s life, it seems that teaching was his main focus. He did not produce significant writings during the ten years

he spent in Saudi Arabia with the exception of the publication of his Ph.D. dissertation,³ an introductory book about *Ijtihād*,⁴ and a verification of Muṣṭafā al-Wirdānī's *Al-Nahy 'an al-Isti'ānah wa-al-Istiṣār fī Umūr al-Muslimīn bi-Ahl al-Dhimmah wa-al-Kuffār*.⁵ He did publish a number of articles but they were limited in scope and circulation.⁶ His stay in Saudi Arabia, however, gave him the opportunity to participate consistently in international conferences, especially those organized by Saudi-based institutions for the purpose of international *da'wah* activities, such as the Islamic Youth Camp, Islamic Federation for Islamic Organization and World Assembly for Muslim Youth. It seems that through these conferences he became more attached to Muslim communities living in non-Muslim countries and their concerns. Also in 1977, al-'Alwānī became involved in the process of the establishment of the International Institute of Islamic Thought (IIIT) in Virginia, USA, and its main project of the Islamization of Knowledge. In 1983, he immigrated to the United States and assumed the position of the director of the research unit at the Institute between 1984 and 1986 and then became the Vice-president of the IIIT for ten years from 1986 to 1996. He was appointed the President of the Institute for a couple of years in the late 1990s and the beginning of 2000s.

³ Fakhr al-Dīn Al-Rāzi, *Al-Maḥṣūl fī 'Ilm Uṣūl al-Fiqh*, ed. Ṭaha Jābir al-'Alwānī (Imam Muhammad bin Saud University, 1980).

⁴ Ṭaha Jābir Al-'Alwānī, *Al-Ijtihād wa al-Fiqh fī al-Islām* (Cairo: Dār al-Anṣār, 1980).

⁵ Muṣṭafā Al-Wirdānī, *Al-Nahy 'an al-Isti'ānah wa-al-Istiṣār fī Umūr al-Muslimīn be-Ahl al-Dhimmah wa-al-Kuffār*, ed. Ṭaha Jābir al-'Alwānī (Riyadh: Al-Ubaykan, 1983).

⁶ For a complete list of his works and publications see Al-'Alwānī's web page: <http://www.Alwani.net/cv.php> (accessed 8/10/2011).

In the United States, al-'Alwānī dedicated most of his writings to the question of the Islamization of Knowledge which he considers the solution to revive the spirit of the *ummah* and its path to perform its duties as “the chosen” people. Under the rubric of the Islamization of Knowledge, al-'Alwānī introduced his controversial readings of Islamic sources and established a methodology of knowledge that combines both religion and the social sciences. It seems that the intellectual forum of IIIT allowed him to express his own thoughts freely which would not have been received positively by Saudi institutions. This hypothesis may be supported by a number of arguments. When his dissertation about the famous *Maḥṣūl* of al-*Imām* al-Rāzī was to be published by the University of Muhammad bin Saud, a Saudi professor objected to its publication, claiming that al-'Alwānī, in his commentary section, criticized Ibn Taymiyyah – whom the Saudis revere and consider as a godfather of their jurisprudential orientation. Eventually, the university decided to publish the book without al-'Alwānī's commentary.⁷ Furthermore, if one is to compare the volume of his publications while he was in Saudi Arabia and later on when he came to the IIIT, it becomes evident that his post-Saudi intellectual life, mid 1980s and onwards, resulted in a surge of publications, mainly through the publication series of IIIT. This period also witnessed his contribution to the Iranian legal periodical, *Majalat Qaḍayā Islāmiyyah* and his appointment as a member of the executive committee of the Tehran-based World Forum for the Proximity of Islamic Schools of Thought. Such contributions to Iranian intellectual forums would not have been seen favorably by his

⁷ Ṭaha Jābir Al-'Alwānī, *Ibn Taymiyyah wa-Islāmiyyat al-Ma'rifah, Silsilat Islāmiyyat al-Ma'rifah* (Virginia: International Institute of Islamic Thought, 1994), 15.

earlier Saudi employers. Within a few years, al-'Alwānī became the most influential mainstream Muslim preacher in the United States.

Although al-'Alwānī was a president of the Islamic *Fiqh* Council in North America and a member of various international Islamic entities such as the International *Fiqh* Council, the Organization of Islamic Conference, and the Muslim World League, he is not known as a *mufti*, especially among the masses, whether in the Arab World or even in the United States. He did not engage in *fatwa* production or the *fatwa* “counseling” process. In one interview he stated that he is not a *mufti* per se. He is a researcher who produces papers that present his position on certain issues. Then it is up to scholars or the masses to make use of them.⁸ To a certain extent, al-'Alwānī's claim that he is not a *mufti* is true, especially during the 1980s and the 1990s. There is no evidence that he got involved in or published a *fatwa* collection. His focus was more on community collective concerns and worries.⁹ Even in such cases, he did not provide an answer himself. Rather he sought a *fatwa* from other well-known jurists like those of the Islamic *Fiqh* Council or an eminent *mufti* like Sheikh al-Qaraḏāwī. Upon receiving an answer, he would make it public. If these answers, according to al-'Alwānī, do not fit the American context, he would then provide his own position in a research paper that not only answers the

⁸ Algomhariah.net, “Qīṣat *Fatwa Fiqhiyyah* I'tabarat al-Junūd al-Amrikiyīn Mujahidīn fī Sabīl Allah,” March 7, 2007, http://www.algomhariah.net/news_details.php?lng=arabic&sid=981 (accessed 8/10/2011)

⁹ After extensive research, only a few *fatwas* were found for Al-'Alwānī on the Islamonline.net website (to be discussed later in this chapter). These *fatwas* as such cannot be considered as contributions to *fatwa* literature.

question in a direct way but also presents a socio-legal historical perspective on the issue.¹⁰

Al-'Alwānī believes that Muslims in the United States need to establish themselves in the American public sphere. The channel for this integration is to create Muslim academic institutions that produce qualified graduates who understand the objective of their religion and appreciate the opportunities they have in the American land.¹¹ Given such an open and cooperative spirit, al-'Alwānī was accepted in many of the American political and official circles and was acknowledged as an Islamic leader. He was received by politicians and intellectuals and his institution, IIIT, was officially recognized as one of the few institutions that produces chaplains to the American Armed Forces. However, the events of 9/11 and the following scrutiny and raiding of Islamic institutions for suspicions over funding terrorist activities resulted in raiding al-'Alwānī's home and his institution in March 2002, while al-'Alwānī himself was summoned for questioning in May 2003. Despite enduring the unhappy experiences of investigations and suspicions, al-'Alwānī did not change his position toward the need for more work on

¹⁰ We can see this on various occasions. In the late 1990s, al-'Alwānī compiled around 30 questions and sent them to the *Fiqh* Academy in Jeddah requesting responses from the Academy members. See: <http://www.fiqhacademy.org.sa/> (accessed 8/10/2011). On another occasion, he referred the question of the Muslim Chaplain concerning American Muslim soldiers joining the American army in their fight in Afghanistan, to a group of Muslim scholars such as al-Qaraḍāwī and the Well-known Egyptian lawyer Muḥammad Salīm al-'Awwā. See: Imām Muḥammad Imām, "Fatwa min al-Qaraḍāwī wa-al-'Awwā wa-Akharīn Tujīz li-al-'Askaryyīn al-Amrikiyyīn al-Muslimīn al-Mushārkah fi al-Gharāt 'alā Afghanistan" *Al-Sharq al-Awsat*, October 14, 2001. On a third occasion, when some Muslims argued against the presence of the Prophet Muḥammad frieze in the Court of Justice, al-'Alwānī announced his position through a research paper that was published as a *fatwa*. See: Ṭaha Jābir al-'Alwānī, "'Fatwa" Concerning the United States Supreme Courtroom Frieze," *Journal of Law and Religion* 15, no. 1 (2000-2001): 1-28.

¹¹ Al-'Alwānī aided the establishment of a number of higher education institutions. He was a founding member in the establishment of the Graduate School of Islamic Social Sciences. He also established the first accredited program of Muslim Chaplains in the United States.

the side of Muslims to truly understand the message of their religion and the opportunities this message carries in America.

Although neither al-'Alwānī nor IIIT was accused of terrorist activities, al-'Alwānī felt that Muslims became under scrutiny and profiled in such a way that deprived them from their rights. He decided to leave the United States. Looking for a new place to relocate himself and his scholarship, al-'Alwānī travelled to Egypt, Malaysia, and Morocco. Eventually, he settled in Egypt and headed the Egyptian IIIT headquarters. In Egypt, another stage of al-'Alwānī's scholarship started. He started to address the public through publishing in widely circulated publishing houses. His concise and scholarly-oriented articles were expanded and published as books for the public.¹² He also appeared on satellite channels as a main guest in a number of Islamic talk shows.¹³

Until this moment, to the best knowledge of this researcher, no satisfactory critical study of al-'Alwānī and his thought exists. There are a few online and newspaper reviews of his recent books, but they are mostly limited in scope and failed to present a comprehensive overview.¹⁴ This lack of critical resources may be due to the nature of al-

¹² See for example his series entitled Qur'anic Studies: Ṭaha Jābir Al-'Alwānī, *Naḥwa Mawqif Qur'ānī min al-Naskh*, 1st ed. Vol. 5, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2007). Ṭaha Jābir Al-'Alwānī, *Al-Jam' Bayna al-Qirā'atayn, Qirā'at al-Waḥy wa-Qirā'at al-Kawn*, 2nd ed., vol. 2, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2008). Ṭaha Jābir Al-'Alwānī, *Al-Wiḥdah al-Binā'iyyah li-al-Qur'an al-Karīm*, 2nd ed., vol. 3, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2008).

¹³ He was the main guest of a program called "*Madārik*" in the short-lived Satellite Channel "*Anā*". For some of his episodes see: <http://www.youtube.com/watch?v=clg9AXrzOEM> (accessed 8/10/2011)

¹⁴ Almost all available research where the name or the thought of al-'Alwānī is mentioned focuses on his position towards the question of the Islamization of knowledge. There are a few examples in which his *fatwas* on political participation or against terrorism were referred to but more in a descriptive way and not as a question of analysis. His *fatwa* on the Prophet Muḥammad's portrayal on the Supreme Court frieze was used in the context of the analysis of Muslims' reaction to the Danish cartoon. See for example: Birgit

‘Alwānī’s personality as he attempted to keep a low profile and preferred not to engage in controversial issues. Also his writings were mostly dry and sociologically-oriented. They were published on a very limited scale, through the publications of the IIIT. On the other hand, there are western voices that accuse al-‘Alwānī of links to terrorism. This claim is mainly based on his position on the Palestinian-Israeli conflict. It is more of a politicized Islamophobic claim that reflects fear, rather than intellectual endeavors to examine the thoughts and publications of al-‘Alwānī. One of the few available writings on al-‘Alwānī’s thought is Shammai Fishman’s article “Ideological Islam in the United States: “*Ijtihād*” in the Thought of Dr. *Taha Jābir al-‘Alwānī*”.¹⁵ Shammai concludes that al-‘Alwānī is a mainstream orthodox Muslim cleric and his program is no more than a reconstruction of Muhammad’s days.¹⁶ According to Shammai, the proper way to solve the *ummah*’s current problems, in the eyes of al-‘Alwānī, is through Islamic methodologies, i.e. the Islamization of knowledge.¹⁷ Although Shammai tried to present a balanced overview of al-‘Alwānī’s position on *ijtihād*, his data were limited. He relied

Schabler and Leif Stenberg, *Globalization and the Muslim World: Culture, Religion and Modernity* (Syracuse University Press, 2004), 96-ff; Amaney Jamal and Sunaina Maira, “Review: Muslim Americans, Islam and the “War on Terror” at Home and Abroad”, *Middle East Journal* 59: 2 (Spring 2005): 303-309; Jyette Klausen, “The Danish Cartoon and Modern Iconoclasm in the Cosmopolitan Muslim Diaspora, *Harvard Middle Eastern and Islamic Review* 8 (2009): 86-118; Yvonne Yazbeck Haddad, Jane I. Smith, John L. Esposito, eds., *Religion and Immigration: Christian, Jewish and Muslim Experience in the United States* (Rowman Altamira, 2003), 212.

¹⁵ Shammai Fishman, "Ideological Islam in the United States: "Ijtihad" In the Thought of Dr. Taha Jābir Al-‘Alwānī." *Jamaa* 11, no. (2003). Available online: <http://www.e-prism.org/images/IdeologicalIslam.pdf>. See also: Shammai Fishman, ""Some Notes on Arabic Terminology as a Link between Tariq Ramadan and Sheikh Dr. Taha Jābir al-‘Alwānī, Founder of the Doctrine Of "Muslim Minority Jurisprudence" (Fiqh Al-Aqalliyyat Al-Muslimah)," *PRISM* (no date).

¹⁶ Fishman, "Ideological Islam in the United States," 25.

¹⁷ *Ibid.*

mostly on a number of online news articles, a few articles of al-'Alwānī in AJISS in 1992 and 1999 and al-'Alwānī's book *Usul al-Fiqh al-Islami, Source Methodology in Islamic jurisprudence*. With such limited sources, Shammai's conclusions reveal another form of generalization that does not withstand critical analysis. As will become clear in the following section, al-'Alwānī's version of the Islamization of knowledge does not simply mean limiting oneself to Islamic methodologies. Rather, it transforms the current scientific methodological apparatus in various fields of knowledge to be divine conscious, i.e. adding an element of divine intervention/revelation, that will guide humanity to develop purposeful knowledge - not knowledge for the sake of knowledge. Al-'Alwānī's "reconstruction of the Prophet's days" does not mean to restore the *fatwas* and the rulings of these days. Rather, it attempts to understand the wisdom, and the methodology that the Prophet and early Muslims followed in the context of their time and then try to benefit from this methodology in the context of the present time.

Project of Revival: Islamization of Knowledge

In the summer of 1977, a group of Muslim intellectuals met in Lugano, Switzerland, to discuss the current condition of the *ummah* and possible ways of reform. It was argued that one of the main reasons of the weak condition of the *ummah* is its lack of a vision of its own. To materialize their vision, they collaborated to establish an international institute that would provide a platform for the reform and revival of the Muslim *ummah*. A few years later, they founded the International Institute of Islamic Thought in Virginia, USA, in 1980. As a strong advocate of the project and as a founding member of the Institute, al-'Alwānī became the head of the research unit of the institute

in 1983. In the following years, he became the vice-president and then the president of the institute.

“The Islamization of Knowledge” has become al-‘Alwānī’s mission in life. Most of his writings, lectures and interviews revolve around this subject.¹⁸ He argues that contemporary scientists and intellectuals, especially in the West, rely heavily -- if not exclusively -- on experimental tools to determine their knowledge of concepts and paradigms, where the man or the intellect is the center of the universe and relativism is the bottom line of scientific findings. Al-‘Alwānī believes that this approach produces an ideology of positivism which endorses individualism and utilitarianism while at the same time it fails to project a constructive purposeful existence of man. Scholars of theology, on the other hand, instead of striking a balance between what is divine and what is human, according to al-‘Alwānī, are occupied with dogmatic interpretations that turn life into a state of absolutism regardless of spatial and time factors.¹⁹

From an Islamic perspective, al-‘Alwānī argues that neither pure experimental science nor dogmatic theology produces purposeful comprehensive human knowledge. Islamic sources of knowledge are exclusive and appreciate input from various sources. Revelation, however, is the first essential source of knowledge. This does not imply a rejection of the role of intellect or experimental knowledge. Rather it affirms that man

¹⁸ For a collection of al-‘Alwānī’s writings on the issue of Islamization of Knowledge, see: Ṭaha Jābir al-‘Alwānī, *Naḥwa Manhajīyyah Ma’rifīyyah Qur’āniyyah, Muhawālāt fī Bayān Qawā’id al-Manhaj al-Tawḥīdī li-al-Ma’rifah* (Beirut, Dār al-Hādī, 2004). Taha Jabir Al-Alwani, *Issues in Contemporary Islamic Thought* (Virginia: International Institute of Islamic Thought, 2005).

¹⁹ Al-‘Alwānī, *Naḥwa Manhajīyyah*, 14 ff.

should derive his knowledge concepts from a divine source, i.e. Qur'an and *Sunnah*.²⁰ In other words, knowledge is produced according to two parameters: Islamic in terms of goals and objectives and scientific in terms of tools and production processes. The combination of these two factors represents the core of the concept of Islamization of Knowledge. According to al-'Alwānī, Islamization of knowledge is a product of the interaction of three elements: the Unseen, the Universe, and Man. Each plays a role in the construction of knowledge: the Unseen, i.e. faith, sets the objective; the Universe represents the material and the substance; and Man is the agent and the intellect. Faith determines the direction of the intellectual, psychological and emotional life of the Muslims and is reflected in art, literature, architecture, etc. Faith provides Man with a number of hypotheses that constitute the basis for analytical and scientific methodologies for all sciences: theological, social, and natural.

Al-'Alwānī's approach of the "middle way" between materialism and dogmatism connects him to the *wasatīyyah* reform trend of the 20th century. This reform trend extending from Muḥammad 'Abduh to al-Qaraḍāwī attempts to strike the balance between the dogmatic orientations that led Islamic *fiqh* to a state of blind imitation and modern ideologies that deprive man from his faith and disconnect it from his religious community. Although al-'Alwānī's language is different as he attempts to develop a general epistemological frame of reference to Muslim modern thinking by introducing or reaffirming the role of intellect in the process of determining the meaning of revelation, i.e. the notion of two readings, that of revelation and that of the universe. To see the

²⁰ Al-Alwani, *Issues in Contemporary Islamic Thought*, 5.

connection between al-'Alwānī and other reform scholars, one may refer here to al-'Alwānī's reference to Rashīd Riḍā in his writings. As for his connection to al-Qaraḍāwī, both belong to the Islamic movement, are members of transnational Islamic organization and were in contact with other.

Given this methodology of understanding the role of and the relationship between faith and science, al-'Alwānī sets the ground for his main argument that in order to realize the value of life, to fulfill the objective of the divine, and to ease the hardships of life, one needs to manage everything in life, inter alia, science puzzles, legal questions, social problems, with a dual-reading approach: "reading the *Wahy*, i.e. Qur'an" along with "reading the *Wujūd*, i.e. Universe".²¹

Based on the first Qur'anic verses revealed "Iqra' 96:1-5", "Nūn 68:1-2", and "al-Raḥmān 55:1-3", al-'Alwānī argues that humanity has been commanded to understand its role in the universe by undertaking two complementary readings. The first reading is the reading of Revelation, i.e. Allah's Book, the Qur'an, in which the world of the Unseen is unfolded and matters of religious significance are explained. The second reading is that of the book of Creation (the natural universe) in which the laws of nature and existence are demonstrated. To undertake a reading of either without referring to the other will disrupt human life. If one ignores the first reading, he loses sight of the Unseen and his relationship to God and his role as His vicegerant on earth. It makes life ego-driven and self-centered and produces a positivistic understanding of knowledge that negatively

²¹ Ṭaha Jābir Al-'Alwānī, *Al-Jam' Bayna al-Qirā'atayn, Qirā'at al-Wahy wa-Qirā'at al-Kawn*, 2nd ed., vol. 2, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2008). Al-'Alwānī, "Madkhal Ila *Fiqh* al-Aqalliyyāt," *Islāmiyyat al-Ma'rifah* 19 (1999): 55; Al-'Alwānī, *Naḥwa Manhajiyah*, 144 ff.

influences the structure of society. On the other hand, if one focuses only on the first and ignores the second, it can easily lead one to isolation, or authoritarianism. Reading both, i.e. revelation and the universe, creates balance. The Book of Revelation discovers the worlds of the Unseen and how they manifest themselves in nature. It links what is absolute to what is specific to the best of the ability of the human intellect, while the second reading links what is particular to what is general and absolute. In so doing, life reveals its purpose and man fulfils the trust assigned to him by God.²² After presenting his main hypothesis about the dual reading of *wahy* and *wujūd*, al-‘Alwānī focuses on how to read the *wahy*, arguing that the Muslims’ reading of their Book needs to be reconsidered and reevaluated.

Reading the *Wahy* in the Age of Methodology

Muslims need to develop a new methodology of how to read the Book of Allah. Reading it through the eyes of earlier interpreters makes it lose its relation to our modern time. The early Arabs understood the Qur’an from within their social and intellectual sphere that was different from the nature of the current contemporary civilization.²³

“When the revelational sciences (those that mainly revolved around the Qur’an and the Hadith) were first formulated, the dominant mentality among Muslim scholars was descriptive in nature. As a result they concentrated on analyzing the text primarily from lexical and rhetorical perspectives. Thus, at that period of Muslim intellectual history, the Qur’an was understood in terms of interpretative discourse...

²² Al-Alwani, *Issues in Contemporary Islamic Thought*, 33-34.

²³ *Ibid.*, 38.

At the present time, however, the dominant mentality is the methodological understanding of issues through disciplined research, employing criticism and analysis, into topics of significance for society and their various relationships. This requires Muslims to reconsider the disciplined means by which they are to interpret the texts of revelation and read the books of revelation and the real existential...”²⁴

A genuine reading of the Qur’an gets rid of interpretative elements that control the open nature of the Qur’an,²⁵ such as that of *isrā’iliyyāt*, apocryphal interpretations, and *asbāb al-nuzūl*, i.e. causes of revelation.²⁶ These tools limit the Qur’an into a spatial and temporal framework and produce legal determinations that may challenge basic concepts such as Islam’s universality, finality of the Prophet’s mission and the sovereignty of the Qur’an. The functionality of these concepts requires the Qur’anic text to be absolute and unqualified in its appeal to the Muslim mind of every time and place.²⁷

The Qur’an should be understood from within itself, through its unity of structure and its own language constraints and discourse. To understand the meaning of a certain Qur’anic concept or principle, a methodological scholar would search for various references of the same concept and its meaning in each context. Based on this search, a scholar can reach a better understanding of the word and its relevance to the higher value

²⁴ *Ibid.*

²⁵ Al-’Alwānī, *Naḥwa Manhajīyyah*. 10

²⁶ Al-’Alwānī, *Madkhal*. 89; Al-’Alwānī, *Naḥwa Manhajīyyah*, 155; Al-’Alwānī, *Issues in Contemporary Islamic Thought*, 38.

²⁷ *Ibid.*

structure of the Qur'anic message.²⁸ This research mechanism requires one to give “intellect” its due role as a partner to the text, in terms of the function and the limits of the text in the present time.

Al-'Alwānī argues that this dual reading should be the methodology that guides the process of reading and understanding Islamic sources: the Qur'an, the *Sunnah* and the *turāth*, i.e. Islamic heritage. Applying this methodology aims at deconstructing the modern jurisprudential hypothesis of the nature of the interrelationship of the text, the tradition and the *turāth* to each other and their relationship to the present world. Moreover, al-'Alwānī's methodology reconstructs a new framework of the roles and function of the objectives of *Shari'ah* through recharging long-held objectives of *Shari'ah*, such as the universality of Islam, the sovereign nature of *Shari'ah* and the finality of the Islamic message, with new meanings that are inclusive to humanity, regardless of religion or ideology.

The role of the *Sunnah* in relation to the Qur'an must be thoroughly understood. The Qur'an is the source of legislation while the *Sunnah* presents a model of its application in a real life situation.²⁹ Without the *Sunnah*, it would be impossible to elaborate on how to apply Qur'anic values to real existential circumstances.³⁰ It should be

²⁸ Ṭaha Jābir al-'Alwānī, *Al-Wiḥdah al-Binā'iyyah li-al-Qur'an al-Karīm*. 2nd ed., vol. 3, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2008). Al-'Alwānī calls his methodology of reading the text of the Qur'an “The Conceptual Reading”. This methodology is based on compiling all the different references of the same work and its different meanings and contexts in order to understand its full meaning and indications. See Al-'Alwānī, *Madkhal*, 87.

²⁹ Ṭaha Jābir al-'Alwānī, “Mafhūm al-Waḥy fi al-Qur'an,” *Al-Masār* 6 (2005): 183.

³⁰ Al-Alwani, *Issues in Contemporary Islamic Thought*, 39.

understood that the *Sunnah* responds to the reality that the Prophet had to deal with. This reality differs considerably from what Muslims confront today. This means that Muslims need to construct a methodology to understand how to relate the teachings of the revelation to real life. In other words, when reading the *Sunnah*, the focus has to be not on its legal rulings but on its reasoning. The *Sunnah* is to be utilized for *ta'assiy*, i.e. a role model, and not for *taqlīd*, an emulation model.³¹ Such a methodology will release the *Sunnah* from being a collection of particularized responses to specific questions and circumstances that are transformed by the litigious into conflicting statements, much as if they were legal opinions voiced by different *imams*.³²

Given such a controversial methodology, al-'Alwānī encounters the question of the role of the *turāth*, Islamic intellectual heritage, in reading the *Wahy* and in the formation of legal precedents. According to al-'Alwānī, the Islamic intellectual heritage is a rich source but it must be understood critically, analytically and in a way that delivers Muslims from subjective positions of total rejection, total acceptance or piecemeal grafting.³³ In this context, al-'Alwānī divides the scholars in their treatment of the *turāth* to three categories. The first is those who accept it at face value; the second is those who reject it in its entirety; and the third is those who try to combine both but without a clear methodology or objective. All three ways do not lead to an objective comprehending

³¹ *Ibid.* 40.

³² *Ibid.*

³³ *Ibid.* 41.

reading due to the subjective limitation of the intellect that is drawn upon its social, political and economic setting.

Islam's intellectual heritage is the product of the human mind. It is subject to the relative consideration of the "when, where, and who" of its origin.³⁴ Muslims need "to understand it as ideas, treatments and interpretations of a historical reality that differs significantly from our own."³⁵ Muslims must discern what objectives the heritage sought to serve and then evaluate the methods used, if not the solutions suggested, for their utility in our own time and place.³⁶

Following this methodology in reading the Qur'an, the *Sunnah* and the *turāth*, the ultimate higher values and objectives of the Message of Allah reveal themselves to us as *Tawhīd* (unity and oneness of God), *Tazkiyah* (purification of the soul), and *'Umrān* (applying the values and objectives of the message into the existential world).³⁷ This categorization is a new understanding of the objectives of *Shari'ah* which was entertained by the jurists for centuries. Jurists used to categorize these objectives into five, *al-Kulliyāt al-Khams* i.e. protecting oneself, religion, lineage, honor and property. Some *'uṣūlī* scholars attempted to expand these objectives and re-categorize them into

³⁴ Habbān Niyuf, "Taqrīr al-'Arabiyyah nit li-al-Kitāb, Dr. 'Alwānī: Al-Islām lā Yu'āqib al-Murtadd wa-Hadith al-Rasūl Wuzẓifa Siyāsiyyan," *alarabiya.net*, January 12, 2007. (accessed 7/18/2010)

³⁵ Al-'Alwani, *Issues in Contemporary Islamic Thought*, 42.

³⁶ *Ibid.*

³⁷ For al-'Alwānī's understanding of *maqāṣid*, see: 'Abd al-Jabbār al-Rifā'ī, *Maqāṣid al-Shari'ah* 2nd ed. (Damascus: Dār al-Fikr, 2005). For other scholars see: Al-Maqasid Research Centre, *Maqāṣid al-Shari'ah wa-Qaḍayā al-'Aṣr* (London: Al-Furqan Islamic Heritage Foundation, 2007); 'Abdel-Majīd Al-Najjār, *Maqāṣid al-Shari'ah bi-Ab'ād Jadīdah*, (Beirut: Dār al-Gharb al-Islāmī, 2006).

dāruriyyat (necessities), *hajiyyāt* (needs) and *tahsiniyyāt* (luxuries). Contemporary scholars developed these objectives to include contemporary concepts such as human rights, preserving the environment. But here al-‘Alwānī leaves the circle of practical categories such as that of body, money and wealth, and introduces constructs that presents abstract concepts. As such they are comprehensive to cover the dogmatic, spiritual and social life aspects but at the same vague to allow for more inclusive interpretations.

Controversial Methodology

The question of the impact of time and space on the Islamic legal texts has always been a source of debate and tension among Muslim scholars, who always attempted to approach it from within the tradition by introducing legal principles,³⁸ legal tricks,³⁹ etc. Some contemporary scholars, however, departed from this tradition. They called for a new methodology that incorporates philosophical assumptions, sociological hypotheses and linguistic adaptations.⁴⁰ This methodology, to which al-‘Alwānī belongs, raises various methodological problems. For example, al-‘Alwānī’s argument on “the combining of two readings” poses many questions concerning its conceptual framework. Al-‘Alwānī creates a duality: the Qur’an versus the Universe, the Unseen versus the Known, as if both have different realms of existence. Although al-‘Alwānī may argue

³⁸ Such as: “*Fatwas* change in accordance with the change of place and time.”

³⁹ Called in Arabic “*al-Hiyal al-Shar‘iyyah*”,

⁴⁰ For a comparison between the traditional and contemporary debate on the relationship between text and time and place see: Sa‘īd Muḥammad Bu Harāwah, *Al-Bu‘d al-Zamānī wa-al-Makānī wa-Āthārumā fī al-Ta‘āmul ma‘a al-Naṣ al-Shar‘ī* (Dār al-Nafā‘is, Jordan, 1999).

that this philosophical duality does not exist in reality since the Qur'an and the Universe lead to each other, still it is unclear, at least, methodologically, how to realize this combination, especially when this reality is subjective, as it is based on the understanding of an interpretative community of a certain time and place.

Another controversial argument of al-'Alwānī is his point to use the *Sunnah* as a model of application and not as a source of legislation. Such a generalization does not stand up to historical or legal analysis. This conclusion might have been better presented if it had been preceded by an analysis that distinguished between the different layers, roles, functions of the *Sunnah* in Islamic Law. Al-'Alwānī is well aware of this debate as an expert in Islamic Law, but he opts to leave his thesis open for criticism. In Islamic tradition, the distinction is always made among *Sunnah*, *Hadith* and *Sirah*. Each one of these categories has its own sub categories and serves a specific purpose. Certain reports serve as legal arguments, while others may serve as historical narratives. The legal arguments themselves can be context specific or general statement. A report such as "I denounce a Muslim who lives among the non-believers." is a case in point. Does it report a mere historical incident? Or does it a legal ruling? If so, is it applicable to everyone at all times and in all places? Al-'Alwānī's position towards the *Sunnah* as only a model of application of divine wisdom, and not of legislation should have supported with definition of terms and examples of its application in modern life settings.

Al-'Alwānī's ambivalent position towards the *turāth* provides another source of criticism. At the same time that al-'Alwānī declines to use *asbāb al-nuzūl* and *al-nāsikh wa al-mansūkh* (causes of revelation and the abrogated rulings), he acknowledges the

contextual application of the rulings of the Qur'an and *Sunnah*, which are in themselves a recognition of *asbāb al-nuzūl* and *al-nāsikh wa-al-mansūkh*. Actually, instead of using these principles as arguments to support his thesis of the possibility of changing rulings based on circumstances, he used them to prove the opposite, a matter which led to a gap in his analysis. One may argue that there is a process of consistent cautious (dis)engagement in al-'Alwānī's theory with the past: (dis)engagement with the language by focusing on the internal language of the Qur'an, (dis)engagement with the Islamic sciences such as *tafsīr* and *ta'wīl* and (dis)engagement with the cultural and intellectual production of the past.

Apart from these and similar methodological problems, al-'Alwānī's thesis raised controversy in traditional and conservative circles. He was described as one of the *sheikhs* of the rationalization trend of *fiqh al-wāqi*⁴¹ - a trend that gives more weight to context than to legal schools.⁴² He distinguishes three levels of context: mental, linguistic and external. Each level provides a certain aspect of the reality. The task of the intellect is to understand the mechanism of the interaction of these three levels to comprehend the reality of things. For al-'Alwānī, the jurist needs to recognize and apply this methodology to become a comprehensive jurist.

The critics of this trend argue that such a methodology leads to the denial of certain rules, e.g. apostasy, that enjoyed consensus in the ranks of legal schools. Al-

⁴¹ <http://www.aslein.net/showthread.php?t=11062> (accessed 8/10/2011)

⁴² See: Ṭaha Jābir Al-'Alwānī and Munā Abū al-Faḍl, *Mafāhīm Miḥwariyyah fī al-Manhaj wa-al-Manhajiyyah* (Cairo: Dār al-Salām, 2009), 11-14.

'Alwānī's argument, especially that the *Sunnah* is a source of illustration of *Shari'ah* and not a source of legislation, subjected him to severe criticism to the extent that he was accused of apostasy.⁴³ The generalization in al-'Alwānī's thinking and presentation of ideas are behind such a criticism. Although he has been writing about the need for a new methodology in dealing with the Qur'an, a new approach to legal studies and a different mechanism in reading history, he has not yet provided a thorough well-thought-out monograph on the subject. It seems that al-'Alwānī prefers not to delve into such critical issues of text and jurisprudence to avoid raising controversy among the masses, further than what is already in existence. It seems he follows the tradition of earlier scholars who avoided talking about certain issues for fear of spreading *fitnah*, i.e. dissension, in the community.⁴⁴ Also he may have avoided more indulgence in this issue to avoid confrontation with the contemporary dominant religious discourse in the Muslim world that literalist-*wahhabī* oriented. Instead of taking these issues of *Sunnah* and *turāth* as his starting points, al-'Alwānī turned to *fiqh al-aqalliyāt* as a new ground in which he can apply his controversial methodology without the need to face immediate opposition or creating dissension in the ranks of ordinary people. Even with this new *fiqh*, al-'Alwānī presented his position in concise research as early as 1990. Since then, the same research was republished a couple of times with minor modifications, without taking the next step of elaborating on his methodology or testing it on a wider scale.

⁴³ <http://www.aslein.net/showthread.php?t=11062> (07/18/2010)

⁴⁴ Al-'Alwānī, *Madkhal*. 123.

Al-'Alwānī: Pioneer of *Fiqh al-Aqalliyyāt*

In his capacity as the director of the research unit at IIIT and the president of the American *Fiqh* Council in the mid 1980s, al-'Alwānī used to encounter legal questions that were posed by American Muslim communities. Having observed the conflicting answers given by various *muftis* to these questions, al-'Alwānī compiled twenty eight questions, which he considered the most relevant to a Muslim minority context. This compilation included questions on naturalization, marriage, bringing-up children, work, selling mosque lands, food, and taking usurious loans. With a view to getting authoritative answers that unite Muslim communities and end the *fatwa* chaos among them, al-'Alwānī sent these questions to the Islamic *Fiqh* Academy in Jeddah, Saudi Arabia, attached to a letter that explained the dire need for minorities to authoritative answers that consider their specific context. The letter states,

“There are at least three million Muslims living in North America ... Such countries [North American countries] have a system of life that no doubt will have an impact – positive or negative - upon those who live there. Therefore Muslim minorities have jurisprudential needs and questions that rarely arise in Muslim countries. Due to the scarcity of jurists in these lands and, in case they exist, their lack of *fatwa* qualifications, not to mention their inability to comprehend the orientation and logic of the different schools, these questions have become points of conflict and tension among Muslims. This situation led them to a critical situation that resulted in terrible consequences – the least of which is their assimilation

into the countries they live in, then their overlooking of their Islamic identity and their Muslim brothers...”⁴⁵

The Islamic *Fiqh* Academy forwarded the questions to 7 *muftis*, asking for their individual take on these questions. In its 1986 Jordan 3rd annual meeting, the Islamic *Fiqh* Academy discussed the *fatwas* given by those different notable *muftis* and issued a number of resolutions pertaining to these questions. The resolutions were not much different from the *fatwas* given by other traditional jurists. The resolutions presented conditional *fatwas* based on concepts of necessity. For example, Muslims can bury their dead in a non-Muslim graveyard, or work in a place that deals with illegal Islamic food, such as pork or wine, in case of necessity. They, on the other hand, made illegal shaking hands between men and women and prohibited Muslim women to live alone in a non-Muslim land.⁴⁶ These answers and their reasoning were not good enough for al-‘Alwānī. He became more convinced of the need for developing “indigenous *fiqh*” that combines legal tradition with the living context. Al-‘Alwānī introduced his call to establish a *fiqh* for minorities.⁴⁷ He justified his call by arguing that the present Muslim minority

⁴⁵ To read the letter, the questions and the answers see: <http://www.fiqhacademy.org.sa/>. This researcher has a personal copy of al-‘Alwānī’s original letter and some of the *fatwas* given by the Academy *muftis*.

⁴⁶ *Ibid.*

⁴⁷ His first direct article on the issue was published in *Majallat Islāmiyyat al-M‘arifah*, vol. 19, 1999. After that the same article was republished a couple of times with some modification in the introduction and the conclusion. See for example: Ṭaha Jābir al-‘Alwānī, *Fi Fiqh al-Aqalliyāt al-Muslimah*, series of Tanwīr al-Islāmī, no. 52 (Cairo: Nahḍat Misr, 2000). Ṭaha Jābir al-‘Alwānī, “Madkhal Ilā Fiqh al-Aqalliyāt,” *Al-Rashād*, vol. 12, August, 2001, 8-28; Ṭaha Jābir Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, ed. Anas al-Shaikh-Ali and Shiraz Khan, Occasional Paper Series, vol. 10 (London-Washington: The International Institute of Islamic Thought, 2003). Ṭaha Jābir al-‘Alwānī, “Madkhal Ilā Fiqh al-Aqalliyāt” *Scientific Review of the European Council for Fatwa and Research*, no. 4 -5, 2004, 17-92. The main reference used in this chapter is the IIT English translation of the paper. However, other references were occasionally used when the translation is not accurate or when there are additions that al-‘Alwānī introduced to the introductions or the conclusions of the other versions of the article.

experience is completely different from earlier ones. Throughout the history of Islam, Muslims' life was centered in the Muslim World where the space was officially Islamic and the laws were claimed to be *Shari'ah*-based. Muslim travelers, traders, Sufis, diplomatic envoys, political dissidents or indigenous converts were few in number and were scattered in various lands. They did not occupy a prominent place in the legal thought. Jurists dealt with them as people in transition who had to resettle at the nearest occasion in a Muslim land. Given the nature of traditional society structure, Muslim jurists developed a distinct Islamic culture that at times facilitated *da'wah* while at others caused friction with their non-Muslim host society that forced them into assimilation or otherwise persecuted and enslaved them. Encountering new conditions, those Muslims who live in a non-Muslim space would seek *fatwas*, especially during *hajj* season, from '*ulama*' and jurists. The jurists were aware of the legal, cultural and psychological conditions of those Muslims and consequently they issued them appropriate *fatwas* which can be easily and conveniently applied to this time and space without infringing the main principles and aims of *Shari'ah*, as understood in that time. This perception of Muslim's presence outside the land of Islam as a transient did not urge Muslim jurists to think of them on their own terms as an independent category of Muslim communities. Rather those minority questions and *fatwas* were seen as simply a *fiqh* of crises or emergency.⁴⁸

In addition to this attitude of earlier jurists toward the position of Muslim minorities, al-'Alwānī argues that legislation or jurisprudence, whether be divine or man-

⁴⁸ Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, xi-xiii.

made, is shaped by the cultural tradition of the group that produces it.⁴⁹ In other words, legislation and tradition establish a polemical relationship that within time becomes very hard to disintegrate. Islamic law is no exception. Muslims in the heartland of Islam establish a legal ground that stems from their religious tradition, historical experience and cultural customs, creating a mix that dominates to a great extent the Muslim jurist's mindset. When approached by an individual who does not belong physically to his legal ground and asked about something that lies outside the scope of his legal environment, the jurist might not see the real underpinnings of the question and might not realize the need of the questioner. In some cases, the jurist may give an answer that would lead to unintended results. Although this polemical relationship between legislation and culture did not have a great impact on earlier Muslim minority experience because of the structure of the world powers and the then-ongoing war between Islam and Christendom, the contemporary Muslim minority experience is completely different. They cannot break away from the modern parameters, such as economics, public life venues, media, education, politics, etc., that control the society they live in.⁵⁰ Given this modern society structure, the response of jurists who live outside this context will mostly be inadequate.

In order to deal with minority concerns properly, al-'Alwānī argues for a new *Ijtihād* that goes beyond the inherited *fiqh* legacy. The jurisprudential heritage should be seen as context-specific, i.e. it is produced for a certain historical moment and cannot be literally taken to answer questions of another historical context. Conversely it can be used

⁴⁹ *Ibid.*, xiv-xv.

⁵⁰ *Ibid.*

as a legal precedent that can be studied in order to discern its internal principles and objectives to make use of them in other contexts.

The “non-applicability” of the Islamic legal heritage in contemporary minority contexts represents an integral part in al-‘Alwānī’s thesis on *fiqh al-aqalliyyāt*. This non-applicability argument is based on methodological concerns and conceptual formulation. Methodologically, the sources of legislation for the *fiqh* heritage need to be reevaluated. The Qur’an should be the only absolute source. The *Sunnah* is the application of the Qur’an in the context of the Prophet’s era with a view to present us with a model of how to apply the higher principles and objectives of the Qur’an and the message of Islam. In terms of concepts, the Islamic legal heritage is based on the medieval geo-political map of dividing the world into two “Us” and “Them”, which was translated in the Islamic tradition as “the abode of Islam” and “the abode of war”. The jurists overlooked the Qur’anic concept of the world and human geography. Moreover, they ignored the principles of the “universality of Islam”, “the witnessing *ummah*” and “the final message” in their discourse as defining factors in their rationalization of the nature of the relationship between Muslims and non-Muslims. Instead they developed a *fiqh* of individualistic nature that focuses on the Muslim individual who lives in a Muslim environment rather than developing a synthetic approach that relies more on the values and principles of *Shari‘ah*.⁵¹

⁵¹ *Ibid.* 9-10.

This is a significant argument because it is the second time where a minority jurist stresses the need for a society-oriented *fiqh*. Al-Qaraḏāwī made the same argument. He confirms that the nature of the traditional *fiqh* is individual-oriented. The cases were decided for specific individuals and for personal application.⁵² *Fiqh al-aqalliyyāt* is different. It has to be community-based because of the absence of the political power that maintains the community welfare. In other words, *fiqh* in the case of minority becomes the polity and the jurist is like the *amīr* whose job is not only giving advices but also maintaining order and public interest.

The novelty of the current minority context adds another dimension to the unsuitability of the Islamic legal heritage at the present time. In the early days, the relationship between a kingdom and its subject was based on ideological and cultural affiliation. Today “citizenship” changed this relation and created a completely different pattern to organize the relationship between the state and its citizens. The right of citizenship now is given on the basis of birth or marriage rather than on creed or cultural background. In earlier times, the rationale of power controlled the relationship between empires and their subjects. The introduction of “International Law”, “diplomatic conventions”, “United Nations”, etc. challenged this rationale and required states to protect immigrants and their rights. Above all, the world of earlier Muslim jurists did not experience the “global village” where cultures mix and positively interact on various levels, politically, socially and even virtually. In another way, early Muslim jurists lived in a world where people of different cultures mostly met on war zones. This created “*fiqh*

⁵² Al-Qaraḏāwī, *Fī Fiqh al-Aqalliyyāt*, 46-48.

al-ḥarb”, i.e. *fiqh* of war, and developed a culture of conflict while what is needed in our present time is a *fiqh al-ta’āyush*, i.e. *fiqh* of existence.⁵³

With such a complex analysis of the non-applicability of Islamic legal rulings in modern times, al-‘Alwānī becomes a difficult target for analysis. He is not a *wahhābī* literalist as he focuses on the wisdom of the text and its application in a specific context. He is not an Azhar traditionalist as his main objective to eliminate *fatwas* based on concession and licenses. He does not claim to be a reformer or a modernist. The key word for his approach is renewal. But what exactly does this word mean? It does not mean Rashīd Riḍā’s or al-Qarāḍāwī’s approach, because unlike al-‘Alwānī, both view the classical Islamic legal history as an integral part of their discourse. Renewal may actually mean in the context of al-‘Alwānī, renewal of faith values as illustrated in the Qur’an. This is reflected at the end of his research when he stresses the place of mercy, equity and justice in Islamic jurisprudence. This connection between values and *fiqh* redefines the meaning of *fiqh*, something that he acknowledges when he argues for the revival of *al-fiqh al-akbar*, i.e. *fiqh* of creed, principles of faith.

Given all these above mentioned arguments, the modern jurist, especially in the context of minorities, cannot take his *fatwas* from earlier *fiqh* manuals. The only way out of this dilemma is to establish a new *fiqh* that has its own internal mechanism driven from authentic Islamic sources and based on the social, political and cultural ground of the community in context. This *fiqh* needs a new *ijtihād* that is based on the general

⁵³ Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, 10-11.

objectives of the Qur'an and its values and relies on the *Sunnah* in terms of how it applied the Qur'anic values in the Prophetic era.

New Fiqh: New Ijtihād

At the outset of his theory of *fiqh al-aqalliyāt*, al-'Alwānī de/reconstructs what is meant by *fiqh*. *Fiqh*, as defined in jurisprudential manuals, was not known among early Muslims. *Fiqh* originally, al-'Alwānī argues, means *fahm*, i.e. “comprehension”, of the wisdom of God or as described by Abū Ḥanīfa “*al-Fiqh al-Akbar*”, i.e. greater *fiqh*, as opposed to the minor one which focuses on day to day specific questions.⁵⁴ *Fiqh al-aqalliyāt* needs to restore this original meaning with a view to release it from the *fiqh* vacuum that reproduces nothing but a projection of the past into the present. The main goal of this *fiqh* is not to repeat the past or to give concessions or privileges to minorities but to develop a model of a Muslim rigorous fully-engaged community.⁵⁵

Trying to establish this *fiqh* requires, according to al-'Alwānī, the jurist to recognize the fundamental principles of his legal framework as well as the methodological tools that are valid for his research. This should not mean ignoring the rich *fiqh* legacy or its mechanism of technical sources or deductive methods. Rather the

⁵⁴ Dr. 'Ujayl Jāsīm al-Nashamī criticized al-'Alwānī's claim to revive *al-fiqh al-akbar* in a minority context, arguing that *fiqh al-aqalliyāt* entails *ahkām* while *al-fiqh al-akbar* produces principles. This is one of the common criticisms directed to al-'Alwānī that he always mixes the *ḥukm* and the principle without defining the space and rule of each. See 'Ugayl Jāsīm al-Nashamī, “Al-Ta'liqāt 'alā Baḥth: Madkhal Ilā Uṣūl wa-Fiqh al-Aqalliyāt” *Scientific Review of the European Council for Fatwā and Research*, vol. 7, July 2005:17-63. For other critical remarks on al-'Alwānī's research see: Nadyah Maḥmūd Muṣṭafa, “*Fiqh al-Aqalliyāt al-Muslimah Bayna Fiqh al-Indimāj (al-Muwaṭānah) wa-Fiqh al-'Uzlah*, *Scientific Review of the European Council for Fatwa and Research*, vol. 10-11, 2007. Med-ḥat Māhir, “Jadīd Fiqh al-Aqalliyāt fī Mawdū' al-Mar'ah,” in *Murāja'ah fī Kḥītabāt Mu'asirah Ḥawl al-Mar'ah*, Naḥwa Manẓur Ḥaḍarī, ed. Amānī Ṣāliḥ (Cairo University, 2007): 37-100.

⁵⁵ Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*. 3-4.

jurist attempts to deploy the techniques and tools of *ijtihād* in a way that is compatible with time and current knowledge paradigms in order to restore the role of *Shari'ah* in modern life. The first of these fundamental principles is to understand the meaning and the function of *fiqh*, not as a manual of dos and don'ts but as a guidebook to direct the actions of man on this earth to assure that these actions are in line with the ultimate objective of man as a viceroy of God.⁵⁶ *Fiqh*'s ultimate objective is to instill pure monotheism in the heart, to guarantee the prosperity of the universe, and to develop the ethical values of the individual. In order to achieve this objective, al-'Alwānī argues, the Muslim jurist needs to develop a new *ijtihād*, neither that of the liberals nor that of the traditionalists. Liberals use *ijtihād* as a pretext to temper and distort the role of *Shari'ah*. The traditionalists use it to forge a link between the past and the present. Both parties use *ijtihād* to maintain a dogmatic position that is always constrained by already-made juristic determinations. *Ijtihād*, according to al-'Alwānī, is an intellectual state of mind that inspires man to think systematically and according to certain rational methods towards the establishment of the universal role of the message of Islam.

The question of the need for a new *ijtihād* to develop this *fiqh* is the essence of al-'Alwānī's theory, and at the same time it represents the essence of his own ideological project, namely the Islamization of knowledge, as outlined in the previous section. In developing his synthetic exposition of *ijtihād* and its tools in the context of minorities, al-'Alwānī is doing no less than presenting an empirical model of his project, as it will become evident in the following paragraphs.

⁵⁶ *Ibid.* 13.

Al-'Alwānī's theory of *ijtihād* is basically a reorganization of the sources of Islamic Law and the redefinition of the role and function of each, as exactly the main objective of the project of the Islamization of Knowledge. The first source of *ijtihād* is what al-'Alwānī called, "the combined reading of the Qur'an and the Universe". Both lead to each other. The Qur'an reveals the marvels of the secrets of the physical world while reflection on the physical world leads back to understanding the Qur'an. Al-'Alwānī establishes a dialectic relationship between the Qur'an and the Universe and the intellect of a man as it is the tool that reads and combines between the two. This combined reading reveals the universal values of man's life on earth. These values are *tawhīd*, Monotheism, *tazkiyah*, Purification and *'umrān*, Civilization.

"*Tawhīd* is the belief in the absolute and the pure oneness of God Almighty as the Creator, Maker, Everlasting Lord. *Tazkiyah* relates to man as God's vicegerent on earth, entrusted by and accountable to Him, charged with building and developing the world. He can only achieve this through self-purification. *'Umrān* refers to the cultivation and development of the world as the arena harnessed for discharging man's mission and the crucible for his trials, accountability and development."⁵⁷

Based on these values and objectives, man's actions on earth should be valued. In other words, these values are the criteria upon which man's actions are measured and the legal rulings should be based. These values were the ones in action in the early days of Islam before jurists became influenced by the language of logic and philosophy and framed their stands in logistic formalistic jargon as obligatory, recommendable,

⁵⁷ *Ibid.* 16.

despicable and prohibited.⁵⁸ Modern jurists need to go back to the principal values and view man's actions from their lenses. Not only the minor legal questions should be valued from the perspective of these higher values, but also the juristic contribution of categorizing man's actions into necessities, needs and luxuries should be tied to the higher values of *tawhīd*, *tazkiyah* and *'umrān*. In short, these higher values work like ethical check points for legal determination.

This hypothesis of al-'Alwānī is very significant for a number of reasons. First, it reveals the struggle to establish the role of intellect in relation to text/revelation. The combined reading opens the door wide for the intellect to explore the text and the context both on equal footing. This recalls the earlier debate of theologians on the relationship between the intellect and revelation. On the other hand, this thesis liberates the text from the shackles of earlier interpretations that were shaped by the ideological and the historical ideas of their times. In other words the integrity of the text comes from within the text and not from a historical legacy of the interpretative community. This notion of liberation becomes very clear when al-'Alwānī argues for the place of *Sunnah* and its relevance to the Qur'an.

The *Sunnah* interprets the Qur'an in its historical context but it does not govern nor limit the Qur'an. Debates over the abrogation of some Qur'anic verses by certain Prophetic narratives or the argument that the *Sunnah* controls/governs the Qur'an are flawed. The Qur'an is the ultimate source and the *Sunnah* runs in its orbit and does not

⁵⁸ *Ibid.* 17.

depart from it. Therefore if the Qur'an states the principle of justice and righteousness in dealing with non-Muslims, then prophetic *hadith* such as "do not initiate peace greeting, i.e. saying "peace be upon you" with the Jews and oblige them to take the side of the road" should be reinterpreted in terms of the Qur'an and not otherwise. Such a statement should not be taken on its face value. The *Sunnah* has to be considered as an integral structure in its own right, however closely linked to the Qur'an as an elaboration of its values in a relative specific context.⁵⁹ Based on this principle, the above *hadith* is applicable only in its specific context. It is reported that the Prophet instructed Muslims to not to greet the Jews when he was heading to war against the Jewish community of Banū Qurayzah for the breaching of their covenant with him. Muslims were advised not to greet them because if they exchange greetings, this will be like giving the Jews an *amān*, i.e. concluding a peace treaty, which is not desired at this specific situation. Against this specific incident, the Qur'an lays the general principle that "Allah does not forbid you to deal justly with those who fought not against you on account of religion nor drove you out of your homes." (Qur'an 60:8). If one adds to this some other Prophetic *hadiths* that support the Qur'anic principle, one can conclude the inapplicability of the statement preventing the greeting of non-Muslims.⁶⁰

Reading the Qur'an analytically will provide a number of methodological tools and legal concepts that would help build a *fiqh* for minorities. One of these

⁵⁹ *Ibid.* 20; Al-' Alwānī, *Fī Fiqh al-Aqalliyāt al-Muslimah*, 30.

⁶⁰ For a comprehensive study of the hadīth and the degree of its authenticity see Ḥākīm al-Muṭṭirī, "Al-'ilām bi-Dirāsāt Ḥadīth 'lā Tabda'ū al-Mushrikīn bi-al-Salām'" in <http://www.dr-hakem.com/Portals/Content/?info=TmpJMUpstJfZbEJoWjJVbU1RPT0rdQ===.jsp> (accessed 8/10/2011)

methodological concepts is the concept of *ghā'iyah* or the Qur'anic logic that guides the intellect to the general wisdom behind a certain action regardless of the predispositions inherited from one's own culture or tradition. A second concept stressed by al-'Alwānī is the Qur'anic concept of geography: the whole earth belongs to Allah and Islam is the religion of God. Therefore, every country is either the land of Islam or will be in the future. According to the Qur'an, all humanity is a nation of Islam but either a nation which already embraced the religion or a nation that should be receiving *da'wah*. A third methodological concept is the universality of the Qur'anic message. The Qur'anic discourse, according to al-'Alwānī, is different from the discourse of previous prophets in the sense that earlier books or prophets addressed specific, sometimes local, communities. The Qur'an, on the other hand, addresses the whole of humankind. Thus, it becomes the only book capable of dealing with contemporary global situations as it presents common rules and values.⁶¹ By using these concepts as his starting points, al-'Alwānī sets the ground for an exclusive version of legal literature where universality, or in other words parameters of modernity, become Islamicized and hence ready for Muslim engagement.

Although the concept of the universality of the Islamic message is not new in the Islamic literature, al-'Alwānī rediscovers it as a legal paradigm and not only as a theological argument. This new legal paradigm threatens long standing positions of Islamic schools of thought in terms of their overview of the world as divided between the

⁶¹ To review a complete list of al-'Alwānī's principles for the study of the Qur'an, see: Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, 20-23.

abode of Islam versus the abode of war, in terms of the relationship between Muslims and non-Muslims, and in terms of questions of *walā'* and *barā'*, i.e. loyalties. It is true that many of the advocates of *fiqh al-aqalliyyāt* stress the concept of the universality of Islam and its *da'wah*, but it is al-'Alwānī who did not stop at the generalization of such a statement. Rather, he provided a well-thought-out argument for the universality of the Qur'anic discourse compared with other earlier prophetic discourses and why it is the only scripture capable of addressing modern age humanity. It should be noted here also that this approach to the Qur'an is a way to relate knowledge to religion and to intellect, composing a circle of world existence. Although his exposition is controversial and critically approached by other Muslim intellectuals, al-'Alwānī is a key figure in the debate on *fiqh al-aqalliyyāt*.

Qur'an and Minorities

In support of his position, al-'Alwānī extracts some Qur'anic general principles that are relevant to Muslims' life in minority contexts. The first role is "the golden role" of Muslim-non Muslim interaction, which is the principle of kindness and justice toward all belligerent communities as revealed in the verses of *al-Mumtahinah* 8 and 9.

"Allah does not forbid you to deal justly with those who fought not against you on account of religion nor drove you out of your homes. Verily Allah loves those who deal with equity. It is only as regards those who those who fought against you on account of religion, and have driven you out of your homes, and helped to drive you out, that Allah forbids you to befriend them. And whomsoever will befriend them, then such are the wrong doers." (Qur'an 60: 8-9)

All life matters and concerns should be judged according to this principle. Muslims cannot deviate from this principle because this is the main objective of their message which is to establish good and justice.⁶²

The second Qur'anic principle is the principle of "the best nation ever raised for mankind", as indicated in Surah Āl-'Imrān, "You are the best community that has been raised up for mankind. You enjoin right conduct and forbid indecency; and you believe in Allah..." (Qur'an 3: 110). God has raised the Muslim nation, according to al-'Alwānī, in order to lead mankind out of the darkness and into the light, from servitude to man to submission to God. Given this principle, the role of the Muslim nation is not limited by land or confined in space. It has to reach out to others to convey to them the message of God. Thus all references to *dār al-kufr* or *dār al-Islām*, as geographical entities, become superfluous and restrictive for the role of the message. Moreover the concept of *ummah*, nation, in Islamic Law is not associated with quantity, or space, i.e. the number of Muslims in a certain region. It is used to represent the Islamic principle of "doing good for the people", even if it revolves around one single person, as actually the Qur'an did when God talked about Prophet Abraham as "a nation". This understanding is not new in Islamic thinking. Muslim jurists recognized this dimension and linked "the islamicity of the land" to concepts of the security of Muslims and their ability to practice their religion. Islam has no geographical limitations. *Dār al-Islām* can be anywhere a Muslim is secure even if he lives in the midst of a non-Muslim majority and *dār al-kufr* is where he cannot fulfill the duties of his religion, even if he lives in the midst of a Muslim community or

⁶² *Ibid.*, 26-27.

culture. Al-‘Alwānī refers here to the *ḥanafī* jurists, Abū Yūsuf, Muḥammad and the Shāfi‘ī al-Mawridī and al-Rāzī.⁶³

Unfortunately al-‘Alwānī does not engage the original arguments of those jurists who according to Abou El Fadl developed, along with other jurists a spectrum of positions that are quite relevant to contemporary debate. Earlier jurists debated the meaning of *dār al-Islām*, the ability of practicing one’s religion, and the question of jurisdiction, among others. The meaning of *dār al-Islām* for example presented a challenge to earlier Muslims as it did to al-‘Alwānī. Some jurists held that *dār al-Islām* is where Islamic Law is applied. Others focused on numbers and argued that *dār al-Islām* where there is a sizeable Muslim majority. A third group argued that *dār al-Islām* requires an Islamic state.⁶⁴ This disagreement over definition led to other alternative classification for the *dār*, such as Ibn Taymiyyah’s *dār murakkabah* or Razi’s *dār al-da‘wah*. Al-‘Alwānī developed Razi’s term but with more affirmative language, as he argues that this is the task of the Muslim. So in the case where Rāzī focuses on the potentials that others may accept Islam, al-‘Alwānī concentrates on the task of Muslims as all the land is Allah’s and it is the Muslim who gives it its designation by conveying the message of his faith.

A third Qur’anic principle that al-‘Alwānī derives from the Qur’an that can guide Muslim minority life is the concept of positive life. The Qur’an praises Muslims for being positive and standing up for their rights. The Qur’an says,

⁶³ *Ibid.*, 27-29.

⁶⁴ Khaled Abou El Fadl, “Legal Debates and Muslim Minorities,” 142.

“Save those who believe and do good works, and remember Allah much, and vindicate themselves after they have been wronged.”(Qur’an 26: 227)

“And those who, when great wrong is done to them, defend themselves, (Qur’an 42: 39)

Acquiescence by Muslims to humiliation, resignation to inferior positions, adoption of negative attitudes towards others, or withdrawal from pro-active interaction with the environment they live in, would be in contradiction to this Qur’anic principle of affirmative and constructive engagement. If this pro-active participation entailed certain concessions that do not affect the fundamentals of faith, then forbearance has to be practiced for the benefit of the greater good. This understanding reflects a basic Islamic legal principle, as Ibn Taymiyyah formulated it, “Wrong doing and sinful behavior of some Muslims, rulers as well as subjects, should not prevent one from taking part in good activities.”⁶⁵

It is clear that al-‘Alwānī has in mind the question of Muslim’s political participation in the American or the Western democratic governance system. This was very clear in the conclusion when he argued that, “It is a duty upon Muslims to positively participate in the political and social life, to stand for their rights and to support their brothers in Islam wherever they are, to convey the truth about Islam and to fulfill its universal call. We said that this is their duty because we do not consider it as a right that

⁶⁵ Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, 30.

we can give up or a concession that we can forfeit.”⁶⁶ “If Muslims can win an office or have influence over one who occupies an office this is a gain for them through which they can participate in drafting laws that affect their lives, to be in accordance with the Islamic moral philosophy. All the means that lead to this goal become a duty upon Muslims to undertake as well.”⁶⁷

Al-‘Alwānī: the *Mufti*

Al-‘Alwānī’s training in al-Azhar and his appointment as a member in the Jeddah-based *Fiqh* Academy and as the head of the *Fiqh* Council of North America qualify him to be an authoritative *mufti*. However, on many occasions, al-‘Alwānī denies the claim that he is a *mufti*. “I’m not a *mufti* and I do not like *fatwas* and I do not practice *ifta*’. Whenever I do that, it is in the form of a research paper where the *fatwa* comes as its conclusion and not as its introduction...Throughout my academic career, I did not issue a single *fatwa*. I only write research papers and at the conclusion I argue that the research led me to such and such opinion...”⁶⁸

Al-‘Alwānī’s claim is right to a certain extent, at least from his own perspective. There is no single *fatwa* clearly issued in his name. Neither his website nor the IIIT has a *fatwa* section or a *fatwa* link. The only *fatwas* that are published under his name are available in the islamonline.net *fatwa* page. Although technically they are considered

⁶⁶ Al-‘Alwānī, *Fi Fiqh al-Aqalliyāt*, 50.

⁶⁷ *Ibid.*

⁶⁸ <http://www.alarabiya.net/articles/2007/03/06/32330.html> (accessed 7/20/2010)

fatwas, at least by their recipients, they may not be seen as *fatwas* proper by al-‘Alwānī, as they were normally given as opinions where no reference was made to a textual or legal school. One of these *fatwas* will be discussed later in more detail.

However, it would be implausible to think that al-‘Alwānī in his capacity as a jurist by training and by profession has not encountered people asking for *fatwas* and he did not respond to them. His writings and his interviews clearly indicate that he was at the heart of the *fatwa* production in North America. It may be more plausible to argue that his *fatwas* /opinions are confined to certain limited settings that are kept personal. Even with such conclusion, the mere fact that a president of a *fatwa* council does not give *fatwas* is thought-provoking. What does this mean? One interpretation is his piety of not bragging about his work and the heavy burden of such a task. But also it may indicate that he was avoiding presenting controversial positions that may put him in confrontation with the prevailing religious discourse. Also it may be due to his political role as a Muslim religious leader that he wanted to maintain with government administration to advocate Muslim interests. So he did not want his name to be linked to a *fatwa* that may lead to a political tension.

Al-‘Alwānī’s main contributions are in academia and revolve around his “Islamization” project and on the “collective” concerns of Muslim minorities. In Academia, his writings are confined to a limited circle of readers who may engage his writings critically without being judgmental. Al-‘Alwānī, as a president of the *Fiqh* Council of North America, focused mainly on the needs of the Muslim community. Instead of occupying oneself with questions of “the *ḥalāl* and the *ḥilāl*”, i.e. questions on

food and moon sighting,^{69 70} al-'Alwānī dedicated his “*fatwa*” research paper to what he believes to be critical to the community and its integrity. In the following paragraphs, an analysis of three different “*fatwas*” of al-'Alwānī will be examined with a view to elaborate his legal position and the relevance of his “*fatwas*” to his intellectual project and the minority context. These *fatwas* are also examples of what a minority *fiqh* is expected to produce, at least from the perspective of its advocates.

“Paper Marriage” and the US Constitution

In a response to an immigrant’s question,

“Would it be permissible for me to divorce my wife from the Subcontinent on paper only so that I can marry an American woman for some time to get the green card? My intention is to divorce the American woman after I have the green card and remarry my wife from the Subcontinent. Is this permissible in Islam?”

Al-'Alwānī argues,

Allah Almighty declares cheating as prohibited. This applies to any form of cheating, whether to individuals or government. Upon entering the States, you applied for a visa. This application is a contract between you and the U.S. government. Being here in the States, you should respect the law and the constitution of the country.

⁶⁹ Muslims in the United States have debated at length whether it is possible to confirm the birth of the new moon of *hijrī* months through astronomical calculations or through the naked eyes. They also have debated whether a Muslim living in the West should only eat *ḥalāl* meat, that is slaughtered according to Islamic law.

⁷⁰ Al-'Alwānī, *Madkhal Ilā Fiqh al-Aqalliyyāt*, 9.

To marry a woman just on paper without having a real intention to establish a family is really an evil deed. Such an act involves telling lies and cheating which are both *Haram*. Marriage, being a sacred institution, is to be shown due respect and never played with.

At the same time, making a paper divorce without having the intention to do so, thinking that this will render the divorce invalid is a total miscalculation, for the divorce is still valid according to the majority of scholars. In the Hadith, the Prophet, peace and blessings be upon him, is reported as having said: **“Three things are considered valid whether done seriously or jokingly; divorce, marriage and manumitting slaves.”**

Even if you find an American lady who accepts such a fake marriage, both of you will be conspiring against the law of the country. You will have only yourself to blame.

I would like to urge all Muslims in the West to be good examples and representatives of their religion. Muslims are commanded always to be pure and straight forward. In the life of a Muslim, there are no lies, forms of deceit or cheating.⁷¹

Comment

As said earlier there are few *fatwas* available in Islamonline.com (IOL) for al-‘Alwānī. These *fatwas* cannot give a thorough understanding of the *mufi*’s orientations or legal positions because the IOL *fatwa* mechanism production allows the website *fatwa* editor to intervene in the process on various levels. The editor may for example regenerate an old *fatwa* from the website data bank or from another website to answer a

⁷¹http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwāE/FatwāE&cid=1119503543738 (07/20/2010)

new question.⁷² The editor also may rework his translation and organize the *fatwa* and sometimes may also call other *muftis* if he feels that the first *mufti* was not clear enough. On many occasions the *fatwa* editor may combine two opinions into one *fatwa*. Although the editor attributes every opinion to its holder, during the process of translation, editing and combining, the *fatwa* may lose certain elements, a matter that makes it hard for analysis for the purpose of this dissertation. However, it may still provide us with the *mufti*'s general stance on certain issues, as the case is here.

It is interesting to note the order of the answer. The *fatwa* seeker asks about the Islamic stand on paper marriage. Al-'Alwānī started by arguing that “paper marriage” is illegal because it involves the betrayal of the contract, i.e. visa, the *fatwa* seeker has with the US government and it also shows disrespect to the country and its constitution. Then al-'Alwānī moves on to argue that such an act involves cheating and telling lies which are *ḥarām* because they are against family values. Although both reasons can be Islamically supported, al-'Alwānī did not take this line of argument. Instead, he illegalized the “paper marriage” on a value basis. He uses an ethical argument, a language that is understood not only by the questioner but by the large non-Muslim society which is worried about such practices from some Muslims. At the third step, al-'Alwānī refers to the Islamic legal position that one cannot nullify his first marriage only on paper. Once divorce is pronounced, it is in effect.

⁷² For example in al-'Alwānī's *fatwa* dated November 2010, the editor referred to al-'Alwānī as the President of GSISS and the president of *Fiqh* Council of North America; two positions that he left long ago. If you compare this *fatwa* with another *fatwa* from 2008, you can note that al-'Alwānī was referred to as a former president of FCNA and the current president of Cordova University. This may lead to different interpretations. One of them is that this *fatwa* is regenerated from the old bank and the editor copied and pasted it again as if it is a new one.

It is subtle here to note that al-'Alwānī did not use any Islamic reference to support his opinion because it seems he does not want to get into the question of the legality of polygamy in Islam and its illegality in American law, a point which is controversial for some Muslims. Al-'Alwānī concludes his *fatwa* by two thought provoking points. The first is his criticism of the non-Muslim American woman if she accepts such marriage. By so doing, al-'Alwānī implicitly argues that there is no difference between a Muslim and a non-Muslim when it comes to law and its procedures or to ethics. Religion for a Muslim citizen/immigrant/resident alien does not permit him to play around with the law and nor does being a native allow one to break the law. Second is al-'Alwānī's call upon all Muslims, not only the questioner, to be good representatives of Islam by not cheating or lying. In other words, to follow the rules and regulations of their country.

Traditionally when Muslim or non-Muslim scholars discuss issues of obeying the law of the land in the contest of Muslim minorities, they refer to the rules of *amān* as represented in the visa or in the citizenship contract. Al-'Alwānī did not do that. If he got engaged in such an argument, that will be a drawback in his argument. Once an argument of *amān* is raised, it invites connotations of the foreigner, the minority, the weak, and the hierarchy between the *amān* giver and the *amān* receiver, things that al-'Alwānī struggles against. He establishes his position that Muslims are part of the legal political culture of their societies.

Prophet Muḥammad in the US Supreme Court: A Case of Reading Islamic Sources

To exhibit the nation's pluralism and praise the strength of its diversity and tolerance, the architect of the US Supreme Court Building entertains figures of 18 historical lawgivers depicted in a marble frieze high above the bench of the Supreme Court Chamber. These figures, whose construction goes back to 1935, are depicted in larger than life size in the ivory marble friezes on the north and south walls of the Court Chamber. These figures include Hammurabi, Moses, Solomon, Justinian, Muhammed, King John, John Marshal, Napoleon Bonaparte and others. In 1997, 16 American Muslim groups petitioned the US Supreme Court to remove Muhammad's image because it represents a form of sacrilege, since graven images are forbidden in Islam.⁷³ The controversy was brief as some Muslim community leaders interfered in favor of the artistic frieze. The most prominent among those figures was al-'Alwānī, who was approached by KARAMA organization with a question on the legal Islamic position pertaining to the legality of the Prophet's depiction in the US Chamber.⁷⁴

Upon receiving the question, al-'Alwānī did not follow the regular procedure by referring the question to the *fatwa* committee in the *Fiqh* Council or in the *Fiqh* Academy. Instead he presented a 29 page research/ *fatwa* that concluded that there is no legal Islamic objection to maintain the image of the Prophet on the frieze. Before getting

⁷³ For a brief description of the Frieze see: Hongxia Liu, "Court Gazing "Features of Diversity in the U.S. Supreme Court Building," *Court Review*, Winter 2004; Joan Biskupic, "Great Figures Gaze upon the Court," *Washington Post*, March 11, 1998.(http://www.dailyrepublican.com/sup_crt_frieze.html) (accessed 8/11/2011)

⁷⁴ http://www.karamah.org/news_supreme_court.htm (Accessed 07-20-2010)

into the details of the *fatwa*>, the first question that comes to mind is why al-‘Alwānī did not seek a *fatwa* from other legal authorities, especially those in the East, as he used to do with other *fatwas*. The best hypothesis here is that he realized that such a *fatwa* needs an insider who is aware of the historical background of the frieze and the nature of the constitutional relationship in the US. Also, he might have expected that the incoming *fatwa* would be against his conviction that keeping the portrayal is of more benefit for Muslims than to remove it. Additionally, if he referred the *fatwa* to somebody who lives outside the county, this may have been considered by some Americans interfering in the country’s internal affairs. So he preferred to take the issue, in spite of his reluctance to deliver *fatwas*.

The *fatwa* structure is modeled after monograph *fatwas* that reflect the significance of the issue under scrutiny, its novelty or controversial nature and its relevance to the *mufti*’s advocacy of his school of thought or jurisprudential orientation. The *fatwa* begins with a section on legal premises that should guide the *mufti*. It is expected that the introductory legal premises of a *fatwa* include jurisprudential principles (mostly cited from the Qur’an or based on Prophetic tradition) and/or a reference to certain legal rules. Al-‘Alwānī’s *fatwa* premises do not include any of these. His premises are socio-historically oriented rather than legal-*fiqhi*-based. He argues that each civilization has its own means of self-expression. Islamic civilization expresses itself through the “Word”, while Western Civilization tends to be represented through “Imagery”. Islamic Culture and civilization regard the Word as the medium best capable of expressing their specificity and symbolism! For Arabs and Muslims, “[t]he “culture of

the Word” is thus the ultimate culture of abstraction, comprehension and limitless possibilities!”⁷⁵ On the other hand, the Western culture of imagery regards “the image as the most capable symbol for expressing ideas in a precise, physical and defined manner because the image represents an embodiment, not an abstraction.”⁷⁶

Based on these introductory premises, al-‘Alwānī argues,

“Thus when the Supreme Courtroom displays the images of select world leaders to symbolize justice and strength in human history, and the Messenger of God and the final Prophet (SAAS) is included among them, it expresses a specific view. It is the view of those who designed and approved the architecture of the Supreme Court building more than 60 years ago as to the diversity of cultures and civilizations that had significant impact on the legal system in the United States. Whether this expression is consistent with the Islamic juristic vision in general, or with the vision of a particular school of Islam is another matter.”⁷⁷

Given this introduction, al-‘Alwānī lays the foundation of his legal methodology of giving *fatwas* in a Western platform: the West is a setting that is different culturally and religiously from the Islamic one, and hence the traditional Islamic legal approach needs to be adapted to the new setting. In other words, the Islamic legal culture cannot force its world view outside its land. It needs a renewal movement that maintains its core principles as dictated in the Qur’an and applies them contextually into our modern world. Such a premise reflects al-‘Alwānī’s methodology on *fiqh al-aqalliyāt*.

⁷⁵ Al-‘Alwānī, “Fatwa” Concerning the United States Supreme Courtroom Frieze,” 4.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, 6.

After the premises' section, al-'Alwānī discusses the question of the frieze portrayal of the Prophet's image from an Islamic perspective. In this section, al-'Alwānī introduces a typical *fatwa* structure: providing arguments in order of their authoritative considerations: first the Qur'an, then *Sunnah* and thirdly the opinions of different schools of thought. Qur'anically, "There is no single text that directly addresses the question of whether making or possessing "pictures" and "images" is prohibited." Rather the Qur'an provides examples of prophets who praised images.⁷⁸ It was the second source of Islamic Law, i.e. *Sunnah*, that provided Prophetic traditions indicating the Prophet's despising of the making and dissemination of images. Al-'Alwānī argues that:

"We must inquire whether the ahadith have totally prohibited the making of images as an act of worship, or whether this prohibition is contextual. We must ask about that, which is critical in making proper Islamic rulings on this matter: the ratio, or causal reason that determines the *manaat* (basic rationale on which the legal rulings hang). That is we must ask whether the meaning of the precise prohibition, warnings, or even descriptions of the text necessarily also depend on the interpreter's knowledge of the events, circumstances and other situations about which these ahadith are concerned.)⁷⁹

This quote comes at the core of al-'Alwānī's methodology and understanding of the relationship between the Qur'an and the *Sunnah*. Qur'an is absolute and eternal while *Sunnah* is the application of the Qur'an in a certain context. Therefore its rulings are bound to this context. Al-'Alwānī goes on to elaborate this context: worshipping idols,

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 7-8.

using images as Allah's representation on earth and emulation of Allah's creation. Given this context, the Prophet's prohibition of images is plausible. So the Prophet's *hadiths* are context-specific and hence "the fundamental rule is one of non-prohibition of images."⁸⁰ To support his position, al-'Alwānī examines the different prophetic traditions, juristic opinions and *fatwas* of earlier scholars with a view to showing his expertise on the subject matter as well as to demonstrate that the issue at hand is far from having a consensus in the Islamic legal tradition.

Al-'Alwānī concludes that the cause of prohibiting "imagery making" does not apply to the US Supreme Court frieze.⁸¹ Moreover, al-'Alwānī criticizes the artist who designed the Prophet's image for not considering the Muslim tradition that describes in details the Prophet's figure and attributes so that his portrayal would have been a true and honest reflection of the Prophet's image as done by the Turkish and Persian artists in earlier times.⁸²

Al-'Alwānī concludes,

"My answer to this question is as follows: What I have seen in the Supreme Courtroom deserves nothing but appreciation and gratitude from American Muslims. This is a positive gesture toward Islam made by the architect and other architectural decision-makers of the highest court in America. God willing, it will help ameliorate some of the unfortunate misinformation that has surrounded Islam and Muslims in this country.

⁸⁰ *Ibid.*, 14.

⁸¹ *Ibid.*, 19.

⁸² *Ibid.*, 25.

For this reason, I would like to express my gratitude and appreciation to the early twentieth century architect and his associates who brought, in their own way, the essence of what the Prophet (SAAS) symbolized, namely, law with justice, to the attention of the American people. I hope that the Muslim leadership in the United States and around the world will join me in expressing this appreciation even though the frieze is over 60 years old.”⁸³

If one attempts to relate this legal analysis to al-‘Alwānī’s theory on *fiqh* of minorities and his overall project of Islamization of Knowledge, one may argue that it is an honest reflection of both. First of all, he redefines the question, i.e. re-producing the question with a positive tone. Al-‘Alwānī’s *fatwa* was not centered only on religious legal argument, but it incorporates historical and sociological analysis along with the legal one. The *fatwa* was balanced between the three elements. This is a unique approach which is not seen often in contemporary *fatwas* where the *muftis* often resort to legal precedents and arguments, without discussing the historical or the sociological implications of their *fatwas*.

Al-‘Alwānī’s recognition of the sociological setting in defining the legal ruling brings into the discussion the new-old historical legal debate of the role of custom in legal determinations. Although al-‘Alwānī did not refer to this debate, the link is clear. Here one can notice the argument that the legitimacy of the local custom, although foreign to Islam, and the welfare of the Muslims, individually and collectively “*maṣlahah*” are key arguments that take precedence over preferences of juristic schools.

⁸³ *Ibid.*, 27-28.

It is the *maṣlahah* of the Muslims to keep the Prophet's portrayal as a way to enforce a positive image of the Prophet that Islamophobes attempt to damage and to preserve the status of the Muslim community as an integral part of the American mosaic.

Muslims and Political Participation in a non-Muslim Polity

Al-'Alwānī's research/*fatwa* on this issue represents a step by step application of his theory on *fiqh al-aqalliyyāt*. He first started by presenting the premises upon which his opinion is based. They can be categorized into three groups. The first group is Qur'anic-based, i.e. the general principles of the Qur'an as understood by al-'Alwānī, such as: the unity of the human family, the universality of the message, the positivity of the Muslim *ummah*, and the application of the principle of justice regardless of belief or territory. The second group of premises is contextual. They include: the borderlessness of the contemporary world, the presence of international human rights agreements, the role of citizens in modern states, and the duty of Muslims in their society. The third group addresses the peculiarity of the American situation as a young nation of immigrant plural communities that is comparatively less racist and open to the influence of Islam and Muslims. In addition, the American Constitution respects the rights of minorities, despite the shortcomings in the practice and the enforcement of these rights. These premises are a reiteration of the principles that al-'Alwānī indicated in his paper on *fiqh* of minorities.

Based on these premises, al-'Alwānī concludes that,

- I. First, it is incumbent upon Muslims to actively participate [in the political process] for the following reasons:

(1) In order to protect our rights as American citizens, we must be involved in politics.

(2) Our involvement can facilitate our support of our fellow Muslims around the world.

(3) Our interaction with non-Muslims and our involvement will help to spread Islam's message.

(4) It helps to convey the universality of Islam.....

II. Whatever helps us to achieve these noble goals becomes Islamically obligatory. This includes:

(1) Nominating qualified Muslims for public offices (as mayors, governors, Congress members, etc.) and supporting Muslim candidates in an effort to promote good and to forbid and prevent evil for the welfare of our society.

(2) Individual Muslims nominating themselves for such offices.

(3) Supporting (both politically and financially) those non-Muslim candidates whose beliefs and values are most compatible with ours as Muslims, and who most address and support our issues and causes.

(4) Pursuing American citizenship because it is the basis by which we can exercise our rights.

(5) Registering to vote and then voting. Although separate acts, they are both an essential part of the electoral process. Our participation in that process is mandatory....

Al-'Alwānī did not stop at the level of presenting his legal position towards the political participation. He introduced to the Muslim community a working agenda to guarantee an optimum level of positive participation. He argues,

In order for American Muslims to obtain their full rights as citizens, exercise those rights in their entirety and be effectively involved in the American political system, we must:

(1) Consult with one another and come to a mutual agreement on the main principles of Islam, and excuse and overlook one another on our minor differences. The righteous companions of the Prophet set the example for this hundreds of years ago when they met to determine the best response to the situation necessitating their migration to Abyssinia.

(2) If we are concerned that our interaction with non-Muslims will lead to concessions that are not in accordance with Islam, we are in need of strengthening our belief, and enhancing our Islamic culture. Again, the refusal of the Companion, Jaf'ar Attyar, to cower down to Annajashi, King of Abyssinia, provides a good example of the possible outcomes of our faithfully professing and acting in accordance with our beliefs as Muslims.

(3) We are in need of being able to accurately and eloquently convey the message of Islam to non-Muslims. We must seek to practice the humanitarianism inherent in Islam, and to manifest its eternal values in the best manner, as Ja'far did in his speech before King Annajashi, when he stated the principles of Islam and explained the difference between Islam and darkness. In doing so, we will not only gain the support and cooperation of others, but we can influence them to follow the path of Islam.

(4) Muslims in America should become skillful in the arts of communication and public relations. Again, Ja'far provided an excellent example for us when he ended his speech to the king by saying, "We have come to your country. We have chosen you among kings; we seek out our neighbors, and we seek not to be dealt with unjustly."

Al-'Alwānī's reference to the story of the first *hijrah* of Muslims to Abyssinia provides a practical legal precedent that al-'Alwānī uses to justify his position, regardless the categorical differences between the two experiences in terms of the status of Islam and the accumulative legal debate. Had this experience not occurred, al-'Alwānī would still likely argue for the positive participation of Muslim in politics in a non-Muslim majority society.

Since this issue has occupied Muslims in various circles and *fatwas* were issued by various *imams* and *muftis* to the effect of the impermissibility of political participation, al-'Alwānī finds it necessary to respond to these claims. Actually, almost half of the *fatwa* refutes the arguments given against political participation. He argues that muftis, by giving such *fatwas*, did not properly understand the general principles of Islam. His critical rejection of the other *muftis*' position is actually more important for the purpose of this chapter than his personal position.

He states,

The objections raised by Muslims to our political involvement can be classified into five points:

(1) Our participation is contrary to the principles of Islam – particularly, as it establishes **loyalty** to non-Muslims, which is prohibited in the Qur'an.

This is an inaccurate understanding of the prohibition of loyalty. The pragmatic aspect of a creed differs from the creed itself. Fair treatment of and cooperation with non-Muslims are not synonymous with loyalty. Rather, they are pragmatic methods for promoting good and fighting evil. As well, there is a distortion in the understanding of loyalty by some who

expand its meaning to include cooperation. The type of loyalty the Qur'an warns against is that when a Muslim favors non-Muslims over Muslims in granting them love and support.....

(2) The second objection that is offered is that our participation is a kind of **inclination towards non-Muslims**, prohibited by the following Qur'anic verse (11:113): "And incline not to those who do wrong, or the fire will seize you; and ye have no protectors other than Allah, nor shall ye be helped." According to this understanding, this verse would prohibit all types of cooperation with non-believers.

"Inclination" here means the acceptance and support of the Unbeliever's actions. Attabari explains inclination as returning to disbelief, being loyal to Unbelievers, and accepting their behavior.

I don't see any of these actions in political participation. They differ significantly from cooperating with non-Muslims for the sake of safeguarding our rights and protecting ourselves and our fellow Muslims from the injustices of unbelievers and from taking actions that may help non-Muslims find the right path.

(3) Some believe that our political participation helps to maintain **the status quo in non-Muslim countries**, and we are required to change the status quo rather than be a part of it. This is an upside-down understanding. It is the isolation and withdrawal of a society's citizens from public life that leads to the maintenance of the status quo. Participation is an attempt to change such conditions. Our positive participation seeking to express Islam's morals and values resists the status quo – not our boycotting elections and withdrawing from society.

(4) Participation within America's political system will cause us to **neglect working to establish an Islamic system**. This objection encompasses two misinterpretations.

First, we have to consider two possible scenarios – one where Muslims are a majority, and the other where we are a minority. There is a great difference between the two situations. It is incumbent upon Muslims to establish the Islamic system in Muslim countries; however, it is not required when Muslims are a minority. Furthermore, it is logically inconceivable in America today. What is required is enhancing our presence through our active participation in public life, and working to strengthen our community and to Islamically influence others.

Then, we can consider the establishment of an Islamic system – a task that may take centuries. This has been the path of the prophets throughout history.

The second misinterpretation inherent in this objection is that it limits the definition of an Islamic system to the arena of politics; however, any activity that enhances the implementation of positive and moral values in our society should be promoted whether it is of a political nature or not. Activities that oppose crime, abortion, drugs, etc. are important, and they strengthen the good in society and work to prevent evil.

(5) Political participation contradicts **the goal of residing only temporarily in a non-Muslim country**. This objection is based on an inaccurate understanding of the historical concepts of “*Dār Al Harb*” (war) and “*Dār As Silm*” (peace), which, as mentioned earlier, do not apply to contemporary world affairs. It also contradicts history in that the first Muslim community was established in a place where the Prophet (SAW) and the Muslims had migrated temporarily. It was not established in the land of revelation, Mecca, but rather in Madinah.

Loyalty, befriending non-Muslims, promoting non-Islamic practices, and the requirement to immigrate from the land of disbelief or the work to establish an Islamic State are the issues at stake in the old-age debate over the role of Islamic Law in the life

of minorities. Responding to these questions determines the *mufiti*'s legal orientation, his legal sources and mostly his personal living experiences. Here al-'Alwānī takes two main lines of argument. First, reading the Qur'anic text is inaccurately done. Words are not taken at their face value. Words like *walā'* and *mayl* have different layers and refer to various contexts. One needs to analyze these layers first before reaching a conclusion. Even such a conclusion should not exclude other possibilities. Second, concepts like *hijrah* and the Islamic state are historically-laden concepts that do not establish legally-binding rules. Moreover they are subject to modification and redefinition. This is exactly the role of *fiqh al-aqalliyāt*.

Conclusion

Al-'Alwānī belongs to the twentieth and twenty-first centuries' reform movement. His reform ideology, however, has taken a complex path. He argues that the *ummah* needs to press ahead with an agenda of reform that is based on the revival of *Ijtihād*. This *Ijtihād*, however, does not only provide innovative answers for contemporary legal questions but also establishes a new research methodology and new *uṣūlī* principles of jurisprudence. The word "new" here is misleading. Actually he calls for a drastic change. First, *ijtihād* needs to be institutionalized and academized. Second, Islamic sources of legislation need to be re-organized. Third, the relationship between *Ijtihād* and legal tradition needs to be re-constructed according to a number of procedures such as understanding the Qur'an through its internal language structure and not only through its interpretative cultural community, focusing on the Qur'anic universal message instead of

causes of revelations, and maintaining the higher objective of *Shari'ah* in the legal determination rather than the cultural production of the past.

In short, al-'Alwānī hopes to go back to the “original state” of the law, where *Shari'ah*, *Uṣūl* and *Fiqh* were undistinguishable from each other, and then from there, reconstructing a new science that corresponds to the current stage of human progress. This new science surely will be informed by early experience and may produce some similar conclusions, but more importantly it is based on an inclusive methodological debate of present time and place. Is that possible?

To prove the applicability and the significance of his methodology, al-'Alwānī provides a number of research papers on the capital market, the testimony of women, and the language of the Qur'an and the question of abrogation in the Qur'an. However his most significant contribution is his research on *fiqh* of minorities.

Al-'Alwānī was the first not only to declare the need to establish this *fiqh* but to put it on the table of research and debate through his controversial papers. Other scholars took the lead and presented their own vision for *fiqh al-aqalliyyāt*. Al-'Alwānī's vision is still unique in its arguments and aspirations. His attempt to take *fiqh al-aqalliyyāt* outside the circle of *turāth* and link it to the main objectives of *Shari'ah* and Qur'an was a daring step that no one else has taken so far.

Chapter V

Fiqh al-Aqalliyyāt: Rise of a Research Field

Since the turn of the twenty-first century, the lives of Muslim minorities in the West have gone through hard times. At this time they felt they belonged to and were an integral part of society at large, but things changed rapidly with the attacks of 9/11 and the subsequent rise of Islamophobia. The classical tension between Islam and the West not only reemerged but was ignited by certain groups after it had been largely forgotten due to the advancement of notions of liberal democracies, plural societies, and global modernities. Instead of confrontation and exchanges of hate and fear, a significant number of Muslim activists and intellectuals searched for more civic methods of engagement with Western, ‘non-Muslim’ society. Reading their articles, attending their conferences, and scrutinizing their work agendas, one notices a recurrent theme: engaging coexistence and solidarity with society at large.¹ In order for this message to become established, certain ideas need to be promoted and certain actions have to be taken. These actions include social, political, and religious endeavors, which have been studied, analyzed, and surveyed extensively in the increasing literature on Muslim minorities in the last decade.²

¹ One may refer here for example to the writings of Muslim scholars and activists living in the West such as Khaled Abou El Fadl of UCLA (<http://www.scholarofthehouse.org/>); Ingrid Mattson of Hartford Seminary (<http://macdonald.hartsem.edu/mattson.htm>); Hamza Yusuf of Zaytuna Institute (<http://sheikhhamza.com/>); and Tariq Ramadan of the Oriental Institute at St. Antony’s College (<http://www.tariqramadan.com/spip.php?lang=en>)

² For academic researches, see for example: Jocelyne Cesari, *When Islam and Democracy Meet Muslims in Europe and in the United States* (Palgrave Macmillan, 2004); Jocelyne Cesari, *Muslims in the West after*

The question of the role and function of Islamic Law in the life of Muslims in the West is one of these endeavors that Muslims respond to in different ways. The writings of al-Qaraḏāwī and al-‘Alwānī and their calls to establish a certain distinctive category of Islamic Law for Muslim minorities were just the starting points that were soon developed into a discourse in legal and intellectual Muslim forums, a matter which has resulted in a surge of literature in the last few years.

The discourse on *fiqh al-aqalliyāt* started with articles and research papers by scholars affiliated with Muslim minority organizations, such as ECFR and the Association of Muslim Social Scientists (AMSS). These research papers were mostly known on a limited scale, among scholars interested in the legal debate on Muslims in the West. The debate went public when conferences, seminars, and symposiums were held by various Islamic institutions to discuss the significance and the ramifications of such calls.³ Within a couple of years, *fiqh al-aqalliyāt* was increasingly found on the research table of many interested parties. Books, monographs, and university theses and

9/11: Religion, Politics, and Law, Routledge Studies in Liberty and Security (London ; New York: Routledge, 2010); Willem B. Drees and P. Sj van Koningsveld, *The Study of Religion and the Training of Muslim Clergy in Europe: Academic and Religious Freedom in the 21st Century* (Leiden: Leiden University Press, 2008); Bettina Gräf and Jakob Skovgaard-Petersen, *Global Mufti : The Phenomenon of Yusuf Al-Qaradawi* (London: Hurst & Co., 2009); Karen Isaksen Leonard, *Muslims in the United States: The State of Research* (New York: Russell Sage Foundation, 2003). Andrew F. March, *Islam and Liberal Citizenship : The Search for an Overlapping Consensus* (Oxford ; New York: Oxford University Press, 2009). For surveys see for example Pew several surveys on Muslims in the West (<http://pewresearch.org/>) Also see Gallup survey (<http://www.gallup.com/poll/116260/muslim-americans-exemplify-diversity-potential.aspx> - accessed 8/10/2011). For conferences see for example: The Harvard Center for Middle Eastern Studies 2006 conference on Muslims in Europe and in the United States: Transatlantic Comparison (http://cmes.hmdc.harvard.edu/events/conf/transatlantic_comparison - accessed 8/10/2011).

³ For example: The AMSS (UK) 2004 annual conference entitled: *Fiqh Today: Muslim as Minorities* (<http://www.amssuk.com/events.html#events2004> (accessed 8/10/2011)).

dissertations have since been produced, creating an enormous body of literature that requires scrutiny and analysis to understand this phenomenon.

A good deal of these *fiqh al-aqalliyāt*-related publications, however, are descriptive in nature. They review the classical legal position on minorities, and either maintain such a position or argue for al-‘Alwānī’s and al-Qaraḍāwī’s main thesis of the need to have a *fiqh* for minorities.⁴ Some of these writings, however, may be singled out as they enrich the debate, whether through providing new arguments or focusing on other aspects that were not part of earlier contributions.⁵ This chapter focuses on some of these studies and examines the extent of their contribution and how they managed to transform the concept of *fiqh al-aqalliyāt* into a working agenda that was supported not only by *fiqh* councils but by other cultural and social minority institutions.

This chapter focuses on seven contributions that have become significant in the discourse of *fiqh al-aqalliyāt* during the last few years either for the novelty of approach or for the prominence of the author or for its ground-breaking contribution. First, the chapter highlights Khālid ‘Abdel-Qādir’s work, *Fiqh al-Aqalliyāt al-Muslimah*. Although this book was published earlier than al-‘Alwānī’s and al-Qaraḍāwī’s books, its significance emanates from the fact it has become a reference source for many students in

⁴ Ṣalah ‘Abdel-Razzāq, *Al-Aqalliyāt al-Muslimah fī al-Gharb: Qaḍāyā Fiqhiyyah wa-Humūm Thaqāfiyyah*, ed. by A. J. al-Rifā‘i, Qaḍāyā Islāmiyyah Mu‘āṣirah (Beirut: Dār al-Hādī, 2007); Muḥammad al-Shahḥāt Al-Jindī, *Qaḍāyā al-Jāliyyāt al-Muslimah fī al-Mujtama‘āt al-Gharbiyyah*, Qaḍāyā Islāmiyyah 16 (Cairo: Supreme Council of Islamic Affairs, Ministry of Endowments, 2008); Wahbah Al-Zuḥaylī, *Qaḍāyā al-Fiqh wa-al-Fikr al-Mu‘āṣir* (Damascus: Dār al-Fikr, 2006); ‘Imad Eddīn Ibn Abi-Hijlah, *Al-Nujūm al-Lami‘ah fī Thaqāfat al-Muslim al-Jāmi‘ah* (Amman: Dār al-Faṭḥ li al-Dirāsāt wa al-Nashr, 2009).

⁵ Such as the concept of citizenship or international minority rights. These issues will be elaborated upon throughout this chapter.

the field. It is considered the first systematic study to bring together in one volume the juristic discussions on relevant issues to Muslim minorities. It covers ritual, political, economic and social issues such as the meaning of *dār*, the interreligious marriage and the business transactions with non-Muslims. Originally the work was a M.A. Thesis submitted to the School of Awzā'ī, Beirut in 1994. Second, the chapter reviews some of the writings and *fatwas* of ECFR members. The significance of these writing comes from the affiliation of their authors with the ECFR, the presentation of their papers in ECFR conferences for debate, and their development of further positions that were not stressed by al-Qaraḍāwī and al-'Alwānī. One may argue that these writing can be considered the bridge that strengthened al-Qaraḍāwī's and al-'Alwanī's thesis and paved the way for the public debate. Third comes Dr. Ismā'il al-Ḥasanī's *Al-Ikhtilāf wa-al-Taḥkīm fī Fiqh al-Aqalliyyāt*, which focuses on the mechanism used to determine minority legal rules based on societal criteria rather than traditional *fiqh* manuals. This work represents a different approach, as the author belongs to the IIT Islamization of Knowledge trend. This is reflected in the sociological orientation of the arguments presented in the book. Fourth, *Sheikh* Ibn Bayyah's *Ṣinā'at al-Fatwa* is introduced as a new attempt to legalize *fiqh al-aqalliyyāt* through the gate of *fatwas*. Ibn Bayyah belongs to the Mālikī legal tradition of North Africa, where *fatwa* discourse on Muslim minority had always been a point of interest for the historical relation with Andalusia. The compendium of al-Wansharīsī *Al-Mi'yār al-Mu'rib*, 1546 A.C. is a case in point. Ibn Bayyah presents an approach that builds *fiqh al-aqalliyyāt* as a *fatwas* genre that is based on *qawā'id kulliyah*, legal comprehensive rule. The fifth and sixth studies represent a paradigm shift within *fiqh al-*

aqalliyyāt discourse. Dr. Ṣalāḥ Sulṭān considers *fiqh al-aqalliyyāt* a bridge to *fiqh al-muwaṭānah*, i.e., jurisprudence of citizenship, while Dr. Jamāl ‘Aṭiyyah introduces a comprehensive vision of *fiqh aqalliyyāt* that applies to all minorities of the world regardless of their religious convictions. The last study represents the conservative position in this trend as Dr. Ṣalāḥ al-Ṣāwī warns of a jurisprudence that ignores the Islamic legal tradition and produces *bid’ah*, i.e., innovation in religion. He instead suggests the development of *fiqh al-nawāzil*, jurisprudence of new cases that is based on necessity.

These studies illustrate that *fiqh al-aqalliyyāt* has become a concern for jurists coming from different regions: from Morocco (Ibn Bayyah and al-Ḥasanī), from Egypt, Ṣalāḥ Sulṭān, al-Ṣāwī and ‘Aṭiyyah and from Lebanon and Kuwait (Khālid ‘Abdel-Qādir). The authors also belong to different juristic and ideological orientations: traditional (al-Ṣāwī and ‘Abdel-Qādir), reform (‘Aṭiyyah), renewalist (Sulṭān). The significance of these studies is that they problematize the classical position and argue that the current reality demands Muslims to re-think their position in modern life under the umbrella of *fiqh*. They also argue to make the *fiqh* of Muslim minority an endeavor for the collective community and not for individual cases. Thanks to these writings, *fiqh al-aqalliyyāt* has become a recognized legal category in contemporary Islamic legal thinking.

The objective of this chapter is to review the abovementioned contributions to *fiqh al-aqalliyyāt* discourse and to demonstrate how these studies managed to turn this discourse from being a mere idea into a collective project aimed at creating a space for

the application and adaptation of Islamic law in the West. This chapter also shows to what extent recent publications in this field have developed, modified, or rejected the ideas of the early advocates.

Khālid ‘Abdel-Qādir: *Fiqh al-Aqalliyāt al-Muslimah*

Khālid ‘Abdel-Qādir’s *Fiqh al-Aqalliyāt al-Muslimah*⁶ is considered the first systematic study to examine classical Islamic legal texts of various schools and jurists and present an encyclopedic volume on legal rulings pertaining to Muslim minorities living in non-Muslim polities.⁷ The title of his book is not the original title of his thesis. The title is *Al-Aḥkām al-Shar‘iyyah li-Muslimī al-Bilād Ghayr al-Islāmiyyah* “Legal Rulings Pertaining to Muslims Living in non-Muslim Territories”. As it sounds the title resonates the traditional stance towards Muslims as they need *aḥkām* and not special *fiqh*. In another way, the case of minorities is discussed within the framework of other general issues. They do not need special category or chapter in *fiqh* manuals. The question poses itself how the title of *fiqh al-aqalliyāt* came into the ‘Abdel-Qādir’s work. It may be argued that the title of *fiqh al-aqalliyāt* was a later addition after al-‘Alwānī and other

⁶ Khālid Muḥammad ‘Abdel-Qādir, *Fiqh al-Aqalliyāt al-Muslimah* (Lebanon, Dār al-Imān, 1997).

⁷ The Islamic *fiqh* library has quite impressive studies that dealt with Muslims living in non-Muslim territories such as al-Shaybani’s *Kitāb al-Siyar al-Kabīr* and Ibn Al-Qayyim’s *Aḥkām Ahl-al-Dhimma*. The focus in these works, however, was on the rules of *Jihad*, combat, and political treatments, rather than on the normalization of Muslim’s lives in these territories, which was then a hardly imagined matter. See: Muḥammad ibn al-Ḥasan al-Shaybānī, *Sharḥ Kitāb al-Siyar al-Kabīr*, ed. Muhammad ibn Ahmad al-Sarkhasy, verified by Ṣalāh al-Dīn al-Munajjid, 5 vols, (The Institute of Manuscripts: Arab League, 1971); Majid Khadduri, *The Islamic Law of Nations Shaybani’s Siyar* (The Johns Hopkins Press, Baltimore, Maryland, 1966); and Muḥammad ibn Abī Bakr Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, verified by Ṭahā ‘Abdel-Ra’ūf Sa’d, 2nd ed. (Lebanon: Dār al-Kutub al-‘Ilmiyyah, 2002).

scholars introduced it to the public.⁸ 'Abdel-Qādir acknowledges that he met with scholars working on minority *fiqh* and discussed with some of his writings. He even criticized some of their work as going off the limits in interpreting the *Shari'ah*.⁹

The study, as introduced by 'Abdel-Qādir, is a compendium of legal positions of various legal schools and jurists, starting from the companions of the Prophet up to the specialized jurists who may not be known to the ordinary man. The study looks like a manual of *fiqh*, organized in the same way as any functional legal manual. The main difference is that it starts with a chapter on international relations that discusses the classical division of the world into two *dārs*, i.e., abodes: the abode of peace (Islam) and the abode of war (disbelief). Although 'Abdel-Qādir argues that peace, and not war, is the principle that governs Muslim–non-Muslim interactions, he still maintains the dual division of the world. He argues that this division is valid for two reasons: first, there will always be tension between belief and disbelief, a matter which justifies categorizing people according to their belief convictions; second, it is a scientific tradition to divide the world into entities in terms of progress, atmosphere, ethnicities, etc.¹⁰ He also argues that there is an in-between *dār*, *dār al-'ahd*, i.e. an abode of 'contract', if a peace treaty exists between two territories. In modern times, the visa is a form of this contract that has

⁸ The ECFR was established in 1997 and the idea of *fiqh* for minorities was proposed in its constitution and in its early publications.

⁹ 'Abdel-Qādir mentions in his introduction that he met with various scholars who were interested in the field and exchanged views with them. He also argued against the position of some of them.

¹⁰ 'Abdel-Qādir, *Fiqh*, 43, 117.

to be respected and fulfilled.¹¹ Here 'Abdel-Qādir is not unique in this argument. He is confirming what other minority jurists argued that *visa* represents a form of *amān* contract that Muslims have to abide by. 'Abdel-Qādir's argument, however, of the validity of using the dual dichotomy of belief and disbelief in modern times in the light of categorizing the world into geo-political entities is thought-provoking, especially when coupled with his conceptualization of the 'visa' as a form of peace treaty. He uses modern concepts such as 'visa', and 'geographical and political' divisions of the world to reintroduce concepts exclusive to Islamic Law. By so doing, he maintains the formalistic form of the tradition while at the same time freeing the term from its legal and historical package. In another way, this dual or triple (if the abode of contract is added) categorization is merely a way to distinguish realms of jurisdiction and does not carry theological or ideological significance.

After this introductory chapter, which shows why Muslim minorities should be treated as a special case, the book takes the form of a manual of *fiqh*, including sections on purification, rituals, family law, and food. The book ends with a long section on transactions and everyday activities. The study shows that earlier *fiqh* books are a rich source of rulings pertaining to relations between Muslims and non-Muslims. In principle, this is true. There are detailed discussions that cover many aspects of Muslim–non-Muslim interaction and the life of Muslims in non-Muslim lands. There are debates on such matters as the 'purity' of non-Muslims, seeking their help to perform ablution, praying and fasting in countries of immoderate length of day or night, praying in temples

¹¹ *Ibid.*, 76-7.

and churches, delivering Friday sermons in a language other than Arabic, burying Muslims in non-Muslim graves, and paying one's *Zakat* to Islamic centers. In matters of family law, there are rulings pertaining to marrying non-Muslims, contracting the marriage in non-Muslims' places of worship, marriage expenses, custody of children, inheritance, testimony, endowments, and other issues. The last section on transaction is the longest and covers the legal discussion on various aspects of the political, legal, economic, and cultural life of Muslims in non-Muslim polities. A review of these sections results in a couple of observations. First, although 'Abdel-Qādir compiled an almost 700-page code of law for Muslim minorities, on many occasions these rulings are based on the interaction of Muslims with non-Muslims in Muslim lands or in lands recently taken over by Muslims. In both cases, jurists were driven by the prevailing Muslim culture or political power. This is evident if one looks at the different legal positions taken with regard to certain categories. In the ritual category, jurists were more tolerant. For example, Muslims are permitted to combine prayers, pray in non-Muslim places of worship, and deliver Friday sermons in a language other than Arabic. In the commercial category, jurists were also open and allowed almost all types of trade with the exception of what is strictly forbidden, such as wine, pork, and usury. Trading, partnership, renting, lending, *wikālah*, *i.e.*, delegation, are all allowed between Muslims and non-Muslims. In the case of both rituals and commerce, the focus was on facilitating peaceful interaction between the two communities, especially in new territories. In this regard, one may refer to the *Hanafi* school, which was the most permissive school in questions of Muslim–non-Muslim interaction. This was due not only to their legal and

intellectual orientation as *ahl al-ra'y*, school of reasoning, but also to the fact that the newly conquered lands were geographically close to *hanafi*-dominated territories. In the family law category, jurists became very cautious and started to apply the rules of exception and necessity. In the international law category, jurists were very strict and prohibited any type of *muwālāh*, loyalty, or cooperation. This position corresponds with the historical and military context of that time.

'Abdel-Qādir reiterates the qualitative change in present day minority life when compared to earlier Muslim minority historical experiences. He argues that international treaties become the basis of interactions between countries and among residents of those territories. Minorities, especially Muslims, have to engage with their societies in order to be part of the decision-making process.¹² In order to achieve this goal, in various cases, 'Abdel-Qādir gives preference to positions that facilitate such engagement, even if these positions are not supported by a majoritarian legal consensus.¹³ The book's conclusion is that given the current world status, Muslims are permitted to reside and work in non-Muslim lands. They should interact, respect, and fulfill their obligations towards these lands as required by Islam and by law. However, this should be done on two bases: first, no *muwālāh* whatsoever should be observed; second, rules of necessity should be the

¹² *Ibid.*, 371.

¹³ As examples of this approach: 'Abdel-Qādir permitted Muslims to marry each other in *dār al-Kufr*, although many jurists made it *makrūh* (despicable). *Ibid.*, 369-71. He also argues that the people of the Book do not constitute part of the people of *shirk*, i.e. polytheists, although many classical jurists argue for that position. *Ibid.*, 397.

legal basis for such interaction.¹⁴ Although 'Abdel-Qādir appreciates the new Muslim minority situation, by focusing on these two conditions he kept his research within the intellectual frame of reference of classical jurists, something which the new advocates of *fiqh al-aqalliyāt* attempt to go beyond. *Muwālāh* for him is to limit one's relationship with non-Muslims to external affairs, without befriending, loving or socializing with them. If there is a need for a more engaging interaction, then it is only under the condition of necessity.

'Abdel-Qādir's vision of *fiqh al-aqalliyāt* is a form of reaffirming the traditional *fiqh* ruling. Shortly after 'Abdel-Qādir published his book, al-Qaraḍāwī and al-'Alwānī opened the door for a more rigorous analysis. Still, however, after the discourse on *fiqh al-aqalliyāt* went beyond 'Abdel-Qādir's position, his book is still a reference for many readers of that *fiqh*.¹⁵

European Council of *Fatwa* and Research (ECFR)

The idea of an institution to issue collective *fatwas* has become a phenomenon in modern times. Al-Azhar's Islamic Research Academy, 1961, and the Muslim World League's *Fiqh* Academy, 1977 were just the starting points. In the West, over the last few decades, one can observe the proliferation of this idea of collective institutions through the

¹⁴ He argues that if there was a conflict between the rules of *Shari'ah* and the traditions and laws of non-Muslims, the rules of Islamic law take preference, except in cases of necessities. *Ibid.*, 683

¹⁵ In 2002, the Supreme Council of Islamic Affairs, Egyptian Ministry of Endowments, published a summarized version of 'Abdel-Qādir's *Fiqh al-Aqalliyāt al-Muslimah* in Arabic and in English. Also many of the research papers on Muslim minority *fiqh* used 'Abdel-Qādir as a primary source. See for example: Andrew March, "Islamic Foundation for a Social Contract in Non-Muslim Liberal Democracies," *American Political Science Review* 101, no. 2 (2007): 235-252.

establishment of, for example, the *Fiqh* Council of North America, 1986, the European Council of *Fatwa* and Research, 1997, and more recently Assembly of Muslim Jurists in America, 2002. The institutionalization of collective *ijtihad* is justified by the complexity of modern world that requires the collaboration of various scholars from various fields in order to render practical relevant *fatwas*. The notion of the absolute *mujtahid* has become difficult to be maintained in the context of present world. In the Western context, the need of such institutions was greatly felt due to the absence of traditional religious authorities whether in the form of individual scholars or Islamic Law institutions. Out of these Western-based fatwa institutions, the European Council for Fatwa and Research as the most active and the most engaging with minority concerns.

The European Council for *Fatwa* and Research (ECFR) was established in London, 29-30 March 1997, on the initiative of the Federation of Islamic Organizations in Europe. Later on it was relocated in Dublin, Ireland, in the Islamic Cultural Center. Its board was first composed of fifteen Muslim scholars and imams who were mostly living in the West. Its main task is to help, guide and support Muslim minority in their lives in their larger societies. The authority enjoyed by the ECFR is derived from its prominent members: the well-known *Sheikh* Yūsuf Al- Qaraḏāwī, chairman, the Lebanese reputable jurist and judge Fayṣal Mawlawī, deputy chairman, Prof. 'Abdullah al-Juday', secretary general. The reputation of those personal was transformed into the Council position and its decisions to fill the vacuum of Islamic religious authority among Muslim minority communities.

ECFR is the main institutional forum that brought the project of *fiqh al-aqalliyāt* into focus and made it a basic component of its constitution. The main purpose for the establishment of the Council was to create a collective body of Muslim scholars who are familiar with the situation of Muslims in the West with a view to discussing the Western Muslims' problems so as to reach a qualified opinion that corresponds to the *Shari'ah* precepts and at the same time reflects the special situation of Muslim minorities. The objectives of the council, as stated in its constitution, include issuing collective *fatwas* and publishing legal studies and research findings that respond to the rising concerns of Muslims in the West in a manner that realizes the objectives of *Shari'ah* and the interests of Muslims. Thanks to a decade of ambitious ECFR work, *fiqh al-aqalliyāt* has become an acceptable term and a jurisprudential category that many Muslim jurists utilize without much criticism.

The work of ECFR on *fiqh al-aqalliyāt* was not only to introduce the concept or to initiate the project. Rather, it requested its members to research ways to ground this *fiqh* in the Islamic legal tradition. Apart from the studies of al-Qaraḍāwī and al-'Alwanī, which we examined in earlier chapters, the ECFR periodical was a forum comprised of various contributions that covered both theoretical and empirical aspects of *fiqh al-aqalliyāt*. Suffice it here to refer to samples of these contributions, especially the theoretical ones, to show the influence of the ECFR in the development of this discourse.

Al-Najjār: Developing *Uṣūl* for *Fiqh al-Aqalliyāt*

Dr. 'Abdel-Majid al-Najjār, of France, is a prominent figure in the formation of the ECFR. He is a member of both the editorial committee and the administrative board

of the ECFR *Review*. In his various contributions to the Council sessions, he went a step beyond simply justifying the need for a minority *fiqh* or its sources. He has attempted to develop an *uṣūl* to this *fiqh*. The use of the legal term *uṣūl* is expressive. It indicates that this *fiqh* is already in practice and what is needed is a methodology to guide its operation. In volume 3, he contributed a research paper entitled *Naḥwa Manhaj Uṣūli li-Fiqh al-Aqalliyyāt* (Toward an *Uṣūli* Methodology for the Jurisprudence of Muslim Minorities). In this research paper he claims that jurisprudence manuals (*mudawwanah*) have little to say about the situation in which Muslims find themselves living under the control of a non-Islamic polity. This claim is controversial as other scholars proved that Muslim jurists of various schools debated and developed legal positions on various issues. Khaled Abou El Fadl, for example, examined the legal debate on questions of residence, jurisdiction, and interactions with non-Muslims. He argued that Muslim jurists discussed issues of *dār*, *amān* and *Izhār al-Dīn* to establish legal determinations that corresponded to their time and place.¹⁶ The above-mentioned work of ‘Abdel-Qādir is another proof that *fiqh* manuals did cover significant number of issues relevant to Muslim minority lives. The argument of al-Najjār may be entertained if he means that jurists did not experience similar historical and social conditions to modern life. Therefore their manuals may not contribute much to the present setting.

Al-Najjār gave two reasons for what he thought to be a vacuum in the tradition. First, the detailed rules of the religion were based on the supremacy of Islam and the ability of the community to apply these rules collectively under an Islamic hegemony.

¹⁶ Khaled Abou El-Fadl, “Islamic Law and Muslim Minorities”.

The situation of modern Muslim minorities does not fall under this supremacy umbrella. Therefore, such rules do not apply to their position. Instead, Islamic law should be utilized as a general framework, leaving the case open for reason to judge accordingly. Secondly, the historical moments when Muslims were subject to non-Islamic rule were moments of intellectual stagnation and weakness. The intellectual Muslim mind of that era was not able to generate fresh comprehensive insights and kept reproducing the old traditional commentary and rulings on both levels— the principles of *uṣūl* and the *aḥkām* of *fiqh*.

Al-Najjār's attempt to exclude the *fiqh* legacy on minority for historical claim can be countered with other historical evidence to the opposite. The argument that the Muslim tradition weakened and the process of *ijtihād* ceased can be met with a reference to the fatwa production. There had been always competing *fatwas* on Muslim minority condition in various historical and social eras. *Fatwas* of Ibn Taymiyyah, Ibn Rushd, and more recently Rashīd Rīdā have been a focus of interests for researchers interested in the genre of *fatwas*.

After such a controversial introduction, al-Najjār argues that due to colonization and bad conditions of Muslims, millions of Muslims in the twentieth century immigrated to European countries where they became subject to non-Islamic rule. Though regrettable, the situation resulted in some benefits; Muslims started to respond to this new situation by attempting to regenerate *fatwas* and *aḥkām* that guide them in this new situation. The ECFR was established to signalize this process and systemize its jurisprudential outcome. *However, all this work lacks an essential element: the*

formulations of legal uṣūli rules that consider the peculiarities of the new situation. This formulation will not disregard the general principles of *uṣūl* but will constitute a new section to be added to it. This new addition will cater for both the general established rules and the new state of Muslim minority groups. Some of the bases that should guide this process of introducing new formulations can be summed up as follows:

- Maintaining the religious life of Muslim minorities
- Introducing Islam to the wider society
- Establishing a ‘civilized’ *fiqh*, i.e., a *fiqh* that is not limited to the *Ibādāt* practices but incorporates all walks of life and determines Muslims’ relationship with such elements as their society and their environment
- Establishing collective *Fiqh* that addresses the Muslim and human community, not only the individual.

Al-Najjār goes on to give a practical example of what he thinks jurists need to do.

There are many *uṣūl* concepts in *Fiqh* literature. Some of these concepts and principles have been forgotten for various reasons. They need to be revived and reevaluated within the framework of the abovementioned bases to determine if they can be related to the position of Muslim minorities. Among the general principles that need to be brought to light are: *ma’lāt al-af’āl*, i.e., the end result of a certain action; drawing balance between harm and benefits; necessities that legalize prohibitions; and unchangeable situations that legalize rules that cannot be applied otherwise.

In volume 4 of the *Review*, al-Najjār continues exploring the issue of *ma’lāt al-af’āl*, arguing for its validity in the case of minority *fiqh*. If a ruling is intended to achieve a certain goal in a given context, the *mufiti* has to ensure that this goal is

reasonable and achievable through his *fatwa*. If the *fatwa* outcome does not realize this goal, then the *fatwa* needs to be reconsidered.

Al-Najjār's approach takes the call for the establishment of a minority *fiqh* one step further, from only issuing minority-contextual *fatwas* to developing a framework for the actual generation of the *fatwa*. His call goes with the contemporary intellectual trend of renewing/reviving the science of the principles of jurisprudence that had been fixed for centuries. The echoes of this call can be seen in the writings of Jamāl 'Atiyyah, Ṭaha Jābir al-'Alwānī, and others. His focus on 'the comprehensive' rules [*al-qawā'id al-kulliyah*] is a way of drawing a balance between bringing the *fiqh* heritage to light and taking the present context into consideration. He does not want to present himself as departing from the general rules that have governed the science of *fiqh* for centuries, but rather as taking them as a point of departure for a deeper and more balanced reading of the tradition and the contemporary Muslim context, especially those in a minority position.¹⁷ This may explain the absence of bibliographical references in his papers. He has based his approach on general rules that are known to everybody and this do not need any references to support their reliability.

Al-'Arabī al-Bishrī: General Rules

Al-'Arabī al-Bishrī contributed a research paper to volume 4 entitled *Munṭalaqāt li-Fiqh al-Aqalliyāt* (Starting Points for Establishing a *Fiqh* for a Minority). He argues

¹⁷ Al-Najjār always tries to present a balanced and mid-way reform approach to the tradition and to Muslims themselves. See: Jamāl al-Dīn Aṭiyyah, *Khilāfat Al-Insān Bayna Al-Wahy Wa-al-'Aql*, 2nd ed., Islamic Methodology Series, vol. 5 (Virginia: International Institute for Islamic Thought, 1993).

for a number of basic rules that he believes are the main starting point for anyone engaging in the *fiqh al-aqalliyāt* debate. These rules start with a significant bottom-line argument, which is the question of the legality of Muslims settling in non-Muslim lands. Once a jurist starts with this premise, he challenges the tradition, which is based on territorial preferences, and creates a neutral zone where new rules can be applied. To further support this position, he sets up the following starting points: a jurist has to consider the difference between traditional *fiqh* rules and the new situation under which Muslim minorities are living; the new *fiqh* should focus on the group, rather than the individual; the jurist should differentiate between individual necessity and community need; and the rules should also be gradually observed. In theory, the application of these principles leads to a change in the weight and form of a minority *fatwa*, from one based on exceptional necessities to a general ruling that is applicable to everyone.

It is worth noting that the formulation of the titles of the research reviewed in the ECFR periodical denotes that *fiqh al-aqalliyāt* is a work in progress. Words such as ‘Towards’, ‘An Introduction’, and ‘Regulations’ have been used to convey this meaning. Another point worthy of note is that the scholars who contributed to the debate in its early stage, with the exception of al-Qaraḏāwī, were from European countries. This may indicate that these jurists were under direct pressure from their communities and felt the urgency of providing an immediate response to the living situation of Muslim minorities.

Apart from direct research on *fiqh al-aqalliyāt*, the *Review* also publishes research dealing with other aspects of the lives of Muslim minorities. Some of this

research includes studies on the life of the Muslim family in the West,¹⁸ arbitration,¹⁹ prayer times,²⁰ and political activism.²¹ These studies generally argue for the positive engagement of Muslims in their lives in non-Muslim lands with a view to striking a balance between presenting a positive image of Islam and its message, facilitating Muslims' lives, and respecting the laws and traditions of the non-Muslim environment.

A Glance at the ECFR *Fatwas*

In addition to research and studies, the ECFR provides a *fatwa* service, which represents the foundation on which the ECFR applies its *fiqh al-aqalliyāt* principles. Some of the ECFR *fatwas* and resolutions are published at the end of their *Review*, but they are also available on the ECFR website. In 2002, ECFR published these *fatwas* in book form. The ECFR *fatwa* compilation follows the conventional pattern,²² which first identifies the question, and then provides the answer in short clear sentences. References to the Qur'an and *Sunnah* or juristic schools are sometimes given. The opinions deal with a number of topics, including *da'wah* (calling people to Islam) (pp. 29-39, 101-104); ritual purity and prayer (pp. 40-44, 104-110); property (pp. 44-5); livelihood (pp. 50-55, 142-156); marriage and divorce (pp. 55-60); family (pp. 60-84, 119-138); food and

¹⁸ See for example ECFR, *Review*, vol. 7, July 2005.

¹⁹ *Ibid.*, vol. 3, June 2003.

²⁰ *Ibid.*, vol. 5, June, 2004.

²¹ *Ibid.*, vol. 10-11, May, 2007.

²² Mathias Rohe, "The Formation of a European Shari'ah," in *Muslim in Europe, from the Margin to the Center*, ed. Jamāl Malik (Lit Verlag Munster, 2004), 176.

beverages (pp. 84-86); ethics and morals (pp. 86-95, 195-172); and miscellaneous (95-101, 172-181).

Reading through the *fatwas*, one can see that the emphasis is not on legal questions per se but on questions relating to ritual commandments and social behavior. It is remarkable that a significant number of the questions are not minority-oriented (i.e., relevant specifically to people in a minority position), but instead are similar to the same *fatwas* and concerns of everyday Muslims in the heartland of Islam. These issues include shortening the hair of woman, children's stubbornness, conversing between sexes, and masturbation. Another group of *fatwas*, while common for both Muslims in a minority situation and otherwise, are of special concern to those in minority positions, such as adhering to a certain *madh-hab*, women riding bicycles, husbands being present while their wife gives birth, and preventing a woman from visiting her non-Muslim parents. A third group is primarily of interest and significance to Muslims in a minority situation, such as a convert having a double name, to whom the woman should resort in the case of disagreement with her husband in a non-Muslim society, accepting donations from non-Muslims, and staying in a non-Muslim country.

Two points should be noted here. The first is that most of the *fatwas* are related to social issues and relations between a man and a woman. This indicates that the Muslim community in the West is still influenced by the culture of its native country. Some Western Muslims raise questions, believing that they have to do with Islam, only to realize that their question reflects certain cultural customs and not religion. For example, one question asks about the obligation of woman to deposit her own money in her

husband's account and not to have her own personal bank account. The Council's fatwa argues that the woman not only has its absolute right but also it is preferable for her to have its own personal account. The husband has no right to interfere with her personal property. In another question, someone asks about the case where women are not allowed to talk with male visitors while men are allowed to talk with female visitors. The Council's fatwa argues that Islam does not prevent both sexes from talking to each other as long as Islamic manners are observed. The cultures or the scholars, the fatwa confirms, that subscribe to the absolute prohibition of women speaking with men are not supported by authentic Islamic legal texts or by the objective of *Shari'ah*.

Such questions illustrate the tension between the immigrant culture, the Western culture and Islamic Law. Since Islamic law is blended with the culture, it becomes, with time, hard to distinguish between the two until one encounters certain opposing culture. At this moment, the question of the islamicity of certain acts is raised and strongly debated. This tension comes at the heart of the discourse of *fiqh al-aqalliyyāt*: it is an attempt to first discover the original *ḥukm* and then re-adjust it to present context.

Another point that can be noted from the ECFR *fatwas* is their easiness. Almost all the *fatwas* published serve to legalize, sometimes with conditions and precautions, what was long thought to be *ḥarām*, or at least doubtful. For example, a new female convert should not be forced to wear the *ḥijāb* since this might force her to leave Islam.²³ To remain Muslim (which is *aṣl*, a principle) is more important than wearing the veil

²³ ECFR, *Qarārāt wa-fatāwa al-Majlis al-Urūbi li-al-Iftā' wa-al-Buhūth* (Dār al-Tawzī' wa-al-Nashr al-Islāmiyyah, 2002), 38-40.

(which is obligatory but is a *far'*, a sub-principle when compared to 'being a Muslim'). A Muslim is allowed to deal with non-Islamic banks and get the usurious interest, provided that he donates it to any charity organization.²⁴ A Muslim physician can sign a certificate stating that burning the body of a dead person will not result in radiation that harms the environment.²⁵ A Muslim can work in a place where wine and pork are served as long as there is no other place to work and he made every possible attempt to avoid partaking in that work.²⁶ It is permissible for Muslims to touch and get touched by dogs, according to the *madh-hab* of Mālik.²⁷ Only a few *fatwas* have been issued pertaining to prohibited actions; it is prohibited to eat Druze meat,²⁸ prohibited to sell wine in shops or businesses owned by Muslims,²⁹ and prohibited to marry only for self-interest or for the sake of obtaining residence papers.³⁰ This concept of easiness, and not hardships, in fatwa has to do with ideological inclination of the ECFR members, who mostly identify themselves with the *wasāṭiyyah* trend, i.e. middle-way trend, whose main advocate is al-Qaraḍāwī.

One may argue here that it was al-Qaraḍāwī and al-'Alwānī who pioneered the debate on *fiqh al-aqalliyāt*, but it was the ECFR that promoted the concept and made it a focus of research in many circles.

²⁴ *Ibid.*, 45.

²⁵ ECFR, *Review*, vol. 1 (2002), 310.

²⁶ ECFR, *Qarārāt*, 50-51.

²⁷ ECFR *Review*, vol. 1 (2002), 318.

²⁸ *Ibid.*

²⁹ ECFR, *Qarārāt*, 51.

³⁰ *Ibid.*, 55-58.

Ismā‘īl al-Ḥasanī: *Fiqh al-Aqalliyyāt* as an Epistemology

Ismā‘īl al-Ḥasanī is a professor of *Maqāṣid al-Shari‘ah*, the science of understanding of the objectives of *Shari‘ah*, in *Dār al-Hadīth al-Ḥasaniyyah*, Rabat, and the University of *Qādī ‘Iyād*, Marrakesh. He is also a member in the London-based Center of the *Maqāṣid al-Shari‘ah* Studies and an expert in the American *Fiqh* Academy. He belongs to the contemporary trend of scholars who attempt to develop a new perspective on the objectives of *Shari‘ah* that goes beyond the classical objectives of maintaining one’s self, faith, intellect, property, and offspring.

Ismā‘īl al-Ḥasanī’s monograph on *fiqh al-aqalliyyāt* is an attempt to create a rational foundation for *fiqh al-aqalliyyāt*. He defines it as an epistemological field that directs the legal thinking of minority jurists towards resolving minority questions resulting from the peculiarity of their societal context.³¹ According to this, *fiqh al-aqalliyyāt* is not only a purely legal discourse but it an epistemological field that requires the interaction of various realms: the legal, the sociological, the psychological and the historical. One should note here the use of the terms ‘peculiarity’³² and ‘societal’ context.³³ He argues that these two elements should create a conscious state of

³¹ Ismā‘īl al-Ḥasanī, *Al-Ikhtilāf wa al-Taḥkīm fī Fiqh al-Aqalliyyāt* (Marakesh, Al-Maṭba‘ah wa al-Warawah al-Waṭaniyyah, 2006), 13. Ismā‘īl al-Ḥasanī, “Qirā‘ah fī Binyat al-Aqalliyyāt” *Islāmiyyat al-Ma‘rifah* 30 (2002): 119-144.

³² Al-Ḥasanī rejects the classical divisions of the world into two territories, that of war and that of Islam, and argues the criterion of valuing territories is not Islam or *Kufr* per se but it is the community’s security and safety. To argue for his point he refers to al-Mawārdī that if Muslims live securely in a certain land and are able to perform their religion, this land is an abode of Islam. See: Al-Ḥasanī, *Al-Ikhtilāf*, 32.

³³ Al-Ḥasanī refers here to the nature of modern democratic life in the West that is regulated through laws and treaties that protect minorities. Al-Ḥasanī, *Al-Ikhtilāf*, 10, 20, 27.

recognition of the differences in jurists' thinking. Jurists should be aware that differences in their environments, personal inclinations, epistemological orientations, complexity and subtlety of the legal text, and tradition may influence their rulings. An example of this state of being conscious of differences is to recognize the various parameters of the principle of the manifestation of one's religion. This principle is used by jurists to determine the legality of living in certain territories. Jurists should recognize the various levels of this manifestation and relate each level to its contextual political, social, and religious setting. This logic of analysis will yield the ruling of illegality of residence in non-Muslim territories invalid in modern states that respect international law agreements.³⁴

The state of recognition of difference requires two things from minority jurists. First, they should approach the sources of the law critically and judiciously examine their legal reasoning and wisdom,³⁵ because it is history, i.e., context/society that produces text, i.e., jurisprudence. Therefore, if history changes, jurisprudence changes. Legal tradition does not work in a vacuum. It justifies its position through relevant reasoning and acknowledged wisdom. If a modern issue does not reflect the same reasoning or wisdom of a legal tradition, the legal tradition becomes inapplicable for this specific issue. Second, minority jurists should look at *Shari'ah* in its totality in terms of its principles, goals, and objectives. Jurists should utilize all available sources and texts while at the same time striking a balance between maintaining their internal unity in

³⁴ Al-Ḥasanī, *Al-Ikhtilāf*, 33-6.

³⁵ *Ibid.*, 87.

terms of meanings and interpretations and external unity in terms of their applicability to various contexts.³⁶

Al-Ḥasanī's contribution is another elaborate attempt to develop a theory of *fiqh al-aqalliyyāt*. Although he reiterates certain aspects that were highlighted by al-Qaraḍāwī and al-'Alwānī, such as the issue of *da'wah*, the significance of engagement with the wider society, the universality of Islam, and the comprehensive nature of *Shari'ah*, he focuses on the jurist and the nature of jurisprudence. He argues that a critical jurist and a methodical jurisprudence produce legal positions that fit modern changes in the world and reflect the openness of Islamic character that concerns itself with the wellness of its society — both Muslim and non-Muslim – and positively engages in its prosperity.³⁷

Al-Ḥasanī's work develops a conciliatory approach by arguing that a critical appraisal for the classical classification of land highlights its limitations in modern times. Islamic tradition is complicated enough to provide multiple positions that a jurist can utilize in his analysis. There are legal debates on the parameters qualifying a land as Islamic or otherwise, on the manifestations of religion, on the nature of *Shari'ah*, on people-state relationships, and on what constitutes a Muslim personality. If the jurist is conscious of these debates and the differences among Muslim legalists, he will appreciate the state of difference in Muslim minority communities and will work accordingly.

³⁶ *Ibid.*, 104-07.

³⁷ *Ibid.*, 43.

Al-Ḥasanī's study comes as an affirmation of the need to a *fiqh* for minorities. He is clearly influenced by earlier discourses, especially that of al-'Alwānī's.³⁸ Although his contribution may not be known on a large scale, his position on the objectives of *Shari'ah* and its relation to modern legal discourse in North Africa and Muslim minority has become well known to experts in the field through his continuous participation in *fiqh* conferences and seminars all over the Muslim world. The significance of his research stems from his critical stand toward both the textual orientation in responding to minority concerns and the *uṣūlī*-based school which focuses on the theory of objectives of *Shari'ah* without proper application on practical questions. Al-Ḥasanī argues that *fiqh al-aqalliyāt* needs a proper application of the science of *maqāṣid* where it is understood critically and comprehensively to correspond with the jurist's consciousness of the differences of his present time.

'Abdullah ibn Bayyah: Fatwa Production

During the 1980s, 'Abdullah ibn Maḥfuz ibn Bayyah (born 1935), a former minister of the Mauritanian Ministry of Religious Affairs, became an international Islamic figure whose career as a jurist flourished after the coup that toppled his government in the early 1980s. After his release, he traveled to Saudi Arabia where he worked as a professor of the principles of Islamic Jurisprudence at King 'Abdel-'Aziz University. Ibn Bayyah soon became involved in the debate over the presence of Islam and Muslims in the West. He became a member of the Islamic *Fiqh* Council, Jeddah and

³⁸ Al-Ḥasanī published parts of al-'Alwānī's writings as appendices to his book. *Ibid.*, 149-158.

the ECFR, and was recently appointed Vice President of the International Union of Muslim Scholars. He was ranked among the fifty most influential Muslims in 2010.³⁹

Through his student, Hamza Yusuf, a well-known American Muslim intellectual, Ibn Bayyah became more informed about the conditions of Western Muslim communities. He was invited to their conferences and advised them on various issues.⁴⁰ Ibn Bayyah's interaction with Muslim minorities and his membership in international institutions resulted in his work *Şina'at al-Fatwā wa-Fiqh al-Aqalliyyāt*.⁴¹ The book is divided into three main parts. The first part discusses the institution of *fatwā*, its history, methodology, and mechanism. The second part deals with the question of *fiqh al-aqalliyyāt*, its sources, objectives, and rules. The third part provides examples of *fiqh al-aqalliyyāt fatwas* taken mainly from ECFR *fatwas* and resolutions. Ibn Bayyah occasionally provides a brief comment on these *fatwas* throughout the book.

Ibn Bayyah's book is another affirmation of the need to have a minority-based *fiqh*. The main concern, however, is how this *fiqh* is related to the general *fiqh* manuals. Is it to be considered a new field of jurisprudence with new sources and methodologies?

³⁹ This list was put together by the Royal Islamic Strategic Studies Center, Jordan. To see the list visit: <http://www.rissc.jo/index.php/english-publications.html> (accessed 8/10/2011)

⁴⁰ Examples of his contribution to the Western Muslim context includes his teaching a course on Islamic Law in Zaytuna University, California in 1999; CD collection entitled *Sacred Law in a Secular World, a Survival Guide to Muslims in the West* (Alhambra Productions, 2004); and his leading "The Mardin, the Abode of Peace" conference held in Mardin Artuklu University, March, 2010.

⁴¹ 'Abdullah Ibn Bayyah, *Şina'at al-Fatwa wa-Fiqh al-Aqalliyyāt* (Dār al-Minhāj li-al-Nashr wa-al-Tawzī', Jeddah, 2007). I relied on an electronic version of the book, available in <http://ar.islamway.com/book/1937?ref=search> (accessed 8/11/2011). For video files of Ibn Bayyah discussing his book see: al-Shari'ah wa-al-Ḥayah, *Şinā'at al-Fatwā*, Jazeera Satellite Channel, November 15, 2009 (Available online: <http://www.youtube.com/watch?v=WG4phFu4TZM> (accessed 8/11/2011)). Also see: Ḥiwār Satellite Channel program, *Ma Yasfurūn*. (Available online: <http://www.youtube.com/watch?v=ifeAabl92A8> (accessed 8/11/2011))

For Ibn Bayyah, this is categorically not the case. *Fiqh al-aqalliyyāt* represents a section in the *fiqh* manuals that brings together all minority questions in one place and deals with them from the perspective of necessity. In other words, *fiqh al-aqalliyyāt* is a *fiqh* of necessity where legal rules pertaining to ‘relieving hardships’, ‘necessity rules’, ‘the change of *fatwas* due to the change of time and space’, and the like should be fully considered when rendering a *fatwa* for minorities. Ibn Bayyah delves into a legally complicated discussion on these general rules to prove that the rich legacy of Islamic law is inclusive enough to provide a legal *shar‘i* basis for almost every legal question. *Ijtihād* is required, but within the legal tradition. *Ijtihād ‘inshā‘ī*, i.e. to make a creative new unprecedented *ijtihād* for a legal question, does exist but it should be very selective and limited to absolutely new questions and done by a well-versed jurist. Ibn Bayyah clearly states that contemporary jurists should benefit from old *fatwas* and use them as a reference of support in order to keep within the circle of juridical consensus.

The problem of minority questions, according to Ibn Bayyah, lies mostly in the deterioration of the *fatwa* institution in the modern world. This explains why the first part of his book starts by an analysis of *fatwa* production. The Arabic term ‘*Ṣina‘at*’, which literary means ‘manufacturing’, is rarely used with *fatwa* in the literature but it reveals the message Ibn Bayyah attempts to convey. *Fatwa* production is a complex process that does not mean to copy an opinion and disseminate it as a *fatwa*. The *fatwa* production has a mechanism that incorporates at least three elements: text, objective of the text, and context. Each one of these elements contains sub-elements that need to be considered. Ibn Bayyah argues that *fatwas* are comprised of three categories. Category one involves

questions relevant to community concerns. This should be left to legal authorities and councils. Category two involves questions of a new nature, e.g. economic questions. This category should be dealt with by well-versed jurists. Category three involves everyday questions.⁴² These can be answered by the *imam* of the mosque. If this categorization is combined with Ibn Bayyah's understanding of *fatwa* production, *fiqh al-aqalliyyāt* becomes the sole possession of legal traditional authorities, of which he himself is one. At the same time, through his long and complex analysis of *fatwa* production, Ibn Bayyah prepares the *fatwa* seekers to accept rulings that they may not be familiar with.

Ibn Bayyah argues that Muslims in weak minority situations are only bound to apply the mundane rulings. The *ahkām sultāniyyah* laws, i.e., rulings applied by governments, such as penal codes or criminal laws, are not applicable.⁴³ Even with the mundane rulings, he argues that there are two interconnected discourses in the production of these rulings (and in Islamic Law in general): the *taklīf* discourse, i.e. divine commands, which are the discourse pertaining to text-based obligations and duties, and the *wad'* discourse, i.e. man-made application and understanding of divine commands, which pertains to the range of application of these obligations and duties. The later discourse governs the first, i.e., it limits, organizes, and generalizes the way a certain

⁴² Al-Jazeera Satellite Channel, *Al-Shari'ah wa-al-Hayah*. Available online: <http://www.youtube.com/watch?v=WG4phFu4TZM> (accessed 8/11/2011)

⁴³ Ibn Bayyah, "Muslims Living in Non-Muslim Lands," talk in Santa Clara Convention Center, July 31, 1999. Available in <http://www.themodernreligion.com/world/muslims-living.html> (accessed 8/11/2011)

obligation is performed.⁴⁴ Therefore, according to Ibn Bayyah's categorization, even these mundane rulings are applied within the subtle area of *wad'* discourse. As such, a Muslim can combine prayers if it is difficult to pray on time. A Muslim woman can marry without a *wali*, male guardian etc. A convert can stay with her non-Muslim husband if she wishes. However, Ibn Bayyah does not forget to stress that these questions all fall under the category of *shubuhāt*, i.e., ambiguous doubtful matters, that are forced upon Muslims due to their peculiar conditions and necessity. In the end, he is not imposing rulings but providing exceptional legal windows for those who would like to follow them.

Ibn Bayyah's traditional voice takes over his attempt to normalize people's lives in the West. He provides all possible evidence to prove that Muslims should engage in their life in the West and do everything possible for the welfare of their communities. Justice, loyalty, goodness, and respect should be the principles followed in order to establish trust and a civilized relationship with Western, non-Muslim majoritarian societies. Along with this positive attitude, Ibn Bayyah still held the view that Muslims in the West are strangers and alien to its culture. Their jurisprudence is that of necessity and exceptionalism; that, for example, allows dealing in usury based on the *ḥanafī* argument that Islamically invalid contracts can be held in non-Muslim lands. This is the main problem of the traditional school of *fiqh al-aqalliyyāt*: it tries to strike a balance between normalization of Muslims' lives and Islamization of their presence.

⁴⁴ Al-Jazeera Channel, *Al-Shari'ah wa-al-Hayah*. Available on <http://www.aljazeera.net/Mob/Templates/Postings/ChannelDetailedPage.aspx?GUID=0EE208A1-16CA-4BBB-95BC-7BB88E3FA572> (8/11/2011)

Şalāḥ Sultān: *Fiqh of Citizenship*⁴⁵

After several visits to Muslim communities in the West and settling down in the United States in 1998 as a director of the Islamic Center of Greater Worcester, MA, Professor Şalāḥ al-Dīn Sultān realized that contemporary Muslim presence in the West is categorically different from the earlier presence of Muslims in both Muslim and non-Muslim polities. Muslims in the contemporary West are a minority that enjoys 1) complete safety, 2) freedom of religious practice, 3) the ability to establish their own institutions, and 4) legal rights just as any other citizen. Moreover, having been born and raised in non-Muslim lands, a good proportion of this minority has not held citizenship in any other country.⁴⁶ Given such an argument, Sultān indirectly asserts that minority lands contain all the required conditions stipulated in the juristic manuals for Muslims to stay in a non-Muslim territory. In their legal debates, earlier jurists were not in favor of Muslims staying in non-Muslim territories and labeled these territories as *dār al-ḥarb* that had to be fled. Those who permitted Muslims to stay did so on the condition that those who stayed were safe and able to *izhār al-dīn*, manifest their religion. The contemporary Muslim presence in the West guarantees these conditions in a way that does not exist in

⁴⁵ I feel indebted to Prof. Şalah Sultān for providing me with electronic copies of his publications on the question of Muslim minorities. They include: Şalah Sultān, *Al-Ḍawābiḥ al-Manhajīyya li-al-Ijtihād fi Fiqh al-Aqallīyyāt al-Muslimah*, 2nd ed., (2007); Şalah Sultān, *Al-Muwaṭānah bayna al-Ta'şil al-Shar'i wa-Ta'addud al-Walā'āt al-Dīniyyah wa-al-Tā'iffīyyah*; and Şalah Sultān, *Fatawa Fiqhiyyah li-al-Muslimīn fi al-Gharb*. The last publications did not have dates or publishing houses.

⁴⁶ Sultān, *Fatawa*. Also available as a *fatwā* in his website under the title “Tijārat al-Khumūr fī al-Gharb: Radd ‘alā Muftī al-Diyār al-Mişriyyah. <http://www.Şalāhsoltan.com/opinions-and-advice/fataawa.html?catid=2> (accessed 8/11/2011)

some Muslim lands.⁴⁷ Therefore, Muslims should see themselves as religiously living in *dār al-‘ahd*, an abode of contract,⁴⁸ as if this contract corresponds to the social contract of citizenship.⁴⁹

Sultān acknowledges that the Western liberal democratic lifestyle represents a challenge for Muslims whose legal and cultural traditions are shaped in a different setting.⁵⁰ He argues for the development of a new methodology of *ijtihād* that takes into account the new conditions.⁵¹ While his call is very similar to other jurists of *fiqh al-aqalliyyāt*, Sultān differs in a number of ways. He does not focus on the principles of *fiqh al-aqalliyyāt* or its sources, as other jurists have done. Rather, he frames his contribution in terms of *dawābiṭ*, which literally means constraints or regulations. He attempts to develop a technical frame of reference for the minority jurist, aside from the legal textual evidence of the Qur’an and *Sunnah*.

Sultān provides ten reference/regulation points: deepening feelings of citizenship, the responsibility for the welfare of one’s country, the interconnection between text and context, the practice of collective *ijtihād* in public issues, having piety along with sound legal argument, the consideration of jurisprudence of objectives, giving due attention to community priorities, narrowing the gap between different legal schools and creativity in

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Sultān did not use the term “social contract” but this is the indirect conclusion of his argument.

⁵⁰ Ṣalāh Sultān, *Fatawa*.

⁵¹ Ṣalāh Sultān, *Al-Dawābiṭ al-Manhajiyah*, 2.

ijtihād, and striving to find a legitimate alternative to forbidden matters in minority contexts.⁵²

Of these ten points, the first two are significant to comment upon for the purpose of the present study. The other eight points are essentially a reconfirmation of what other minority jurists argue, as elaborated earlier in this chapter or in previous chapters. The fact that Sulṭān makes strengthening citizenship the first methodological reference is very significant for various reasons. First, it establishes the fact that Muslims have become, from an Islamic Law perspective, part of the indigenous population of non-Muslim polities. This view is similar to earlier juristic position such as that of Rashīd Rīḍā who argued that indigenous Muslim of non-Muslim territories can take the citizenship of their non-Muslim country. Sulṭān's shift, however, is in the possibility of immigrants to be part of the indigenous non-Muslim society. If this premise is accepted, then Islamic Law should be based on jurisprudence of citizenship, not that of immigrants. This is a crucial point. If the *fiqh* is based on citizenship, then notions of loyalty, integrity, welfare, and public interest will be directed to the Western land, whereas if the *fiqh* is immigrant-based these notions will be linked to the Muslim *ummah*, as is clear from the legal discussion of the illegality of strengthening non-Muslim-governed territories instead of Muslim lands. Second, the use of citizenship as a methodological reference has divided jurists into two groups: jurists advocating immigrant-based *fiqh* and jurists who support citizenship-based *fiqh*. According to Sulṭān, the latter are those who should be consulted for *fatwas*. The former are not to be involved in the production of minority jurisprudence.

⁵² *Ibid.*, 16.

Third, and most importantly, it develops an Islamic legal connection between Muslims and their non-Muslim government. This legal connection is technically called '*siyasaḥ shar'īyah*', i.e., the land is to be run according to the dictates of the political state and the people, Muslims included, should not rebel nor disturb the public order. If there are things that are not Islamically legal in the eyes of Muslims, they should advise their leaders and follow peaceful means to correct them.⁵³ In short, Muslims should join their fellow citizens in the democratic organization of their society as long as it does not contradict Islamic prescriptions.

The second point in Sulṭān's methodological references is to bear the responsibility of reforming one's country. This point is a continuation of the principle of citizenship. The first establishes a legal connection but here it attempts to transform this connection into an emotional, practical reality, i.e., love the country you live in. *Fiqh* of minorities, Sulṭān argues, should be neither preventive nor exploitative. Muslims should not establish schools for the sole purpose of protecting their children from the larger society. Muslims should not participate in politics for the sole purpose of protecting their rights or in support of their native country. This is a narrow perspective of *fiqh*. Muslims should use this *fiqh* to engage with the larger society and provide reform projects, for example to stop social violence, save the environment, care for pets, fight drugs, and help the homeless.⁵⁴ Interestingly, Sulṭān makes his argument without stressing *da'wah* (proselytizing activities). Rather, he argues that the real *da'wah* is to reform the ills of

⁵³ Sulṭān, *Al-Muwāṭānah*, 21-22.

⁵⁴ Sulṭān, *Al-Dawābiṭ*, 23-6.

society, even if the rulers and the land are ‘non-Islamic’. This language represents a shift in the discourse. Rightly, earlier jurists did not fail to mention similar arguments. However, to make it a separate reference point and establish it as an Islamic Law principle makes the contemporary jurists’ debate distinctive from earlier ones.

Sulṭān’s *fatwas* are indicative of his methodology. Muslims should participate in politics. Muslims are allowed to help in any form those who were displaced due to Hurricane Katrina. Muslims are allowed to donate their blood to non-Muslims, but not to wear the t-shirt gift of the Red Cross without changing its cross symbol. Muslims should seek consensus among themselves regarding moon sightings and the number of *takbīrs* (saying Allah is Great) in *‘Id*. In a detailed *fatwa*, Sulṭān rejects the *fatwa* of the Grand *Mufti* of Egypt Dr. ‘Alī Jum‘ah that the West is an abode of war and argues that the West can be an abode of contract or an abode of *da‘wah*, but never, in the contemporary time, an abode of war. The only *fatwa* that contradicts the position taken by some other advocates of jurisprudence of the minority is his opinion on the illegality of Muslims participating in war against other fellow Muslims in Iraq or Afghanistan. He argues that this war does not have strong validity, since civilians were also killed, and thus a Muslim has to avoid participating. If forced to participate, they should work in a non-combatant service role.⁵⁵

Undoubtedly, Sulṭān contributed to the debate of *fiqh al-aqalliyyāt*. His articulation of the concept of *fiqh al-muwāṭānah* (jurisprudence of citizenship)

⁵⁵ Sulṭān, *Fatawa*. See also his *fatwas* in his website Ṣalāhsoltan.com (*Fatwa* section).

precipitated a whole debate that is currently going on around the question of citizenship and loyalty in the context of Muslim minorities. He also played a role in the formation of Islamic universities in the West. He was a professor in the Islamic Open University, Washington DC, 1998-1999, and a professor in the Islamic American University, Southfield, MI, 1999-2004. He also recently founded and presides over the American Center for Islamic Research. In spite of Sulṭān's moderate *fatwas* for Muslims in the West, his stand and *fatwas* against Israel and against American wars in Iraq and Afghanistan made him a source of suspicion in some political and intellectual circles, a matter which shadowed his juristic contribution to the debate of the role of Islamic Law in the West.

Jamāl al-Dīn 'Aṭīyyah, Jurisprudence of World Minorities

Jamāl al-Dīn 'Aṭīyyah, 1928, is an Egyptian Muslim scholar who graduated from Law School, Cairo University, in 1948. He obtained his Ph.D. in law from the University of Genève in 1960. He worked as a professor and head of the Law department in the Faculty of *Shari'ah*, Qatar, and was the general treasury of the Kuwaiti Encyclopedia of *Fiqh*. He is the owner and editor in chief for *Majllat al-Muslim al-Mu'āsir*, Journal of the Contemporary Muslim. He writes extensively in the field of the objectives of *Shari'ah* and the renewal of the principles of Islamic Law.

Jamāl 'Aṭīyyah lived in the West, specifically in Genève and Luxemburg in the 1960s and 1970s. He was the president of the International Islamic Bank of Luxemburg between 1978 and 1988. Even after returning to the Arab world and settling in Egypt in 1988-1992 and in Qatar in the 1990s, he was well-informed of the Western context

through his membership in a number of international organization such as the London-based International Lawyers' Syndicate, International Association for Democratic Lawyers, Brussels, World Peace Through Law Center, Washington, International Council of Islamic Research, Germany and the International Institute of Islamic Thought, Virginia and Egypt. As an academic councilor for the Virginia-based IIT and the director of its branch in Cairo for four years, 1987-1992, he became a significant contributor to the project of the Islamization of Knowledge and the renewal of Islamic thought and *ijtihad*. Though his jurisprudential capabilities, he was not known as a *mufti*. His contribution was limited to his attempt to develop a theoretical framework for the movement of *tajdid*, renewal, whether in *uṣūl* or in *maqāṣid*. This explains his absence from the field of *fatwas* and the nature of his contribution to *fiqh al-aqalliyāt*.

'Aṭīyyah's study on *fiqh al-aqalliyāt*⁵⁶ takes a different perspective from the studies introduced so far in the sense that its focus is not to develop a *fiqh* of minority for Muslim communities in the west but it examines the question of minorities in general – wherever the minorities come from or whatever their ethnic, linguistic, or religious characteristics may be. He argues for a comprehensive Islamic legal approach that contributes to the debate on world minorities, which, he believes, has become a source of contention in modern times. His study is a legal-sociological text on a *fiqh* for world minorities in which Islam is presented as a source of law along with other sources, such

⁵⁶ Jamāl al-Dīn 'Aṭīyyah, "Naḥwa fiqh Jadīd," *Ummatī fī al-'ālam: Hawliyyat Qaḍāyā al-'ālam al-Islāmi*, 4th edition, Civilization Center for Political Studies (Cairo. Shorouk International, 2004), 7-105. The same study was republished as a book by Dār al-Salām, Cairo. The edition used in this study is the Dār al-Salām second edition, 2003.

as United Nations or international conventions. ‘Aṭīyyah’s approach is unconventional in the sense that it equates the problems of Muslims in a non-Muslim polity with the problems of non-Muslims in Muslim polities, recognizing that the practices of Muslim states towards their own non-Muslim minorities need to be considered from both the Islamic perspective and the international minority laws perspective. His approach also acknowledges the legitimacy of various sources of law that work in parallel with Islamic jurisprudence, not in terms of adaptation and compromise but as original contributors to minority problems. Other scholars of *fiqh al-aqalliyāt* build their discourse from within the Islamic tradition. They use international treaties and laws only to argue that contemporary minorities are in a better position to live the life they aspire to while maintaining and practicing their own traditions, including the religious one. Therefore, Muslim minorities are in a position to manifest their religion, to apply the requirements of their religion, and to work out a passage of engagement with their own societies. In ‘Aṭīyyah’s case, “...it becomes evident that there is no contradiction between the international positions and the Islamic perspective. Rather, they complete each other. The Islamic vision introduces theoretical basics and practical principles that constitute a substance that international treaties translate into legal commitments, and establishes necessary mechanisms to monitor the application of these commitments.”⁵⁷

‘Aṭīyyah’s study has two main parts. The first is a concise sociopolitical report on minorities: definition, characteristics, categories, and problems. In this part, ‘Aṭīyyah gives a brief statistical survey of Muslim minorities in the world. He also reviews the

⁵⁷ ‘Aṭīyyah, *Naḥwa Fiqh Jadīd*, 86.

practices used by various states to restrain the rights of minorities, including the rights to equality, the right to worship, and the right to move. In the second part, which represents the main component of the study, 'Aṭīyyah raises the question that lies at the heart of the problem: what is the source of authority in minority cases? He distinguishes between two main categories of authority: external authority and internal authority. The former is limited to international conventions and religious texts while the later may include international pressures, intellectual discourse, and historical praxis. The external authority force can be applied in cases where a region of an ethnic or a religious majority is controlled by a religiously or ethnically different state, such as the situation in Kashmir. In this case, international conventions should take preference over other legislation and authority sources, i.e., the internal laws of the governing state, local traditions, or religious texts of the governed people. The internal authority, on the other hand, has the priority in cases of minority communities living with a majority, such as Muslims in the West. In this case, following the state's laws takes priority, taking into consideration international conventions.⁵⁸ This analytical framework and preferences can be understood in light of the legal training 'Aṭīyyah received. He studied law at the University of Cairo and obtained a PhD in law from the University of Genève in 1960. He understands the tension between state laws and international laws and their mechanism of interaction. Scholars of *fiqh al-aqalliyyāt* do not usually give due attention to the conflict of laws and are mostly unaware of the technical procedures of international laws. Their main interest is in the general principles and how they correspond to the Islamic tradition. In other

⁵⁸ 'Aṭīyyah, *Naḥwa Fiqh Jadīd*, 41.

words, while *fiqh al-aqalliyyāt* discourse is *Shari'ah* oriented, 'Aṭīyya's discourse is legally and comprehensively focused. The term *fiqh*, in his case, does not refer to jurisprudence of Islamic legal determinations, but rather as a mechanism to more effectively establish minority rights.

Under the section on other sources of influence or authority in minority communities, 'Aṭīyyah focuses on the Muslim case not as a minority group per se but as a nation that developed a legacy in dealing with minorities. This legacy is based on jurisprudential writings and historical settings. Both of them, whether they are positive or negative against minorities, reflect the conditions of their time and place, which are completely different from our present moment. Therefore, we need a new *ijtihād* that takes our present context into consideration.⁵⁹ This argument is very similar to the one given by the advocate of *fiqh al-aqalliyyāt*: that traditional jurisprudence is an outcome of its time and cannot be taken at face value in our time and place and a new *fiqh*, i.e., *fiqh al-aqalliyyāt*, is needed. But at this time, minority jurists limit their positions and *fatwas* to Muslim minority cases, while 'Aṭīyyah argues for a general Islamic theory of dealing with the other.

'Aṭīyyah holds that Islamic *Shari'ah* is an authoritative source of law for minorities, as it represents the source of legislation for sixty-five countries in the world, almost one-third of world's countries. *Shari'ah* here refers to the texts of the Qur'an and the authentic *Sunnah* reports of the Prophet. Jurists' interpretations or scholars' writings

⁵⁹ *Ibid.*, 61-ff.

or kings' practices do not come under this category. *Shari'ah*, as an absolute source of law, functions as the national state law. This means that if one lives in one of these sixty-five countries, *Shari'ah* takes precedence in minority cases, while if living outside of them, then the national state laws of these countries take precedence, and in fact there is no place for *Shari'ah* there. This is similar to the conclusion reached by jurists of *fiqh al-aqalliyyāt*, each through his own analysis, either as *siyāsah shar'iyah* or due to it being a non-Muslim territory. However, in 'Aṭīyyah's case, there are two points of note. First is his attempt to explore the *Shari'ah* principles in dealing with minorities living in Muslim territories, and how they are similar if not better than the international conventions on minority rights. Second is that Muslims, before seeking their own rights as minorities, should also develop an internal minority policy to give similar rights to minorities living on their lands and honor the minority conventions they agreed to.⁶⁰ Here is another difference in the discourse of 'Aṭīyyah in comparison with other jurists. On many occasions, minority jurists address Muslim minority communities and encourage them not only to seek their rights but also to positively engage in the welfare process of their societies. They warn Muslims not to be parasites who grow on others' food. 'Aṭīyyah's discourse is different. It addresses Muslim intellectuals, not the masses, who they need to tackle the minority problem with neutrality.

Shari'ah does not use minority versus majority as legal concepts. Therefore, no specific reference can be made to 'minority' legal determinations. However, in terms of principles, *Shari'ah* speaks about people as human beings living on earth. Reading the

⁶⁰ *Ibid.*, 68-9.

Qur'anic texts and reports of the Prophet, 'Aṭīyyah argues that the principles of *Shari'ah* in dealing with minorities stem from its position towards 'the other'. *Shari'ah* provides ethical and intellectual values as well as practical principles for interacting with minority groups. Recognizing these values and principles, such as equality, freedom, and protection, should result in a number of steps. Intellectually, the discourse of loyalty to non-Muslims should be understood in its historical context. Justice and kindness are the basis of interaction. Minorities have the right to worship, build their places of worship, and invite others to their religion. They have the right to move freely, to take part in the political process, to be appointed to government offices, and to decide their future. Their integration into their society should be selective, as they do everything that is required from them as citizens while still maintaining their minority tradition and culture. At the end of his study, 'Aṭīyyah provides a platform towards a new *fiqh* for minorities. This platform has no single reference to the Qur'an or *Sunnah* and is written in bullet format as if it is an agenda for work. It provides recommendations for minorities that are far removed from the traditional Muslim position. One of them is to establish a self-rule state for Kurds in Iraq and for Christians in South Sudan, as this is the choice of minorities therein. Non-Muslim minorities have the right to practice missionary activities in Muslim lands as long as they do not disrespect other religions or cause disorder in the land.

As part of his project to renew the objectives of *Shari'ah* and the principles of Islamic sciences, theology, and jurisprudence,⁶¹ 'Aṭīyyah's study challenges *fiqh*

⁶¹ Jamāl al-Dīn 'Aṭīyyah, *Naḥwa Taf'īl Maqāṣid al-Shari'ah*, Al-Manhajīyyah al-Islāmiyyah 17 (Washington:IIIT; Damascus, Dār al-Fikr, 2003); Jamāl al-Dīn 'Aṭīyyah, *Al-Tanzīr al-Fiqhī* (Saudi Arabic: Maṭba'ah al-Madinah, 1989).

manuals, especially chapters on *jihad* and politics, to acknowledge international institutions, laws, and mechanisms as viable complementary alternatives and points of references in their world-view towards 'the other'. Although Muslim scholars, such as Abū Zahrah, Mawdūdī, 'Abdel-Karīm Zaydān, al-Qaraḏāwī, Fathī Othmān, and Muḥammad Salīm al-'Awwā, have contributed to this discourse, 'Aṭīyyah calls upon Muslims to carry out their responsibility towards humanity through carrying out a project for *fiqh al-aqalliyāt* that develops an international minority constitution based on the common ground that religions and cultures share in realms of creeds, values, and ethics.

As modern and liberal as such a discourse is, 'Aṭīyyah actually belongs to a trend of renewal in the traditional Sunni school. As an editor in chief for the Contemporary Muslim Journal, he utilized the journal to be a platform of *tajdīd*. His *tajdīd* project covers various aspects: the renewal of *fiqh*, the renewal of *uṣūl al-fiqh*, the renewal of *al-qawā'id al-fiqhiyyah* and the renewal of *maqāṣid al-Shari'ah*.

Ṣalāḥ al-Ṣāwī: *Fiqh al-Aqalliyāt* versus *Fiqh al-Mughtaribīn*

In a time when *fiqh al-aqalliyāt* discourse is growing and its language utilized in discussions on Muslims in the West,⁶² there grows another trend that attempts to stay within the traditional Islamic legal discourse and language. The best representative of this discourse is Dr. Ṣalāḥ al-Ṣāwī and his colleagues at the Assembly of Muslim Jurists of America (AMJA). Established in 2002, AMJA has been active in the United States

⁶² One can see this for example in the various conventions held by Islamic activist groups. Although the convention theme is always wide open and focuses on process of interaction of Muslims in their non-Muslim majoritarian societies, there is always a session on *fiqh al-aqalliyāt*.

through an energetic team of Muslim *imams* and scholars. Although ordinary American Muslims may not have heard of it, AMJA reaches them through their local *imams* who attend its *imam* training workshops and annual conferences. According to their website, their latest *imam* workshop in November 2010 was attended by 200 *imams*,⁶³ a number that reflects its growth when compared with their first workshop in April 2004, which was attended by approximately 30 *imams*.⁶⁴ In these workshops, *imams* discuss issues that are relevant to their minority communities, such as marriage to non-Muslims, marriage to obtain immigration papers, converts staying with their non-Muslim husbands, home mortgage, interfaith dialogue, and political participation.⁶⁵ These discussions shape the *imams*' positions once they return to their local communities. Moreover, AMJA's website has a *fatwa* bank that contains over 3,000 *fatwas* that cover almost every aspect of minority lives.

It is a common phenomenon in Islamic academic institutions⁶⁶ established in non-Muslim majority countries to evolve around a recognized scholar who becomes, at least in the beginning, the focal point for activism and then later on the source of guidance and consultation, especially in forming the religious orientation of the center. In AMJA, Ṣalāḥ

⁶³ http://www.amjaonline.com/en_d_details.php?id=335 (accessed 8/11/2011)

⁶⁴ Personal communication

⁶⁵ Visit www.amjaonline.com for a list of these workshops. Also available through the websites are a number of the research papers as well as audio files for the discussions taking place in these workshops.

⁶⁶ Academic institutions are different from other Islamic institutions created in the West. Islamic institutions may be established by an international body, like the Muslim World League, or by an ethnic local linguistic community or be a *Sheikh*-based, i.e. centered around a reputable charismatic leader. Academic institutions tend to be part of the third category, i.e. a charismatic figure who is able to collect sources and recruit individuals.

al-Şāwī, a graduate of al-Azhar,⁶⁷ plays this role. He is one of the founders and main contributors to AMJA's activities. His *fatwas* and publications represent the core of AMJA's scholarly productions. For example, AMJA's website has 2,759 *fatwas* issued by al-Şāwī, while their religious department, which comes second in terms of the number of *fatwas* available on the website, issued only 212 *fatwas*.⁶⁸ Moreover, al-Şāwī's *fatwas* were published by AMJA in a four-volume publication. As a representative of this trend, the following paragraphs will comment on al-Şāwī's position towards *fiqh al-aqalliyyāt*.

Al-Şāwī is reluctant to accept *fiqh al-aqalliyyāt* as advocated by the advocates of this *fiqh* as a new methodology that responds to the current Muslim minority experience. For him, the term can only be used as a linguistic tool to gather issues of relevance to Muslim minorities in one place. The goal of this *fiqh* is to guide them to legal *shar'i* opinions. He distinguishes between two usages of *fiqh al-aqalliyyāt*: "One refers to exerting *ijtihad*, as dictated by legal rules established in *ijtihad-fiqh* manuals, to deduce legal rulings for new – unprecedented - incidents resulting from living as minorities, along with operating the *ijtihad* principles of exceptional cases, such as rules of public interests, end-result of actions, necessities, and the like, taking into consideration the

⁶⁷ Dr. Şalah al-Şāwī pursued his education in al-Azhar, Faculty of *Shari'ah* and Law. He got his BA in 1976 and his Ph.D. in 1985. He also worked as instructor in the Faculty of *Shari'ah* for a while before he moved to work in the Umm al-Qura University, Saudi Arabia, from 1981 to 1986. After that, he joined the World Muslim League as the director of Scientific Miracles office, 1985-1987, and then as a director of the Shari'ah Research Center at Islam Abad, 1987-1992. As early as the 1990s, Dr. al-Şāwī's activities focused on American Muslims. He worked as a visiting professor in the Arabic-Islamic Institute in Washington DC, a vice-president of the Open American University, the President of International University of Latin America, and currently the Secretary General of AMJA. For a complete C.V. See, Şalāh al-Şāwī, *Mawsū'at Fatawa al-Mughtaribin* (Cairo: Al-Fārūq al-Ĥadīthah li-al-Ṭibā'ah wa-al-Nashr, 2009), 14-18.

⁶⁸ This estimation is made based on the *fatwas* available on AMJA website in November 2010.

peculiarities of these minorities, in terms of alienation, legal obligations, and their duty to convey the message of Islam to the people of those communities. If this is the meaning of *fiqh al-aqalliyyāt*, then this is the truth that deserves support... But if it means to trace the mistakes (of earlier scholars) and look for odd *fatwas*, and compromising between jurists' positions, claiming that this is a form of renewal or a tool to achieve a [legal] interest, this is a dangerous road that leads in the end to cutting off these minorities from the roots of their *ummah*... One should warn against this *fiqh*, clarify the evil of its outcome, and provide advice for those who advocate it.”⁶⁹

Given this argument, it is evident that al-Şāwī does not subscribe to the discourse of *fiqh al-aqalliyyāt* per se. He prefers to use the classical term ‘*nawāzil*’,⁷⁰ a term that relates minority questions to 1) exceptionalism and necessity, and 2) an urge to the *ummah* of Muslims to help. He called his *fatwa* collection *Mawsū'at al-Mughtaribīn*, i.e., the encyclopedia of expatriates, which implicitly indicates a sense of temporal existence and the need to return to *dār al-Islām*, as residing in non-Muslim territories is, in principal, forbidden. This is a reiteration of the common traditional classical Islamic view. Although this statement has a sense of essentialization, as the history of Muslims in non-Muslim territories is complex and ambivalent and has to be approached with caution, it is used here as a way of following the same argument presented by Dr Salah al-Şāwī. Although al-Şāwī refers to the conditions of residence in non-Muslim countries as

⁶⁹ http://www.amjaonline.com/ar_d_details.php?id=143 (accessed 8/11/2011); Şalāh Al-Şāwī, “*Fiqh al-aqalliyyāt al-Muslimah bayna al-Tafallut wa-al-Indibāt*”, in AMJA 1st *imam* workshop *Nawāzil al-Ushrah al-Muslimah fī al-Mujtama' al-Gharbī*, audio file, part 1. (personal possession)

⁷⁰ Şalah al-Şāwī, *Nawāzil Fiqhiyyah 'alā al-Saḥah al-Amrikiyyah*, n.d.

explained by various jurists, he issued *fatwas* arguing that it is not preferable for a Muslim to travel to non-Muslim lands for work, if he has already a decent job in his Muslim country, arguing that living in non-Muslim territories is principally forbidden and allowed only under exceptional cases.

In principle, al-Ṣāwī follows the legacy of the juristic tradition and believes that this tradition represents the base that one cannot easily bypass on a claim of *tajdīd* or *fiqh al-aqalliyāt*. On many occasions, he ends his *fatwas* with, “I’m committed to following, in principle, the way of the *salaf* (early jurists). I submit to what they submitted to and believe in what they believed in. If I make a mistake in applying one of their principles or erroneously understood it, I ask Allah for His forgiveness and I return from it in my life and after my death. The truth is what they said. Their opinion is more accurate, wiser, and safer...”⁷¹

Therefore, for him, there is no space to argue for a new categorization of land other than that of Islam, of Disbelief, and of Contract, or for the legality of taking out a home mortgage, or for a Muslim convert to stay with her non-Muslim husband (all of which were argued for by the advocates of *fiqh al-aqalliyāt*).

In spite of his clear traditional orientation, al-Ṣāwī’s position is different from the puritan literalist position studied in Chapter One and the traditionalists studied in Chapter Two. He argues that Muslim minority questions have peculiarities that do not exist in other contexts. These questions should be approached cautiously and on an individual

⁷¹ Al-Ṣāwī, *Mawsū‘ah*, 22.

basis. Each and every question should be dealt with within the needs of the *fatwa*-seeker, taking into consideration the inability or the weakness of the minority to follow the letter of the law. The *fatwa* should also take into account the obligation of the Muslim to abide by the laws of the country in which they live. The *fatwa* should also be *da'wah*-oriented, i.e., to always remind the questioner about the purpose of his residence in this land and the need to keep vigilant about his Islamic obligations, as they constitute the basis of the legality of his residence. These obligations include the ability to practice one's religion, to safeguard one's family, and to make *da'wah* for Islam.⁷² A distinctive feature of Dr. Al-Ṣāwī's approach is his desire to avoid accusing Muslims of disbelief, even if he is clearly against their practices and considers them *bid'ah* (innovation). He advises his audience to focus on positive *da'wah* rather than creating division within the community.

Al-Ṣāwī's *fatwas* can be divided into two groups in terms of methodology. Group one includes cases that already existed and were discussed by early jurists. In these cases, he presents the arguments given by early jurists, concluding that the position of the *salaf* is the conclusive one that has to be followed. Examples of these are questions of usurious transactions or family relations. Group two covers the *nawāzil* questions. In these cases, al-Ṣāwī dissects the question into smaller, finer points and then deals with each one on its own merits. On the question of naturalization, for example, he distinguishes two levels: citizenship in a non-Muslim land for its own sake as an absolute and abstract concept in comparison with acquiring citizenship in the current condition for a specific purpose. The former, i.e., absolute citizenship, is ruled as strictly forbidden, but for the latter, the

⁷² Al-Ṣāwī, "*Fiqh al-Aqalliyāt*".

intention of the citizenship seeker is the definitive factor of its legality or illegality. Al-Şāwī also makes the distinction between those who acquire citizenship on the basis of birth or origin and those who apply for it. Additionally, he made the distinction between those who apply for permanent residency and those who apply for citizenship.⁷³ These positions will be studied in the following chapter, but what is significant here is the approach of deconstruction of the question and the reconstruction of the answer. This same approach can be seen in questions of political participation and loyalty.

Interestingly, and against the orientation of the *fiqh al-aqalliyāt* discourse that tries to minimize the legal connection between Eastern Muslims and Western Muslims and focus more on the role of the Muslim minority in the welfare of their non-Muslim communities, al-Şāwī connects both worlds, both in legal discourse and in practical advice. In his book *Nawāzil Fiqhiyyah fī al-Sāḥah al-Amrīkiyyah*, he answers questions by drawing parallels with the Muslim world. *Fatwas* on engaging in political activism, coalitions with secular parties, or paying taxes first discuss the situation in the Muslim world, and then move on to discuss the situation in the minority context. In so doing, two things are proven: 1) the legal rulings, whether they be a minority or a majority, are the same, and 2) a connection is established between the two worlds geographically, politically, and emotionally. In terms of practical solutions, al-Şāwī recommends that both groups should support each other's causes. Wealthy Muslims in the Muslim world should help Muslim minorities in solving, for example, the problem of mortgage through

⁷³ Al-Şāwī, *Nawāzil Fiqhiyyah*, 13-ff.

establishing Islamic business ventures with them⁷⁴ and Muslim minorities should support the *ummah*'s political causes and must not participate in war against it.⁷⁵

Although al-Şāwī's discourse departs from *fiqh al-aqalliyyāt*, it represents a form of the internal legal debate among Muslim minority jurists that interacts and enriches the overall legal debate.⁷⁶

Conclusion

There is a consensus among minority jurists that the basis of *fiqh al-aqalliyyāt* is the existence of dynamic interaction between text, context, and the intellect. The main puzzle, however, is the range of each of these three elements and how they may be put together.

The 'text' is an ambivalent construct that is used in the discourse instead of the "wahy", i.e. revelation. To use "text", gives the jurist a larger space of negotiations with the traditions. It may refer to the literal text of the Qur'an and to a certain degree – for some jurists – the prophetic *hadiths*. It may also incorporate the cumulative legal traditions of interpretive communities, i.e., schools of jurisprudence and theology. At this conjecture, the question posed is how one views the relationship between the 'text' and the legal tradition. Do they complete each other, i.e., is the 'text' manifested through the

⁷⁴ *Ibid.*, 9.

⁷⁵ *Ibid.*, 77.

⁷⁶ There are other opinions against the discourse of *fiqh al-aqalliyyāt* but they do not provide alternative discourses (such as the article of the famous Syrian scholar al-Būṭī). The only exception for this is the *Ḥizb al-Taḥrīr* booklet but it was not included here because it is based on a purely political stance rather than legal approach. For al-Būṭī see: <http://www.fikr.com/bouti/article.php?PHPSESSID=xcqyuxuu&id=149> (accessed 8/11/2011)

aḥkām, i.e., legal rulings? If so, the *aḥkām* becomes textual. They derive their authority from the text to the extent that sometimes they embody the ‘text’, which becomes secondary to them. This understanding is manifested in various degrees in the puritan and in some traditional figures discussed in this chapter (Ibn Bayyah and al-Ṣāwī). They argue that one should stay within the *aḥkām* of the Islamic legal tradition that were produced by early legal minds and endorsed by the consensus of the majority of jurists. (Here, Ibn Bayyah differs from al-Ṣāwī since he may accept opinions of individual jurists that may contradict the opinions of the majority.)

On the other hand, a second trend objects to this orientation of understanding the relationship between the ‘text’ and the tradition. They transform the text into principles, rather than *aḥkām*, and then utilize these principles, sometimes as frameworks (Jamāl ‘Atiyyah) or as points of departure (Ṣalāḥ Sulṭān). In this case, the legal tradition becomes functional and is seen as a component independent from the text. Its role is to provide precedents and models of application of the text, which are not necessarily binding.

The text–tradition debate is not a new phenomenon in Islamic legal history. It can be seen as early as the first Islamic century in the debate between *ahl al-hadith* and *ahl al-ra’y*. However, it has been almost forgotten in modern times due to Muslim intellectual drawback, colonial supremacy, and the rise of puritan ideology. Since the beginning of the twentieth century, there have been attempts to reintroduce it through reform projects, but without great success. Discussion on *fiqh al-aqalliyāt* is an attempt to reignite this discussion, if not thriving on it. I would argue that the revival of the text-

tradition debate and its continuity will determine the future and the productivity of this *fiqh*.

The 'context' is another important aspect of the debate of *fiqh al-aqalliyāt*. The outcome of this *fiqh* lies in the way the 'context' is constructed, as the context is a moment in a historical social cycle that produces its own paradigms and peculiarities. The context of Islam versus the West has been essentialized (by both Muslims and non-Muslims) to that of a battlefield where the language of war prevails, e.g. the division of the world into the abode of war and the abode of peace. In modern times, the language of war – which has become an unacceptable way of labeling people – has changed to that of incompatibility, backwardness, and promiscuity. In both cases, the end result is the same: enmity and hatred.

For minority jurists, this 'context' puzzle needs to be mitigated and resolved in a way that helps build a positive *fiqh* and at the same time empowers Muslims in their new setting. In order to achieve that goal, they needed to deconstruct the image of the West as an enemy and a rival to Islam. All minority jurists who have been studied in this research, with the exception of the puritans, have succeeded in taking this step. They argue that the present day West is categorically different from the historical one. Its liberal principles and modern nation states not only guarantee the rights of Muslims as equal citizens but also resolve the traditional Islamic legal complications of staying in a non-Muslim polity. Muslims now, through the right of freedom of worship, can 'manifest their religion'. In addition to that, international treaties and conventions guarantee a minority their rights of safety and freedom. Moreover, many Western Muslims, especially converts or

second/third generation Muslims, are attached to the new land as their own and have no other place to go. Given this new setting, some jurists rejected the ‘enemy’ perception and replaced it with a ‘neutral’ ‘non-Muslim’ land where Muslims are able to carry out their personal obligations to their religion. Other jurists even attempt to reconstruct a new form of interaction. They argue that since the West accepts Muslims as citizens who have complete rights and enjoy the welfare of the society in the same way as any other member, then the old historical image of the West as an enemy is irrelevant and its *aḥkām* are invalid. Rather, Muslims should appreciate their context and are obligated to positively contribute to it through civic engagement, voluntarism, political participation, and social solidarity. This transforms the West into part of the ‘*ummah*’, since exactly these same obligations are due for the Muslim *ummah*.

If the text is open for neo-interpretation and the context changes, then a process of negotiation through the intellect is necessitated: here enter the various legal techniques used by different minority jurists to allow the intellect a role in formulating minority *fatwas*. Some jurists (e.g. al-Najjār) use the *qawā'id al-kulliyah*, i.e., jurisprudential comprehensive rules. Others (e.g. ‘Aṭiyyah) use *maqāṣid al-Shari'ah*, i.e., objectives of *Shari'ah*. A third group (e.g. al-Ḥasanī) uses an epistemological construct, i.e., the societal awareness of the jurist.

Having established itself as a discourse, *fiqh al-aqalliyāt* needed to create a space for its jurisdiction as a prior authoritative collective preference of Muslim minorities, rather than a personal choice. In order to do that, *fiqh al-aqalliyāt* had to address three basic issues: the question of residence (temporary or permanent); the nature

of residence (alien or citizen); and the reason for residence (*da'wah* or civic). In other words, Muslim communities needed to define their relationship to their *ummah* (*hijrah*), to the political system of their country of residence (citizenship), and to their 'host' societies (*da'wah*). These issues will be the focus of the next chapter.

Chapter VI

Fiqh al-Aqalliyāt:

A Debate on World Division, Citizenship, and Loyalty

The discourse of *fiqh al-aqalliyāt* is not merely a theoretical debate among jurists on mechanisms, methodologies or preferences. It started as a response to practical empirical questions of Muslims of how to respond to challenges facing them in their non-Muslim environment. Questions covered almost every aspect of Muslims' mundane life including food, dress, education, rituals and above all living in or immigrating to non-Muslim countries. Jurists of *fiqh al-aqalliyāt* worked their way through these particular questions to arrive at a theoretical conceptualization of the new *fiqh*. As with many legal systems, the process starts with technical determinations before forming its theoretical framework. In the case of *fiqh al-aqalliyāt*, although it addresses multiple layers of questions on worship, society, economy, etc., the discourse emanates from one primary issue: the nature of the relationship between Muslims and their non-Muslim society. This issue represents the core of the discourse and upon which various positions were taken, whether for or against *fiqh al-aqalliyāt*.

The relationship between Muslim minority communities and their "host" countries starts with the question of residency. Are Muslims allowed to reside in a non-Muslim country? This question may sound irrelevant because it defies the reality of things. Muslims were and still are residing in non-Muslim societies. Nevertheless, from a legal perspective, any discussion on *fiqh al-aqalliyāt* has to start there for various

reasons. First the legal tradition of Muslim-non-Muslim interaction begins with identifying the nature of the non-Muslim's lands. This nature of land, i.e. *dār ḥarb*, *dār Islām*, *dār 'ahd*, etc., is determined by various elements, including the islamicity of the land, the safety of residence, the limit of religious freedom, and the application of jurisdiction. After assessing these elements, the jurists would decide over two things: first the question of residency (are Muslim allowed to reside in a non-Muslim polity?); and second the ethical obligations one has towards its non-Muslim society. Another reason for the significance of question of residence in non-Muslim lands is its close connection with issues of citizenship and loyalty. A jurist would not be able to promote a concept of citizenship if legally one should not live in or be loyal to his country of citizenship? Therefore, in order for *fiqh al-aqalliyyāt* to prove its validity and strength, it has to address the question of residency.

This chapter examines how *fiqh al-aqalliyyāt* transformed the reluctance and the non-desirability of jurists for Muslims to reside in a non-Muslim territory into not only an appreciation of this residence but also a call for a full engagement with its political, social and economic apparatus. In order to demonstrate this process of transformation, the chapter examines briefly how the *fiqh al-hijrah*, i.e. a doctrine of emigration, evolved in Islamic legal discourse from a question of individuals to a concern of a community. This doctrine played a significant role in drawing the boundaries of the presence of Muslims in non-Muslim polities and the role they can play. It determined their space, conduct, and moral obligations towards their religion, their families, and the "other" non-Muslim. This chapter then raises the question of how this doctrine was compromised in the modern

context and led at the end to a doctrine of civic engagement through the establishment of the legality of assuming citizenship of a non-Muslim state and paying loyalty to its system and fellow citizens.

Fiqh al-Hijrah

Fiqh al-hijrah, a doctrine of emigration, is a relatively new question that was researched in the second half of the twentieth century as an independent question of research after the unprecedented waves of Muslim emigration to non-Muslim lands.¹ However new, *fiqh al-hijrah* is informed by a legal tradition that was developed over centuries through a wide array of sources extending from *tafsīr* books, and *ḥadīth* compilations to books of biographies and *jihad* to *fiqh* manuals and *fatwa* manuscripts. It should be noted here that although a variety of sources referred to the question of *hijrah*, these sources do not provide detailed analysis or formulate clear positions on the issue. Rather they suffice themselves with brief comments when the occasion arises. If the question occurs in their writings, it appears in unexpected contexts. For example, the Shāfi‘ī’s discussed the difference between *dār al-Islām* and *dār al-ḥarb* in the chapter on *al-laqīṭ*, i.e. the babies left behind by their families, while it appeared in the chapter on apostasy in the Ḥanbalī’s jurisprudential manuals. Scrutinizing legal sources, however, reveals that the question of *hijrah* went through at least three stages. Each stage has a

¹ Muhammad Khalid Masud, “The Obligation to Migrate: the Doctrine of *Hijrah* in Islamic Law,” in *Muslim Travellers: Pilgrimage, Migration and the Religious Imagination*, ed. D. F. Eickelman and J. Piscatori, (California: University of California Press, 1990), 29-49.

specific version of the question that responds to the socio-historical context of that specific stage.²

As early as the first and the second centuries of Islam, Muslims expanded their territories far beyond the boundaries of Arabia to regions whose population believed in religions other than Islam. Given this rapid expansion, jurists of that era were concerned with the elaboration of rulings pertaining to the conditions of non-Muslims under Muslim's rule. The corresponding question of Muslims under non-Muslim rule was not completely developed at the time. The juristic discussion focused on the situation in which a non-Muslim residing in the non-Muslim territory would convert to Islam or when a Muslim merchant would travel to a non-Muslim territory for trade. In other words, the questions were: was it obligatory upon the convert to immigrate to the abode of Islam? Is a Muslim allowed to travel to the land of non-Muslims for trade or any other legitimate purpose? In response to the question of converts, the Ḥanafī jurist Saḥnūn (d. 804), for example, argues that converts may not migrate to the land of Islam after conversion because the Prophet allowed the Bedouins who converted to Islam to stay in their lands and not to migrate to Medina. Shāfi'ī (d. 819-20) also argues that converts

² It should be noted here that this approach to the development of the question of *hijrah* has been examined by a number of established scholars. Khaled Abou El Fadl undertook the formidable task of presenting a masterly comparative survey of the juristic discourse on the legal and ethical positions of Muslim minorities living in non-Muslim lands. See: Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Journal of Islamic Law and Society* 1:2, (1994): 141-186. In his study on the jurisprudence of an immigrant Muslim family, Dr. Muḥammad al-Kaddī Al-'Amrānī, of Morocco, presented a thematic overview of the juristic discourse on *hijrah* focusing on the qualitative difference between the historical legal debate and contemporary discourse. See: Muḥammad Al-Kaddī Al-'Amrānī, *Fiqh al-Uṣrah al-Muslimah fī al-Mahājir* (Lebanon: Dār al-Kutub al-'ilmiyyah, 2001), 11-127. Khalid Masud reviewed textual evidence and how the doctrine of emigration was created out of theological and political conflicts. See Khalid Masud, "The Obligation to Migrate."

may stay in their non-Muslim territory if there is no fear of being seduced away from their faith. In the case of trade, Mālik (d. 796) strongly disapproved of Muslims traveling to the land of non-believers for trade because they might be subject to the laws of non-believers. The Ḥanafis, on the other hand, did not oppose trading with non-Muslims, claiming that it may be a necessity for the welfare of Muslims.³ Careful reading of sources indicates that early jurists took various positions and manifested a degree of ambivalence towards the problem of Muslims' emigration and residence in non-Muslim territories.⁴ Their responses however reflected a dynamic process by which doctrinal sources, legal precedents, juristic methodologies and historical reality interacted to produce various results.⁵ They utilized different operative causes to conclude their rulings. These operative causes revolved around the supremacy of Islamic jurisdiction, the ability to practice one's religion, the fear of being seduced away from religion, and the availability of gaining knowledge of religion.

To get a sense of the range of the juristic variations, one may refer to the following jurists: the Andalusian Ṣāḥībi jurist Ibn Ḥazm (d. 1065), equivocally disapproved Muslims entering or residing in non-Muslim territories, even for the purpose

³ See Abou El Fadl for a detailed review of various positions of legal schools. Abou El Fadl, "Islamic Law and Muslim Minorities: the Juristic Discourse."

⁴ *Ibid.*, 148. To give an example of the treatment of early jurists to the issue of residence of Muslims in non-Muslim territories, Abou El Fadl referred to the *sunni* jurist Abū Maṣṣūr al-Tamīmī al-Baḡhdādī (d. 1072 CE) who counts in *Kitāb uṣṣal al-Dīn* (Beirut: Dār al-Hilāl, 1980, 154-55) the opinions that a land that espouses heretical stands against Muslims is *dār kufr*.

⁵⁵ Abou El Fadl, "Islamic Law and Muslim Minorities: the Juristic Discourse," 143.

of trade if such residence would entail being subject to non-Muslim law.⁶ The Shāfi'ī jurist al-Mawāridī (d. 1058) holds the position that if a Muslim is able to manifest his religion in non-Muslim land, then his residence is *dār Islām* and his residence is better than his migration to *dār al-Islām*. The Mālikī jurist al-Mazārī (d. 1141) argues that a Muslim should not reside in non-Muslim land under the best circumstances. But his residence does not affect his credibility as a Muslim and can be justified if his stay is for a necessity or for an erroneous *ijtihād*.

While Muslim jurists were trying to reconcile between various positions and conditions, they categorized the world into two entities: *dār al-Islām* (abode of Islam), *dār al-kufr/al-ḥarb* (abode of non-belief/war) or into three if *dār al-'ahd* (abode of contract/treaty) is added. The intriguing question here is on what basis they made this division. One group sets the division on the ability of the Muslim to practice his religion. Another group, led by *imam* Abū Ḥanīfah,⁷ based the division on the safety of Muslims. This technical difference has various repercussions whether in the formative age of Islam or in our present time. It produces two theories that have dominated the discourse until our present time. The first theory divides the world into two (*dār al-Islām* and *dār al-ḥarb*) according to whether there is peace with, or aggression against, Muslims. This does not allow for a third division because, according to this view if there is a peace treaty with a certain territory, this territory is designated as *dār Islām* even if ruled and

⁶ *Ibid.*, 149

⁷ *Imam* Abū Ḥanīfah Nu'mān ibn Thābit (699-767 CE) is the founder of the oldest *sunni* Ḥanafī School of *fiqh*.

inhabited by non-Muslims. The main criterion here is not the “Islamicity” of the land but “the security” of Muslims. The second theory held by the Shāfi‘ī⁸ jurists divides the world into Muslim/peace and non-Muslim/war. Thus they proposed a third division, *dār al-‘ahd*, in case there is a treaty signed between *dār al-Islām* and *dār al-kufr*.⁹

By the approach of the 6/13th century non-Muslim competing forces started to take over certain Muslim territories.¹⁰ This new context introduced a compelling second version of the question of emigration: can a Muslim, whose land was dominated and controlled by non-Muslim forces, stay in his land although he may be unable to practice his religion and may suffer injustices and persecution? The jurists acknowledged that there is no direct textual evidence that responds to this question. The Moroccan jurist Aḥmad ibn Yaḥyā al-Wansharīsī¹¹ argued, “Our earlier guided *imams* dedicated their writings to the question of those who converted to Islam and did not emigrate. As for [our

⁸ Shāfi‘ī jurists refer to the followers of *Imam* al-Shāfi‘ī (Abū ‘Abdullah Muḥammad ibn Idrīs, 767-820 CE), a founder of the *Sunni* Shāfi‘ī school of *fiqh*.

⁹ Ahmed Mohsen Al-Dawoody, “War in Islamic Law: Justifications and Regulations,” PhD. Dissertation, Department of Theology and Religion, the University of Birmingham (2009), 167; Yāsir Luṭfī al-‘Aliyy, *Ard Allah: Al-Taqsīm al-Islāmī li-al-Ma‘mūrah, Dirāsah Fiqhiyyah Muqāranah* (Beirut: Resalah Publishers, 2004), 43.

¹⁰ In the 5th/11th century, the Normans returned Sicily for Christendom, and shortly afterwards, the Crusaders established four Christian principalities in the Levant which was a Muslim land since the 1st/7th century. The Iberian Peninsula was also completely rendered into the hands of the Christian power by the end of the 9th/15th century. In the Eastern part of the Muslim Empire there was the Mongols’ army sweeping and usurping the Muslim part in Central Asia, Iran and Iraq.

¹¹ Aḥmad ibn Yaḥyā ibn Muḥammad al-Wansharīsī (1430- 1510 CE) is the *Imam* of the Mālikī school in North Africa in his time. He is the author of the well-known *fatwas* compendium *Al-Mi‘yār al-Mu‘rib wa-al-Jāmi‘ al-Mughrib fi Fatāwā Afriqya wa-al-Maghrib*.

present situation of] befriending the polytheists¹², it did not exist at the beginning of Islam and its sublime era and it only took place after hundreds of years and after the demise of the *mujtahid imams* of the various regions [of the Muslim world]. Therefore there is no doubt that none of them discussed the legal rulings [of our present condition].”¹³ What the jurists did was to reinterpret the texts used to answer the previous questions on converts and merchants and apply it to the new context,¹⁴ forming the core of what came to be known in the modern literature as a doctrine of *hijrah*.¹⁵

The real question that Muslim jurists attempted to give a systematized answer to was whether a Muslim whose land was occupied by a Christian army should stay or whether he must migrate to a land ruled by the Muslim authority. In other words, the question was not merely about emigration but rather about the Muslim political and religious authority and hegemony over their territories. The question is political more than doctrinal, even if it was formulated as the latter. This is a crucial point because it

¹² In Arabic, it is “*muwālāh shirkīyyah*”. Although the question is about residence, al-Wansharīsī argues that such a residency will lead eventually to *muwālāh*. He went further arguing that the mere content to stay under their rule is a forbidden *muwālāh*. Al-‘Amrānī, *Fiqh al-Uṣrah*, 95.

¹³ This text appeared first in Abū Al-‘Abbās Aḥmad ibn Yaḥyā ibn Muḥammad al-Tilmisānī al-Wansharīsī, *Asma al-Matājir fī Bayān man Ghalaba ‘alā Baladihi al-Naṣārā wa-lam Yuhājir wa-mā Yatratṭab ‘Alayhi min al-Uqūbāt wa-al-Zawājir*, ed. M. Ḥusayn. (Egypt: Maktabat al-Thaqāfah al-Dīniyyah, 1986). Then later on it was used verbatim by the judge Abū ‘Āmir ibn Rabī’ (d. 1320 CE) in his fatwa for some students about residing in non-Muslim lands. I would like to express my thanks to Prof. Van Koningsveld, of Leiden University, and my colleague Maḥmūd al-Ṣayfī for giving me a copy of the fatwa manuscript.

¹⁴ The jurists acknowledged this. Al-Wansharīsī argued that the new form of the question on *hijrah* (for those whose lands were taken over by non-Muslims) does not change the rule. The difference in the subject of the question is superficial, and therefore the ruling remain unchanged, i.e. the obligation to emigrate. See: Al-Wansharīsī, *Asmā*.

¹⁵ For further reading on the establishment of this dogma, see Masud, “The Obligation to Migrate”.

explains the various positions taken by the community of jurists in accordance with the geo-political situations they encountered and the scenario they addressed.

The Mālikī school¹⁶ holds an uncompromising position that a Muslim, even if he is able to practice his religion freely, should never reside in a non-Muslim territory because he will be subject to non-Muslim laws.¹⁷ Al-Wansharīsī goes further than that, arguing that whoever believed in the permissibility of such emigration is an apostate.¹⁸ Although less radical Mālikī positions were heard in various places (e.g. the Egyptian Mālikī jurist al-ʿAwadī (d. 1775) sees the resident as a sinner and not as an apostate,¹⁹) the dominance of the hardliner position is conceivable since it emanates from the historical political experience of Muslims' decline in al-Andalus and Sicily, where the

¹⁶ The Mālikī school is one of the four *sunni* schools of *fiqh*. It is named after the famous jurist Mālik ibn Anas (711-795 CE). The Mālikī school currently dominates in North and West Africa, and some Gulf countries. In the past, it was the dominant law school in Islamic Spain and Sicily.

¹⁷ Affirming the consensus of the Mālikīs on the issue, Ibn Rushd, the grandfather (Abu Al-Walid Muhammad (d. 1126), chief judge of Córdoba under the Almoravids), argues that “the obligation to migrate was never negated. It is a permanent obligation until the day of Resurrection according to the consensus of jurists upon those who converted to Islam in the abode of Kufr.” Abū al-Walīd Muḥammad ibn Aḥmad ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, ed. Saʿid Aḥmad Aʿrāb, vol. 2 (Beirut: Dār al-Gharb al-Islāmi, 1988), 151.

¹⁸ Abū Yahyā Aḥmad Al-Wansharīsī. *Kitāb al-Miʿyār al-Muʿrib wa al-Jāmiʿ al-Mughrib ʿan fatāwā Ifriyqiyyā wa al-Maghrib*, vol. 2, (Rabat: Ministry of Culture and Religious Affairs, 1981-83), 124. For an analysis of al-Wansharīsī's *fatāwā* see: Muʿnis Husayn. “Asmā al-Matājir fī Bayān man Ghalaba ʿalā Baladīhī al-Nasārā wa lam Yuhājir,” *Revista Del Instituto de Estudios Islamicos en Madrid* 7, 1-2, (1975):129-ff; Van Koningsveld and Gerard Wiegers, “The Islamic Status of Mudajars,” *AQ* (xvii), (1996), 52-55.

¹⁹ Abou El Fadl, “Islamic Law and Muslim Minorities, the Juristic Discourse,” 156-57. Other Mālikī jurists can be also cited in this context. See for example the paper of Van Koningsveld and Gerard Wiegers that reviewed four *fatwās* issued by four Egyptian judges, including a Mālikī one. See: Van Koningsveld, and Gerard Wiegers, “Islam in Spain during the Early Sixteenth Century: The View of the Four Chief Judges in Cairo,” in *Poetry, Politics, and Polemics: Cultural Transfer between the Iberian Peninsula and North Africa*, edited by O. Zwarjes, G. van Gelder and G. Moor (Leiden, 1997), 133-52; Kathryn Miller, “Muslim Minorities and the Obligation to Emigrate to Islamic Territory: Two *Fatwās* from Fifteenth Century Granada,” *Islamic Law and Society* 7:2 (2000): 256-288.

Mālikī School was predominant. The Ḥanbalī²⁰ and the Ja'farī²¹ schools argue that if Muslims can manifest and practice their religion, migration is not obligatory but recommended because by their stay Muslims would contribute to the material wealth and strength of unbelievers.²² The Shāfi'ī²³ and the Ḥanafī schools agreed that residence in non-Muslim territories might at times be recommended or obligatory. It all depends on the extent to which a Muslim can manifest his religion and whether he lives in an area formerly controlled by Muslims but now under non-Muslim control.²⁴

This brief exposé of the jurists' position does not do justice to the mechanism jurists utilized to derive their positions and the technicalities they tackled to arrive at such conclusions. A detailed analysis of such positions is outside the scope of the present study. However, the point to be stressed here is that the jurists' discussions raised controversial questions that still infuse our modern day discussion about *hijrah* such as: what is the basis of jurists' designation of the land as an abode of Islam or an abode of war? Is it the presence of a ruling power? Is it jurisdictional question? Is it the people? Is

²⁰ The Ḥanbalī school is one of the four *sunni* schools that goes back to *Imam* Aḥmad ibn Ḥanbal (c. 762-839 CE)

²¹ The Ja'farī school is a prominent Shi'i school of *fiqh*, named after *Imam* Ja'far al-Sādiq, the 6th Shi'i *Imam* (702-765 CE).

²² Abou El Fadl, "Islamic Law and Muslim minorities, the Juristic Discourse," 157; Al-Khamlishi, *Al-Jannah*, 473.

²³ Imam al-Shafi'ī argues that "the *Sunnah* of the Prophet made evident that the obligation of *hijrah* for those who have the means is upon those who were subject to *fitnah* in their religion after their conversion to Islam because the Prophet permitted some Muslims to stay in Mecca after their conversion to Islam, such as al-'Abbās ibn 'abdel-Muṭṭalib and others if they did not fear the *fitnah* in their religion." See al-Shafi'ī, *Al-Umm*, 2:4, 169.

²⁴ Abou El Fadl, "Islamic Law and Muslim Minority," 159; Al-'Amrānī, *Fiqh al-Ussrah*, 99

it safety? What is the meaning of manifesting one's religion? Does it refer to rituals or to some form of personal application of Islamic Law or to the ability to apply Islamic Law in its totality? How does one qualify the land? Is it *dār al-ḥarb* or *dār al-'ahd* or *murakkabah* or even *dār al-Islām*? Moreover, how does one qualifies *dār al-Islām*? Can it be called *dār al-Islām* even if injustices were practiced against Muslims? What is the nature of the relationship with the non-Muslim community? What is the meaning of their *muwālāh* or *mushābahah*, befriending and imitation?

Although the debate on these questions was part of the classical *fiqh* of the middle ages, it was strongly revived in the 19th and the 20th centuries. During these two centuries, the political map of the world was changing due to the rise of nationalism, competing Western ideologies (e.g. liberalism and socialism) and political exploitation (e.g. colonialism). The Muslim world was affected by these factors and had to re-act, sometimes in resistance and other times in reconciliation. Under colonialization, the urgent question of whether Muslims are obliged to continue armed resistance or to emigrate to an area governed by a Muslim ruler was posed in many countries such as Algeria, India, and Sudan.²⁵ The range of the debate even went beyond the issue of emigration or resistance to include other socio-political issues such as questions of clothing (e.g. the French hat),²⁶ of naturalization (e.g. the French law of naturalization in

²⁵ Rudolph Peters, *Islam and Colonialism, the Doctrine of Jihad in Modern History*, (Grovenhage: Mouton, 1979), 39-89.

²⁶ The *fatwā* on its permissibility was issued by a certain Tunisian al-Ḥarairi. The Egyptian Muḥammad 'Ilish holds an opposite view, Wasif Shadid and Sjoerd van Koningsveld, "Loyalty to a non-Muslim Government: An Analysis of Islamic Normative Discussions and of the Views of Some Contemporary Islamicists," in *Political Participation and Identities of Muslims in non-Muslim States*, eds. W.A.R. Shadid and P.S. van Koningsveld (Kampen: Kok Pharos Publishing House, 1996), 91-3.

1923/27 in Tunisia and Algeria),²⁷ of renting buildings to non-Muslim foreigners,²⁸ of teaching Muslim children in schools run by the colonizers,²⁹ to mention but a few. More recently, in the 1970s and 1980s, the question of *hijrah* took other forms when some radical Islamic groups claimed that Muslim states, due to their non-Islamic government system, had become part of *dār al-kufr* and hence emigration from these lands were required.³⁰ In both cases, i.e. emigration from colonized Muslim territories or emigration from secular Muslim states, the classical debate on *hijrah* shaped the contours of the debate in modern times, widening the schism between the world of Islam and the non-Muslim world.

The question of emigration took a different form in the second half of the 20th century, when an unprecedented number of Muslims migrated from the land of Islam to non-Muslim lands, mostly Western Europe and North America, in search of a better life or to escape political persecution. As a result of this *reverse* emigration, the third version of the question appeared: Is it permissible for a Muslim to emigrate from Muslim lands to non-Muslim lands to seek a better economic life, or political freedom or advanced education, etc?

²⁷ Rashīd Ridā, *Fatawā*, ed. Ṣalāḥ al-Dīn al-Munjid and Yūsuf al-Khūrī, vol. 5 (1971), 1748-1761.

²⁸ *Ibid.*, 1917-19.

²⁹ *Ibid.*, 2139.

³⁰ The position of some radical groups to designate Muslim secular states as *dār kufr* is studied extensively in various sources. See for example: Shadid and Koningsveld, "Loyalty to a non-Muslim Government", 84-95. Al-Qaraḏāwī, *Fiqh al-Jihad*, vol.2.

What made the question different this time is not only the Muslims' initiative to emigrate but also the qualitative change in the attitude of the host non-Muslim lands. Around this time the struggle of the Western world to develop a model of a modern nation state based on principles of secularism and pluralism led to the reconsideration of the role and function of minority communities in the establishment of a modern state.

As illustrated in earlier chapters, this new situation presented a challenge to contemporary Muslim jurists who, following the vibrant tradition of their predecessors, took different positions. The literalists, as explained in Chapter I, took a hardline position towards emigration. The traditionalists, as presented in Chapter II, provided a qualified answer regarding the permissibility of emigration. Both trends remained within the limitations and views expressed by the classical jurists. The advocates of *fiqh al-aqalliyyāt*, however, whose main goal is to normalize a Muslim life in the West, had to start by addressing this question of emigration because it is the hinge that governs subsequent questions on, for example, naturalization and social solidarity.

The researcher may argue that it was the question of *hijrah* that represented the common factor in the debate on *fiqh al-aqalliyyāt* and in the discussion on the position and role of Muslims in the West. The manifestations for this argument are various. The following section reviews a number of contemporary *fatwas* on *hijrah* issued by a number of well-known *muftis* to Muslim minorities in Europe and North America.

***Hijrah* “Never Ends”³¹**

Around 1994, the Islamic Fiqh Academy of the Islamic Conference received a collection of 28 questions from the Virginia-based International Institute of Islamic Thought, IIIT. These questions covered pressing questions of Muslim minorities who live in non-Muslim territories. One of these questions pertained to the fears of bringing up Muslim children in a non-Muslim environment. The questioner stressed that the same fears may apply to certain Islamic countries where children may get exposed to atheistic ideas present in the school curriculum of some Muslim secular governments. The Academy solicited answers from a number of jurists³² who did permit emigration to and residence in non-Muslim lands, but with certain conditions: 1) The emigration must not be for the purpose of loving disbelief or for increasing the strength of disbelievers; 2) The emigration should be for a lawful purpose such as seeking knowledge or a needed job; 3) The emigration can be to escape persecution even if it is from Muslim lands to non-Muslim lands because a Muslim is required to protect his soul from injustices; 4) Emigration should not be for the mere sake of joy and tourism; 5) Finally, the immigrant should be able to manifest his religion, maintain his identity and culture and be able to raise his children on Islamic terms. As one can easily note the *fatwa* mirrors various elements in the classical debate but without getting into the details of each school and the socio-historical background of each of these conditions. Issuing the ruling without

³¹ This statement is taken from the Prophetic tradition, “*Hijrah* is prescribed upon Muslims until the Day of Resurrection”.

³² They include Sheikh Aḥmad ibn Muḥammad al-Khalīlī, Judge Muḥammad Taqīyy al-Dīn al-‘Uthmānī, *Sheikh* Muḥammad Mukhtār al-Salāmī, and *Sheikh* Muḥyī al-Dīn Fādī. These scholars are all members of the Academy.

referring to legal authorities or to juristic schools or to historical events can be read in two ways. First, it can be an affirmation of the classical positions since the *fatwa* makes it practically difficult for the individual to take the decision to emigrate especially with the overwhelming inclination in religious issues to take the side of precautions, i.e. if there is a mere possibility that a sin may be committed, then it is preferable not to do the action altogether - in our case here not to emigrate. A second reading may indicate that such rulings represent a sort of transitional *fatwa* that would make it easier for other *muftis* to follow up with milder positions. Because if the *fatwas* as presented here are not clearly based on textual evidence and express only personal positions of the *muftis*, then there is a space for other jurists to voice their own minds as well, not only to permit emigration but also to make it a positive moral act, as it will shortly become clear when the opinions of *fiqh al-aqalliyyāt* advocates are discussed. The second reading is more appealing to the researcher because of the language used in drafting the *fatwas*. There was no reference to terms such as *dār al-kufr* or to the negative impact of interaction with non-Muslim community. The wording of the *fatwas* reflects an internal debate among Muslim jurists and their appreciation for the dilemma the Muslim minority is facing. This becomes more evident when the Academy, although having received five *fatwas* for the question, decided not to issue a resolution. The Academy preferred to let each *mufti* decide his answer to such questions on a case by case basis.

*Sheikh Mannā' al-Qaṭṭān*³³ issued a *fatwa* permitting Muslims to emigrate and reside in non-Muslim lands. His position is based on the classical tradition of a division of the world into *dār al-Islām* and *dār al-ḥarb* and *dār al-'ahd* and how these terms apply to modern times. It should be noted here that the division of the world is used as an anchor to argue for the permissibility of emigration to *dār al-'ahd*, the abode of contract. However again, the *hijrah* is permitted only if there is a necessity for it and the immigrant is able to find a secure place for his life and for the practice of his religion. Voluntary emigration is not recommended. Moreover, if emigration is intended only to accompany non-believers out of love, then it may turn a Muslim into an apostate. *Sheikh Mannā'* also stressed that to work under non-Muslims is in principle not allowed unless one is obliged to. Such work should be in itself legal, as long as it does not harm Muslims or lead to the *muwālāh* of non-Muslims.³⁴ This *fatwa* recalls the position of the literalists where *dār al-kufr* or even *dār al-'ahd* is seen with suspicious as it entices Muslims away from their religion. It limits the Muslim's engagement with non-Muslims, even in the field of work.

In his *Qaḍayā Fiqhiyyah Mu'āṣirah*, Dr. Muḥammad Sa'īd al-Būṭī,³⁵ an anti-*fiqh al-aqalliyāt* jurist, presents a different perspective. He argues that the *aṣl*, i.e. original rule, of emigration is permissible. This is in accordance with verses from the Qur'an and prophetic traditions. The purpose of this emigration varies from preaching for Allah, to

³³ Mannā' al-Qaṭṭān (1925-1999) is an Egyptian *mufti* who lived in Saudi Arabia since 1953. He taught in Saudi Academic institution and resided over the High Institute of Judiciary.

³⁴ For a review of Mannā''s *fatwā* see: Al-'Amrānī, *Fiqh al-Uṣrah*, 116-117.

³⁵ Dr. Muḥammad Sa'īd Ramaḍān al-Būṭī (b. 1929) is one of well-known scholars in the *sunni* world. He is of Turkish origin but lived in Syria since the age 4.

trading, or for worldly material gains. This principle, however, should be governed by other legal rules such as *sadd al-dharā`i`*, i.e. blocking the means to illegitimate actions and *dār` al-mafāsīd muqaddam `alā jalb al-mašāliḥ*, i.e. preventing evil is prior to securing interests.³⁶ The application of these rules changes the *aṣl* from the merely permissible to either obligatory, or forbidden or despicable. *Sheikh* Muḥammad al-Ghazālī³⁷ follows a similar line of argument for disallowing Muslims from emigrating or residing in non-Muslim lands because it would lead to losing one's religion. In such a case the Muslim has to return to his country, otherwise he is a sinner.³⁸

The famous *fatwa* of the Moroccan `Abdel-`Azīz al-Ṣiddīq al-Ghamārī³⁹ entitled *Hukm al-Iqāmah fi Bilād al-Kuffār wa-Bayān Wujūbiha fi Ba`d al-Aḥwāl* introduces an opposite line of argument. The *fatwa* came in response to the question of an Algerian student who studies in the Islamic University, Saudi Arabia. The student asked the opinion of `Abdel-`Azīz al-Ṣiddīq on the position of some Algerian scholars who issued a *fatwa* prohibiting emigration to Europe and other non-Muslim lands. Al-Ṣiddīq argues that those who argue for the illegality of emigration are ignorant of the rules of *fiqh* and

³⁶ Sa`īd Ramaḍān al-Būfī: *Qaḍayā Fiqhiyyah Mu`asirah*, 189, c.f. al-`Amrani, *Fiqh al-Uṣrah*, 118. Here one should pay attention to the legal maxims he used because this is a selective process. The advocate of *fiqh al-aqalliyāt* used the same legal maxims or other similar ones to prove the opposite. They argued for example that *hijrah* and residence is more fruitful and productive to the Muslim individual and to the Muslim *ummah* and to the religion of Islam than not to emigrate.

³⁷ Muḥammad al-Ghazālī al-Saqqā (1971-1996) authored more than 35 books and is considered one of the revivalists of Islamic faith in contemporary times.

³⁸ Muḥammad al-Ghazālī, *Mustaqbal al-Islām Khārij Arḍih*, 2nd Ed., (Cairo: Dar al-Shorouk, 2003), 78.

³⁹ `Abdel-`Azīz ibn Muḥammad ibn al-Ṣiddīq al-Ghamārī (1910-1993 CE) is a well-known Moroccan *mufti* and scholar of *hadīth*.

the Islamic tradition.⁴⁰ The Algerian *mufti*'s argument is similar to the logic of other anti-*hijrah* scholars. He argues that the reason for the impermissibility is fear for the religion and for not being able to practice its tenets. Al-Şiddīq argues that this reason does not exist today and therefore one cannot conclude that *hijrah* is forbidden. According to him, it is permissible to stay in a non-Muslim country as long as one can perform his religious duties and is not in danger of losing his belief. To argue his case, al-Şiddīq refers to the legal position that *hijrah* is abrogated after the conquest of Mecca and that Muslims' current position in non-Muslim Western countries is similar to Muslims' first ever *hijrah* to Abyssinia, when they were commanded by the Prophet to emigrate to Christian Abyssinia to enjoy the safety of its just king. Al-Şiddīq, however, makes preaching Islam a requirement for those who chose to stay.⁴¹ Interestingly, he did not provide or state conditions for its permissibility. Moreover he argues that, "Residence in Europe today for the Muslim is better than his residence in his homeland due to the hope of spreading Islam among non-Muslims and to convey the message of the word of monotheism in the world of Trinity and among the worshippers of the Cross, i.e. Christians."⁴²

This discussion of *fatwas* represents just a sample of many other *fatwas* and studies that were produced in the last few decades. This search for a modern position on *hijrah* reveals a number of points. First is the urgency of the question of emigration in the

⁴⁰ Al-'Amrānī, *Fiqh al-Uṣrah*, 119.

⁴¹ 'Abdel-'Azīz ibn Muḥammad al-Şiddīq, *Hukm al-Iqāmah fī Bilād al-Kuffar wa Bayān Wujūbiha Ba'd al-Aḥwāl* (Tangiers: Maṭb'at al-Būghaz, 1985), 62, quoted from Shadid and Koningsveld, "Loyalty to a non-Muslim Government", 99-100.

⁴² Al-'Amrānī. *Fiqh al-Uṣrah*, 120.

1990s, the same time that *fiqh al-aqalliyāt* discourse started to appeal to many jurists. Second, the same points discussed in the context of emigration, e.g. the preaching of Islam, the manifestation of one's religion, and the fear of losing one's religion, represented the backbone of the legal discourse on the division of the world into *dār al-Islām* and *dār al-kufr*. Therefore, in order for *fiqh al-aqalliyāt* to establish itself, it has to solve the dilemma of emigration which in turn could not be approached except through the lenses of Islamic legal debate on the division of the world.

Fiqh Al-Aqalliyāt, Division of the World and Jihad

The debate over world division used to be studied within the framework of larger issues such as *jihad* or immigration. It was not a focus of independent research until the rise of *fiqh al-aqalliyāt* which made it central to its theoretical construction. Some jurists and intellectuals dedicated whole treatises to the question of world division and its relation to the Muslim *ummah* in general and to Muslim minorities in particular.⁴³ Others responded with a detailed discussion or a section in one of their publications.⁴⁴ A third group wrote articles or issued *fatwas* or statements in response to questions which

⁴³ See for example: Muḥyī al-Dīn Muḥammad Qāsim, *Al-Taqsīm al-Islāmī li-al-Ma'mūrah: Dirāsah fī Nash'at wa-Taṭwwur al-Jamā'ah al-Dawliyyah fī al-Tanzīm al-Dawli al-Ḥadīth* (Cairo: International Institute of Islamic Thought, 1996); 'Ali Yāsir Lūṭī, *Arḍ Allah: Al-Taqsīm al-Islāmī li al-Ma'mūrah, Dirāsah Fiqhiyyah Muqāranah* (Beirut: Al-Risālah, 2004); 'Abdullah ibn Yūsuf Al-Juday', *Taqsīm al-Ma'mūrah fī al-Fiqh al-Islāmī wa Atharuh fī al-Wāqi* (Dublin: European Council for *Fatwā* and Research, 2007).

⁴⁴ See: Yūsuf al-Qaraḍāwī, *Fiqh al-Jihad, Dirāsah Muqāranah li-Ahkāmih wa-Falsafatih fī Daw' al-Qur'an wa-al-Sunnah* (Cairo: Wahba Bookstore, 2009).

revolved around world division in light of international relations in Islam.⁴⁵ Even minority jurists, who did not explicitly discuss the classical position, voiced their position on the world's division by discussing how Muslims should see their position and role as citizens in non-Muslim countries.⁴⁶ Examining these different sources, positions and attitudes regarding the question of world division shows the various areas minority jurists discussed to prove the inapplicability of this division in modern times. They debated: 1) the origin of these terms, 2) the relation between the world's division and the concepts of *hijrah* and *jihad*. 3) the logic of *hijrah*, 4) definitions and categorization of the world's territories, 5) the qualitative change of the world context between our contemporary time and earlier times of Islamic history, and 6) the original Qur'anic conception of the world. In the following paragraphs, these elements are highlighted with the purpose of examining the mechanism of *fiqh al-aqalliyāt* to challenge the *hijrah* doctrine and to establish a doctrine of citizenship of Muslims in non-Muslim states.

Origin of *Dār al-Islām* and *Dār al-Ḥarb*

The origin and meanings of these terms (abode of Islam and abode of War) is a common factor in the jurists' debate on *fiqh al-aqalliyāt*. Jurists acknowledge that these

⁴⁵ See for example: Mardin Declaration, (http://www.mardin-fatwa.com/attach/mardin_2010_arabic.pdf), Ṣalāḥ al-Ṣāwī, *Mawsū'at al-Mughtarībīn* (Cairo: Al-Fārūq al-Ḥadīthah li-al-Ṭibā'ah wa-al-Nashr, 2009); 'Abdel-Rahmān al-Ḥāj, "Taqsīm al-Ma'mūrah fī al-Khitāb al-Fiqhī: al-Ḥajah ilā I'adat al-Ijtihād," *Al-Ghadd*, 03/05/2011.

⁴⁶ Ṣalāḥ Sultān, *Al-Dawābiṭ al-Manhajīyah li-al-Ijtihād fī Fiqh al-Aqalliyāt al-Muslimah* (No publishing house, 2nd ed: 2007). (Acknowledgment to Dr. Ṣalāḥ for providing me with a copy of his manuscript)

terms, along with other similar terms that have similar connotations,⁴⁷ did exist at the time of the Prophet and his Companions. Many of them, however, argue that these terms were used by the Prophet and his Companions for mainly descriptive and rarely for legal purposes.⁴⁸ However these terms went out of their limited descriptive functions and became, over time, the center of a “legal” doctrine that was developed by the intellect of successive generations of jurists in the formative period of Islamic Law in their attempt to deal with their socio-religio-political environment.⁴⁹ In that environment, where *jihad* was the key word guiding interaction with other surrounding kingdoms, *hijrah* was seen as an initiation of the new Muslims into Islam and as his share in *jihad*. That is why the question of *hijrah* is always discussed in the context of *jihad*, which was then a basic component of the worldview of the Islamic state and law.⁵⁰

⁴⁷ The Prophetic traditions and Companions’ statement have terms like *dār al-hijrah*, the abode of migration; *dār al-imān*, the abode of faith; *dār al-’adl*, the abode of justice; *ard al-’aduw*, the land of the enemy; *ard al-shirk*, the land of polytheism, and *ahl al-’ahd*, the people of contract. Examples of the Prophet’s statements that referred to these terms include “‘*Uqr*, the heartland, of the abode of Islam is *al-Shām*, the Levant”, and “If the slave escaped to the land of enemy, we have no obligations towards him [in terms of protection and support]”. Examples of the Companions’ statements would include the advice of ‘Abdel-Rahmān ibn ‘Awf to ‘Umar Ibn al-Khaṭṭāb, “...wait until you come to Medina because it is the abode of *hijrah*, *Sunnah* and safety...”, and Ibn ‘Abbās’, “the unbelievers had two places with the Prophet, peace be upon him: those whom he fights them and they fight him, these are the people of war, and those who do not fight him nor he fights them, these are the people of contract.” For a review of these reports and their degrees of authenticity, see al-Juday’, *Taqsim*, 10-14.

⁴⁸ Al-Juday’. *Taqsim*, 48; Khālid ‘Abdel-Qādir, *Fiqh al-Aqalliyāt al-Muslimah*, 114-15.

⁴⁹ By way of example to prove the impact of social and political settings on the foundation and formulation of these terms, Khalid Masud argues that jurists did not intentionally work out a clear definition of *dār al-Islām* or *dār al-harb* for various reasons such as that they did not want rulers or theological sects using their definitions as a justification to crack down on other Muslims on the claim that their land is *dār kufr* and therefore *jihad* is to be invoked to restore the islamicity of the land. Leaving the terms ambiguous helped maintain the unity of Muslims. See Masud, “The Obligation to Migrate,” 36.

⁵⁰ Although the literal meaning of *jihad* is literally to strive for or to exert one’s utmost, the *jihad* with the meaning of fighting to spread the message of Islam has become the common usage of the interpretive community of that era in view of the continuous confrontation between Islam and the neighboring political powers.

Hijrah and Jihad

Now the question asked by some minority jurists is whether this relationship between *hijrah* and *jihad*, i.e. one emigrates from the land of non-Muslims to the land of Muslims to maintain his religion and strengthen the Muslim army in its *jihad* against non-Muslims or one emigrates from Muslim lands to non-Muslims territories for the purpose of fighting non-Muslims to surrender to the Muslim ruler, is still valid in our present time. This question becomes even more relevant when some Western activists and writers argue that Islam is taking over the West and that it represents a threat to Western society and its conception of secularism and liberalism.

Minority jurists tried to address the tie that connects the question of *hijrah* with that of *jihad* with two steps: First they expounded on the meaning of *jihad* itself. *Jihad* does not mean only fighting on the battlefield. They stressed the literal meaning of *jihad*, the major *jihad*, as a way of striving for the good and forbidding the evil. *Jihad* can be against the whims of the self, the whisper of the devil, the tyranny of the ruler. *Jihad* can be with the word, with the pen, with action, etc. ‘Abdullah al-Juday’⁵¹ opposes the common meaning of *jihad* as fighting by arguing, “... confining the meaning of *jihad* to “fighting” is a minimization of the comprehensive meaning of *jihad* to one of its means. [This had been the practice] until this interpretation (of *jihad* as fighting) became the common usage and replaced the true meaning...”⁵²

⁵¹ ‘Abdullah ibn Yūsuf al-Juday’ (b. 1959) is a well-known Iraqi Muslim scholar who settled in England after the Second Gulf War. He is a member in the ECFR and resided over its *fatwa* committee.

⁵² Al-Juday’, *Taqsim*, 44; See al-Qaraḏāwī for different types of *jihad*, *Fiqh al-Jihad*, vol. 1, 127-ff.

The second move to untie the relationship between *jihad* and *hijrah* is to prove that *jihad*, as fighting, was enjoined in Islam to defend the Muslim territories. Minority jurists provide extensive arguments, both textual and historical to prove this point.⁵³ They argue that the basis of the relationship between Muslims and non-Muslims is not war *per se*. *Jihad* is meant to defend the territories of the state in case of aggression and to convey the message of Islam and its mercy to the whole world.⁵⁴

Arguing that *jihad* is a defensive obligation that has little to do with the question of *hijrah* and that the division of the world is mainly descriptive of its historical moment, it becomes no hard to argue that the legal division of the world is not part of the fundamental principles of religion. Rather it is a product of a time when powers were fighting over the hegemony of the world. The Muslim state worked within the limitations of the day either to defend its territories or to spread its religion. At that time, as long as there was no contract/truce between competing powers, a war might be waged to expand a kingdom's hegemony. To further argue for their point, jurists refer to various Qur'anic statements (e.g. 22: 39-40⁵⁵) to prove that *jihad* was meant as a defensive mechanism against the atrocities of the time.⁵⁶

⁵³ Al-Qaraḍāwī, *Fiqh al-Jihad*, vol. 1, 237-407; Al-Juday', *Taqsim*, 42-48.

⁵⁴ Al-Juday', *Taqsim*, 50.

⁵⁵ "Permission to fight (against disbelievers) is given to those (believers), who are fought against, because they (believers) have been wronged, and surely, Allah is able to give them victory. (39) Those who have been expelled from their homes unjustly only because they said: "Our Lord is Allah." - For had it not been that Allah checks one set of people by means of another, monasteries, churches, synagogues, and mosques, wherein the Name of Allah is mentioned much would surely have been pulled down. Verily, Allah will help those who help His (Cause). Truly, Allah is All-Strong, All-Mighty. (40)" (Hajj: 39-40)

⁵⁶ Al-Juday', *Taqsim*, 52.

Abū Zahrah⁵⁷ argues, “Almost all jurists agree that non-Muslim land is called the abode of war because it was as such in the formative era of legal writing because of the frequent aggressions from the enemy and their continuous fights against Muslims.”⁵⁸ Therefore the notion of dividing the world into *dār Islām* and *dār kufr* is contextually bound and can be changed, modified, or even eliminated according to the particularities of a certain moment.

Logic of *Hijrah*, Islamic State or Safety

After proving that the terms used to divide the world are a product of human reflection on their geo-political situation, some jurists go further and re-pose the questions of *hijrah*, i.e. presenting the classical legal positions in a discursive fashion so as to arrive at a qualitatively different ruling. Out of these questions, two frequently stand: what is the purpose of *hijrah*? And what is the ruling of *hijrah*? These two questions will be addressed in the following paragraphs.

What is the purpose of *hijrah*? Is it to live in the abode of Islam so as to enjoy the protection of the Islamic state? Or is it essentially to seek one’s safety, security and livelihood? Reviewing the two *hijrahs* in the Prophet’s time to Abyssinia and to Medina and other prophetic statements, minority jurists mostly argue for the latter. In the following al-Juday’s arguments will be presented as a case in a point. ‘Abdullah al-

⁵⁷ *Sheikh* Muḥammad Abū Zahrah (1898-1974 CE / 1315-1394 AH) is an Egyptian scholar of Islamic Law. He was a professor of Islamic Law at both al-Azhar and Cairo universities. He served as a member of al-Azhar’s Academy of Research. He has more than 30 published books.

⁵⁸ Al-Juday’. *Taqsim*, 61; Abū Zahrah, *Al-‘Iqāt al-Dawliyyah fi al-Islām* (Cairo: Dār al-Fikr al-‘Arabī, 1995), 55.

Juday' (1959) is an Iraqi Muslim jurist who was the general secretary of the ECFR and the president of the ECFR *fatwa* sub-committee. His book on *Taq̣sīm al-Ma`mūrah*, i.e. the division of the world, has become a reference on the subject of Islamic view of world categorization. Al-Juday' argues, "*Hijrah* had become obligatory upon whoever converted to Islam to where he could find safety, provision, and support. When Mecca became a Muslim land, the reason of emigration from there was removed. The same applies to every land that guarantees to the Muslim what the *hijrah* was meant for, i.e. enabling the Muslim to practice his religion and guarantee him protection."⁵⁹ It is important to notice here al-Juday''s avoidance of getting into the polemics of the jurists that the abode of Islam is the land that is meant for emigration because there the Muslim not only practices his religion but also reigns superior over others through the political authority and the power of jurisdiction.

This approach of evading polemics with different schools becomes more evident when al-Juday' poses the second question: What is the ruling pertaining to *hijrah* for those who converted to Islam while living in the abode of disbelief? Here al-Juday', instead of presenting the various legal schools' positions, compiles textual references, mostly Prophetic traditions, stressing two points. First is that these traditions were in the context of new Muslims living in a land in a state of war with Muslims. Second is that their emigration is meant for their safety.⁶⁰ To resolve the complexity of the issue, al-Juday' presents the juristic debate as different positions on one continuum. The *hijrah* is

⁵⁹ Al-Juday'. *Taq̣sīm*, 21.

⁶⁰ *Ibid*, 25-34.

obligatory upon those who cannot practice their religion and are able to undertake it. It becomes preferable for those who can practice their religion and are able to undertake it. It turns to be non-obligatory upon those who are unable to undertake it.⁶¹ As such, the argument goes toward the preference of emigration. At this point, al-Juday' presents al-Mawārdī's⁶² position on another continuum but this time argues for the non-emigration to a Muslim land. Al-Mawārdī argues that if the resident in a non-Muslim land is known for his religion and able to practice his faith and to make *da'wah*, then he should stay there and his place will become his own *dār al-Islām*. If he can manifest his religion but is unable to practice *da'wah*, then it depends on if he is convinced that his stay will make Islam known; if so, then it is preferable for him to stay. If Muslims in the abode of Islam request for support, then he should migrate. If the Muslim fears losing his religion and is able to undertake *hijrah*, then he has to emigrate. If he is unable to make *hijrah*, then he is relieved from this obligation.⁶³ Al-Juday' then concludes this section by adopting a more positive tone toward the permissibility of staying in the non-Muslim land by quoting Ibn Taymiyyah's statement in one of his *fatwas*, "Residence where the conditions are conducive for obedience to Allah and his Messenger and encouraging for doing good deeds and [where the Muslims] are knowledgeable and have authority over his life and

⁶¹ *Ibid*, 35.

⁶² Abū al-Ḥasan 'Alī ibn Muḥammad ibn Ḥabīb al-Mawārdī (in Latin, Alboacen) (1058 CE) was a Shāfi'ī jurist and a judge during the Abbasid time. He is remembered in Islamic legal history for his works on religion, government and the Caliphate. He is the author of the well-known *Al-Aḥkām al-Sultāniyyah*, i.e. the Ordinances of Government.

⁶³ Al-Juday'. *Taqṣīm*, 36

more enthusiastic about much better than staying in a place where the conditions are less than (what is mentioned before). This is a fundamental principle...”⁶⁴

The Problem of Definition and Categorization

Understanding the controversial nature of the dichotomy of *dār al-Islām* and *dār al-ḥarb*, the jurists of *fiqh al-aqalliyyāt* argue that Muslim jurists and legal schools through the ages did not reach consensus on defining these terms⁶⁵ nor they articulated unified positions.⁶⁶ Rather, they debated almost every aspect of this division. They debated, for example, the question of how *dār* may be transformed from that of war to that of Islam and vice versa. They debated whether this transformation should be based on population or on authority or on conditions. They debated the conditions of staying in *dār al-ḥarb*. Their disagreement over the concept of “manifesting one’s religion” as one of the conditions to stay in *dār al-ḥarb* is a case in point. Some interpreted it as the ability of enforcing Islamic jurisdiction. Others limited it to the practice of rituals. A third group understood it to refer to each one’s ability to apply Islamic law in its own right.⁶⁷

Muslim jurists, moreover, introduced other division categories based on their perception of the time and their conception of the Islamic message. We referred above to al-Mawārdī’s designation of *dār al-ḥarb* as *dār al-Islām* if Muslims living there are able

⁶⁴ *Ibid.*, 37

⁶⁵ Al-‘Amrānī, *Fiqh al-Uṣrah*, 54-ff; ‘Abdullah ibn Bayyah, *Ṣinā‘at al-Fatwa wa-Fiqh al-Aqalliyyāt* (Jeddah: Dār al-Minhāj lī al-Nashr wa al-Tawzī‘, 2007), 86.

⁶⁶ Ismā‘īl al-Ḥasanī, *Al-Ikhīlāf*, 27-ff.

⁶⁷ *Ibid.*, 34.

to practice and preach their religion. Some other jurists introduced *dār al-`adl*, an abode of justice, to describe *dār al-ḥarb* if Muslims were protected therein, as was the case during the first Muslim migration to Abyssinia. Al-Rāzī coined a completely different division of the world. He coined the two divisions: *dār al-da`wah* and *dār al-ijābah*, i.e. the abode of inviting people to Islam and the abode of those who accepted Islam.⁶⁸ Ibn Taymiyyah created the concept of *dār murakkabah* when he was asked about the people of Mardin whose land was conquered by a Christian ruler who allowed them to practice their religion. When asked if the land of Mardin was an abode of war or an abode of Islam, Ibn Taymiyyah argued that it was neither. Since each group is treated according to its system of laws and convictions then one cannot prefer one description over the other. He concluded that it can be called *dār murakkabah*, i.e. a composite *dār*.⁶⁹ The jurists of *fiqh al-aqalliyyāt* utilize the juristic difference to affirm that the division is open for debate and for the creativity of jurists in reading his reality. Al-Juday' follows Ibn Taymiyyah and argues that the governance system of the contemporary West makes more sense to call it *dār murakkabah* where each party, Muslims, Christians, etc., are legally permitted to practice their own religions. "By necessity this [position] creates a non-religious bond among people of different religions, through which they coexist. It is the bond of citizenship."⁷⁰

⁶⁸ *Ibid.*, 28-29.

⁶⁹ *Ibid.*, 67-8.

⁷⁰ *Ibid.*, 68.

Contextuality

Given the above discussion, minority jurists argued that an absolute doctrine of *hijrah* or a world division is flawed. Judgment over questions of *hijrah* or the division of the world is conditional and contextual.⁷¹ This conclusion takes the question of world division from the realm of '*aqidah*'⁷², i.e. creed and tenets of faith, to the realm of legal technicalities of jurisprudence. Questions on world division or *hijrah* are thought of as manifestations of one's creed and an affirmation of one's faith. As reported in many *fatwas*, if one does not emigrate from the land of *kufir* to the land of Islam, he is to be seen as a sinner and on certain occasions as an apostate. In the current debate, by arguing that the understanding of these concepts vary from one jurist to the other, the questions went out of the faith realm to the legal sphere where the ruling becomes contextual and individual-based. This shift creates a space for negotiation between tradition and reality. On the question of *hijrah*, for example, minority jurists would count the conditions that tradition brought in to justify its protective position against emigration to non-Muslim lands. These conditions include: a) the fear of losing one's religion (*fitnah fi al-din*), b) the application of the laws of non-believers upon Muslims, c) the inability to practice one's religion (*izhar sha'ir al-din*), d) the fear of Muslim children losing their religious

⁷¹ Jamāl 'Aṭīyyah, for example, reviewed the historical practices of Muslims against non-Muslims to prove that they were human contextual praxis and not divinely revealed Sharī'ah. See: Jamāl al-Dīn Aṭīyyah, "Naḥwa fiqh Jadīd," *Ummatī fi al-Ālam: Ḥawliyyat Qaḍāyā al-Ālam al-Islāmī*, 4th edition, Civilization Center for Political Studies (Cairo: Shorouk International, 2004), 7-105. The same study was republished as a book by *Dār al-Salām*, Cairo. The edition used in this study is the *Dār al-Salām* second edition, 2003, 62-65 and 70-85.

⁷² Questions on *hijrah* and world division in our modern times always are discussed in *fatwas* related to '*aqidah*' and tenets of faith. See for example: *Fatawa al-Lajnah al-Dā'imah*; Ṣalāḥ al-Ṣāwī, *Mawsū'at Fatawa al-Mughtaribīn*.

identity and their inclination toward non-Islamic ways of life, e) the superior social position of non-Muslims over Muslims, as Muslims may work under their leadership. After discussing each one of these conditions as expounded in *fiqh* literature, the jurists of *fiqh al-aqalliyāt* argue that that these conditions are no longer definite in our modern context. These conditions can be dealt with in our current minority situation where Muslims by law are permitted to practice their faith and uphold its tenets.⁷³

In order to inform their discussion of the qualitative change in modern times compared with earlier times, minority jurists refer to three main points: 1) the creation of nation-states, 2) the development of a new international order, and 3) the weakness of the Muslim nation and the collapse of the Caliphate in 1924.

During the last century, notions of modernity and secularism have become part of modern life. A new world order was introduced where everyone, whether a member of a majority group or of a minority community, enjoys fundamental rights guaranteed by universal declarations or entities. The violation of human rights through wars or genocides or racial discrimination urged the international community to interfere. Within three decades in the middle of the twentieth century, the UN Charters (1945), the UN International Declaration of Human Rights (1948), the European Convention on Human Rights (1950), and the UN International Convention on the Elimination of all Forms of Racial Discrimination (1965), along with other international conventions, were signed by the international community. These agreements refer to minority rights of existence, of

⁷³ Al-'Amrānī, *Fiqh al-Ushrah*, 106-7.

self-determination, of maintaining their identities, of freedom to practice one's religion, etc. This shift in world affairs, although being applied in different ways on various occasions, is considered enough grounds for jurists of *fiqh al-aqalliyyāt* to argue for the inapplicability of the classical world division into *dār al-Islām* and *dār al-ḥarb*. This division is based, as mentioned earlier, on the constant status of war in previous times. If this status changed into peaceful recognized borders, rights, and laws, then the world should be divided differently, if it needs to be divided at all. To argue for this conclusion, some minority jurists refer generally to changes in world politics, while others discuss these agreements in detail (referring to dates, places and rules). A third group would still discuss the principles of these agreements and compare them with Islamic principles with a view to proving that they are Islamically recognized and Muslims should abide by them.⁷⁴ One jurist argues that “the logic of power that controlled the ancient world was the language of every one. Separation for safety [between ancient world kingdoms] was required. But nowadays it is the power of international law that directs things. This awareness of the variation in power mechanisms in controlling international relations leads us to a different conclusion when it comes to the nature of the land and the ruling on emigration.”⁷⁵

The comparison between past and present reality is not only limited to the political shifts. Jurists refer to a legal linguistic shift. In classical literatures the term used

⁷⁴ See: Al-Ḥasanī, *Al-Ikhtilāf*, 10; al-Juday', *Taqīm*, 126-7; Ibn Bayyah. *Ṣina'at*; al-Qaraḍāwī. *Fiqh al-Jihad*.

⁷⁵ Al-Ḥasanī, *Al-Ikhtilāf*, 35-6.

to describe people was *ahl al-milal wa-al-nihal* (communities of religions and sects)⁷⁶ in a clear indication that people were seen and dealt with from the perspective of their religious convictions. This usually meant that those groups were deprived of certain rights that the rest of the people may enjoy. But once the modern state came into existence, the positions of other groups within the boundaries of the nation state were looked at differently. Terms like “minority” “group” or “community” are utilized not to single them out but to legally guarantee them certain rights (not to deprive or exclude them).

In the last couple of years, one can observe a further change. Terms such as “minority” or “group” became less used in the debate, in favor of terms “citizens” or “resident aliens”. Using such terms would negate any possibility to call such a non-Muslim land a *dār* of *kufr*.

Furthermore, pragmatism and practicality are also used to produce another type of argument. Al-Juday' argues that the current international context “became a reality that cancelled all distinctive markers of the Muslim state(s) that were based on religion, at a time when it was known as *dār al-Islām* versus all other countries which were known as *dār al-ḥarb*”. He states that Muslims had to deal with this new context either with absolute denial or to interact with it and accept what agrees with the principles of Islam and do the best to create an impact in the making of world decisions to come in line with the *Shari'ah*. For example the UN declaration stipulates that its members have to be

⁷⁶ Nadyah Mustafa, “Al-Aqalliyyāt al-Muslimah: Iṭār ‘ām Muqāran” in *Qadāyā Islamiyyah Mu‘āsirah*, ed. Ḥasna Ḥamdān (Cairo: Asian Studies Center of Cairo University, 1997), 227.

peace-loving. This is a part of the ultimate objective of Islam. Therefore Muslim should uphold it and join forces with others to maintain it.⁷⁷ A Muslim's character of openness and his positive interaction with the world around him obliges him to reject the traditional position of denying the land through human man-made categories of the world.⁷⁸

In light of this discussion, can America, for example, be *dār al-ḥarb*? Al-Ḥasanī and others definitely argue negatively. It cannot be *dār ḥarb* in light of all these agreements and conventions that Muslims upheld. Sulaymān al-'Uwdah states that Muslims look at the West as a hotbed of *kufṛ* while in reality it is not. The West represents a civilization which cannot be described as *kufṛ*, but as a human accumulation of the creativity of humans over centuries.⁷⁹ This positive overview of the West is thought provoking. The distinctions between a civilization, including its cultural products, and *kufṛ* as two different components that may be disconnected limit the description of *kufṛ* to the private sphere, i.e. to the individual not to the land. So the Westerners may be *kuffār* in terms of their belief but not in terms of their land or civilization.⁸⁰ This distinction between the public and private spheres and between residency and religious practices reflects clearly the impact of modern ideologies on the Islamic legal debate to the extent that according to Prof. Ja'far 'Abdel-Salām, the

⁷⁷ Al-Juday', *Taqṣīm*, 126-7.

⁷⁸ Al-Ḥasanī, *Al-Ikhtilāf*, 39-43.

⁷⁹ *Al-Shari'ah wa-al-Ḥayah*, "Taṭbīqāt al-Fiqh al-Islāmī fi al-Waqi' al-Mu'āṣir", program broadcasted in July 4, 2010. The guests were Ibn Bayah, 'Abdel-Majīd al-Najjār and Salmān al-'Udah.

⁸⁰ This can lead to two related conclusions. The first is that Islam, as a religion, can also be limited to the private sphere, a reiteration of the secular perception of religion. The second is that Muslims can interact positively with, live within, and share Western civilization.

secretary general of the League of the Islamic Universities, the classical Islamic division of the world has fallen into abeyance in our modern time.⁸¹

Qur'anic Philosophy

Apart from the legal debate discussed earlier, some jurists advanced a philosophical argument derived from Qur'anic teachings against the dual division of the world. The argument provides five premises that lead to a conclusion. The first premise is that the earth/the land and what walks on it belong to Allah. The second premise is that the whole earth is made for the benefit of Man. The third premise is that the whole of humanity comes from the same father, Adam. The fourth premise is that man by nature is inclined to belong to a group, i.e. his people, tribe, ethnicity, land, etc. The fifth is that the basis of interaction between humanity is to get to know each other. Reading these premises, one would derive the conclusion that the land in principle is Islamic and if turns out to be an abode of *kufur*, this is transitional. One also may conclude that man can freely move in the land of Allah and establish a sense of belonging with various communities based on peaceful coexistence, i.e. in Arabic *ta'āruf*.

Moreover, the Qur'anic understanding that the earth belongs to Allah prevents jurists from producing legal rulings based on the land as such. The land becomes a neutral space "*arḍ mujarradah*" (except for certain areas that God defined as sacred such

⁸¹ Ja'far 'Abdel-Salām, "Naḥwa Balwarah Mu'aṣirah li al-'Ilāqāt bayna al-Islām wa al-Akhar," *Tolerance in the Islamic Civilization, Researches and Facts*, the Sixteenth General Conference of the Supreme Council for Islamic Affairs, Cairo (Cairo: Supreme Council of Islamic Affairs, 2004), 475; Muḥammad Hāshim Kamālī, "Methodological Issues in Islamic Jurisprudence," *Arab Law Quarterly*, 11: 1 (1996): 11; Sohail H. Hashmi, "Is There an Islamic Ethic of Humanitarian Intervention?" *Ethics and International Affairs*, vol. 7 (1993): 58.

as Mecca, Jerusalem and Sinai) that is granted to man for specific “Qur’anic” purposes, *sakan* (a home, a comfort), *‘umrān* (cultivating ‘a civilization’), and *istikhlāf* (viceroys) and not for *fasād* (mischief) or *baghy* (rebellion) or *istiḍ’āf* (being weak).⁸² As such, the Qur’an provides a philosophical conception of the world that is surely not in conformity with a dichotomy of the world based on personal beliefs.

Another Qur’anic philosophical argument is the universality of Islam. The Qur’an and *Sunnah* are full of references to this principle.⁸³ The early jurists, however, did not consider this aspect in their debate. Their view of the world was based on their local social construct, producing what can be called “localized *fiqh*”. Al-‘Alwānī argues, “[early jurists] did not think of the universality of Islam as part of the methodological factors in determining their *ahkām*, legal rulings. They distanced themselves from the Qur’anic perspective on geography. The jurisprudence has become local in character and individual in focus.” This logic, in the contemporary qualitatively different era, should be rejected. It threatens the existence of Muslims and makes Muslim children feel inferior and marginalized.⁸⁴

Al-‘Alwānī then concludes that the Qur’an (3:110) states that the Muslim *ummah* has two characteristics: 1) it is chosen by God for 2) leading mankind. The Muslim’s mission, as an *ummah* raised by God, is to lead others out of the darkness of servitude to man to the light of faith and submission to God. Reviewing the exegeses of this verse

⁸² ‘Abdel-Raḥmān al-Ḥāj, “Introduction” in al-‘Aly, *Arḍ Allah*, 12-3.

⁸³ Al-Juday’, *Taqṣīm*, 153.

⁸⁴ Ṭaha Jābir Al-‘Alwānī, “Madkhal Ila *Fiqh al-Aqalliyāt*,” *Al-Rashād* 12 (2001): 25.

states that Muslims are chosen as the best of mankind providing they are the most obliged to benefit mankind. The chosenness of the *ummah* is not an inherited element *per se* but it depends on whether they will do work for the benefit of all humanity. “A nation that has these two characteristics cannot be limited by land or confined in space. It has to reach out to the people to convey the message of God. Thus all references to *dār al-kufr* or *dār al-Islām* or *dār al-ḥarb*, as geographical entities, become superfluous and restrictive.”⁸⁵ Given this understanding, Islamic legal tradition started to see not only theoretical debates but also *fatwas* and collective scholarly statements that reflect this new position. The statement of *Mardin: the Abode of Peace* stands here as attestation to the birth of a new juristic vision of the world.

Mardin: the Abode of Peace

Realizing that the classical juridical division of the world does not correspond to our modern reality, a group of Muslim scholars held a peace summit conference in 2010 in Turkey under the title “Mardin: the Abode of Peace”.⁸⁶ The scholars collectively studied one of the most important (classical juridical) foundations of the relations between Muslims and fellow human beings, namely: the (classical juridical) classification of ‘abodes’ (*diyār*), as Islamically conceived, and other related concepts such as *jihad*, loyalty and enmity, citizenship, and migration (to non-Muslim territories)

⁸⁵ Ṭaha Jābir Al-‘Alwānī, *Towards a Fiqh*, 28.

⁸⁶ The conference was convened in the Turkish city of Mardin at the Artuklu University campus on Saturday and Sunday (27-28 March 2010) under the auspices of the Global Center for Renewal and Guidance (GCRG – based in London) in cooperation with Canopus Consulting (based in Bristol) and sponsored by Artuklu University.

as conceived by Ibn Taymiyyah's *fatwa* to the people of Mardin. In this *fatwa*, Ibn Taymiyyah challenges the classical division of the world and "came up with a compound/composite classification by virtue of which civil strife amongst Muslims was averted, and their lives, wealth, and honor safeguarded, and justice amongst them and others established".⁸⁷

The scholars argue that Ibn Taymiyyah's *fatwa* is exceptional in its formulation and that, to a large degree, addresses a context similar to our time: a political state of the world that is different from the one encountered by past jurists, and which had formed the basis for the particular way in which they had classified territories. If Ibn Taymiyyah took into consideration the political change, then it is imperative that contemporary jurists learn from him and review the classical classification, because of the changed contemporary situation. Contemporary jurists need to develop a sound Islamic and legal vision that does not violate Islamic religious texts, is in harmony with the higher objectives of the *Shari'ah*, and engages contemporary context. They argue that Muslims are now bound by international treaties through which security and peace have been achieved for all of humanity, and in which they enjoy safety and security, with respect to their property, integrity and homelands. Consequently, Muslims are interacting with others in unprecedented ways: politically, socially and economically."⁸⁸

⁸⁷ The statement is available online: for English pdf version see: http://www.mardin-fatwa.com/attach/Mardin_Declaration_English.pdf; for Arabic see: <http://www.youtube.com/watch?v=wbqo79j1zd8> (assessed 8/11/2011)

⁸⁸ *Ibid.*

The scholars describe the contemporary world as a world of recognized international treaties, a world of civil states which guarantee, on the whole, religious, ethnic and national rights, a place of tolerance and peaceful co-existence among all religions, groups and factions in the context of establishing common good and justice amongst people.

These traits of our contemporary life, the scholars continue, is “what the *Shari'ah* has been affirming and acknowledging, and to which it has been inviting humanity, ever since the Prophet (peace and blessings be upon him) migrated to Medina and concluded the first treaty/peace agreement that guaranteed mutual and harmonious co-existence between the factions and various ethnic/race groups in a framework of justice and common/shared interest. Shortcomings and breaches perpetrated by certain states that happen to scar and mar this process cannot and should not be used as a means for denying its validity and creating conflict between it and the Islamic *Shari'ah*.”⁸⁹

Proving that the classical division of the world is historically bound, jurisprudentially human, and contemporarily illogical, jurists have attempted to develop a better classification that corresponds to the historical moment and religious precepts.

Fiqh al-Aqalliyāt: a New Vision of the World?

Fiqh al-aqalliyāt jurists had to address the question of the abode at a certain moment of their discourse because it is the base that their position will be built on. As mentioned earlier, some examined the question of the abode in detail and made it an

⁸⁹ *Ibid.*

essential argument in their debate. They provided different historical, linguistic, philosophical and legal evidence for its inapplicability in modern times. Others referred to the question occasionally in their writings and *fatwas*. They argued that this classical classification is not valid nowadays for various reasons. If the case is as such, then how one will define the contemporary world? Here one may note different approaches and trends. Some jurists regenerate/reinterpret the tradition, i.e. using the same classical definition but with new meanings. Others reconstruct the tradition by using general Islamic principles to define the land.

Re-interpretation of the Tradition: *Dār al-‘Ahd*

In his *Fiqh al-Aqalliyāt al-Muslimah*, al-Qaraḍāwī did not examine questions of *dār*, *hijrah* or citizenship. This may be surprising since these issues represent the basics for any discussion on *fiqh al-aqalliyāt*. On his list of the legal questions that are frequently asked by Muslim minorities, the questions on *hijrah* and world division come at the top of the list, but are totally ignored in the *fatwa* section.⁹⁰ One wonders why? Is it because they are controversial and the mere discussion of them will distract attention from his main *fatwa* framework, i.e. co-existence with the non-Muslim society? Or is it because his theoretical introduction to the book, studied in Chapter III, is enough to respond to these questions? In the introduction, al-Qaraḍāwī stresses the necessity of the Islamic presence in the West for two reasons. The first is to join ranks with the West, the most influential power in the modern world, to cherish human freedom, dignity and

⁹⁰ Al-Qaraḍāwī, *Fi Fiqh al-Aqalliyāt al-Muslimah*, 25.

solidarity. The second is to convey the message of Islam. Having said that, he explicitly argues that there are no grounds to ask such a question on the permissibility of staying in non-Muslims lands. Moreover, al-Qaraḏāwī disliked the description of non-Muslims as disbelievers and he prefers to use words such as “society” or “country” in place of “abode” and “non-Muslim” in place of *kuffār*.

It can be argued that the absence of this discussion in al-Qaraḏāwī’s *fiqh al-aqalliyyāt* is an indication that Muslims have passed to a new stage in their debate on Muslim minorities. Muslims need to move on to debate the urgent issues, rather than getting involved in political and philosophical debates that will not change the reality. Muslims strive to establish a new home, i.e. in the West, and they will not forsake it.

The place where al-Qaraḏāwī argues for the question of *dār* is in his discussion on *jihad*, as if this is the place where one may debate the issue of the relationship between Islam and the West, and not about Muslims living in the West.⁹¹ This distinction between the political West and Western people is evident in many *fiqh al-aqalliyyāt* writings. Muslims may be against the political administration of certain countries but not against the people. Those people may be either Muslims trying to strive for their life or non-Muslims who are moral subjects and potential targets for *da‘wah*.

After reviewing the Qur’anic and prophetic origin for the classification of the world into two categories, the abode of Islam and the abode of war, and the

⁹¹ Although this inclination to study the question of *dār* in the context of *jihad* may be due to his traditional training as jurists used to examine this question as part of their treatment of the issue of *jihad*, still the complete absence of the question of *dār* from his discourse of *fiqh al-aqalliyyāt* is indicative.

jurisprudential discussion on the definition and boundaries of each abode,⁹² al-Qaraḏāwī acknowledges that such a classification of the world is logical and attested by historical experiences of dividing the world into entities.⁹³ As for the world of today, this classification is still valid. He states,

“There is still a space to argue for the validity of this classification. We cannot accept the position of some who argue that the abode of Islam no longer exists in our world, because our new world, the age of globalization, is not divided on a religious basis. Such a position is not completely sound. While others took religion away from their lives and constitutions, we did not and it is not permissible to us to do that, as long as Islam is our faith and our way of life, upon which our identity is based and our authority is derived.”⁹⁴

Al-Qaraḏāwī continues to argue,

“All so-called Islamic countries, inhabited by a Muslim majority, are part of the abode of Islam, even if some Islamic countries do not follow the *Shari'ah* in its totality....The rest of the world to us, Muslims, is an abode of contract, with the exception of the Israel. We are tied with the world around us through [our signing of] the United Nations Charter, in our capacity as members of this entity. It is true we did not sign the charter as one entity, as was the case during the Caliphate time, but we signed it as states bound together with some umbrella organization such as the Islamic Conference....the moment we signed [to be members of the UN], there established a contract and *mithāq* that we are Islamically bound to follow

⁹² Al-Qaraḏāwī, *Fiqh al-Jihad*, vol. 2, 882-900.

⁹³ *Ibid.*, 886.

⁹⁴ *Ibid.*, 900.

and to fulfill all its requirements, as long as they do not contradict the religion.”⁹⁵

It is not only the United Nations, but also other types of state-state relationships such as educational, developmental agreements, diplomatic missions, etc. All these connections charge Muslims with moral and ethical obligations towards other states, a matter which does negate the possibility of describing these states as an abode of war. The best way to describe them then is that they constitute *dār al-‘ahd*.⁹⁶

The whole world as “*dār al-‘ahd*” is the bridge that al-Qaraḍāwī builds between the tradition and modernity. He uses the concept as an absolute term without ascribing to it the legal debate if *dār al-‘ahd* itself is a part of *dār al-kufr* or a third category of *dārs*. He does not refer to the legal conditions of concluding contracts with *dār al-ḥarb*. It will be misleading if one compares al-Qaraḍāwī’s conception of *dār al-‘ahd* with its traditional definition. *Dār al-‘ahd* for him is very close to, if not the same as, an international civil political domain of human brotherhood. This becomes clear when al-Qaraḍāwī disfavors the use of the term of “*dār al-‘ahd* in the modern world because of the historical connotations it implies. So he suggests changing these terms with others that are acceptable to a wider audience. He argues that these terminologies are not sacred. Rather it will work better with the Qur’anic direction to debate others with what is best. Al-Qaraḍāwī himself advises Muslims not to use the word *kuffār* in addressing others. He argues that the Qur’an used this word only twice in addressing non-believers: the first in

⁹⁵ *Ibid.*, 900-1.

⁹⁶ *Ibid.*, 906.

connection with the Day of Judgment and the second when non-believers were bargaining with the Prophet. Al-Qaraḏāwī confirms that in his books he always calls them ‘non-Muslim’. Nowadays people use the term ‘the other’ to talk about those who disagree with them. So there is a need to develop a different way of addressing the other that fits today’s moral standards.⁹⁷

Al-Qaraḏāwī is not the only one to rely on the notion of *dār al-‘ahd* to rationalize his argument of the validity of Muslims’ residence in a non-Muslim abode. Ibn Bayyah used the same method but his understanding of *dār al-‘ahd* is different from al-Qaraḏāwī. He maintained the traditional understanding as *dār al-‘ahd* as a territory where an official treaty or contract is concluded between such a land and Muslim individual or state. However his conceptualization of the treaty incorporates modern forms: Visa or citizenship represents this contract. For Ibn Bayyah, *dār al-‘ahd* is a real signed individual contract that results in moral and legal obligations and not a civil moral commitment that is innately established with the others, as understood from al-Qaraḏāwī’s disposition.⁹⁸ Ibn Bayyah argues that the world is not classified into two abodes, that of Islam and that of war. It actually has a third abode, i.e. the abode of contract. This is the current relation between Muslims and non-Muslims. Through a visa or citizenship, Muslims enter into a binding contract that imposes a state of dialogue between Muslims and non-Muslims. A binding Islamic contract creates moral

⁹⁷ Al-Qaraḏāwī, *Fiqh al-Jihad*, vol. 2, 908-910.

⁹⁸ This does not mean at all that Ibn Bayyah does not subscribe to the notion of the dignity of the human being and his rights to protecting his self, property, honor, etc. Ibn Bayyah argues for all these elements but on basis other than *dār al-‘ahd*.

responsibility and legal obligations. Muslim minorities should respect the law of the land and should prohibit themselves from aggression. Good citizenship is part of the deal. This *amān* contract is not only for regulating life with non-Muslims but in itself reflects three aspects of the religion of Islam: the moderation of Islam in dealing with the other, the acceptance by Islam of the concept of diversity and pluralism and thirdly the exclusivity of the Islamic *da'wah*, since those non-Muslims are potential Muslims.⁹⁹

At the time where al-Qaraḍāwī and Ibn Bayyah were clear about their position toward introducing *dār al-'ahd* as an alternative to *dār al-ḥarb*, al-Juday', it seems, has not come to a decision yet. As a traditional jurist, he wanted to stay within its legal options, i.e. *dār 'adl* (abode of justice), or *dār Murakkabah* (composite abode) or *dār Islām* (abode of Islam) that were produced by earlier jurists. On one occasion, he argues that modern liberal countries cannot be described as *dār Islām* since they follow a non-religious governance system. It can be described as *dār 'adl*, an abode of justice, because it guarantees the dignity of man, and work on his protection.¹⁰⁰ On another occasion, he states that the governance system of the West makes more sense to call it *dār murakkabah*, a composite *dār* where the two parties, Muslims and non-Muslims were legally permitted to practice their own religion. By necessity this [position] creates a non-religious bond among people of different religions, through which they coexist. It is the

⁹⁹ Ibn Bayyah, "Muslims living in non-Muslim Lands", trans. Hamza Yusuf, talk in Santa Clara Convention Center, California, July, 1999. (available: <http://www.binbayyah.net/portal/en/books/980>) (8/11/2011)

¹⁰⁰ Al-Juday', *Taqīm*, 157.

bond of citizenship”.¹⁰¹ On a third occasion, al-Juday’ subscribes to al-Mawārdī, al-Haythamī, and al-Shirbīnī’s position that a non-Muslim land can be *dār Islam* as long as one is able to practice his religion safely in a non-Muslim territory; then his place is *dār Islām* in his own right.¹⁰²

Reconstruction of the Tradition

Jurists of *fiqh al-aqalliyyāt* vary in their methodology of how to label the world of non-Muslims. In the previous section, al-Qaraḍāwī, Ibn Bayah and al-Juday’ attempted to reconcile the tradition with the current reality through a process of reinterpretation the already available traditional legal positions. Some other jurists sought another path. They have a different vision of the non-Muslim world. Using Qur’anic principles, al-‘Alwānī argues that recognizing the Qur’anic understanding of geography as “the earth belongs to Allah and Islam is his religion” would lead to a conclusion that every and each country is either an abode of peace as a matter of fact or will be eventually in the future. All humanity is the community of Islam, *ummatu al-Islam*, either by adopting the faith “*ummat millah*” or as a prospective follower of it, “*ummat da ‘wah*”. Al-‘Alwānī supports his position by going back to the legal tradition by referring to al-Mawārdī and al-Rāzī. He quotes al-Mawārdī’s position, referred to earlier, that *dār al-Islām* is the land where Muslims can practice their religion therein. He furthermore adopts the Razi’s division of

¹⁰¹ *Ibid.*, 68.

¹⁰² *Ibid.*, 69.

the world into *dār da'wah* and *dār ijābah*, arguing that those positions are close to the objective of the *Shari'ah* and Qur'anic meaning of geography.¹⁰³

The use of the term “*dār*” in Islam is indicative. The Qur'an did not use the world, country or state “*balad*” or “*arḍ*” because “*dār*” is tied with the Muslim. It is part of his life. Where he goes, his *dār* goes with him. The Muslim has no single country that he sanctifies and defends while the rest of the world has no obligation towards him. This *dār* has no qualifications other than that he can manifest his religion therein.¹⁰⁴ *Dār* is like a tent. One day it is set up in a place and the next day it is carried to another place, holding with it one's religion and values. So if the land is all for Muslims, then the question of world division or residing in a certain land is meaningless. Moreover Muslims are required by their religion (Qur'an: al-Shu'arā', 227 and al-Shūrā, 39) to have a pro-active interaction with the environment they live in and to have an affirmative and constructive engagement. Even if this participation entails some courtesies that may have some negative aspects to the minorities, this is all right as long as they do not have an impact on the fundamentals of faith.¹⁰⁵

Ṣalāḥ Sulṭān comes close to al-'Alwānī's conclusion when he states that it is a methodological error to apply certain juridical positions that might have been valid in another time to modern times. One of these positions is the division of the world into *dār*

¹⁰³ Al-'Alwānī, *Towards a Fiqh*, 28-9.

¹⁰⁴ Al-'Alwānī, “Madkhal”, 22.

¹⁰⁵ Al-'Alwānī, *Towards a Fiqh*, 29.

al-Islām and *dār al-ḥarb*. However it is better to consider in our context *dār al-‘ahd* and *dār al-da‘wah*,¹⁰⁶ based on these countries’ attitudes towards Muslims.

In his *al-‘Usus al-Shar‘iyyah li-al-‘Ilāqāt bayn al-Muslimīn wa-Ghayr al-Muslimīn*, Fayṣal Mawlawī (1941-1911), member of the ECFR, argues in the same venue. He states that Muslims in Western countries are not in *dār al-ḥarb* for various reasons: they entered these countries on the basis of a contact/treaty, i.e. visa, that must be fulfilled; they are also able to practice their religion in a way that goes beyond what is permitted in some Muslim countries; Muslims, as individuals are not responsible to declare a state of war against other countries. Such a declaration is a matter of state concern and requires certain state procedures and conditions. If Muslims happen to be in the West, they are in *dār ‘ahd* or *dār da‘wah*. If one accepts the classical legal division, then Muslims are in *dār al-‘ahd* but if one argues that this division is not applicable in our current world, then we are in *dār da‘wah* similar to the situation of Muslims in Mecca before their *hijrah* to Medina. At that time, Mecca was not *dār ḥarb*. It was *dār da‘wah*, along with the whole Arabian Peninsula. If people in *dār al-da‘wah* accept the call and establish Islam in their lands, then their place becomes *dār Islām* and the rest of the world is *dār da‘wah*.¹⁰⁷

This redefinition of the non-Muslim territories as *dār al-‘ahd*, *dār al-‘adl*, *dār al-Islām*, or *dār al-da‘wah* establishes the basis for not only allowing Muslim to emigrate

¹⁰⁶ Sulṭān, *Mawsū‘ah*, 21.

¹⁰⁷ Fayṣal Mawlawī, *Al-Usus al-Shar‘iyyah li-al-‘ilāqāt bayna al-Muslimīn wa-Ghayr al-Muslimīn*, 2nd ed. (Beirut: Dār al-Rashād al-Islāmiyyah, 1990), 78-9.

and reside in non-Muslim territories but also for bringing different perspectives on questions of citizenship and loyalty to non-Muslims, matters to which jurists have always negatively responded.

Citizenship and Loyalty Redefined

The creation of the nation state redefined the relationship between the political entity of the state and its subjects. Categories such as citizens, alien residents, minorities, ethnicities, illegal immigrants, etc. became integral in determining the rights and duties of every individual towards the society he lives in. At the same time Muslims were trying to navigate their status through these categories, Muslim jurists and *muftis* were searching for ways to negotiate, accommodate, or even reject these categories with a view to maintain the integrity and the authority of Islamic Law. The *muftis* who ruled for the undesirability of emigration to non-Muslim countries had no problem with the challenge of citizenship. For them the question does not exist because Muslims should emigrate and be citizens in a Muslim state. As for those *muftis* who permitted Muslims to reside in a non-Muslim land, they had to tackle further a long list of questions on Muslims' duties and obligations towards their non-Muslim country as well as their religion. Questions of citizenship and loyalties come at the top of their list.

Citizenship is a complex challenge because it requires certain duties and obligations that may inherently contradict the "traditional" understanding of Islamic Law. One main obligation of citizenship, for example, is that it assumes loyalty to the constitution of the non-Muslim state. This intersection between citizenship and loyalty

triggered the debate on the concept of citizenship and the meaning of loyalty and to what extent they correspond with Islamic teachings and values.

Engaging the debate, Muslim jurists and *muftis* produced a wide array of complex arguments that undoubtedly mirror each jurist's political and social context as well as its legal orientation. At the time of colonialism, many *muftis* categorically refused to permit Muslims to take the citizenship of the colonizers whatever the reasons were. Rashīd Ridā considered such a person a sinner and the Tunisian *mufti* considered the person who merely seeks the citizenship of the colonizer an apostate. These positions became milder in the 1980s and the 1990s. Jurists tended more to permit Muslims to take the citizenship of the host country for the sake of securing religious and social benefits for Muslims. At the turn of the twenty-first century, Muslim status in the "host country" has become positively different. They have become quite settled and built many infrastructures. They felt more secure and a good deal of the second and third generations became citizens already. By this time also, minority *fiqh* has become part of the debate of Islam in the West and produced a different line of argument: Muslims should not only take their country's citizenship but also they should be active citizens who work not only for their religious community but for the welfare of their people and state. To arrive at this conclusion, jurists of *fiqh al-aqalliyyāt* had to resolve a number of intricate questions and various points of contention such as constitutional supremacy (over Islamic Law), military subscription, and taxation. Each of these questions require a separate study, especially in terms of their impact on a Muslim's legal and moral obligations towards his non-Muslim country and on the process of transformation of Islamic Law in the West.

For the sake of brevity and the focus of this present study, the analysis here will be limited to the question of citizenship and its relation to the meaning of loyalty in the thought of jurists of *fiqh al-aqalliyāt*. The objective is to demonstrate the complexity of the issue and how it was resolved in innovative ways that challenge conventional positions at the same time that they establish a solid ground for *fiqh al-aqalliyāt* to flourish and respond to minority concerns without a need for conciliatory justifications.

Before presenting the positions of minority jurists on the question of citizenship and loyalty, it is necessary to present an anti-citizenship argument in order to understand the type of arguments minority jurists needed to advance to strengthen their argument. The Syrian jurist al-Būṭī argues that the assuming citizenship of a non-Muslim country works against the religiously distinct identity of Muslims in the immigrant countries. Instead of absolute submission to Allah and His *Shari'ah* and instead of emigration to Muslim territories, Muslims often assume citizenship in clear contradiction to verses of *muwālāh*, i.e. loyalty. Citizenship, al-Būṭī states, is not a legal or a geographical identification. It has also a creedal aspect and philosophical and ideological objectives. It requires full loyalty to the policies of the country and surrender to its laws. Such surrender to secular man-made laws means that one accepts them and is convinced of their truthfulness. This conviction, according to al-Būṭī, is a grave sin in Islam.¹⁰⁸

Al-Būṭī here advances three arguments. The first argument is that of a Muslim's religiously distinctive identity. Taking non-Muslim citizenship replaces this identity with feelings of *muwālāh* that should be limited to Allah, His messenger and the believers.

¹⁰⁸ Al-Ḥasanī, *Al-Ikhtilāf*, 78; Al-Buṭī, *Qaḍayā Fiqhiyyah Mu'āshirah*, 254.

The second argument is significant. It shifts the question from being a legal issue into a question of *'aqīdah*, i.e. one's faith, which does not allow any room for a compromise. The third argument is directed toward the individual Muslim. If he accepts citizenship, this implicitly means that he is convinced of the truthfulness of the "non-Islamic creed", a matter which leaves the individual with the burden of sin. These arguments are compelling and can easily affect the minds of many Muslims.

The complexity of the question of citizenship becomes more evident when one reviews the *fatwas* of the Islamic *fiqhī* organizations such as the Islamic *Fiqh* Academy, the *Fiqh* Academy of the Islamic Conference and the position of the *muftis* of the *Fiqh* Guide of North African Muslims Living Overseas. The first council decided not to give an opinion and left the *fatwa* to each individual *mufti* to decide on the case at hand. The second council so far has not issued a *fatwa*. The council did send the question to a number of its committee *fatwa* members, received their answers and formed a small committee to draft a resolution for the council to review and debate. Until this very moment, the question has not been answered. This position recalls the position of the same Academy towards the question of *hijrah* when they decided not to issue a general *fatwa* and asked each individual *mufti* to give his *fatwa* on a case by case basis. It seems that the same applies here. It is up to each *mufti* to decide it on a case by case basis. One may wonder why there is such reluctance although these councils were created to answer *ummah* concerns, of which citizenship has been an urgent one. There may be a number of hypotheses that would respond to this question. First, it seems that these councils mostly recruit members who ascribe to traditional schools whose literature did not have much to

say about the innovative question of citizenship. Out of caution, they prefer not to issue an opinion that may create trouble for them from traditional circles. One may venture here and argue that such councils tend to issue their collective resolutions only after the issue has received a sort of consensus among individual jurists. Then the Council issues a *fatwa* to consolidate that position. If not, the case stays open until such a position is reached. The questions of *hijrah* and citizenship are good examples here. Also it is worth noting that most of the councils' members are traditionally trained and mostly live in Muslim countries. They may not be aware of the various dimensions of the questions or the mechanism that governs Muslims' lives in the West.

Individual *muftis*, especially those who have connection with Muslim minorities, tend to have more positive and somewhat conclusive positions towards these questions. The *muftis* of the *Fiqh* Guide of North African Muslims, for example, permitted citizenship on the basis that it is a technical procedure and geographical affiliation that has no effect on the creed of the Muslim and his desire to practice the religion of Islam.¹⁰⁹

Ṣalāḥ al-Ṣawī does not agree with the *muftis* of the *Fiqh Guide*'s conclusion that citizenship is a simple technical procedure. Rather it is such a problematic issue that requires various layers of analysis. On one hand, apparently, acquiring citizenship implies consent with the *Jahiliyyah* law, pre-Islamic law, and discarding arbitration to Islamic Law. It also implies being loyal to non-Muslims over Muslims. Any of these is by necessity known in religion as *ḥarām*. It does not even preclude the ruling of apostasy against those who are involved in such acts, or at least it is one of the main reasons that

¹⁰⁹ Al-Ḥasanī, *Al-Ikhtilāf*, 73.

leads to apostasy. On the other hand, many of those who got naturalized, al-Şāwī argues, are still loyal to their religion. They gained strength out of their citizenship that they utilized in their *da'wah* activities. They built Islamic centers and institutions in these lands and made Islam part of the land, instead of being an immigrant religion. Through the work of those people, many came to Islam. In addition to this, positive law has become the norm in many Muslim countries to the extent that there is not much difference between the laws applied in these lands and the laws applied in the lands of Muslims. Therefore al-Şāwī concludes that, “if the process of citizenship is stripped off from the requirements of absolute acceptance of the laws and systems of the country granting citizenship and does not fully subscribe to its binding laws or express absolute belonging to its community so that one is obliged to show peace to its allies and involve in war against its enemies; and if such a citizenship is necessary to organize the affairs of residents of these societies and to establish their residency, along with keeping one’s commitment to the contracts and agreements one has with the host country, and such a citizenship is needed for urgent necessities and the citizenship-seeker to maintain his *walā’* and *barā’* and commitment to Allah and His messenger, then the ruling on citizenship is open for *ijtihād* and one should not preclude an opinion to its permissibility with the framework highlighted above.”¹¹⁰

Şalāḥ al-Şāwī’s *fatwa* is actually not a *fatwa* in the sense that it guides the *fatwa* seeker to an answer. It problematizes the question by reiterating all concerns and advantages of living in a non-Muslim society. It does not discuss the nature of the host

¹¹⁰ Şalāḥ al-Şāwī, *Mawsū'ah*, vol. 2, 37-41.

society in terms of values or structures. It deals with the citizenship question as a self-interest issue for the Muslim minority. This position corresponds with al-Ṣāwī's position of non-settlement/non-emigration to a non-Muslim land. This position does not contribute much to the discourse of *fiqh al-aqalliyyāt*.

Understanding the problematic nature of the question, Ismā'īl al-Ḥasanī formulates his position on a cautious, but positive, ground. He argues that the question of *tajannus*, i.e. citizenship, requires one to analyze various elements such as the reasons and outcomes of *tajannus* and the meaning of *muwālā* that such practice may entertain. Taking the nationality of a certain country is normally an outcome of social and personal necessities. Muslims admire Western life in terms of its intellectual freedom, political tolerance and social solidarity. They made use of these components to build an Islamic community of mosques, schools and other institutions. When this admiration of the West is compared with the poor economic situation and the limited freedom in the Muslim world, it results in one's privilege to the West. However there are also, al-Ḥasanī continues, other disadvantages of holding the nationality of a non-Muslim country. In some situations Muslims may need to work against the interests of their country of origin. They may also become more attracted to non-Islamic customs and practices. Bringing all these factors together, one cannot arrive at a final resolution that applies to all cases. Acquiring citizenship implies "a level of the *muwālāh*, i.e. loyalty, of Muslims to the *kuffār*".¹¹¹ If this *muwālāh* entails any aspect of loyalty to a faith that is not the faith of Allah or to any aspect of treason to the Islamic home country, then I subscribe to the

¹¹¹ Al-Ḥasanī, *Al-Ikhtilāf*, 80, 82.

position of those who narrow the permissibility of assuming citizenship within severe limitations. (He is applying here the role of avoiding mischief as prior to bringing benefit.) That is the mischief resulted from upholding non-Islamic morals, taking off national and religious identity, following a Western style of life. All this, if not *ḥarām*, leads to venues of *kufr* and that is *makrūh*, i.e. reprehensible. This should not mean to ignore the other conditions and necessities which make becoming a citizen permissible, even if this would lead to *muwālāh* but it is the least level of *muwālāh* that is referred to in the Qur'anic statement, "But if you want to take protection against them".¹¹² These necessities include *da'wah*, meeting the needs of the converts and other members of the Muslim community and also to escape the persecution practiced by some home countries...etc.¹¹³

Al-Ḥasanī deals with the same concern of al-Būṭī, i.e. identity and *muwālāh*. He acknowledges that there is loyalty and admiration involved in taking the citizenship of a non-Muslim country. However, he introduces that there are levels of *muwālāh* (such as inclination to their beliefs, showing their love for personal gains, betraying Islam or the Muslim state) and the one projected here is a minor form of *muwālāh*. If compared with the benefits, Muslims may bear it for the greater good, i.e. *da'wah* and support for the Muslim minority community. Al-Ḥasanī's argument reflects the hesitation that some minority jurists may have when they deal with complex minority questions. In his theoretical framework presented in previous chapter, al-Ḥasanī shows a progressive

¹¹² Qur'an, Al 'Imrān 2:28.

¹¹³ Al-Ḥasanī, *Al-Ikhtilāf*, 84-5.

approach when talking about societal consciousness of the differences between classical concepts and modern reality. He does not show the same level of consciousness about the meanings and politics of citizenship.

Ibn Bayyah, on the other hand, seems to have a more consistent approach to the citizenship question in lieu of his argument of considering current non-Muslim territories as an abode of contract. He argues that Muslims' residence in the West is based on various levels of necessities and needs. He refutes the claim that loyalty to one's religion prohibits him from interacting with the non-Muslims, including taking their citizenship. The abode of *amān* is based on the contract of citizenship whose meaning does not contradict the meaning of *walā'*. It actually constitutes a different level of *walā'* that does not contradict the religious *walā'*. Rather it can be seen as part of it.¹¹⁴ The concept of citizenship, Ibn Bayyah argues, is a voluntary contractual bond regulated by a constitutional framework and is established on fundamental values. These basic values include mutual respect, recognition of other faiths and cultures, guaranteeing others' freedoms, participation in fair political and economic life, etc. These same values are Islamically required from Muslims.

It is true for a Muslim that his religious loyalty takes priority over other loyalties but this is in case of conflict, something that Ibn Bayyah does not subscribe to. The

¹¹⁴ Ibn Bayyah originally argues that terms like *walā'* and *barā'* have no legal weight. According to their usage in the Qur'an and *Sunnah*, these terms do not establish any legal determinations. For him *walā'* is an Arabic word that refers to belonging to a certain religion, or to a certain type of family relationship or to a slavery bond. The term "*barā'ah*" used in the Qur'an is context specific. It was used to refer to non-believers who breached their contract with Muslims. The use by certain sects or schools of this term to indicate an ideological or legal stand to exclude others is not based on sound evidence. (<http://www.binbayyah.net/portal/research/621> - accessed 8/11/2011)

significant contribution of Ibn Bayyah's here is his attempt to transform the debate from a technical religious platform to abstract values. The criteria of evaluating the other, including aligning with him and taking its citizenship, has become the value and not the religion. On this level, many controversial questions raised by Muslim minorities can be positively approached. For example, a basic argument against acquiring the citizenship of a Western country is that the secular nature of these governments requires their citizens to resort to secular courts and not to their religious laws. Ibn Bayyah argues that this understanding of secularism is unfair and does not correspond to the real meaning of secularism. The basic values of secularism such as respecting religion, neutrality among faiths, recognition of human rights, acknowledging plurality, defending aggression, etc, correspond to the basic values that religions call for. According to this argument, values are part of human nature that does not require a religious bond to establish it. Conversely, it is religion which requires their fulfillment.

Ibn Bayyah's approach to questions of citizenship, loyalty and secularism is thought-provoking. He turned these concepts into positive values. If positive, they should be part of the value system of Islam. If Islamic, Muslims should hold to them. The questions become no longer religious-based but civilization-oriented.

Following a similar line of thought, i.e. taking the question of citizenship and loyalty from the realm of religion to other grounds, Jamāl al-Dīn 'Aṭīyah argues that there is a distinction between political loyalty and religious loyalty. The Constitution of Medina, 'Attiyah argues, is an early case of this distinction. In the constitution Muslims and Jews, the *anṣār*, indigenous population of Medina, and *muhājirīn*, the Meccan

immigrants, came together in a political alliance, not a religious *walā'*. Moreover, the Qur'an affirms the same distinction when it considers the people of *dhimmah* part of the people in the Islamic state,¹¹⁵ a clear indication that there is an established political *walā'* they have with Muslims.¹¹⁶ 'Aṭīyyah adds to these two levels of *walā'* a third one, i.e. social *walā'* which leads to social peace. Political *walā'* results in legal rights and obligations but the social *walā'* leads to mutual social and emotional rights and obligations such as the non-exchange of hostility among social groups, Muslims and non-Muslims.¹¹⁷ Based on 'Aṭīyyah's argument, Muslims can receive citizenship in non-Muslim states and reciprocate with them in political and social *walā'* but keep the religious one to their own Muslim community. This is more or less an affirmation of civil society principles.

The distinction between religious *walā'* and *walā'* of citizenship has been reiterated in various ways with a view to prove that loving one's country is natural and cannot be penalized by religion. Al-Juday' argues that "loyalty to one's beloved country cannot be ignored or belittled. It is a natural tendency that requires one to work for its country's welfare. This is part of the principles and objectives of the religion of Islam that enjoins one to do the good and to forbid mischief. Islam also requires one to defend his country against aggression: to defend the souls, the people, and the property." (Qur'an

¹¹⁵ Qur'an, al-Anfāl 8: 72.

¹¹⁶ Jamāl al-Dīn 'Aṭīyyah, "Naḥwa fiqh Jadīd," *Ummatī fī al-'Aālam: Hawliyyat Qaḍāyā al-'aālam al-Islāmī*, 4th edition, Civilization Center for Political Studies (Cairo. Shorouk International, 2004). The same study was republished as a book by Dār al-Salām, Cairo. The edition used in this study is the Dār al-Salām second edition, 2003, 80-1.

¹¹⁷ 'Aṭīyyah, *Ibid.*, 82.

22:39-40) Moreover, the *walā'* of citizenship does not mean a *walā'* for the ruler or the governing system. It is for the country. This can be attested in reality, when the governing system changes, say from republican to democratic, one's *walā'* to the country does not. Another example comes from the Muslim world: if religion were part of the citizenship package, you would not find non-Muslim citizens. Therefore the link between religious *walā'* and citizenship cannot stand the test or be based on religious proof.¹¹⁸

Conclusion

The relationship between Muslim minorities and their non-Muslim societies has three connecting circles: residence, citizenship and civic engagement. One may think that the three circles are the same thing, but actually, as seen throughout the chapter, these are three different steps that do not necessarily lead to each other. Rather they do need a denominator to put them in perspective and connect them for full interactivity and productivity. This denominator has been an ongoing collective societal process that involves many factors such as the liberal modern context, the emergence of young Muslim generations, modes of new ways of thinking, and new transnational spaces. *Fiqh al-aqalliyyāt* comes as a reflection of all these factors to frame things in an Islamic tone, empowering Muslims from within the tradition not to break with their identity in a world that promotes pluralism, but at the same time asserts distinctiveness.

Fiqh al-aqalliyyāt challenges the division of the world into *dār al-Islām* and *dār al-ḥarb*, creating an alternative *dār*. It does not matter how you call this *dār*, because the

¹¹⁸ Al-Juday', *Taqīm*, 148.

dār is no longer part of one's faith but a place to apply one's belief. The application of the Islamic creed has to take full power: justice, solidarity, and goodness. Here the creed takes another comprehensive meaning, it is not only rituals. It is civic engagement with society, Muslim or not, that proves one's character as a Muslim. *Fiqh al-aqalliyāt*, or Western Muslims in this case, asserts a new vision of modern Islam that relates to both the private sphere and the public sphere as two distinctive spheres but connected in terms of their desired outcome: a good citizen!

This new vision of modern Islam is not produced *ex nihilo*. It is based on rigorous intellectual argument, whereby jurists go back to the texts to reinterpret or reconstruct them in order to accommodate new realities. This mechanism for relating the text to context is not only due to the interpretability legacy of the tradition but more importantly due to the acceptability of these interpretations in light of the current context. This process may be described as “semantics of expectations” on the part of the society where words acquire new meaning according to different sets of expectations.¹¹⁹ Dividing the world into *dār al-Islām* and *dār al-ḥarb* is no longer part of the expectation of Muslim minorities where “the word” *dār* for them indicates settlement, justice, security, engagement, participation, responsibility and definitely not *hijrah*.

¹¹⁹ Masud, “The Obligation to Migrate,” 45.

Conclusion

This dissertation argues that Islamic Law and tradition have the capabilities and the resources to accommodate social change through a complex process of interpretation, negotiation and intellectualism. The progress of Muslim legal tradition in terms of establishing competing juridical schools, producing voluminous works throughout the centuries, and recognizing the legitimacy of legal differences attests to this conclusion. *Fiqh al-aqalliyāt* is another step in the progress of Islamic legal tradition that continues to prove its living aspect as it relates itself to its time and space. In this *fiqh*, the jurists challenged various traditional concepts and reopened for discussion notions of world division into *dār al-Islām* and *dār al-ḥarb*, notions of Muslim's ethical obligations towards non-Muslims (who were seen as *dhimmīs* or *musta'man* or *ḥarbiyyīn*), and notions of *Jihad* and *da'wah*. For each one of these concepts, jurists of *fiqh al-aqalliyāt* developed a position that responds to the urgencies of modern time and space. The notion of world division is either rejected as irrelevant to our modern life or modified to be *dār of shahādah*, the abode of declaration of faith, and *dār of da'wah*, the abode of inviting people to Islam. As for Muslim's ethical obligation towards non-Muslim, it is no longer based upon rules of *dhimmīs* or *amān* but on the principle of citizenship and other international conventions such as that of human rights and minority rights. *Jihad* is not meant to be offensive. It is only used to defend one's own land so it corresponds with the principle of state's sovereignty on its own land. *Jihad* of *da'wah* to spread the message of Islam has nothing to do with waging wars. In our modern time, internet, satellite channels, or even personal communication is enough to pursue this Islamic duty.

However, in order to establish such understanding and to prove its authoritativeness, jurists and scholars had to engage in a complicated legal discourse. As presented in this study, three key trends in this discourse deserve our attention: the puritan literalist trend, the traditional trend and the renewal trend. The puritan-literalist trend continues to look at the present day Muslim minorities with the lens of medieval jurists who mostly argued that Muslims in minority positions should not reside outside the abode of Islam except for a good reason. This means that present-day Muslim immigrants to Western countries should return to their Muslim country of origin. The traditionalist trend argues that the legal rulings pertaining to Muslim minorities require exceptional rules with a view to fulfilling the needs of place and time. Accordingly Muslims are allowed to stay, work and live in non-Muslim countries, but on an exceptional basis. The renewal trend asserts the need for a new special category of jurisprudence and a new methodology that generate a framework of objectives, characteristics and fundamentals of a minority-based jurisprudence, *fiqh al-aqalliyāt*. Each of these trends attempts to draw a jurisprudential framework for its position. The present study delineates these trends and their jurisprudential framework with a focus on the third trend that represents a significant shift in the jurists' attitudes towards Muslims living in a non-Muslim polity.

Chapter one examines the literalist discourse, mainly through the *fatwa* collection of the Permanent Committee for Scientific Researches and *Ifiā'* of the Saudi Ministry of Islamic Affairs. Given the immense contribution of Saudi institutions to Muslim minorities in form of mosque building, Islamic materials, funding Islamic studies

programs and activities, not to mention the symbolic role of the Saudis as the Guardians of Muslim's holy places, Muslim minorities looked up for guidance and advice from the official *fatwa* committee of the Saudi Kingdom. The committee received questions from many countries in the world, including Belgium, Bangladesh, Thailand, London, America, Canada, France, Germany, Bengal, Australia, Singapore, Brazil, India, Russia, Denmark, Ireland, Africa, etc. The questions dealt with various aspects of man's life: immigration, citizenship, rituals, marriage, divorce, education, food, dress, interacting with non-Muslims, interfaith dialogue, etc. Based on these questions, the chapter provided a portrait of a Muslim life in a non-Muslim polity.

The chapter argues that the advocates of this discourse live in tension with the West. They look at its people, culture and products with suspicion. They continually recall the status of war and enmity that governed the interaction between the East and the West throughout past centuries. This discourse derives its force from the notion that the land is of two categories: the abode of Islam and the abode of war. The abode of Islam is the legally-chosen abode for Muslims to live where they would enjoy sovereignty and autonomy over their religious affairs. The land of war is the land of disbelief, non-believers, the enemy, the immoral, etc. This being the case, the logical outcome is that Muslims have to abandon the non-Muslim abode. This abandonment is required physically through immigration to Muslim lands. If, however, this is not possible for a specific reason, then social abandonment of the society is required. In other words, a policy of segregation and isolation from the wider society is recommended.

Chapter two focuses on the traditionalist discourse as represented in the *fatwa* collections of al-Azhar and its Grand *Imams*. Due to its historical and religious significance, Muslim minorities have a long history of approaching al-Azhar for reliable authoritative responses for their religious questions. Literature shows questions coming to al-Azhar as early as the 1900s from Western countries. Throughout the century, one can easily locate *fatwas* coming from Germany, Italy, Great Britain, America, France, South Africa, Brazil, and so on. Based on *fatwa*-content analysis, the chapter argues that two groups of *fatwas* can be identified: group one covers *fatwas* before the 1970s and group two covers the last quarter of the twentieth century. Through the beginning of the century up to the 1970s, the *fatwas* were mainly asked by individual immigrants and mostly covered personal status issues and ritual practices. During the last decades of the twentieth century, the *fatwa*-seeking process witnessed a significant change. In addition to personal status and ritual-related questions, one can notice the appearance of a new category of questions and questioners. In the post-1970s, Islamic organizations, social institutions, and political entities became an identifiable source of different uncommon minority questions covering social and political issues of concern to the growing Muslim minority communities.

Studying these two groups of *fatwas* demonstrate that the trend of al-Azhar is qualitatively different from the literalist trend examined in chapter one. The *muftis* in chapter one stress the need to reside in a Muslim land. In this chapter, the *muftis* rarely raise the need of a Muslim to leave his place of residence to seek another Muslim land. Rather, the focus is more on the need to commit oneself to the regulations of one's "new"

country and to adapt to its environment as long as one is able to manifest his religion in an atmosphere that does not deny his rights or mock his religion or result in denying the fundamental tenets of one's religion. This chapter examines various *fatwas* and relevant concepts such as *hijrah* (immigration), *taqlid* (imitation), *jinsiyyah* (citizenship) to argue that the *fatwas* given by Al-Azhar represents the voice of tradition. The *muftis* regenerate the tradition by reviewing multiple opinions of classical schools, and investigating arguments and counter-arguments with a view to recommending one over the other, utilizing the legal concept of *rukhsah*, i.e. license-based rulings. They attempt to appreciate changes in time and place and the need, in some situations, to depart from conventional positions through issuing what may be called "conditional *fatwas*", i.e. one is allowed to carry on a certain act, however under certain conditions.

Chapters three and four examine the idea of *fiqh al-aqalliyāt* as promoted by its early advocates *sheikh* Yūsuf al-Qaradāwī and Dr. Ṭaha Jābir al-'Alwānī. Chapter three focuses on the discourse of al-Qaradāwī while chapter four examines the discourse of Al-'Alwānī. These two chapters discuss questions such as, how did those two scholars become reference points for Muslim minorities? How do they see the relationship between Islam and the West; Muslim minorities and Western societies? How do they situate the modern Muslim life, especially that of Muslim minorities, in Islamic discourse of *Shari'ah*, *fiqh* and *ijtihad*? And most importantly how do they relate their Islamic reform projects to the discourse of *fiqh al-aqalliyāt*?

Al-Qaradāwī, the head of the European Council for *Fatwa* and Research and the president of the International Union of Muslim Scholars, is the first Muslim scholar to

contribute a monograph on the question of *fiqh al-aqalliyāt*. Reading his book, however, one realizes that the book represents a continuation of al-Qaraḍāwī's intellectual project of *taysīr* and *wasāṭiyyah*, i.e. facilitation and moderation. *Shari'ah* for al-Qaraḍāwī is divine. It governs all the individual's affairs throughout time and space, even if he lives outside the land of Islam. *Shari'ah*, however, has two categories. First is the affirmative one which is based on clear cut texts from the Qur'an and *Sunnah*. This category is limited in scope and covers only the fundamentals of faith. The second category, which is known as *fiqh*, is the non-affirmative one which is based on the work of the intellect of the jurists. If so, given the societal, political and economic changes in our contemporary life, *fiqh* can be adapted. Social values, for example, should be part of the realm of *darūriyyāt*, basic necessities, that *Shari'ah* guarantees. These values should include justice, freedom, solidarity, equality, human rights and brotherhood. So doing, al-Qaraḍāwī gives himself the right to critically approach *fiqh* cases, rejecting, approving, or modifying its rulings to fit his understanding of contemporary life. *Fiqh*, according to al-Qaraḍāwī, is not what is frequently repeated in jurisprudential literature or what is currently taught in colleges of *Shari'ah*. Rather it is the Qur'anic *fiqh* that is based on *fiqh* of God's signs in the universe, community and oneself. This is very significant because now al-Qaraḍāwī can create his own *fiqh* categories: *fiqh al-muwāzanāt*, *fiqh al-'awlawiyyāt*, *fiqh al-sunan*, *fiqh al-ikhtilāf*, *fiqh al-tadarruj*, *fiqh al-dawlah*, *fiqh al-maqāsid*, and *fiqh al-aqalliyāt*.

Fiqh al-aqalliyāt, according to al-Qaraḍāwī, means to apply the wisdom of *Shari'ah* not the letters of jurisprudence. If certain jurists divide the world into two: the

abode of Islam and the abode of war, *Shari'ah* does not. If some jurists demand Muslims to be loyal to only one entity, the Muslim *ummah*, *Shari'ah* allows dual loyalty: to the *ummah* and to one's residential community. If *fiqh* calls upon Muslims to do *hijrah*, immigration, *Shari'ah* reverses this necessity and asks Muslims not only to immigrate to the West but to interact with it to prove the universality of the message and to perform the duty of *da'wah*. This position represents a paradigm shift in the Muslim legal tradition, because instead of supporting a legacy of disengagement and alienation, al-Qaraḏāwī attempts to normalize Muslim's life in the West. Therefore the Muslim is permitted to take home mortgage, the Muslim is allowed to inherit from his non-Muslim relative, and the convert can stay with her non-Muslim husband.

Ṭaha Jābir al-'Alwānī, former president of the International Institute of Islamic Law and former president of the *Fiqh* Council of North America, is the second pioneering figure in the field of *fiqh al-aqalliyyāt*. Al-'Alwānī's work on *fiqh al-aqalliyyāt* should be examined along with his larger projects of the need for a new *Ijtihād*, for a new *usūl*, principles of jurisprudence, and for *Islamiyyat Al-Ma'rifah*, Islamization of knowledge. In *fiqh al-aqalliyyāt* his analysis resonates with his calls for a re-reading of the Qur'an to identify the general message of Islam and the role of man on earth: i.e. *tawhīd*, *tazkiyah* and *'umrān* (monotheism, purifications and civilization). This message can only be realized through the double reading of '*al-wahy*' and '*al-kawn*' (the revelation and the universe). According to al-'Alwānī, such a reading will reshape Muslim understanding of the objective of jurisprudence. This revised understanding may include the Qur'anic concept of geography, according to which the whole earth is for

Allah, and is all *dār al-Islam*, the abode of Islam. Therefore, the people living on this land are either Muslims representing the nation of Islam or non-Muslims representing the nation of *da'wah*, i.e. potential Muslims. It may also include the universality of the Qur'anic discourse and its values of dignity, equity and justice that make all people equal. He argues that, if early Muslims represent *abnā' al-'aālamīyyah al-'ūlā*, the first generation of the universal Islam, the present Muslim generation living in the West represents *abnā' al-'aālamīyyah al-thānīyah*, the sons of the second era of the universal Islam. So arguing, al-'Alwānī advances the claim that *fiqh al-aqallīyyāt* has to be considered part of *al-fiqh al-akbar*, i.e. the ultimate jurisprudence of life, and not part of *furū' al-fiqh*, i.e. the technical mundane jurisprudence.

Chapter five examines the internal legal debate among Muslim jurists on *fiqh al-aqallīyyāt*. and affirms the establishment of a new category of Islamic jurisprudence. This development is not only the result of a surge of publication that advocates for this category of *fiqh* but also because it takes the discussion into a deeper analytical level. *Fiqh al-aqallīyyāt*, according to Ibn Bayyah, has become a *ṣinā'ah*, a profession that requires special training in order to produce authoritative *fatwas*. This training is not only limited to study the Islamic legal tradition, but also, according to Ismā'īl al-Ḥasanī, to be able to discern the peculiarity and the societal specificities of the minority world. Although this argument is similar to that of al-Qaraḍāwī's and al-Alawani', it differs in the length and the details of the argument, a matter which suggests that such ideas became integral to the discourse and not only a justification to produce compromising *fatwas*. In a more daring step, Dr. Ṣalāḥ Sulṭān considers *fiqh al-aqallīyyāt* a bridge to

fiqh al-muwāṭanah, i.e. jurisprudence of citizenship, while Dr. Jamāl ‘Atiyyah introduces a comprehensive vision of *fiqh aqalliyyāt* that applies to all minorities of the world regardless of their religious convictions. With these and other similar arguments *fiqh al-aqalliyyāt* is transformed from a mere idea of how to help and empower Muslim minorities in their unfamiliar Western abode¹ into a collective project that aims at creating a space for the application and adaptation of Islamic Law in the West.

Having established itself as a discourse, *fiqh al-aqalliyyāt* needed to create a space for its jurisdiction as a prior authoritative collective preference of Muslim minorities, rather than a personal choice of exceptional rules. In order to do that, *fiqh al-aqalliyyāt* had to address three basic issues: the question of residence (temporary or permanent); the nature of residence (alien or citizen), and the purpose of residence (*da’wah* or civic). In other words, Muslim communities needed to define their relationship to their *ummah*, and to the political system of their country of residence and to their “host” societies and their fellow citizens.

Chapter seven examines these intricate issues and argues that *fiqh al-aqalliyyāt* has become a forum to debate various Islamic norms. The question of *hijrah* from the West or that of *Jihad* against the West, for example, is challenged by a position of civic engagement. This is not done on a superficial level but through deconstructing traditional legal positions of the duality of world divisions, reconstructing the objectives of *Shari’ah*, contextualizing and historicizing the tradition, and reinterpreting the primary texts.

¹ This is in reference to the title of Cathleen Moore’s book *The Unfamiliar Abode*.

Definitely, such a process of de/re-constructing a tradition will not yield one position. At least two main positions can be noted. The first focuses more on re-interpreting certain basic components of the tradition, and then applying them to Muslim minority contemporary setting. *Dār al-‘ahd*, i.e. the abode of contract, for example, is redefined not only to refer to the contractual relation between the Muslim resident and the non-Muslim polity but also to subscribe to the idea of international civil political domain of human brotherhood. Therefore Muslim minorities living in non-Muslim polities are committed to the welfare of this political domain. The second position criticizes the use of the context-specific categories of the tradition. For example, it rejects the notion of world division as it is a product of specific historical era and not part of the fundamentals of faith. Instead this position reconstructs what thought to be the original foundation of faith regarding the proper interaction with the land in general, including non-Muslim lands, and its residents. If faith, as Qur’an argues, states that the earth belongs to Allah, then it cannot be described otherwise. Consequently it is permitted for a Muslim to “walk wherever he wants”, provided that he applies the principle of *isti‘mār*, i.e. building and contributing to its civilization. Although the two positions differ in their orientations, they affirm the principle of citizenship to a non-Muslim political state and the commitment of Muslims to be loyal citizens.

This complex discourse of *fiqh al-aqalliyyāt* relies greatly on the mechanism of *ijtihād*, which can be defined as the use of the jurist to his utmost mental and scholarly efforts to deeply understand the legal texts and be able to deduce the legal ruling regarding a certain issue as he believes it to be the will of God. The claim that Islamic

Law is static and its rules are fixed for good is flawed. On the contrary Islamic Law in the most part is founded upon legal human reasoning. The statement that God is the Legislator is restricted in practice. As early as the establishment of Islamic legal schools in the 8th/9th century, jurists used to interpret the divine word and consequently develop norms for its application in their lives. One can argue that there are very few binding provisions in Islamic Law that cannot be applied without interpretation.² This process of interpretation and reasoning is what Muslim jurists define as *ijtihād* which is the kernel of the progress in the structure of Islam.³

The relation between *Shari'ah*, *fiqh* and *ijtihād* is greatly interconnected. As one scholar explains, "*Fiqh* develops *Shari'ah* in light of the changing conditions of society through the modality of *ijtihād*".⁴ In other instance, it is argued that *fiqh* is the embodiment of largely speculative thought and *ijtihād*, and as such it is the unfinished chapter of *Shari'ah* that is amenable to further development and growth.⁵ *Fiqh al-aqalliyāt* serves this purpose, i.e. the growth of *Shari'ah*. In other words *fiqh al-aqalliyāt* represents a new step in the ongoing effort of legal construction and reform. The advocates of this *fiqh* develop their own *ijtihādī* projects with a view to make Islam, read here *fiqh*, relative to the questions and conditions, be they political, social or

² Mathias Rohe, *Muslim Minority and the Law in Europe: Chances and Challenges*, 1st ed. (India: Global Media Publication, 2007) 49.

³ Muḥammad Iqbāl calls *ijtihād* the principle of movement in the structure of Islam. See: Muhammad Iqbal, *The Reconstruction of Islamic Thought in Islam* (Kitab Bhaven, 2000)

⁴ Mohammad Hashim Kamali, "*Fiqh* and Adaptation to Social Reality" *The Muslim World*, LXXXVI, no. 1 (January 1996): 64.

⁵ *Ibid.*

scholastic, of present time. Al-Qaraḏāwī, for example, introduced his project of moderation and facilitation, where he attempts to present a moderate vision of how to reclaim the spirit of Islam and of how to redefine the role of Muslims in the modern life. Al-‘Alwānī, on the other hand, proposed his *ijtihādī* project of the Islamization of knowledge, where he aims at the revival of a universal Islamic philosophy of knowledge through redefining the objectives of *Shari‘ah*. Jamal Atiyyah is also a good example. He pioneers the project of *al-tanwīr al-Islāmī*, i.e. the Islamic Enlightenment Project. In this project ‘Atiyyah argues even for a new *ijtihād*/revival of the science of a new science of principles of jurisprudence. As a one product of these reform attempts, *fiqh al-aqalliyāt* stands as an innovative attempt of the general discourse of *ijtihād*.

At this conjecture, it is important to argue that these reform projects, including that of *fiqh al-aqalliyāt*, are not a sudden product of the last few decades. Rather they are in part a continuation to the reform movements that started in the 19th century. Over the last two centuries, there were many attempts within Muslim circles to save Islam from the shackles of *taqlīd* and puritan ideologies. The writings of Jamāl al-Dīn al-Afghānī, Muḥammad ‘Abduh, Muḥammad Iqbāl, Shah Walli-Allah, and more recently Al-Sanhūrī, Muṣṭafā ‘Abdel-Rāziq are just few examples. The main line of thought in all these writings was to ascertain the relevance of Islam to contemporary life. Observing this development, Weeramantry states, “a new era of Islamic jurisprudence lies ahead, as full of vitality as any of the ages past and as full of determination to make of the Islamic Law an instrument relevant to the problems conjured up by the present technological

age.”⁶ Cantwell Smith also argues, “Islam is today living through the crucial creative moment in which the heritage of its past is being transformed into the herald of its future.”⁷

This process of transformation that Cantwell referred to is not only a result of internal discourse of *ijtihād* among Muslims but it is an outcome of a complex set of factors, that cover a wide array of political, economic, and social elements. In the case of Muslim minority, one of the basic challenges that Muslim jurists encountered is the nature of the political regime. For example, this regime highly commends the individual autonomy and the separation between the private and the public spheres. This individualization of community life is foreign to Muslim culture and religion, whose tradition used to be communal and does not separate between the public life and the individual sphere. Coming to the West, Muslims have to reconsider the communal nature of their life and religion and adapt them to the individual nature of the new setting. Pre-*fiqh al-aqalliyāt* discourse of the 1960s through the 1980s created a counter-individualization paradigm. A Muslim, as an individual, should practice his Islam and follow the teaching of *Shari'ah* to the best of his ability in his private sphere and limit, if not isolate, his interaction with the public sphere. This form of individualization could not survive due to the emergence of younger generations, the urgent need for more interaction with the wider society and the policies of integration and assimilation of the

⁶ C. G. Weeramantry, *Islamic Jurisprudence: an International Perspective* (Hampshire: MacMillan Press, 1988), 123.

⁷ Wilfred Cantwell Smith, *Islam in Modern History* (New York: the New American Library, 1957), 11.

political regimes. Gradually Muslim minorities had to confine their religious practices to the private sphere. Some studies identified the individualization of Muslim religious practices as the major development among Muslim minorities.⁸ The Muslim communities became part of the modern paradigms of the West which were identified as secularization, individualization and privatization.⁹

As *fiqh al-aqalliyāt* discourse was growing, the question of individualization, which was seen by many Muslim activists as a threat to the Muslim religiosity, had to be tackled. *Fiqh al-aqalliyāt* suggests a new approach and proposes a circle of three spheres: private sphere, public sphere, and Muslim community sphere. Islamic Law in turn is also divided into the same three spheres with a view to proving its relevance to all affairs of Muslim life. For example, at the time individual *fatwas* and advice were provided based on each one's condition with a view maintaining the principle of individualization in the society, Islamic universal values such as justice, tolerance and mercy are emphasized in the realm of public sphere. On the other hand, collective communal efforts are also demanded to serve the religious needs of the community and to limit their dependence on non-Islamic options. To clarify, in terms of public sphere, *fiqh al-aqalliyāt* urges Muslims to maintain the nature of the political system, i.e. separation between religion and state, and calls upon the Muslim to abide by the laws of the land and show his solidarity with non-Muslim fellow citizens. For example, *fiqh al-aqalliyāt*

⁸ Frank Peter, "Individualization and Religious Authority in Western Europe," *Islam and Christian Muslim Relations*, vol. 17:1, (January 2006): 106.

⁹ *Ibid.*

demands Muslims who plan to build a mosque to follow the guidelines of building construction in the mosque locality. In the context of private sphere, the Muslim should practice his religious rituals in such a way that it does not interfere with his public duties. He for example can combine prayers in case he cannot fulfill his rituals for work obligations or for other reasons that have to do with the regulations of public sphere. As for the Muslim community sphere, *fiqh al-aqalliyāt* creates an Islamic public sphere where the Muslim community, as a group, works together to maintain its identity. In other words, *fiqh al-aqalliyāt* provides communitarian principles where the rules give priority to the benefit of the community over the individual. Muslims, for example, should join hands to produce *Shari'ah*-compliant solutions to support Muslims against taking interest-based mortgage. Muslims also may give their *Zakāh* to establish Islamic centers instead of giving it away to poor Muslims living in the country of origin. If there is no distinction made between the private, the public and the Muslim community spheres and the examples referred to above are answered from the lens of classical legal tradition, Muslims would continue to live within a framework of legal exceptions, i.e. they can perform whatever action, such as combining prayer or taking citizenship, on the condition that it is temporal.

In order to establish these spheres and to escape falling into the trap of puritan literalist legal positions, the jurists of *fiqh al-aqalliyāt* need not only to perform *ijtihād* in the practical aspect of jurisprudence. They have to start from somewhere beyond practical juridical manuals. They turned to the field of *usūl al-fiqh*, i.e. the principles of jurisprudence, where the focus is not practical legal questions, but on the interaction

between ethical principles and *maqāṣid al-Shari‘ah*, i.e. objectives of *Shari‘ah*. In this field, the question is not about “what should one do (a question of law)?” Rather, it becomes what are the principled objectives of *Shari‘ah* that should govern one’s conception of the good. In other words, there is a shift from pure legal sphere to an ethical philosophical sphere, or to the sphere of the meta-ethics where the questions are about the meaning and nature of moral judgments and values and how they can be supported. In the meta-ethics of *fiqh al-aqalliyāt*, the focus is on common shared values. We see al-Qaraḍāwī, al-‘Alwānī, Ibn Bayyah and others focus on values of justice, freedom, and human rights. It is noteworthy here to note the shift in the value discourse. Not long time ago, and even in some circles until today, the West is often seen as an immoral land without values.¹⁰ If contemporary anti-Muslim trends promote a conflict of civilizations, the Muslim literature talks about a conflict of values. So as to *fiqh al-aqalliyāt* to challenge this value conceptualization of the West, it provides Muslim minority with a different evaluation of the Western value system. In fact it makes them universal, and as such Islamic. So doing, *fiqh al-aqalliyāt* promotes not only legal formal normalization of Muslims’ lives in the West but also ethical and moral normalization. This means a moral commitment to maintain the political and social values of the non-Muslim society.

One may argue here that many Muslim jurists attempted to encounter “Western” values, such as notions of rights, justice, equity, tolerance by providing extensive Islamic

¹⁰ See for example: Raḍwan Ziyādah and Kevin J OToole, *Ṣirā‘ al-Qīyam bayan al-Islām wa al-Gharb* (Damascus: Dār al-Fikr, 2010).

arguments that these values are part of the Islamic Law.¹¹ If so, then these values have a divine origin. As such they actually surpass the Western understanding of them. Finally, if these values are Islamic and divine, then Muslims should be part of the value discourse and contribute positively to it.

That being said, one can rightly conclude that *fiqh al-aqalliyāt* is a basic component in the intellectual growth of Muslim minorities and in their integration in their liberal homes. Although *fiqh al-aqalliyāt* started as an immigrant phenomenon, it evolved into a complex discourse that challenge the role of *Shari'ah* in contemporary world and redefine Muslim identity in a hybrid world. It rejects completely the claim that *Shari'ah* cannot live in the West because of the inherent contradiction of values (the *Shari'ah* versus the West discourse). It challenges the attitude that *Shari'ah* can live in the West through a process of compromise (the *Shari'ah* in/of the West discourse). Rather, *fiqh al-aqalliyāt* discourse promotes that “*dār al-Shari`ah*”, i.e. a land where the objectives of are highly present and guaranteed, can be the West,

With this conclusion, this research provided another perspective for studying the question of Muslim minorities. The study of legal internal discourse of the jurists of *fiqh al-aqalliyāt* definitely helps Muslims to rethink the role of Islam in their life and to redefine their spiritual and social objectives. For researchers, this study fills a void in the present state of research by presenting the voice of jurists on their own terms and from within their own tradition. It investigates the internal tension that jurists encountered in

¹¹ Jamāl Aṭṭīyah is a good example here. In his book *Naḥwa fiqh Jadīd li al-Aqalliyāt*, he presented the Islamic proof that values such as freedom, human dignity, equity and equality are part of the Islamic tradition.

their attempt to reconcile between the Islamic tradition, the aspirations of Muslim minority communities and the expectations of the non-Muslim society. This study enriches current studies that focus on the final statements of the jurists without examining thoroughly the discourse of how they came into such conclusions. For future research, I suggest a follow-up study of *fatwas* of the jurists of *fiqh al-aqalliyāt*, to be based not only on their final determinations, their repercussions and applications, but also on content analysis that dissects the *fatwa* and relates it to tradition, reform, rules of *uṣūl*, *fiqh al-aqalliyāt* and minority conditions. Such a study will enrich our understanding of the institution of *fatwa* in minority context. It would demonstrate points of convergence and divergence between a theoretical framework as that of *fiqh al-aqalliyāt* and practical solutions as those presented by *fatwas*. It also reveals to what extent the discourse of *fiqh al-aqalliyāt* can be extended beyond minority lands to reach Muslim territories.

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