

Sources of Moral Obligation to non-Muslims in the “Jurisprudence of Muslim Minorities” (*Fiqh al-aqalliyyāt*) Discourse*

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Abstract

This article surveys four approaches towards moral obligation to non-Muslims found in Islamic legal thought. I refer to the first three approaches as the “revelatory-deontological,” the “contractualist-constructivist” and the “consequentialist-utilitarian.” The main argument is that present in many contemporary works on the “jurisprudence of Muslim minorities” (*fiqh al-aqalliyyāt*) is an attempt to provide an Islamic foundation for a relatively thick and rich relationship of moral obligation and solidarity with non-Muslims. This attempt takes the form of a fourth “comprehensive-qualitative” approach to political ethics that appeals not to juridical reasoning of the type “is x permissible and in which conditions?” but rather to Islamic ideals of what it means

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to live a good life, of what believing, normatively-committed Muslims want to pursue in this world. This meta-ethical approach builds on and goes beyond the first three. This fourth “comprehensive-qualitative” approach to moral obligation to non-Muslims is novel, emergent and not found in the writings of outright reformers but in those of conservative, “neo-classical,” *sharī'a*-minded—even Muslim Brotherhood-affiliated—Muslim scholars. What adds to the force of this argument is that the other meta-ethical discourses, particularly of contract and utility (*maṣlaḥa*), already get these scholars quite far towards a doctrine of “loyal resident alienage” in non-Muslim societies. That even orthodox Muslim scholars go further shows that they have some interest in giving a theological or principled foundation to a much thicker and richer form of moral obligation to non-Muslims, a relationship which involves recognizing non-Muslims qua non-Muslims and contributing to their well-being.

Keywords

moral obligation; *fiqh al-aqalliyyāt*; Muslim minorities; ethics

In the modern period a number of changes figure as stimuli for the revisiting of traditional doctrines on the nature of the moral relationship with non-Muslims.¹ The first is the global prominence of ethical discourses claiming universal validity which emphasize equality in citizenship, human rights and religious freedom. Such discourses, often embedded in legal systems transplanted from Europe to Middle Eastern countries, in international treaties and agreements, and in state and non-state human rights activism,² have not failed to influence the thought, imagination and assumptions of even “Islamist” thinkers and activists.³

¹ These questions traditionally received sophisticated treatment for the purposes of organizing societies and states where non-Muslims were minorities and/or subjects of Islamic political and legal authority. See, for example, Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003).

² For a rich treatment of international human rights activism in the Islamic world and its ambivalent relationship to Islamic law, see Naz K. Modirzadeh, “Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds,” *Harvard Human Rights Journal*, Vol. 19 (Spring 2006), 191–233.

³ Such as the work of Egyptians Tāriq al-Bishrī, *al-Muslimūn wa'l-Aqbāt fi itār al-jamā'a al-waṭaniyya* (Cairo: al-Hay'a al-Miṣriyya al-'Āmma li'l-Kitāb), 1980, and Yūsuf al-Qaraḍāwī, *Ghayr al-muslimīn fī'l-mujtama' al-Islāmī* (Cairo: Maktabat Wahba), 1977.

The second change is the large-scale migration of Muslims from all parts of the Muslim-majority world to Europe, North America and Australasia. In addition to migration itself being an act which disrupts traditional modes of religious experience and thus sparks introspection, migration to the West has intensified the Islamic encounter with liberalism. The countries in which Muslim populations have grown in the past fifty years are not merely non-Muslim in culture and political values, but defend their political systems and cultures in terms of *universal values* which make both explicit and implicit demands on the Muslim conscience. Unlike Muslim minorities in Russia, Israel, China, East Africa, India and Southeast Asia, Muslim minorities in the West are told that the prevailing liberal values of equality, religious tolerance, universal citizenship, public civic education, gender equality and moderate civic loyalty are not merely contingent political demands which a particular regime poses in return for security and religious freedom but values which represent the achievements of the Enlightenment and Modernity and might very well be political practices which all countries in the world should adopt. This political culture need not describe itself as *metaphysically true* and thus Western societies need not explicitly demand that Muslims abandon Islamic truth claims. This is the hallmark of “political liberalism,” which presents itself as justified but epistemically silent and thus “free-standing” from any single metaphysical doctrine, a feature which, as I have argued elsewhere, shows signs of being very attractive to Muslim thinkers.⁴ Nonetheless, Western political systems, for all their differences, regard themselves as having principled approaches to the dilemmas of social and political life in the conditions of cultural and religious pluralism and tend to expect all of their citizens to endorse these approaches. This adds new dimensions to Islamic religious-doctrinal attempts to make sense of liberal citizenship, for the message often coming from the non-Muslim environment is that Muslims need not merely abide by the local legal and political

⁴ See Andrew F. March, “Islamic Foundations for a Social Contract in Non-Muslim Liberal Democracies,” *American Political Science Review*, Vol. 101, No. 2, May 2007, 235-52 and, more generally, idem, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009).

systems, but also abide by it for good, principled reasons, reasons which Muslims are often called on to publicly proclaim, explain and defend.

It is true that this attentiveness to and self-consciousness about Islamic political ethics coincides with trends in the traditional Islamic heartland and perhaps with a more global “religious resurgence,” but sources suggest that Muslim thinkers both in and outside of Western liberal democracies are engaged in a particularly vibrant process of first-order, abstract, ideal interrogation of their religious commitments in light of the minority condition. Witness the proliferation of centers of research, the self-consciousness of Muslim youth and student groups in Europe and North America and the international popularity of websites offering *fatwās* and religious guidance by eminent scholars such as Yūsuf al-Qaraḏāwī.

Of particular interest for students of Islamic law are the emergence, growth and increasing sophistication and prestige of an entirely new discourse within Islamic legal thought, that of a “jurisprudence of Muslim minorities” (*fiqh al-aqalliyyāt*).⁵ The idea of a *fiqh* for the minority condition is premised, I believe, on a number of assumptions: that the minority status of Muslims in certain countries is an indefinite condition, that a large number of those Muslims have a religious

⁵ See, in particular, Khālid ‘Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima* (Tripoli, Lebanon: Dār al-Imān, 1998); Yūsuf al-Qaraḏāwī, *Fī fiqh al-aqalliyyāt al-muslima* (Cairo: Dār al-Shurūq, 2001); ‘Abd Allāh Ibn Bayya, *Šinā‘at al-fatwā wa-fiqh al-aqalliyyāt* (Jedda/Beirut: Dār al-Minhāj, 2007); Sulaymān Muḥammad Tübülyāk (transliteration from Bosnian of “Sulejman Topoljak”), *al-Abkām al-siyāsīyya li’l-aqalliyyāt al-muslima fi’l-fiqh al-Islāmī* (Beirut: Dār al-Nafā‘is, 1997); Taha Jabir al-Alwani, *Towards a Fiqh for Minorities: Some Basic Reflections* (Herndon, VA: International Institute of Islamic Thought, 2003); Shaykh Ibn Baz and Shaykh Uthaymeen, *Muslim Minorities: Fatawa Regarding Muslims Living as Minorities* (Hounslow, UK: Message of Islam, 1998) and ‘Abd al-Mun‘im Muṣṭafā Ḥalīma (Abū Baṣīr al-Ṭarṭūsī), “Man dakhala diyār ghayr al-muslimīn bi-‘ahd wa-amān mā lahu wa mā ‘alayhi” (online at <http://www.abubaseer.bizland.com/>). Also of note are the *fatwās* of the European Council for Fatwa and Research and the Islam OnLine website, as well as Majdī ‘Aqīl Abū Shamāla, ed., *Risālat al-Muslimīn fi bilād al-gharb* (Irbid, Jordan: Dār al-Amal, 1999), which includes important essays by Qaraḏāwī and Lebanese scholar Fayṣal Mawlawī, amongst numerous others. For a Shī‘i perspective, see Muḥammad Ḥusayn Faḏl Allāh, *al-Hijra wa’l-ighṭirāb: ta’sīs fiqhī li-mushkilat al-lujū’ wa’l-hijra* (Beirut: Mu’assasat al-‘Arif li’l-Maḥbū‘āt, 1999) and ‘Alī al-Ḥusaynī al-Sīstānī, *al-Fiqh li’l-mughtaribīn* (London/Beirut: Mu’assasat al-Imām ‘Alī, 2002).

consciousness which aims at explicitly *shar'ī* answers to ethical dilemmas, and that the spaces in which many Muslims are living as minorities provide Muslims with a particular range of flexibility. The last point is a reference to the liberal political and constitutional order of the countries of Europe, North America and Australasia. This order presents Muslim minorities with a specific range of freedoms and unfreedoms. On the one hand, the religious freedom of liberal societies provides a context for the mutual contestation of the specific demands of public life: schooling, headscarves, mortgages, ritual obligations, and so on. On many non-constitutional matters there is a space in liberal societies for negotiating the precise terms of public and private life, a condition for which *fiqhī* reasoning is ideally suited. On the other hand, liberal societies are more inflexible than non-liberal ones on the question of legal pluralism. It is much harder for liberal societies to grant Muslim communities parallel legal jurisdiction to apply the *shar'ī'a* than it is for societies without universalizing commitments to equality in civil rights. Scholars know that the *fiqh* of minorities cannot begin and end with a demand for Muslim self-government, even to the extent granted in countries such as Israel and India, or for corporatism with communities represented at the state level by their religious leaders.

This, I believe, is what makes the *fiqh al-aqalliyyāt* discourse so interesting and worth following, and also what explains its particular preoccupation with the Muslim communities of Europe. What my reading of the most prominent texts of this discourse shows is a self-conscious and creative engagement on the part of Muslim scholars with some foundational questions of moral obligation and the nature of moral relationships with non-Muslims. I believe that this engagement reflects at least a tacit understanding of the situation faced by Muslim minorities in liberal societies, namely, that Muslim communal autonomy in the form of parallel legal jurisdiction is not likely, and that modern universal citizenship presents expectations of moral recognition and social solidarity across communal and confessional lines. The evidence of the engagement with these foundational questions from an Islamic standpoint on the part of *shar'ī'a*-minded scholars is sometimes explicit, but more often it is embedded in subtler treatments of longer-standing Islamic doctrinal questions,

such as identifying the “basic principle” (*al-aṣl*) of relations with non-Muslims and the precise meaning of “loyalty” (*walāʾ*, *muwālāh*) which is often held to be impermissible towards non-Muslims. My main thesis in this essay is that for *sharīʿa*-minded scholars the primary vehicle for theorizing and theologizing a relatively rich relationship of moral obligation towards and solidarity with non-Muslims is the concept of *daʿwa*, or Islamic proselytism. *Daʿwa* has long served a number of purposes for *sharīʿa* minded scholars, from justifying long-term residence in non-Muslim lands to the suspension of *jihād*. But embedded in contemporary discussions of *daʿwa* is a subtle reformulation of basic attitudes towards non-Muslims’ welfare and moral personality. The purpose of this essay is to present the evidence for that claim in the broader context of Islamic juridical approaches to moral obligation towards non-Muslims.

I have the following objectives in mind for this essay. After outlining the basic doctrinal challenges presented by citizenship in a non-Muslim liberal democracy I will first highlight what I consider to be the three main traditional meta-ethical frameworks for justifying moral obligation to non-Muslims (in evidence both in Muslim-majority and minority contexts) with an eye towards their strengths and limitations for constructing a relationship of moral obligation supportive of common social cooperation. This evaluation of their strengths and weaknesses involves a certain measure of outside normative judgment. My intent is not to impose an arbitrary standard on Islamic ethics, but to help move the discussion along from one section to the next by showing why different meta-ethical approaches appear at different points in Islamic debates. What justifies this form of analysis is that these concerns are clearly present in the internal Islamic discourses; that is, it is jurists contributing to the *fiqh al-aqalliyāt* literature who perceive lacunae in the traditional constructs and are seeking to fill them through new arguments. My own observations about what might be lacking or problematic in the various approaches is only meant to make this more explicit and to explain what is added by each subsequent meta-ethical approach.

Second, I will introduce into consideration what I believe to be a novel fourth framework emerging in the *fiqh al-aqalliyāt* discourse

which represents a powerful resource, particularly for traditionally-minded Muslim thinkers, for theorizing a thicker relationship of moral concern and moral obligation to non-Muslims. This fourth framework, which I call “comprehensive-qualitative,” emerges most clearly in discussions of the Islamic legitimacy of “*muwālāh*” with non-Muslims and non-Islamic polities, and especially in discussions of the Islamic obligation of proselytism (*da’wa*) in non-Islamic environments, which figures (along with “contract”) as one of the core concepts in Islamic thought on the minority condition.

What is the Islamic Concern with Citizenship in the West? Or, Is Moral Obligation to non-Muslims Problematic?

Citizenship in the non-Muslim liberal democracies of the West is something which Muslim scholars both in and outside the West often regard as in need of Islamic justification.

The aspects of such citizenship regarded as in need of justification begin with the very basic. Can Muslims even live in non-Muslim states under non-Muslim authority or must they perform a *hijra* to *dār al-Islām* should they find themselves outside it per Q. 4:96-100?⁶ They extend to the subtle and abstract. What precise aspects of loyalty to a non-Muslim state and its legal system constitute an impermissible form of the *muwālāh* which the Qur’ān seems to prohibit towards unbelievers in verses such as 3:28, 3:118, 4:139, 4:144, 5:51, 5:80-81 and 60:1? There are numerous specific points of contact between Western liberal conceptions of political justice and Islamic political ethics. Can Muslims live a fully just life without the prospect of being able to implement institutions of Islamic justice? Can non-Islamic laws, based on democratic authority or some form of secular reason, ever be regarded as just or otherwise acceptable on grounds other than necessity or expediency (*ḍarūra*)? Do Western conceptions of gender roles present impediments to the preservation of traditional Islamic ideals of family relations?

⁶ 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,” *Islamic Law and Society*, 1:2 (1994), 141-87.

What if non-Muslim states impose demands of loyalty on Muslims in wartime which conflict with obligations due to fellow Muslims? Can Muslims promote morality (“command the right and forbid the wrong”) in societies which protect sinful behavior, including homosexuality and offensive speech about Islam and its Prophet?

I would like to suggest that at the center of all of these questions is a much deeper question which strikes at the foundation of both Islamic positive law (*fiqh*) and theology. At the heart of the liberal conception of citizenship is a demand that all citizens view themselves as being in a particular relationship of *moral obligation* with one another despite any differences of race, class, ethnicity or religion. From the Islamic perspective, thus, a fully comprehensive treatment of the problem of liberal citizenship goes beyond certain technical *fiqhī* questions generated by the minority condition as well as the basic demand to obey the law. In principle, liberal citizenship requires that Muslims conceive of their local non-Muslim space and fellow non-Muslim citizens as objects of obligation, moral concern and solidarity. This is hardly a problem only for Muslims. (Do global capitalists intent on increasing their bottom line and reducing their tax burden whatever the costs to local economies and ecologies have such a conception of citizenship?) However, there is no denying that this relationship of rich moral obligation and solidarity with non-Muslims is often treated as problematic. Two points suffice to demonstrate this.

The first is theological. In both Traditionalism and Ash‘arism, there can be no absolute proof of the obligatoriness or prohibition of any particular act prior to or apart from revelation.⁷ The substantive

⁷ “The Mu‘tazilite tenet that human acts are either good or bad, and that the mind, independent of revelation, is capable of determining which act is good or bad ... runs in diametrical opposition to the most fundamental principle of Sunni jurisprudence, namely, that God decides on all matters and that the human mind is utterly incompetent to function as a judge of any human act.” Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 135. See, e.g., al-Juwaynī (d. 478/1085): “The intellect does not ascertain the goodness of a thing or its badness. Something’s being good or bad falls solely within the disposition of the law. ... What is meant by ‘obligatory’ refers merely to the act which, because the law commands it, is obligatory.” Imām al-Ḥaramayn [Abū al-Ma‘ālī ‘Abd al-Malik] al-Juwaynī, *A Guide to the Conclusive Proofs for the Principles of Belief (Kitāb al-irshād ilā qawāṭir al-adilla fī uṣūl al-ī-tiqād)*, trans., Paul

result of this theological stance is the doctrine of *barā'a aṣliyya*, which is the claim that the natural state of man is one of moral non-obligation.⁸ Thus, the claim made in confidence that one is obligated to perform or to abstain from any act can only be either evidence of reliance on one's own arbitrary, "whimsical" judgment (*hawā*) or the illegitimate subjection to another human being's will. Both constitute a rejection of God's judgment, sovereignty and mastery over mankind.

All questions about specific rights, immunities and obligations are thus matters for substantive law (*fiqh*). Has God endowed unbelievers with absolute rights and immunities and, if so, which ones? Are Muslims permitted to act in a certain way absent positive revelatory proof of this? How, then, do the Islamic revelatory sources, and Islamic positive law, speak in general to the moral status of non-Muslims? The majority of classical jurists held that the basic status of relations between Islam and unbelief is war, that peace is the exceptional condition under emergency conditions and that the

E. Walker (Reading, UK: Garnet, 2000), 141-2. Of course, there are some important Ḥanbalī exceptions to the Traditionalist position, notably Ibn 'Aqīl (d. 513/1119), Ibn Taymiyya (d. 728/1328) and Ibn Qayyim al-Jawziyya (d. 751/1350). In the end, however, these scholars arrive at the same practical conclusion, namely that moral obligation is identical to God's law as revealed in revelation. Affirmation of reason's capacity to identify acts as good or evil is not put in the service of a theory of natural law which would ground obligations to non-Muslims as well as Muslims. See George Makdisi, "Ethics in Islamic Traditionalist Doctrine," in Richard G. Hovannisian (ed.) *Ethics in Islam* (Ninth Giorgio Levi Della Vida Biennial Conference) (Malibu, CA: Undena Publications, 1983), 47-63; and Jon Hoover, *Ibn Taymiyya's Theodicy of Perpetual Optimism* (Leiden: Brill, 2007), 32-9. This is not to downplay the important distinction between the later Ḥanbalī views and Ash'arism; indeed, I will discuss below the "consequentialist-utilitarian" approach to moral obligation, which often refers to the authority of Ibn Taymiyya.

⁸ "*Barā'a aṣliyya* embodies a theological notion: it contradicts the Mu'tazilite thesis which is founded upon the rationality of the legal values (*ahkām*) of a certain number of human acts, and which holds that, before the promulgation of the revealed law, all those other acts which do not admit of a rationalist assessment are all illicit (according to some) or all permissible (according to others) or unqualified (according to a third group). But for almost the totality of the orthodox scholars, the legal values are based, absolutely and exclusively, upon the revealed law; before this law and outside it, human acts have no *ḥukm*; and this kind of fundamental indifference, which must not be confused with permissibility, denies the notion of any obligation." *ET*², s.v. "Barā'a" (R. Rubinacci).

source of this state of war is unbelief.⁹ Any work of *fiqh* from the premodern period,¹⁰ and some from the modern,¹¹ will affirm this.

This point focuses on the idea of moral obligation at a very basic level. Do non-Muslims have any *rights*, including the right not to be killed without good reason? If the state of man in the world prior to revelation is non-obligation (*barā'a aṣliyya*) and the basic status (*al-aṣl*) of relations with unbelievers after revelation is war, it cannot be presumed that even killing a non-Muslim is blameworthy per se.¹² Only specific texts commanding or recommending Muslims

⁹ At any rate, this is the understanding of the classical consensus on the part of 'Abd al-Qādir in his 700-page treatise on the jurisprudence of Muslim minorities, the first and still one of the most comprehensive such works in a growing literature. What is important for our purposes is that contemporary theorists of *fiqh al-aqalliyāt* take this doctrine as their backdrop. They do not assume that relationships of moral obligation to non-Muslims are obvious; they seek to establish them. See 'Abd al-Qādir, *Fiqh al-aqalliyāt al-muslima*, 36-8.

¹⁰ Al-Nawawī (d. 676/1277): "With verses 9:5, 2:191 and 2:193 God permitted fighting [unbelievers] without qualification or condition." Abū Zakariyyā' al-Nawawī, *al-Majmū' sharḥ al-Muhadḍhab* (Beirut: Dār al-Fikr, 2000), 21:10. Ibn Qudāma (d. 683/1223): "A permanent contract of protection and inviolability (*dhimma*) is permissible on only two conditions: (1) that they oblige themselves to pay the *jizya* and (2) the bindingness of Islamic rules over them." Muwaffaq al-Dīn Ibn Qudāma, *al-Mughnī* (Cairo: Dār al-Ḥadīth, 1995), 12:763-4. For scholarship in English: Patricia Crone, *God's Rule: Government and Islam* (New York: Columbia University Press, 2004), 358-85; Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins Press, 1955), 145; Bassam Tibi, "War and Peace in Islam," in Sohail Hashmi, ed., *Islamic Political Ethics* (Princeton: Princeton University Press, 2002); Abdulaziz Sachedina, "The Development of *Jihad* in Islamic Revelation and History," in James Turner Johnson and John Kelsay, eds., *Cross, Crescent and Sword: The Justification and Limitation of war in Western and Islamic Tradition* (London: Greenwood, 1990); Ann Elizabeth Mayer, "War and Peace in the Islamic Tradition and International Law," in John Kelsay and James Turner Johnson, eds., *Just War and Jihad: Historical and Theoretical Reflections on War and Peace in Western and Islamic Traditions* (Westport, Conn.: Greenwood, 1991).

¹¹ See, e.g., Ḥalīma ("al-Ṭarṭūsī"), "Man dakhala diyār ghayr al-muslimīn"; 'Abd al-'Azīz b. Šāliḥ al-Jarbū, "Al-ta'sīl li-mashrū'iyat ma ḥasala li-Amrika min tadmīr" (<http://alansar.hopto.org/jar/> and on file with author); and Sayyid Quṭb, *Fi Zilāl al-Qur'ān* (Beirut: Dār al-Shurūq, 1979), 3:1582.

¹² Rāshid al-Ghannūshī and Fayṣal Mawlawī report the prevalence of the view in some Western Islamic circles that, this being the Abode of War, the relation to non-Muslims is one of war and the situation of Muslims one of *jihād*, non-Western goods and property are licit as booty, it is permissible to file false claims for social assistance and it is not

not to kill certain classes of non-Muslims in warfare, or commanding Muslim authorities to offer certain classes of non-Muslims the *dhimma* contract, or to honor *amān* contracts offered to them, can create specific rights (for non-Muslims) and obligations (for Muslims).¹³

The problem of moral obligation goes beyond the identification of specific rights. If one reads such verses as 3:28, 3:118, 4:139, 4:144, 5:51, 5:80-81, and 60:1 as prohibiting relationships of friendship, alliance or loyalty (*walāʾ*, *muwālāh*) with unbelievers, one might think that specific contracts (such as the *dhimma* in *dār al-Islām* or the *amān* in *dār al-kufr*) can at most create certain immunities, but that the relationship between Muslims and non-Muslims must be a thin one, outranked by one's obligation to fellow Muslims. One must uphold contracts of mutual security, but avoid relationships of deep moral concern and solidarity if one can. Ibn Kathīr, to give one premodern example, extended the range of relationships prohibited as *muwālāh* with non-Muslims to "keeping company" (*muṣāḥaba*), "befriending" (*muṣādaqa*), "mutual consultation" (*munāṣaḥa*) or "revealing the intimate concerns of believers to them" (*ifshāʾ aḥwāl al-muʾminīn al-bāṭina ilayhim*).¹⁴ ʿAbd al-Qādir, to give a contemporary example, defines the concept in terms of "affection," "help," "alliance," "friendship," "following," "being neighbors," and "proximity."¹⁵ In both cases, all of the definitions of *muwālāh* could clearly be interpreted as having both private and political implications, thus calling into question the kinds of relationships created by modern political citizenship: both the legal and political agreement to accept a non-Muslim state's protection and patronage, and the bond of mutual concern between fellow citizens, which we might

necessary to pay taxes. See al-Ghannūshī, "al-Islam fī al-gharb wa ʿalāqātuḥu biʾl-anzīma al-gharbiyya," 112, and Mawlawī, "al-Mafāhīm al-asāsiyya," 220, both in *Risālat al-muslimīn fī bilād al-gharb*. Their reporting of these views is evidence of my basic claim that moral obligation to non-Muslims is often treated as an open question in Islamic ethics.

¹³ From a contemporary "Salafī" treatise on the rights and obligations of Muslims in non-Muslim lands: "The property and blood of a non-Muslim is made inviolable by one of two things: becoming a believer or the contract of security." Ḥalīma (al-Ṭarṭūsī), "Man dakhala diyār ghayr al-Muslimīn," 35.

¹⁴ See Ismāʿīl b. ʿUmar b. Kathīr (d. 774/1373), *Tafsīr al-Qurʾān al-ʿAzīm* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1998), 2:390.

¹⁵ ʿAbd al-Qādir, *Fiqh al-aqalliyāt*, 626.

indeed consider to be a form of alliance or civic friendship. Contemporary Mauritanian scholar ‘Abd Allāh Ibn Bayya succinctly states that “*walā*” is a certain commitment to, and a relationship with, people, ideas and values and must be dealt with [from a religious standpoint].”¹⁶

I do not wish to suggest the popularity (or even knowledge) of these traditional views amongst lay Muslims. However, for Muslim scholars attempting to remain as much as possible within the classical categories, the preceding doctrines explain why relationships of rich moral solidarity with non-Muslims within non-Muslim societies require justification. To the extent that these questions are alive at all, these doctrines suggest that the question of “Muslims in the West” is theologically and philosophically deeper than more accessible questions one often finds discussed, such as aggressive state security measures, the headscarf in France, anti-Muslim media tropes, economic integration and *ribā*-free mortgages.

Meta-Ethical Approaches to Moral Obligation to non-Muslims and non-Islamic Polities

If Islamic positive law and practical ethics do not formulate rights and obligations through intuition, reason or the assumption of broad natural rights, what are the sources of *concrete* moral obligations,¹⁷ in particular towards non-Muslims?

The first three sources are abstractions from Islamic jurisprudential methods: (1) revelatory *commands* (*sharʿ*, *naṣṣ*); (2) legitimate, voluntary *contracts*, and (3) considerations of universal communal *welfare* or

¹⁶ Ibn Bayya, *Ṣināʿat al-fatwā wa-fiqh al-aqalliyāt*, 306.

¹⁷ The question of why humans are in a state of moral obligation or responsibility (*taklīf*) *in general* is distinct. The general covenantal relationship unfolds in man’s awareness of God’s existence and lordship, in God’s addressing (*khiṭāb*) of man and in man’s encounter with a Prophet. See Richard M. Frank, “Moral Obligation in Classical Muslim Theology,” *Journal of Religious Ethics*, 11:2 (1983), 204-23; Bernard G. Weiss, *The Spirit of Islamic Law* (Athens, GA: University of Georgia Press, 1988), Ch. 2; and Aron Zysow, “Two Theories of the Obligation to Obey God’s Command,” in Peri Bearman, Wolhart Heinrichs and Bernard G. Weiss, eds., *The Law Applied: Contextualizing the Islamic Shariʿa: A Volume in Honor of Frank E. Vogel* (New York: I.B. Tauris, 2008), 397-421.

public interest (*maṣlahā*). For comparative purposes, these three meta-ethical approaches can be analogized to non-Islamic meta-ethical terminology. Revelatory commands, properly and authoritatively interpreted, are *deontological* and can produce binding (or “statutory”) rights. The creation of moral rights and obligations through contracts is the *constructivist-contractarian* approach to morality. And the public justification of rights and obligations through considerations of universal communal welfare or public interests is the *consequentialist-utilitarian* approach.

I want to survey these approaches, pointing out their strengths and limitations for theorizing relationships with non-Muslims in the conditions of modern universal citizenship. Again, comments on my part on their lacunae from a comparative ethical perspective are meant to serve two purposes: (1) to represent the moral encounter between Islamic and liberal ethics often expected in contemporary Western publics, but more importantly (2) because I believe that these lacunae are perceived by the Muslim scholars themselves and that this explains their use of various traditional ethical approaches to address different dimensions of the minority condition. I will then introduce a distinct fourth meta-ethical framework for theorizing and theologizing relationships of thick moral obligation with non-Muslims. This fourth framework is present in discourses about ethical life in non-Muslim majority societies, and is in greatest evidence in discussions of the activity of *da’wa* and the moral relationship with non-believers it requires. These discourses go beyond the juridical, *fiqhī* concern with the permissible and impermissible to consider the way in which thicker relationships of moral concern with non-Muslims might be part of a comprehensive conception of an Islamic good life. This mode of theorizing and theologizing the social relationship with non-Muslims reflects what I will call a *comprehensive-qualitative* approach to moral obligation, and we can only appreciate the emergence of this approach if we appreciate both the strengths and the limitations of the first three approaches to moral obligation.

I. Revelatory (Deontological) Approaches

The revelatory sources provide three main approaches to moral obligation to non-Muslims.

1. The first approach refers to explicit texts where the revelatory sources are on record as demanding *these rights* for non-Muslims. An important example of this is Q. 9:29:

Fight those who believe not in God nor the Last Day, nor hold that forbidden which has been forbidden by God and His Messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, *until they pay the jizya with willing submission*, feeling themselves subdued.¹⁸

This verse, while indicative of the general status of non-obligation discussed above, also indicates the revelatory warrant for non-Muslims having the right to enter into a relationship of immunity (*iṣma*) or protection (*dhimma*): “fight them *until they pay the jizya*.” While the construction of this relationship is contractual in that it depends on certain willful actions on the part of non-Muslims (see below), the revelatory text both constructs a background moral status for unbelievers (at least for *kitābīs*) and commands Muslims to offer such a contract—there is no choice to deny eligible non-Muslims the *dhimma* contract if they ask for it.

Similar to this verse are Q. 9:6 (“If one amongst the Pagans asks you for asylum, grant it to him, so that he may hear the word of God. And then escort him to where he can be secure. That is because they are men without knowledge”),¹⁹ Q. 17:15 (“We do not punish until We send a Messenger”)²⁰ and Q. 2:190 (“Fight in the cause of God those who fight you, but do not transgress limits; for God loves not transgressors”) which all command restraint in

¹⁸) Translations from the Qurʾān are based on the translation of Yusuf Ali with modifications for style.

¹⁹) This verse establishes the permissibility of granting a contract of security, *amān*, to otherwise unprotected unbelievers. See below.

²⁰) This verse is used as a proof-text for the doctrine that non-Muslims may not be fought before they have received the call to Islam.

wartime with non-Muslims, although the third may be too vague to produce a specific (“statutory”) right. Of course, numerous *ḥadīth* reports specify (*takḥyīs*) the two basic rights of non-Muslims: to some restraint in wartime²¹ and to *dhimma* within an Islamic state.²²

There are four main limitations of this form of deriving moral obligation to non-Muslims from the revelatory sources, in particular for theorizing the relationship *in non-Muslim societies*. The general problems are that this form alone of the “revelatory-deontological” approach is (1) limited to *those rights* which are enumerated; and thus (2) an approach based solely on it might coexist with a broader attitude of non-obligation (*barā’a*) to non-Muslims. More to the point, this approach is (3) not particularly helpful for the minority condition and (4) might preclude moral dialogue about rights, duties and cooperation which does not proceed on the basis of Islamic reason.

Point (3) requires a brief qualification. Of course, the Qur’ān and *ḥadīth* have much to say about the minority condition, namely anything attributed to the pre-*hijra* period.²³ However, those texts are not usually presumed to have the same legislative status as texts emerging after the migration and the assumption of political and legal authority on the part of the Prophet. Thus, it is fair to say that the revelatory sources are not a rich source of *specific* rights and duties for Muslims outside of an Islamic polity. Of course, this

²¹ E.g., the view that it is impermissible to kill non-combatant women and children in warfare intentionally is grounded on Prophetic *ḥadīth* reports. See al-Nawawī, *al-Majmū’*, 21:54.

²² Listed in al-Bukhārī’s *ḥadīth* collection is the statement of the second Caliph ‘Umar: “I urge [my successor] to take care of those non-Muslims who are under the protection of God and His Messenger in that he should observe the contract with them, and to fight on their behalf, and to not impose burdens on them beyond their capacity.” *Ṣaḥīḥ al-Bukhārī*, Kitāb al-jihād, Bāb 174, no. 3052. For a modern perspective on the rights contained within the classical *dhimma* contract and its applicability in a modern context, see al-Qaraḍāwī, *Ghayr al-muslimīn fi’l-mujtama’ al-Islāmī*.

²³ The early migration of Meccan Muslims to Abyssinia is also a popular referent for Islamic scholars writing on the minority condition. As it occurred with the guidance and blessing of the Prophet and is discussed in biographies, it may be regarded as revelatory in a way similar to *ḥadīth*.

is a problem or limitation only in the formalist sense; the revelatory sources do not give rich evidence of *specific* rights and duties for Muslims outside of an Islamic polity. That they do not, however, is for many scholars not a bane but a boon for thinking through those problems in novel ways. Furthermore, while the Meccan verses may not be a source of textual evidence for specific rights and duties, they are often pressed into service as evidence for the legitimacy of certain general moral *attitudes* towards non-Muslims.

2. This is, in fact, the second way in which the revelatory sources serve as a source of moral obligation to non-Muslims—that they demand a *general attitude* of treating non-Muslims with “justice” or “equity” (*‘adāla, qist*).

Numerous Qur’ānic verses exhort believers to uphold justice (*‘adl*) and equity (*qist*) in all cases, verses which on occasion are invoked by scholars dealing with the problem of relations with unbelievers:

Believers, be steadfast in upholding equity, bearing witness to the truth of God, even if it be against yourselves, or your parents and kin. Whether the person be rich or poor, God’s claim takes precedence over the claims of either of them. Do not then follow your own whims lest you swerve from justice. If you distort the truth or decline to do justice, God is aware of all that you do. [4:135]

Believers, be steadfast in your devotion to God, bearing witness to the truth in all equity. Never allow your hatred of a people to lead you astray from justice. Be just, this is closer to righteousness and be God-fearing for surely God is aware of all you do. [5:8]

It may be that God will grant love and friendship between you and those whom you now hold as enemies for God is All-Powerful, and God is Oft-Forgiving, Most-Merciful. God does not forbid you from dealing justly and equitably with those who do not fight you for your religion nor expel you from your homes, for God loves the equitable. [60:7-8]

The general obligation to uphold justice is universally affirmed, and is often extended to relations with unbelievers, even by scholars and thinkers not generally in favor of close bonds with non-Muslims. Sayyid Quṭb, for example, quoting 4:135, remarks that “the trust [Muslims] have been assigned is to maintain justice, in its absolute sense, in every situation. It guarantees justice between people, giving

everyone, Muslim or non-Muslim, their rights. In their entitlement to justice, all people, believers and unbelievers, are equal in God's sight, as we have seen in the incident involving the Jewish man in Madina."²⁴ Quṭb is able to hold this view that non-Muslims are entitled to "justice" alongside his views that an Islamic polity is entitled to wage war to liberate mankind from submission to manmade laws²⁵ and that no relationship of loyalty and friendship (*muwālāh*) is permissible with unbelievers.²⁶

²⁴ Sayyid Quṭb, *In the Shade of the Qur'ān*, Salahi and Shamis, trans. (Leicester: The Islamic Foundation, 2001), 3:344. The "Jewish man" refers to an episode in Medina during which a Muslim who had stolen a shield from one of the Prophet's Companions placed it in the home of a Jewish resident of Medina and falsely accused him. When the plot was revealed the Prophet insisted that the man be fully exonerated, at a time when the Muslim community was engaged in a wider struggle with Medinan Jews. In relation to this episode, Q. 4:112 declares, "He who commits a fault or a sin and then throws the blame therefore on an innocent person, burdens himself with both falsehood and a clear sin." For Quṭb, God chose to teach the nascent Muslim community the lesson that justice must be done regardless of the identity of the parties not in spite of the enmity between Jews and Muslims at the time but precisely because of it: "The immediate objective was to purify the newly-emerging Muslim community, to treat the elements of human weakness that affected it and to eradicate narrow ties of affiliation in all their forms and guises. ... The Muslim community needed to be seriously tested so as to purge itself of evil, weakness and ignorant practices. Its standard of justice needed to be unblemished by any worldly consideration so that it implemented justice between people regardless of any consideration of immediate interest or prejudice. God, in His wisdom, deliberately chose this particular incident at that particular time, involving as it did a Jew belonging to a community continuously scheming against the Muslims and aiming to undermine the religion of Islam" (3: 299-300).

²⁵ "When there is a divine code requiring complete submission to God alone, and there are alongside it human systems and conditions that are man-made, advocating submission to human beings ... it is right that the divine system should move across barriers to liberate people from enslavement by others. They will then be free to choose their faith in a situation where people surrender themselves to God alone." (Ibid., 8: 28.) "No peace agreement may be made [with Christians and Jews] except on the basis of submission evident by the payment of a special tax which gives them the right to live in peace with the Muslims. ... Never will they be forced to accept the Islamic faith. But they are not given a peaceful status unless they are bound by covenant with the Muslim community on the basis of paying the submission tax." Ibid., 8:101-2.

²⁶ On Q. 3:28: "[There is] a stern warning in the current passage against the believers forging an alliance with the unbelievers. Since the unbelievers have no power to control the universe, and since all power belongs to God, He alone is the guardian of the believers and their allies. How, then, can a believer be justified in forming an alliance with the

This view is consistent with classical exegesis. To cite just two examples: The 10th century historian and exegete al-Ṭabarī (d. 310/923) writes on verse 60:8 that “it is correctly stated with respect to all peoples and religions that you must treat them justly and equitably. God has made this a general ruling in this verse and He did not later make it merely applicable in specific cases and did not abrogate it. God loves the just and those who give people their rights.”²⁷ Similarly categorical is al-Qurṭubī (d. 671/1272), who remarks in connection with the same verse that “justice is an obligation towards both those who fight and those who do not fight.”²⁸ ‘Abd al-Qādir invokes Ibn Taymiyya’s purported commentary on the same verse: “No one is permitted to treat anyone else unjustly, even if he is an unbeliever.”²⁹

Obviously, scholars such as al-Ṭabarī, Ibn Qudāma, Ibn Taymiyya and Quṭb were operating with a different substantive conception of justice than will be enforced in a modern non-Islamic regime. An additional problem with the orthodox claim that Islam “guarantees justice between people, giving everyone, Muslim or non-Muslim, their rights,” is that according to classical Islamic civil law these are not *equal* rights.³⁰ In the Islamic polity, “all people, believers and unbelievers, are equal in God’s sight” in the same way that all

enemies of God? True faith in God cannot be combined with an alliance with, or patronage of, the enemies of God. Hence, we have this very stern warning in verse 28, making it absolutely clear that a Muslim disowns Islam if he forgoes a relationship of alliance or patronage with someone who refuses to acknowledge God’s revelation as the arbiter in life. He has cut himself off from God.” Ibid., 2:62-3.

²⁷ Abū Ja’far al-Ṭabarī, *Jāmi’ al-bayān* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1999), 28:43. He notes that some claimed that the verse originally referred only to the Meccan pagans who did not take part personally in persecuting Muslims but was later abrogated by “the verse of the sword” (9:5): “Slay the pagans wherever you find them.”

²⁸ Abū ‘Abd Allāh al-Qurṭubī, *al-Jāmi’ li-ahkām al-Qur’ān* (Cairo: Dār al-Ḥadīth, 2002), 9:312. On Q. 5:8, al-Qurṭubī comments: “The verse is proof that the unbeliever’s unbelief does not prevent [the obligation of] justice towards him” (3:478).

²⁹ Quoted in ‘Abd al-Qādir, *Fiqh al-aqallīyyāt al-muslima*, 647.

³⁰ For example, the testimony of non-Muslims in court is not regarded as equal to the testimony of Muslims, non-Muslims are not allowed to proselytize or build new houses of worship, there is often a requirement of special dress to distinguish them in public and, of course, the *jizya* poll-tax described by many classical jurists as serving to mark symbolically non-Muslims’ subjugation.

citizens of Plato's republic are equal with their radically unequal rights and duties.

However, in the Muslim *minority* context this question about the type of justice Muslim jurists or ideologues would extend to all subjects of the state obviously does not arise. Clearly the potential exists for severe dispute over what justice requires even where Muslims are a minority.³¹ However, what these texts show is that what is *not* likely to be a matter of dispute amongst serious Muslim thinkers is the basic idea that "justice" is the proper standard for dealing with all fellow citizens as opposed to, say, considerations of Muslim communal interest. In addition to substantive legal or moral rights which might be enumerated, this implies a general attitude of *moral recognition*; non-Muslims cannot be treated instrumentally, their rights and claims (whatever they may be) cannot easily be dismissed even if Muslim interests could be shown to benefit from this.

While statements of this kind are important, this approach to moral obligation may be more limited than it appears for two reasons: (1) the fact of substantive disagreements about the demands of justice (e.g., classical jurists assumed that slavery was a practice that could be engaged in justly) and (2) precisely the *vagueness* and *indeterminacy* of the demand to treat non-Muslims "justly." What does it mean to be obligated to treat non-Muslims justly outside of an Islamic legal and political context? Just which rights and obligations are implied by this and are they assumed to overlap perfectly with those conceptions current in non-Muslim, Western polities? Both of these problems, I maintain, are very much on the minds of many mainstream Muslim thinkers. The second, however, is the object of more frequent *explicit* treatment, for both revelation and classical *fiqh* provide resources for specifying with great confidence at least one basic obligation of justice towards unbelievers, the obligation of *fidelity to contracts*, which I regard as a distinct, third way in which the revelatory sources serve as a source of moral obligation to non-Muslims.

³¹ For example, during the Rushdie and Danish cartoon affairs, the call to limit or ban "offensive," "scandalous" or "blasphemous" speech, or the general question of plural legal jurisdictions.

3. The third way in which revelation commands moral obligation to non-Muslims was suggested above in reference to the *jizya*, *dhimma* status and restraint in wartime by the granting of safe passage (*amān*). All of those point to specific *contracts* that Muslims are commanded to offer and honor. However, the concern registered above that moral obligation under this approach may be limited to *those rights* which are enumerated is mitigated somewhat by the fact that the obligation to honor contracts with non-Muslims is itself a general one. A series of Qur'anic verses exhort Muslims to honor any contract (usually 'ahd or 'aqd, sometimes *mīthāq*) into which they enter:

It is not righteousness to turn your faces towards East or West, but rather righteousness is ... to fulfill the contracts which you make. [2:177]

O believers! Fulfill all contracts. [5:1]

It is those who are endowed with understanding that receive admonition, those who fulfill the covenant of God and do not violate their agreements. [13:19]

Fulfill God's covenant when you have entered into it and break not your oaths after asserting them, for you thereby make God your guarantor. [Q. 16:91]

Fulfill every contract for contracts will be answered for [on the Day of Reckoning]. [Q.17:34]

There is also a famous *ḥadīth*, reported through multiple chains and in multiple forms, about the sinfulness of breaching contracts: "When God gathers all earlier and later generations of mankind on the Day of Judgment he will raise a flag for every person who betrays a trust so it might be said that this is the perfidy of so-and-so, son of so-and-so."³²

In addition to these texts, which deal generally with the status of promises and contracts, a number of revelatory texts apply this duty in the context of military conflict with non-Muslims, where the idea of moral obligation first arises. Q. 8:72 speaks of those who failed to join the Islamic community through migration: "If they [viz., Muslims living amongst non-Muslims] seek your aid in

³²) Muslim, *Ṣaḥīḥ*, Kitāb al-jihād wa'l-siyar.

religion, it is your duty to help them, *except against a people with whom you have a treaty.*" This verse has been traditionally read to impose upon the Islamic polity a duty of restraint towards non-Muslim states harboring Muslim subjects if there is a treaty between them.³³

Another *ḥadīth* applies to the individual Muslim the principle of upholding promises to non-Muslims not to fight them. A certain Companion of the Prophet is reported to have said:

Nothing prevented me from being present at the Battle of Badr except this incident: I came out with my father Ḥusayl to participate in the battle but we were caught by some Qurashī unbelievers. They said: "Do you intend to go to Muḥammad?" We said: "We do not intend to go to him but we wish to go back to Medina." So they took from us a covenant in the name of God that we would turn back to Medina and would not fight on the side of Muḥammad. So when we came to the Messenger of God and related the incident to him, he said: "Both of you proceed to Medina. We will fulfill the covenant made with them but seek God's help against them."³⁴

Although this episode does not deal with a contract with non-Muslims arising as a consequence of legal residence, it seems a perfect example of the justification of some Muslims refraining from fighting non-believers because of a promise made to them. The fact that the episode is situated in the lifetime of Muḥammad (when there can be no question about a Muslim's fealty to the leader of the community and his obligation to participate in *jihād*) only adds to its potency as a guide for Muslim behavior in post-apostolic times.

While this general command to honor contracts is of a revelatory (deontological) nature, revelation itself does not necessarily delimitate the extent of specific moral obligations that may be established through contracts, still less in the minority context. The approach to justifying *specific* moral obligations by reference to (explicit or tacit) legitimate contracts is, therefore, methodologically distinct.

³³ See, e.g., al-Qurṭubī, *al-Jāmi' li-ahkām al-Qur'ān*, 4: 411-14; Ibn Kathīr *Tafsīr al-Qur'ān al-'Azīm*, 4: 84-6.

³⁴ Muslim, *Ṣaḥīḥ*, Kitāb al-Jihād wa'l-siyar, Bāb al-wafā' bi'l-'ahd.

II. Contractualist–Constructivist Approaches

As discussed above, revelation permits Muslims to construct moral obligations through entering into contracts, including with non-Muslims. Jurists from across the legal schools are quite clear that contracts made with non-Muslims are as morally binding as those made with Muslims.

In the context of life within a non-Muslim polity, the relevant discourse is on the “*amān*” contract of mutual security. Jurists are unanimous in holding that the enjoyment of an *amān* imposes on the Muslim certain moral and sometimes legal obligations to the non-Muslim entity in question. I will limit myself here to noting the kinds of obligations thought to emerge from the *amān* contract and the centrality of this concept for contemporary Muslim scholars, especially those contributing to the *fiqh al-aqalliyyāt* literature.³⁵

Premodern jurisprudence converged on the view that “it is abhorred for a Muslim who requests an *amān* from the unbelievers [by swearing] on his religion to deceive or betray them, for treachery is forbidden in Islam. The Prophet said: ‘He who betrays a trust will have a flag raised for him on the Day of Judgment so that his betrayal may be known.’”³⁶ In addition to refraining from hostilities, Muslims are forbidden from stealing from non-Muslims or cheating them in transactions, even if the contract was not explicitly pronounced. It was at times suggested that Muslim authorities in *dār al-Islām* might enforce these obligations should the Muslim *musta’min* flee there, and that considerations of parity and reciprocity were operational in jurists’ reasoning.³⁷ It was even argued that a Muslim prisoner of war, who neither gave nor received a guarantee of security upon entering non-Muslim lands, is morally bound to refrain from fighting his enemy should they release him, even under a non-explicit, tacit contract of mutual security.³⁸

³⁵ For more on the centrality of the *amān* concept, see Abou El Fadl, “Islamic Law and Muslim Minorities”; and March, “Islamic Foundations for a Social Contract in Non-Muslim Liberal Democracies.”

³⁶ Muḥammad b. Aḥmad al-Sarakhsī (d. 483/1090), *Kitāb al-Mabsūṭ* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2001), 10:105.

³⁷ Ibn Qudāma, *al-Mughnī* (Cairo: Hajar, 1990), 13: 152-3.

³⁸ al-Nawawī, *al-Majmū’*, 21:130. See also ‘Abd al-Qādir, *Fiqh al-aqalliyyāt*, 167.

This value, articulated deeply and widely in the classical legal tradition, is the most common present-day Islamic justification (in both Sunni and Shi'i sources) for honoring non-Muslim interests while residing in non-Muslim lands. The contemporary system of visas and naturalization are commonly referred to as the legal and moral equivalent of the former *amān* and thus fidelity to their terms is exhorted.³⁹ Some contemporary thinkers eagerly take up this classical position on loyalty to contracts related to war and derive from it a *general doctrine of political obligation* to non-Muslim states.⁴⁰ Notably, the most prominent clerics issuing *fatwās* on these matters, including through their co-chairmanship of the European Council for *Fatwa* and Research, Fayṣal Mawlawī and Yūsuf al-Qaraḏāwī, extract from the duty to honor contracts even more robust positions, insisting that the duty extends to self-restraint during times when one's non-Muslim state of residence is attacking a Muslim state, when it thus might be held that all Muslims have a duty to resist or oppose this action.⁴¹

Although the emphasis on contract is not the final word on the question of citizenship in non-Muslim liberal democracies, it is truly indispensable and accounts Islamically for much of the civic obligation

³⁹ Mawlawī, "al-Mafāhīm al-asāsiyya," 222; 'Abd al-Qādir, *Fiqh al-aqalliyāt*, 160; Ibn Bayya, *Shinā'at al-fatwā wa-ḥiqh al-aqalliyāt*, 396-7. A Shi'i voice: "If [a Muslim] agreed—even tacitly—to observe the laws of his country, he is bound to honor this contract insofar as it does not involve disobedience to the holy *sharī'a*." 'Alī al-Ḥusaynī al-Sīstānī, *al-Fiqh li'l-mughtaribīn* (London/Beirut: Mu'assasat al-Imām 'Alī, 2002), 184.

⁴⁰ "Islamic law and jurisprudence *order* a Muslim individual to submit to the framework of positive law in force in his country of residence in the name of the tacit moral covenant which already underlies his very presence. To put it differently, *implementing the Sharī'a*, for a Muslim citizen or resident in Europe, is explicitly to respect the constitutional and legal framework of the country in which he is a citizen. Whereas one might have feared a *conflict of loyalties*, one cannot but note that it is in fact the reverse, since faithfulness to Islamic teachings results in an even more exacting legal *implementation* in the new environment. *Loyalty to one's faith and conscience requires firm and honest loyalty to one's country: the Sharī'a* requires honest citizenship within the frame of reference constituted by the positive law of the European country concerned." Tariq Ramadan, *To Be a European Muslim* (Leicester, UK: The Islamic Foundation, 1999), 171-2. Emphasis in original.

⁴¹ Qaraḏāwī, "American Muslim Soldiers Participating in US Attacks against Muslims," www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=49987 (October 2003); Mawlawī, "How Should Muslims in the West Deal with the Iraqi Crisis?" <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=97351> (March 2003).

modern states require of their citizens. The assumption that Muslims have entered into a form of contract allows Muslim scholars and jurists treating the problem of residence in non-Muslim states to assert that such Muslims are under strict obligations to regard as inviolable the blood, property and honor—and in the modern period, laws—of non-Muslims. It is hard to find a single outright exception to this point of doctrine in classical or modern Islamic law.

However, even here one encounters certain problems and limitations for the purpose of accounting for the entirety of the moral relationship with non-Muslims in conditions of social cooperation. I would suggest five in particular: (1) loyalty to the idea of contract may be construed as loyalty to God, not necessarily to the non-Muslim agent or unit; (2) if something is not explicitly contracted to, the obligation might not be regarded as existing; (3) what Muslims are allowed to contract into is always contested within Islamic discourses; (4) there is disagreement on what renders a contract void; (5) the moral logic of contract is often one of “reciprocity” (*mu‘āmala bi’l-mithl*), which is morally ambiguous. A comment on each of these is in order.

It is not obvious how much of an objection (1) is. For one, all religiously-grounded obligations—including to fellow Muslims and to oneself—may be regarded ultimately as obligations to God. This, of course, is the force of *deontological* understandings of morality; moral duties are those which must be performed without calculation of their net benefits in any mundane sense. Even on a “consequentialist” understanding of the motivations for obeying Divine command (where the agent is concerned about her ultimate fate in the afterlife), the fact of the obligation being ultimately to God might be thought to count strongly in its favor.

The concern, however, is the one registered above about moral obligations derived narrowly from specific texts, namely that the relationship of obligation ends at the point of fulfillment of the letter of the specific duty. Beyond this, one has no general obligation or moral concern to the agent with whom one has contracted.⁴² Of

⁴² This dilemma has not escaped the notice of Western rights theorists. H.L.A. Hart argued that moral codes deriving from Divine command, even very rigorous deontological ones such as the Decalogue, do not confer rights on fellow humans. (Although this is a

course, this is a feature of all contracts generally, not a specific feature of the Islamic approach to contracts with unbelievers.⁴³ Nonetheless, it points to the circumscribed nature of moral obligation which is justified in exclusively contractualist-constructivist terms.

Thus, this concern overlaps with (2). While it was shown above that Muslim jurists have invoked the idea of tacit contracts in certain cases, the Islamic recognition of the inviolability of contracts with non-Muslims is far from identical to the recognition of any non-Muslim conception of a general “social contract.” For example, that Muslims under an *amān* in a non-Muslim polity must not violate non-Muslim blood, property or honor is far from an acknowledgement that such Muslims have thereby contracted themselves into recognizing as legitimate any law which that non-Muslim state enacts through its constitutional means, or into a relationship of robust mutual concern.

consequence of his specific conception of rights as a kind of moral property of individuals over which they have sovereign control.) H.L.A. Hart, “Are There Any Natural Rights?” *The Philosophical Review* 64:2 (1955), 175-91. Joel Feinberg has picked up more directly on the dilemma of the other party to the contract, pointing to the Christian tradition of declaring that it “takes three to marry,” the doctrine that “if one breaks his vow, the other cannot rightly complain of being wronged, since only God could have claimed performance of the marital duties, as his own due; and hence God alone had a claim-right violated by nonperformance. If John breaks his vow to God, he might then properly repent in the words of David: ‘To Thee only have I sinned.’” Joel Feinberg, “On the Nature and Value of Rights,” *The Journal of Value Inquiry* 4:4 (1970) 243-57. If we can appreciate that many wives would find this repentance wanting, then we can appreciate also my concern expressed in this section.

⁴³ “Contractualism” (or “constructivism”) is presently one of the dominant meta-ethical approaches to philosophical justification in Western ethics and political philosophy, articulated most famously by John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), and T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998). Its attractiveness for a post-metaphysical ethos is that it appeals to our intuitions about the need to justify power and coercion to those fellow rational agents with whom we are engaged in specific relationships of social cooperation, while also pointing to the limits of our obligations in the conditions of disagreement about value. However, it is often pointed out that contractualist-constructivist approaches have difficulties in accounting for our intuitions about obligations to entities outside of the contractual relationship, such as foreigners, non-human animals, future generations or even the disabled. See, most notably, Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Belknap Press, 2007).

The third concern (3) is more subtle, and more specific to Islam. Some jurists might argue, for example, that a Muslim ruler must honor a truce (*hudna*) into which he enters with a non-Muslim entity, but that he may not legitimately enter into such a treaty beyond the limit of ten years. Or they might argue that Muslims may establish social contracts of basic mutual immunity with non-Muslim entities, but may not promise loyalty during wartime against other Muslims, may not salute symbols of non-Islamic state authority, may not forswear efforts to implement Islamic law and may not contribute to non-Muslim welfare in ways that would strengthen non-Muslims against Muslims. Contemporary Qatari scholar ‘Alī Muḥyī al-Dīn al-Qara Dāghī argues that the duty not to lie obligates a Muslim to pay taxes to a non-Muslim state, but that the duty “to abide by the laws of the country [only holds] so long as they do not contradict the Laws of God. If there is such a contradiction, no one should be obeyed at the expense of disobeying God.”⁴⁴

This pattern of thought is also not unique to Islam. Almost any conception of morality, including a liberal one, will insist on limits to political obligation. From an Islamic perspective, many of those limits will involve exemptions on grounds of personal conscience; however, it is not uncommon for Muslim jurists to express concerns also about the ways in which Muslims may be contributing to the welfare or strength of non-Islamic societies and forms of life.⁴⁵ This is also a statement of conscience, but one which may reveal precisely the limits of moral obligation and solidarity with non-Muslims.

The fourth concern (4) is easily brought out in the context of contemporary polemics. As is well known, virtually all Muslim jurists regard Muslim residents of non-Muslim polities to be under the *amān* contract of mutual security. What actions on the part of

⁴⁴ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=35886.

⁴⁵ E.g., Ibn Qudāma, *al-Mughnī*, 13:151; Abū Ishāq al-Shīrāzī (d. 476/1083), *al-Muhadhdhab fī fiqh al-Imām al-Shāfi‘ī* (Beirut: Dār al-Fikr), 2:227; al-Nawawī, *al-Majmū‘*, 21:5; Aḥmad b. Taymiyya (d. 682/1283), *Majmū‘ fatāwā Shaykh al-Islām Aḥmad b. Taymiyya* (Rabat: Maktabat al-Ma‘ārif, 1980), 28:240; and Manṣūr b. Yūnus al-Buhūti (d. 1051/1641), *Kashshāf al-qinā‘*, 5:44. From amongst modern thinkers: Sayyid Quṭb, *Fī Zilāl al-Qur’ān* (Beirut: Dār al-Shurūq, 1979), 2:732-33.

the non-Muslim authority, however, render this contract void?⁴⁶ Do acts of war or other hostilities against those Muslims living within the state or against any Muslims anywhere outside the state do so? Do such acts render only the state licit, or also its citizens,⁴⁷ particularly today when they might be said to have endorsed those acts of war through democratic elections?⁴⁸ Do domestic security measures which focus on the local Muslim community do so?⁴⁹ Are such contracts

⁴⁶ Ḥalīma (al-Ṭarṭūsī) (“Man dakhala diyār ghayr al-muslimīn,” 56-9) gives four conditions: (1) “if they [the non-Muslim authorities] turn against [the *musta’min* Muslims] and commit perfidy against them,” (2) if the contract is time limited and expires, (3) if Muslims depart from the non-Muslim country and the contract is declared void by either party, and (4) if the country of refuge seeks to deport or extradite the *musta’min* Muslim back to the country from which he fled. It is noteworthy that he does not consider in any detail what kinds of state acts might fall under circumstance (1).

⁴⁷ One sees this argument in some contemporary “jihadī” texts. See, e.g., ‘Abd al-‘Azīz b. Šāliḥ al-Jarbū‘, “Al-ta’sīl li-mashrū’iyyat ma ḥasala li-Amrīka min tadmīr.” Al-Jarbū‘ writes in this lengthy justification of the September 11, 2001 attacks that group punishment for perfidy or an attack on Muslims is permissible. He cites both the 11th-century Andalusian Ṣāḥirī scholar Ibn Ḥazm’s (d. 456/1064) commentary on the episode in Medina when the Prophet massacred the Banū Qurayza tribe on grounds of perfidy and the 14th-century Syrian Ḥanbalī scholar Ibn Qayyim al-Jawziyya’s (d. 751/1350) *Zād al-ma’ād*: “If a part of a people violates or reneges on a treaty or agreement and the rest of the people consents to this, then the entire population is in violation of it, and thus is subject to treatment as a warring people.”

⁴⁸ “Participation by voting in the decision to massacre Muslims, exporting shame and indecency to Islam and Muslims and participating in the corruption of Muslims and diverting them from their religion” make American civilians a legitimate target. al-Jarbū‘, “Al-ta’sīl li-mashrū’iyyat.” An unauthored text justifying the July 7, 2005 London bombings, styled after the Jarbū‘ text, argues similarly that “any Briton who voted for fighting is a combatant, or at least aids and abets combat.” Anonymous, “al-Ta’sīl li-mashrū’iyyat mā jarā fi Landan min tafjīrāt wa’l-radd ‘alā ’l-bayān al-mash’ūm li-Abī Bašīr al-Ṭarṭūsī” (on file with author).

⁴⁹ The primary (if not sole) example of this is the media statement by Omar Bakri Muhammad, the supposed leader of the “al-Muḥājiroun” Salafī group in the United Kingdom. He had previously declared on multiple occasions that while he supported terrorist acts against Western powers, he regarded Muslims living in those countries as bound by the “covenant of security” (*‘aqd al-amān*). On January 10, 2005 he is reported to have declared that British counterterrorism measures violated the British guarantee of security and peace to the Muslim community and thus rendered void the mutual covenant of security, making it permissible for British Muslims to attack British interests. This is reported to have occurred via webcast but then reaffirmed publicly. See *The Times*, January 17, 2005 (www.timesonline.co.uk/tol/news/uk/article413387.ece). It is not clear whether

that do exist binding only on those who voluntarily enter into them or also on subsequent generations born into them?⁵⁰

Finally, what is meant by the idea (5) that reciprocity is morally ambiguous? After all, in many contemporary Western doctrines of moral and political justification, reciprocity plays a central role. The distinction must be made, however, between reciprocity functioning as a model for the justification of a *general* system of cooperation which one is then committed to on grounds of principle, and reciprocity functioning in the form of tit-for-tat cooperation in a game-theoretic sense. Thus, holding to the principle of reciprocity not as a general guideline for determining which rights and obligations are justified in theory, but for regulating one's behavior from one moment to the next is morally ambiguous in so far it involves a merely contingent commitment to moral obligations and thus implicitly contains the threat of retaliation. Consider Pope Benedict XVI's demand for "reciprocity" on the part of Muslim countries in the

there has been any elaborate, scholarly formulation of this position. However, it does seem to enjoy a certain theoretical plausibility (albeit not in its particular application to the British case): if it can be shown that a liberal state formally and consistently applied different sets of constitutional rights to Muslim citizens on arbitrary grounds, then the initial Islamic foundation for their obligations to that state could be said to no longer obtain.

⁵⁰ The argument has also been made that any explicit *amān*, or contract of security, is only binding on Muslims who voluntarily enter a non-Muslim country. Muslims born in a non-Muslim country did not choose to be born there and did not autonomously enter into a contract and are thus permitted to engage in hostilities. Hassan Butt, an activist who split from the UK groups Hizb ut-Tahrir and al-Muhajiroun over the principle that British Muslims are not permitted to engage in violence in Britain is reported to have said: "Now, I am not in favour of military action in Britain but if somebody did do it who was British, I would not have any trouble with that either. . . . It wouldn't necessarily be the wisest thing to do but it wouldn't be un-Islamic. . . . Most of our people, especially the youth, are British citizens. They owe nothing to the Government. They did not ask to be born here; neither did they ask to be protected by Britain. . . . They have no covenant. As far as I'm concerned, the Islamic *hukm* (order) that I follow says that a person has no covenant whatsoever with the country in which they were born." Aatish Taseer, "A British Jihadist," *Prospect* Issue 113, August 2005. Butt does not cite any Islamic text or scholar for this opinion and it is not clear whether this position has been articulated formally by a Muslim legal scholar. Incidentally, the same Butt later publicly renounced jihadism and proclaimed a willingness to collaborate with British security forces. Hassan Butt, "My plea to fellow Muslims: you must renounce terror," *The Observer*, July 1, 2007.

area of religious freedom.⁵¹ Was he suggesting that the religious freedom of Muslims in Europe is contingent upon the rights of Christians in the Middle East? Is the aspiration that Muslims will grant Christians similar rights to those enjoyed by European Muslims solely out of the desire to advance Muslim interests? Where reciprocity operates on the ground as a tit-for-tat approach to cooperation rather than as a general feature of constructivist approaches to justice and morality, it might not be desirable in more than a very practical sense.

This possibility is recognized by some Muslim scholars, who argue that the principle of reciprocity (*al-mu'āmalā bi'l-mithl*), which is used by some to justify the use of violence against civilians or against the state in which one is a citizen,⁵² “is limited to that which is considered virtuous in Islam. For example, if the enemy violates the honor of Muslim women, Muslims do not violate the honor of their women. If they kill women, children and the weak, Muslims do not respond by doing the same. If they starve prisoners of war to death, Muslims do not reciprocate.”⁵³

In addition to these moral ambiguities which emerge both from internal Islamic reasoning and comparative concerns, the contractualist-constructivist approach also does not account for the entirety of relationships that emerge in a situation of common social cooperation. Contract approaches are powerful when dealing with basic moral obligations required for any form of cooperation. However, citizenship (at least in modern contexts) often imposes demands or expectations

⁵¹ E.g., *Address of His Holiness Benedict XVI to the Ambassadors of Countries with a Muslim Majority and to the Representatives of Muslim Communities in Italy*, September 25, 2006.

⁵² The unattributed “London bombing text” states explicitly that “we are permitted to do to the infidels as they do to us.” The text cites two additional Qur’anic verses for this: 16:126 (“If you punish then punish in the manner in which you were punished”; the text does not quote the rest of the verse: “if you are patient then that is the best course for those who are patient”) and 42:39-40 (“Those who when an injustice afflicts them help themselves. The recompense for an injury is an equal injury”). The text also quotes Ibn Taymiyya’s judgment (in his *Fatāwā*) that it is permissible to cut the enemy’s trees and burn their crops if they have done this to Muslims, as well as a number of other classical scholars on the subject of reciprocity in war.

⁵³ Jamāl al-Dīn ‘Aṭīya Muḥammad, *Nahwa fiqh jadīd li’l-aqalliyyāt* (Cairo: Dār al-Salām, 2003), 69.

that go beyond promises of mutual restraint or inviolability. They involve contributing to mutual welfare in such ways as serving in wars of self-defense, paying taxes and participating in political life. Such activities are frequently addressed by Muslim scholars and lead to a third broad approach to thinking about moral obligation, namely one which goes beyond considerations of permissibility or contractual obligation towards considerations of Muslim communal self-interest.

III. Consequentialist-Utilitarian Approaches

The “consequentialist-utilitarian” method consists in the pragmatic approach to Islamic law and moral commitments exemplified by *istiṣlāḥ*, *siyāsa sharʿiyya*, the use of legal maxims (*qawāʾid fiqhīyya*) and, in contemporary times, Qaraḍāwī’s *fiqh al-muwāzanāt*.

In the Muslim minority context, this approach presumes the contract scenario discussed above, at least in the sense of Muslim communities being faced with social and political circumstances not necessarily of their choosing. However, this mode of legitimizing moral obligation to non-Muslim societies differs in crucial ways. While the discussion is usually bounded by the outer limits of what is regarded as unambiguously impermissible (thus overlapping with contractualist approaches), its substance centers on the way in which accepting certain social and political facts may or may not benefit Muslims. Such reasoning differs according to whether the act in question is regarded as otherwise impermissible (e.g., serving in a non-Muslim army against Muslims),⁵⁴ ambiguous in its moral status (e.g., participating in non-Muslim political systems)⁵⁵ or presumed

⁵⁴ Usually considered to be apostasy. See Muḥammad Rashīd Riḍā (d. 1935), *Fatāwā al-Imām Muḥammad Rashīd Riḍā*, ed. Ṣalāḥ al-Dīn al-Munajjid and Yūsuf Q. Khūrī (Beirut: Dār al-Kitāb al-Jadīd, 1980), 5:1749-50; Qaraḍāwī, *Fī Fiqh al-aqallīyyāt*, 25; Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, 122, where he calls it “amongst the greatest sins and most abominable crimes.” Below I discuss a *fatwā* by Qaraḍāwī which justifies serving in a non-Muslim army against Muslims on grounds of benefit to Muslims and *daʿwa*.

⁵⁵ Contemporary scholar Ibn Bayya notes simply (claiming to express the considered conclusions of the European Council for *Fatwa* and Research) that “the basic principle is the legitimacy of political participation by Muslims in Europe, and the specific evaluation of it varies from permissibility, to recommendation to necessity based on what the Exalted

permissible (e.g., residing in a non-Muslim land). In turn, the types of benefit or utility tend to be of three kinds: the fulfillment of other greater Islamic religious duties (e.g., the arguments of Shaybānī, Sarakhsī and others that it is permissible to fight with a non-Muslim ruler to protect Muslim life and property; see below), the advancement of certain Islamic social or political goals (e.g., myriad arguments that appeal to the goal of advancing the Islamic mission [*da'wa*]), or improvement to the secular welfare of Muslims (e.g., Rashīd Riḍā's argument for military service as a way of securing political freedoms; see below).

Some of the best examples of these types of arguments relate to the problems of defending a non-Muslim state and participating in a non-Muslim political system.⁵⁶ Neither is clearly prohibited by an unambiguous revelatory text (unless one holds that verses 4:96-100 forbid such residence in the first place); arguments that they are impermissible or undesirable are derived inferentially from overall Islamic commitments to limit *muwālāh* with non-Muslims or to "rule by what God has revealed." Furthermore, neither military service nor political participation is something clearly *due* to the non-Muslim society as a basic matter of reciprocity (certainly according to Islamic ethics, and possibly also according to various non-Islamic political ethical doctrines), unlike the obligation not to violate a society's laws or security, which Islamic law treats as a clear matter of contractual obligation. Such practices as military service and political participation are treated in Islamic debates (and possibly in non-Islamic ones) as supererogatory contributions to non-Muslim welfare. It is thus not surprising that the substantive justification

One said: 'help one another in furthering kindness [*al-birr*] and God-consciousness, and do not help one another in furthering evil and enmity' [5:2] as well as on the fact that it is considered amongst the requirements of citizenship." Ibn Bayya, *Ṣinā'at al-fatwā wa-fiqh al-aqalliyāt*, 294.

⁵⁶ For a more focused treatment of *fiqhī* reasoning on the problem of political participation in European Muslim thought, see Dilwar Hussain, "Muslim Political Participation In Britain and the 'Europeanisation' Of *Fiqh*," *Die Welt des Islams*, 44:3 (2004), 376-401; W. Shadid & P.S. van Koningsveld, "Religious Authorities of Muslims in the West: Their Views on Political Participation," in Shadid and van Koningsveld, eds., *Intercultural Relations and Religious Authorities: Muslims in the European Union* (Leuven: Peeters, 2002), 149-70; and March, *Islam and Liberal Citizenship*, 242-58.

for performing them consists in speculating on the benefits which might accrue to Muslims in two of the senses discussed above: Muslims can either advance “Islamic aims” through them (such as advancing the cause of *da‘wa* or, in the case of political participation, influencing public policy in an “Islamic” direction) or advance the secular welfare of Muslims.⁵⁷

Such forms of reasoning are inherently complex and ambiguous in terms of their moral nature and implications. At times, it is quite clear that Muslim scholars do not regard the act in question as normally impermissible in the first place⁵⁸ and that the consequentialist-utilitarian calculus does not involve any aims contrary to the interests of the non-Islamic society. However, the limits and insufficiency of a consequentialist-utilitarian approach to grounding moral obligation to non-Muslim societies should be obvious: (1) it often reflects little or no interest in the rights or interests of non-Muslims and (2) it does not involve any substantive judgment that the non-Islamic terms of social cooperation in question have any independent validity or moral standing—the consequentialist-utilitarian approach is also that used to make sense of Muslim life in authoritarian and tyrannical regimes⁵⁹ or (as in the case of Ibn Taymiyya’s classical treatise on *Siyāsa shar‘iyya*) to justify seemingly un-Islamic acts on the part of a Muslim ruler.

The question of fighting in defense of non-Muslim states, even against other non-Muslims, provides an example of the limits and possibilities of the consequentialist-utilitarian approach. While classical

⁵⁷ Ṭāhā Jābir al-‘Alwānī: “It is the duty of American Muslims to participate constructively in the political process, if only to protect their rights, and give support to views and causes they favor. Their participation may also improve the quality of information disseminated about Islam. We call this participation a ‘duty’ because we do not consider it merely a ‘right’ that can be abandoned or a ‘permission’ which can be ignored.” Cited in Hussain, “Muslim Political Participation,” 386.

⁵⁸ In his book devoted entirely to Muslim minority issues, Qaraḍāwī simply remarks: “Muslims are confronted with the question of mandatory military service in these countries, and there is no objection to this unless such a country declares war against a Muslim country.” Qaraḍāwī, *Fi Fiqh al-aqalliyyāt*, 25.

⁵⁹ Riḍā: a Muslim’s “obedience to the state protects his brothers from amongst the state’s subjects from any oppression or evil that may befall them if the state is an oppressive, autocratic one.” Riḍā, *Fatāwā*, 2:565.

jurists did not argue on principled grounds for a Muslim resident's contribution to a non-Muslim polity's self-defense efforts,⁶⁰ it is not rare for contemporary scholars (such as Qaraḍāwī and Mawlawī, who hold that fighting fellow Muslims on behalf of non-Muslims normally constitutes apostasy) to assert that there is no moral dilemma in serving in non-Muslim armies against other non-Muslim armies. There are three basic categories of argument for permitting this. The first two are that the revelatory texts do not prohibit such service and, therefore, it is presumed to be permitted (*lā ḥukma, 'adam al-tahrīm*) or, alternatively, what the Qur'ān and *ḥadīth* prohibit is serving to advance the "word of unbelief,"⁶¹ which is not what service in a modern-day non-Muslim army (or political system) constitutes.⁶²

⁶⁰ Shaybānī and Sarakhsī famously argued that Muslims could fight with non-Muslims only to defend themselves from the same enemy. See Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/805), *The Islamic Law of Nations: Shaybānī's Siyar*, Majid Khadduri, trans. (Baltimore: Johns Hopkins Press, 1966), 193, and Muḥammad b. Aḥmad al-Sarakhsī (d. 483/1090), *Kitāb al-Mabsūṭ* (Beirut: Dār al-Kutub al-ʿIlmiyya, 2001), 10:106.

⁶¹ Sarakhsī: "Because the laws of idolatry are dominant over them, Muslims are not able to rule by the laws of Islam, and thus any fighting on their part would take the form of exaltation of the word of idolatry and this is not permitted unless they fear for their lives from the invaders, in which case there is no sin incurred in fighting to defend themselves rather than fighting to exalt the word of idolatry." The contemporary Bosnian scholar Sulejman Topoljak (Tübülyāk) writes that even if Muslims find themselves with no choice but to join non-Muslims in battle, "it is necessary that Muslims intend by engaging in such fighting only to bring about benefit to Muslims, and to elevate the word of God, without intending to bring about the strengthening of the unbelievers, befriending them or elevating the word of unbelief." Tübülyāk, *al-Aḥkām al-siyāsiyya*, 117.

⁶² E.g., American Muslim scholar Muhammad al-Mukhtar Shanqiti: "taking part in the US elections is not a sign of affiliation to the polytheists, nor is it a kind of support for the oppressors. Judging parliaments to be gatherings of disbelief and polytheism is inappropriate, as this does not take into account the complicated nature of such parliaments. The US Congress, for instance, is not a religious organization, as the American constitution neither supports a certain religion nor restricts another. The US Congress is not, thus, a gathering of disbelief, even though its members are disbelievers. Also, it is not a gathering of belief, even if there are Muslim members in it. It is a neutral political body in relation to matters of religion, according to the American constitution. The US Congress can only tackle issues related to public welfare, which a Muslim is enjoined to participate in achieving, whether for the favor of Muslims inside or outside America, or even in relation to non-Muslims." "Muslims' Participation in US Elections," <http://www.islam-online.net/fatwaapplication/english/display.asp?hFatwaID=106769> (November 2003).

The third category is the argument from *maṣlaḥa*: that although such service is undesirable, certain benefits for Muslims may arise as a double-effect of it. These imagined benefits include, as introduced above, the protection of Muslim life and property and the improvement of the status of Muslims in their non-Muslim polity by ingratiating themselves with its rulers and citizenry.⁶³ Similar arguments are often invoked for justifying participation in non-Muslim political systems. Both of these conceptions of self-interest (self-defense and improving communal status) have the capacity to both conflict and align with a moral commitment to non-Muslims. Often the argument for aligning Muslim communal self-interest with solidarity with non-Muslims is that the non-Muslim political system is the necessary means for advancing universal mundane interests,⁶⁴ that the Islamic

⁶³ Rashīd Riḍā did “not consider that fighting on behalf of the Muslims of Russia against Japan is disobedience to God nor forbidden by *sharīʿa*, and in fact may be one of the things rewarded by God if engaged in with the correct intention.” The first rationale for this position is that “his obedience to the state protects his brothers from amongst the state’s subjects from any oppression or evil that may befall them if the state is an oppressive, autocratic one; it makes them equal to any other citizen in rights and privileges if it is a representative, just state; and it benefits them in other ways if the state is in between.” Riḍā also offers a second rationale for serving in a non-Muslim army: “It is thus better for Muslims who are subjects of those states that they participate like the ordinary people of those nations in the basic elements of social life, strengthened by their strength and made proud by their pride, rather than being weak and degraded by their religion, for Islam does not permit that its adherents choose weakness and subjugation over strength and pride. [We] advise Muslims to choose pride over humiliation, whatever the source of pride and strength may be, over weakness and consider that preserving Islam outside of its abode requires this.” The concerns in these statements all relate to benefits that accrue to the Muslim community from participating in the war, and have nothing to do with either obligations to the state of citizenship or the justness of the war in question. Riḍā, *Fatāwā*, 2:565. This *fatwā* is used as an important point of reference in contemporary *fiqh al-aqalliyāt* texts by Topoljak and ‘Abd al-Qādir.

⁶⁴ E.g., Muhammad al-Hanooti, a member of the North American Fiqh Council: “We have perhaps more than 60% of our welfare and interests to be run through a polling system. Schooling, sanitation, zoning, social services, police, court, medication, finance, business, sports, recreation, etc. are run by people that are elected to office. Are you going to tell me that I am loyal or giving allegiance to the *kuffar* (non-Muslims) because I want to lead myself in the way that can get a school for my children, good sanitation for my neighborhood or good cooperation with the police to protect me?” Muhammad al-Hanooti, “Voting in a Majority non-Muslim Country,” www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=14795. This is also the official position of the European

conception of political morality is realized through the advancement of the five universal interests which are the “purposes of law” (*maqāṣid al-sharīʿa*),⁶⁵ or that the legal maxims (*qawāʿid fiqhiyya*) instruct Muslims towards a pragmatic balancing of obligations in this case.⁶⁶

Council for *Fatwa* and Research: “It is permissible for Muslims to engage with non-Muslims in commercial transactions, peace treaties and covenants according to the rules and conditions prevalent in those countries. Mutual cooperation in worldly affairs goes far to encompass all citizens who share a common destiny, neighborhood and sometimes kinship. This may be extended to include economic and commercial fields. ... Elections in the modern world systems have become a means through which people choose candidates and judge the programs they adopt. Muslims living in such societies enjoy rights and are bound to uphold certain duties. If they fail to uphold those duties they are no more entitled to receive the rights, for the rights meet the duties. Thus, Muslims’ participation in elections is a national duty; in addition it falls under cooperation on that which is good and righteous for society and warding off harms from it.” See “Elections in non-Muslim Countries: Role of Muslims,” www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID==78491.

⁶⁵ See, for example, Ibn Bayya’s endorsement of the modern European conception of citizenship, which provides many goods that are “demanded by religion and desired by nature,” including “the right to life, justice, equality, freedoms, protection of property, protection against arbitrary imprisonment and torture, the right to social security for the poor, elderly and ill, cooperation between individuals in society for the general welfare, as well as all of the duties and obligations that follow, such as paying taxes, defending the homeland against aggression, and obeying the law.” Ibn Bayya, *Ṣināʿat al-fatwā wa-fiqh al-aqalliyāt*, 304. See also Rāshid al-Ghannūshī, “al-Islām fi’l-gharb wa ‘alāqātuhi bi’l-anzīma al-gharbiyya,” in Majdī ‘Aqīl Abū Shamāla, ed., *Risālat al-Muslimīn fi bilād al-gharb*.

⁶⁶ Yūsuf al-Qaraḍāwī argues that the basic principle (*al-aṣl*) is that it is forbidden to participate in a non-Islamic government, but that there are certain grounds for exception: (a) reducing evil and injustice to the extent that one can, (b) committing the lesser of two evils (*akhaḥḥ al-dararayn*), and (c) descending from the higher example to the lower reality. These three grounds for participating are linked to certain legal maxims, including: “necessity makes the forbidden permissible” (*al-darūra tubīḥ al-mahzūrāt*); “hardship brings about relief” (*al-mashaqqā tajlib al-taysīr*); “do no injury nor reciprocate an injury” (*lā ḍarar wa lā ḍinār*); and “relieve hardship” (*raf al-ḥaraj*). The conditions that Qaraḍāwī imposes on such participation are illuminating. They include: (a) that there be some responsibility, independence and authority, rather than merely being the executor of another’s will; (b) that the regime not be characterized by injustice and tyranny, and known for its antagonism to human rights. This means that a Muslim may not participate in dictatorial regimes which tyrannize their populations, but “only in a regime based on democracy which respects human faculties.” And (c) That there be the right to oppose everything which contradicts Islam in a clear way, or at least to refrain from it. al-Qaraḍāwī, *Min fiqh al-dawla fi’l-Islām* (Cairo: Dār al-Shurūq, 1997), 180, 184-5.

As common and accessible as such quotidian conceptions of *maṣlaḥa* are, the greatest single example of consequentialist-utilitarian reasoning in the Islamic literature on Muslim minorities relates to the goal of advancing the cause of *da'wa*, or Islamic proselytism. Along with “contract,” *da'wa* is the core Islamic concept at the heart of the project to theorize the legitimacy of permanent Muslim citizenship in non-Muslim liberal democracies. While the Islamic obligation of loyalty to contracts provides a firm *shar'i* justification for abiding by many of the terms of citizenship in non-Muslim polities, the obligation of calling to Islam (*da'wa*)—which follows from Islam's claims to be a message for all mankind in all times and places—in turn provides a robust, meaningful, inspiring reason for being in the West in the first place. It allows scholars who might otherwise be skeptical about voluntary integration into a non-Muslim culture (or who might feel nipping at their heels more radical scholars who proclaim without doubt such integration to be sinful) to proclaim life in the West to be not only permissible, but also spiritually meaningful and beneficial to the Islamic movement. Much like the way *darūra* and *maṣlaḥa* are commonly observed to function in a *deus ex machina* role for Muslim scholars looking to justify acts known to be subject to long-standing prohibitions or disapprovals, the goal of spreading Islam through *da'wa* is commonly asserted to be such an overwhelming good that it can dispel almost any concern conscientious Muslims may have about the minority condition, including (to round out the discussion which led us here) service in a non-Muslim army.

The rest of this article will be devoted to the concept of *da'wa* and its place in the *fiqh al-aqalliyāt* literature. I will first depart on a brief excursus, introducing the range of ethical problems which *da'wa* is used to address and the weight it is thought to have. I will then raise some theoretical concerns from a comparative ethical perspective about the meaning and force of *da'wa*-based approaches to social life with non-Muslims. Finally, I will introduce and discuss the way in which *da'wa* serves, in the writings of some contemporary scholars, to ground a thicker relationship of moral obligation with non-Muslims than that created by contract and considerations of utility. This “comprehensive-qualitative” approach to moral obligation

is, I believe, the most noteworthy methodological and substantive contribution of *fiqh al-aqalliyyāt*.

An Excursus on the Centrality of Da‘wa in Fiqh al-aqalliyyāt Discourses

The goal of spreading Islam through *da‘wa* figures in the juridical discussion of virtually every aspect of life in a non-Islamic polity, both in classical and modern jurisprudence, including the very question of the permissibility of such residence. While most of the classical discussion on the latter focused on the interpretation of the proof-texts (Q. 4:96-100 and numerous *ḥadīth* reports on whether *hijra* ended with the conquest of Mecca), al-Nawawī reports that al-Māwardī had argued that “if a Muslim is able to manifest his religion (*izhār dīnīhi*) in one of the unbeliever’s countries, this country becomes a part of *dār al-Islām*. Hence, residing in it is better than migrating *because it is hoped that others will convert to Islam through him*.”⁶⁷ Nawawī adopts and develops this position.

If [Muslims resident in non-Muslim lands] are capable of self-protection [*al-imtinā*] and segregation [*al-‘tizāl*], then it is obligatory that they reside in *dār al-ḥarb* because its [legal] status is actually *dār al-Islām*, and if they were to migrate then it would then become *dār al-ḥarb*, which is forbidden. And while living there, *it is necessary for them to call the polytheists to Islam* by argumentation or by fighting.

If they are capable of self-protection but not [complete] segregation or calling for fighting, then *hijra* is not obligatory. In fact, *if one hopes that by remaining Islam might spread in his place of residence*, then it is obligatory that he reside there and not migrate, as well as if it is hoped that Islam might prevail there in the future. Yet, if one is weak in *dār al-kufr* and is not able to manifest one’s religion then one’s residence there is forbidden.⁶⁸

In the contemporary period, Yūsuf al-Qaraḍāwī argues:

Thus there can be no questioning of the permissibility of residing in a non-Muslim country, or in “*dār al-kufr*,” as it is referred to by the jurists, for if we

⁶⁷ al-Nawawī, *al-Majmū‘*, 21:7. Emphasis added.

⁶⁸ Ibid., 5. Emphasis added.

were to forbid it, as some scholars imagine, we would close the door to the call to Islam and its spread throughout the world. [Had this been done] then the Islam of old would have been restricted to the Arabian Peninsula and not left it. For if we read history and reflect upon it properly we find that the spread of Islam into the lands that we today refer to as the Arabic and Islamic worlds occurred through the influence of individual Muslims, merchants, Sufis and others like them, who migrated from their countries to those lands in Asia and Africa and mixed with the local people, worked together with them and in turn were liked by them for their good morals and sincerity, as was their religion which had implanted these virtues in them. Thus people entered our religion en masse and individually.⁶⁹

The preceding two examples are representative of a central point of doctrine. Almost any contemporary scholarly treatment of the *hijra* question will involve some reference to *da'wa*.⁷⁰

Da'wa also surfaces in the question presented in the previous section of loyalty to a non-Muslim state in wartime. In discussing whether a Muslim can serve in a non-Muslim army *against fellow Muslims*, Qaraḍāwī affirms the standard position that this constitutes apostasy but adds that Muslims should be willing to accept non-combatant positions even in wars against brother Muslims to avoid *accusations* of “high treason” which would “pose a threat to the Muslim community and also disrupt the course of *da'wa*” and that “individuals should not set their conscience at ease and refuse to participate in the war if this will endanger the whole Muslim community. This is based on the juristic rule, which states that the lesser harm may be borne to prevent a greater harm, the private harm may be borne to prevent a general one and the right of the group takes precedence over that of the individual.”⁷¹

This is a remarkable argument. Granting Qaraḍāwī his juristic rules (*qawā'id fiqhīyya*), note that for him the greater and general

⁶⁹ Qaraḍāwī, *Fī fiqh al-aqallīyyāt al-muslima*, 33-4. He also argues this in “al-Infītāh ‘alā al-gharb: muqtadiyātahu wa-shurūṭuhu,” in Abū Shamāla, ed., *Risālat al-muslimīn fī bilād al-gharb*, 15.

⁷⁰ Syed Abul Hasan Ali Nadwi, *Muslims in the West: The Message and the Mission* (Leicester, UK: The Islamic Foundation, 1983), 113; Faḍl Allāh, *Al-hijra wal-ighṭirāb*, 86; Sheikh Ahmad Kutty, “Is *Hijrah* (emigration) still necessary?” <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID+99040>; Ramadan, *To be a European Muslim*, 147.

⁷¹ <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=52014>.

harm is the injury to *da'wa* and not *infidel wars against Muslims* (which he clearly regards as aggression), that the right of the group is thus the right to protect *da'wa* and not the *right to self-defense*, and that the Islamic *duty* to avoid a grave sin (*kabīra*) traditionally equated to apostasy is now reduced to an “individual *right* to set one’s conscience at ease.”

Of course, it is possible that Qaraḍāwī’s argument is a function of his desire to remain relevant to Western Muslims and to find juridical arguments which make their lives easier.⁷² Nonetheless, it is worth noting that it is only *da'wa* which he thinks can do this, which (it bears repeating) is to outweigh a Muslim’s obligation not to contribute in any way to the killing of a fellow Muslim in the service of unbelievers.

It also must be noted that there is a certain tradition by now of replacing *jihād* with *da'wa*, not only for Muslim citizens of non-Muslim societies, but generally for the entirety of the Muslim community. As noted at the beginning of this article, the majority of classical jurists considered the basic status of relations with unbelievers to be war, whereas many modern scholars have redefined it as based on *da'wa*. The most frequent Modernist argument for a “defensive” conception of *jihād* is in two parts. First, it is argued that the vast majority of Qur’anic verses on fighting and warfare prescribe a doctrine of defensive war. This argument holds that the more “aggressive” verses are best understood in the context of the hostility faced by the first generation of Muslims from the pagan Arabs rather than as a general attitude toward non-Muslims or as the higher stage of God’s revelation on the ethics of war, abrogating the chronologically-earlier “peaceful verses.” Second, it is argued that the basic *positive* duty underpinning *jihād* is not the duty to eradicate unbelief or remove non-Islamic forms of rule, but rather

⁷² A central theme in the *fiqh al-aqalliyāt* literature is that of *taysīr*, that the purpose of Islamic jurisprudence is to make the ethical lives of Muslims easier rather than to burden them with obligations exceedingly difficult to fulfill while living lives in non-Islamic environments. This aspect of *fiqh al-aqalliyāt* (most explicit in the writings of Qaraḍāwī) is extremely important for problems of personal morality and ritual observance in a non-Muslim society, and is worthy of separate scholarly analysis.

the duty of *da'wa*, i.e., to call non-Muslims to the universal message of Islam. Thus, should the right to proselytize be unmolested in non-Muslim lands and should there be an accord of mutual non-aggression, then there are no grounds for aggression against such non-Muslim states.⁷³

The Modernist doctrine of just war is not quite as simple as a bare doctrine of mutual non-aggression, for the Qur'an-based arguments for restraint are often embedded within a broader argument about the universal nature of the Islamic mission and the duty of Muslims to proselytize. For the Modernists, their emphasis on the importance of *da'wa* exempts them from any charge of passivity, defeatism or insularity, for not only do they match the "Revivalists" in their insistence on bringing the message of Islam to unbelievers in all places and at all times, but "protecting the right to call to Islam" figures as a legitimate *casus belli* in some of their writings.⁷⁴ The argument advanced is that *da'wa*, rather than some categorical duty to overturn man-made laws or systems of rule, is the ultimate value behind the offensive *jihad* doctrine from which Modernist theorists are eager to distance themselves. Once this is asserted, it is then further argued that the crucial variable in determining the stance toward a non-Muslim polity is its policy towards missionaries for Islam. Protection of the freedom to preach the Islamic message guarantees it absolute immunity from hostility.⁷⁵

Da'wa thus figures in Islamic discussions of the most basic aspects of citizenship in a non-Muslim polity. However, citizenship is not limited to legal residence and loyalty in wartime, but makes demands

⁷³ The main works are Maḥmūd Shaltūt, *al-Qur'ān wa'l-qitāl* (Beirut: Dār al-Faḥ, 1983); Muḥammad Shadīd, *al-Jihād fī'l-Islām* (Cairo: Mu'assasat al-Maṭbū'āt al-Ḥadītha, n.d.); Muḥammad Abū Zahra, *al-'Alāqāt al-duwāliyya fī'l-Islām* (Cairo: al-Qawmiyya, 1964); 'Alī 'Alī Maṅṣūr, *al-Sharī'a al-Islāmiyya wa'l-qānūn al-duwālī al-'amm* (Cairo: Lajnat al-Khubarā', 1971); 'Uthmān al-Sa'īd al-Sharqāwī, *Sharī'at al-qitāl fī'l-Islām* (Cairo: al-Zahrā', 1972); Wahba al-Zuhaylī, *al-'Alāqāt al-duwāliyya fī al-Islām* (Beirut: Mu'assasat al-risāla, 1981); and Muḥammad al-Būṭī, *Jihad in Islam: How to Understand and Practise It* (Damascus: Dār al-Fikr, 1995).

⁷⁴ Shaltūt, *al-Qur'ān wa'l-qitāl*, 89; Zuhaylī, *al-'Alāqāt al-duwāliyya*, 31; 'Abd al-Qādir, *Fiḥ al-aqalliyyāt al-muslima*, 44.

⁷⁵ Zuhaylī, *al-'Alāqāt al-duwāliyya*, 18.

beyond obeying just laws. Intrinsic to citizenship in any society is an attitude of solidarity with *particular* fellow citizens. Intrinsic to citizenship *in a religiously and ethically diverse* society is an attitude of recognition of fellow citizens across deep moral and metaphysical divides. Jean-Jacques Rousseau asserted pessimistically that: “Those who distinguish between civil and theological intolerance are mistaken, in my opinion. Those two types of intolerance are inseparable. It is impossible to live in peace with those one believes to be damned. To love them would be to hate God who punishes them.”⁷⁶ But that is exactly what citizenship in a pluralist society demands of religious citizens.

The questions raised here of recognition, tolerance and explaining disbelief are very complex. Yet, as with the questions of legitimate residence and the rules of war, *da'wa* once again features prominently in justifications of all further integration into non-Muslim societies as the value which defines the basic status (*al-aṣl*) of relations with unbelievers. In the next and final section I will show the way in which the ethics of *da'wa* reveal a completely distinct meta-ethical approach towards the problem of moral obligation to non-Muslims and reveal substantively certain values of recognition of the other and common concern crucial to citizenship in a pluralist democracy. I believe this to be one of the most creative, resourceful and fertile areas of contemporary Islamic juridical and ethical thought.

IV. The “Comprehensive-Qualitative” Approach

The desire to proselytize and peacefully win adherents to one's way of life is clearly not in itself ethically controversial. In fact, one might argue that the very purpose of liberal institutions is to protect action on this and other similar desires.

Nonetheless, there are a number of potential ways in which a justification of residence in, and integration into, diverse societies based *entirely* (or even primarily) on the duty to proselytize could be seen to conflict with a modern conception of citizenship. These

⁷⁶ Jean-Jacques Rousseau, *The Social Contract*, Book IV, Chapter VIII, in *The Basic Political Writings* (Indianapolis: Hackett), 227.

concerns could be raised in equal or greater measure about the attitude towards liberal institutions and pluralism current amongst many evangelical Protestants. The concerns which could be raised about such a justification are that:

- It engenders an *instrumental* attitude towards liberal institutions such as freedom of religion, speech and assembly—they are endorsed only when one is in the *minority* and seeking to enlarge one's ranks;
- The religious endorsement of those institutions might, thus, be *temporary and contingent*—they are endorsed only so long as one is in the minority, but *da'wa*/evangelism actually reveals the objective of dominating society and potentially the state;
- Religious others are not recognized as self-authenticating sources of values and valid claims but only as *potential Muslims/Christians*.

A more abstract and forceful statement of these objections might take the following form:

- Modernity requires a certain attitude towards moral knowledge and pluralism. Modernity fragments areas of knowledge and expertise and results in a plurality of conceptions of the good life. Being *moral* in a modern society, thus, requires that one adopt a certain attitude of epistemic restraint towards one's fellow citizens. One must regard ethical pluralism as a normal, permanent feature of social life and agree to debate about an appropriate common political morality using appropriately neutral language. If one sees all other doctrines and views as "error and idle trivialities" [*ḍalāl wa abāṭīl*] and sees Islam as abrogating all previous revealed religious laws and "dominating over them" [*muhaymin 'alayhā*], then how can one possibly agree to conduct public political debate in neutral, non-Islamic, "public" terms in which all can participate? Indeed, *da'wa* is very much part of the *problem*, for it regards "leaving non-Muslims to persist in their transgression, error and insolence as an injustice about which Islam does not remain silent" but rather "aims to change it when it can" for

“this emancipatory mission has been sent to connect humanity—all of humanity—with heaven.”⁷⁷

I do not wish to deny that such conceptions of *da'wa*-as-expansion exist in Islamic discourses. It is quite clear that many Muslim scholars would endorse the Islamization of Western societies in any measure. Indeed, how could they deny that the spread of Islam through proselytism and the conversion of non-Muslim societies is a desideratum and a legitimate objective *and still remain Muslim scholars*? What I would like to introduce, however, are some contemporary discussions of the ethics of *da'wa* and the way in which they reveal an approach to moral obligation and solidarity with non-Muslims which goes beyond the first three approaches.

Three Qur'anic verses in particular are used by scholars when discussing the way in which *da'wa* should be carried out:

Call to your Lord's path with wisdom and kindly exhortation, and argue with them in the most kindly manner, for, behold, your Lord knows best who strays from His path, and best knows who are the rightly-guided. [16:125]

Say [O Prophet]: 'This is my way. I am calling you all to God with perception [*baṣīra*] I and all who follow me.' [12:108]

There is no coercion in religion. Truth stands out clearly from falsehood. [2:256]

In discussing these verses and the methodology of *da'wa* in non-Muslim lands, Muslim thinkers frequently emphasize a number of themes and values that are ripe for appropriation into a doctrine of recognition. Four in particular stand out, which I organize here around phrases and terms found in the above verses: (1) good-willed exhortation [*al-maw'īza al-ḥasana*]; (2) argumentation [*jadāl*]; (3) non-coercion [*lā ikrāh*]; and (4) wisdom [*ḥikma*].

⁷⁷ 'Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, 36-7. The quotes in this paragraph are all from this same passage. My point in invoking 'Abd al-Qādir's language is to emphasize that even a scholar who regards *da'wa*, not war, as the basis of relations with non-Muslims does not think very highly of non-Islamic views.

1. The phrase *al-maw'iza al-ḥasana*, found in Q. 16:125, translatable as “kindly exhortation” or “good-willed warning,” has been used by exegetes and scholars as calling for a posture of good will, friendship, patience and sincerity towards non-believers, as well as engagement with, and commitment to, one’s wider society. Lebanese Shi’i Āyatullāh Faḍl Allāh describes such a form of exhortation, warning and preaching as a mode of inviting to Islam which allows the addressee to feel as though “your role is one of friend and giver of good advice, who seeks that which will benefit him [viz., the other] and make him happy.”⁷⁸ He points to a number of other Qur’anic verses which corroborate this view that disagreement and opposition which fall short of aggression can be met with patience and restraint: “Repel evil with that which is kindlier. Then there will be friendship and affection between you and him in place of enmity” [41:34]. “Tell my servants that they should only say those things which are best, for Satan sows dissent amongst them and is a clear enemy to man” [17:53]. “And if they [non-Muslims] greet you, you should respond with an even kinder greeting or one just as kind” [4:85].

More expansive views can be found in the writings of prominent contemporary Lebanese Sunni scholar Fayṣal Mawlawī. Mawlawī summarizes the Modernist position on whether the basic principle of relations between Muslims and non-Muslims ought to be a state of peace or war by challenging: “Can you call someone [to Islam] while harboring feelings of hatred towards him?! Or making plans to fight him? Under such conditions can you call him with wisdom and good-willed warning [*al-maw'iza al-ḥasana*]?” Mawlawī derives from the duty to invite to Islam in a spirit of “good-willed warning” much more than a position of mutual non-aggression. He speaks, importantly, of *‘aṭīfa* for non-Muslims, literally attachment, sympathy, affection, or liking. However, when transferred to a social, intercommunal context, *‘aṭīfa* can be understood as analogous to a conception of civic solidarity, or at least as providing a foundation for accepting it. He asks, “How can a Muslim be a caller of humanity to Islam when he is reluctant even to initiate a greeting, or speak to him a kind word, to the point that non-Muslims suspect that in the

⁷⁸ Faḍl Allāh, *Uslūb al-dā’wa fī l-Qur’ān* (Beirut: Dār al-Zahrā’, 1986), 62.

Muslim's heart there is no affection [*‘āṭifa*] for them. ... If there does not exist a form of affection or respect or good will between you and non-Muslims, then you will never succeed in calling to Islam.”⁷⁹ This concern of his with whether a Muslim may feel “love” or “affection” for non-Muslims merits our attention.

The need for justifying such sentiments was shown earlier. As noted, verses 3:28, 3:118 and 4:144 have often been understood as prohibiting relations of friendship, affection and solidarity with unbelievers. Mawlawī's response to this dilemma is to argue that what is forbidden are two specific states: having affection for those who fight Muslims because of their faith, and, concerning peaceful non-Muslims, loving them *on account of* their unbelief.⁸⁰ “But if there is an unbeliever who does not fight God and His Apostle and displays certain positive characteristics and esteemed values then there is no harm in appreciating these characteristics or values in him because they are drawn from the store of his God-given nature, and thus they are acceptable from a religious standpoint.”⁸¹ There are two distinct ideas in operation here which constitute powerful, religiously-grounded reasons for recognizing and forming bonds of solidarity with non-Muslims.

The first idea is that there is a sphere of social interaction in which humans form bonds of trust and affection separate from religion. Although such bonds and feelings are clearly inferior to the bonds formed by religion or shared moral purposes, they are legitimate within their own sphere, and a Muslim can be sincere in valuing them. These bonds may be based on common interests, shared experiences or secular virtues. “There cannot be love in your heart for a non-Muslim because of his unbelief, but there may be

⁷⁹ Mawlawī, “al-Mafāhīm al-asāsiyya li'l-da'wa al-islāmiyya fī bilād al-gharb,” in Abū Shamāla, ed., *Risālat al-muslimīn fī bilād al-gharb*,” 211-2.

⁸⁰ This latter interpretation of the “*muwālāh* verses” is ubiquitous in modern writings. See Riḍā, *Tafsīr al-Qur'ān al-ḥakīm al-shahīr bi-tafsīr al-manār* (Beirut: Dār al-Ma'rifa, 1973, 3:277, 288; Wahba Zuḥaylī, *al-Tafsīr al-wasīṭ* (Damascus: Dār al-Fikr, 2001), 1:186; Qaraḍāwī, *Fatāwā mu'āṣira* (Beirut: al-Maktab al-Islāmī, 2003), 193; Ibn Bayya, *Ṣinā'at al-fatwā wa-fiqh al-aqalliyāt*, 307.

⁸¹ Mawlawī, “al-Mafāhīm al-asāsiyya,” 212-3; ‘Abd al-Qādir, *Fiqh al-aqalliyāt al-muslima*, 630.

for other considerations. He may be honest, and you can love him for his honesty. He may be faithful to contracts and you love him for this ... or for his morals, wisdom, reason, or your closeness and shared interests. It is only blameworthy if it involves something explicitly forbidden.”⁸² He refers to this as *ḥubb fiṭrī*, or “innate love” (from the Islamic idea that all humans share a common innate nature, *fiṭra*), to be distinguished from *ḥubb ‘aqā’idī*, “creedal love,” the affection between persons who share religious beliefs. All humans are endowed with a common instinctive nature and thus share certain basic needs, passions and inclinations. The common pursuit of these can result in love, affection and solidarity across creedal lines.⁸³

Mawlawī is even willing to refer to these bonds as a form of brotherhood. Contrary to the belief that brotherhood is only religious,⁸⁴ Mawlawī argues that there are various forms of brotherhood, including “human brotherhood, national brotherhood, familial brotherhood and Islamic brotherhood, which exceeds all others in strength if it is present. And if Islamic brotherhood is absent, then there remain all these other forms.”⁸⁵ As for the verse 49:10 (“Only believers are brothers”), “it means that believers can be but brothers to one another, but it does not restrict brotherhood to believers. For brotherhood between believers and unbelievers has other reasons, such as shared nationality, humanity or interests. The strongest bond of religious brotherhood is not the only kind nor does it forbid one of these other kinds developing between me and a non-Muslim.”⁸⁶ These ideas are quite widespread amongst scholars of the pragmatic school of thought associated with the Muslim Brotherhood. Qaraḍāwī

⁸² Ibid., 210, 215-6.

⁸³ ‘Abd al-Qādir (*Fiqh al-aqalliyāt*, 37) sees a similar path to recognition: “Islam recognizes [non-Muslim] societies by recognizing in a realistic [*wāqī’ī*] way their human nature.”

⁸⁴ Based on a reading of Q. 49:10: “Only believers are brothers.”

⁸⁵ Mawlawī, “al-Mafāhīm al-asāsiyya,” 218. To establish this he first points to a series of verses (Q. 7:65, 73, 85) in which previous Abrahamic prophets were referred to as the “brothers” of their unbelieving, sinning and unjust kinsmen, and also Q. 58:22, which refers to the non-Muslim “brothers” of the first Muslims. A virtually identical position is articulated in Qaraḍāwī, “al-Infitaḥ ‘alā ‘l-gharb: muqtaḍayātuhu wa shurūṭuhu,” in *Risālat al-Muslimīn fi bilād al-gharb*, 8-12.

⁸⁶ Mawlawī, “al-Mafāhīm al-asāsiyya,” 219.

similarly distinguishes between human brotherhood and religious brotherhood, noting that while the latter is the more sublime, it does not exclude either more general or more particular forms of brotherhood with non-Muslims.⁸⁷

Contemporary Mauritanian scholar (and, along with Qaraḍāwī and Mawlawī a leading scholar of the European Council for *Fatwa* and Research) ‘Abd Allāh Ibn Bayya approaches the question along terms similar to Mawlawī’s handling of the question of “love and brotherhood.” He notes that “*walā’* is any firm bond which ties people together in a special, close and intimate relationship which gives rise to obligations, rights and duties.” Note first that there is a reversal of the traditional order of causality. Whereas the traditional question is whether certain relationships are eligible for *walā’* (and the obligations it implies) in the first place, Ibn Bayya’s point of departure is that certain such relationships of *walā’* already exist and that certain moral obligations are thus unavoidable. He then makes the distinction between various types of such relationships, the first being based on shared creed, the second on familial ties, and the third on contract. “The highest and most exalted of these loyalties is that based on creed, which includes faith in basic pillars of religion, the shared practice of rituals and adherence to moral virtue. This relationship of loyalty is not incompatible with loyalty to a homeland, which binds people together into a contract of citizenship and defends its territory against aggression.”⁸⁸ Further on, he suggests that loyalties be seen as concentric circles, or as steps in a pyramid, with religious loyalty at the summit, “but this does not exclude loyalty to a nation or homeland.”⁸⁹

Like Mawlawī, Ibn Bayya seems to find modern, liberal conceptions of citizenship and political community conducive to Islamic modes of justification of the minority condition. If anything, Ibn Bayya is more explicit in his endorsement of contemporary European norms for European Muslims. He begins a lengthy discussion entitled “On Citizenship” by describing the various components of the modern

⁸⁷ Qaraḍāwī, *al-Khaṣā’iṣ al-’amma li’l-Islām* (Cairo: Maktabat Wahba, 1991), 84.

⁸⁸ Ibn Bayya, *Ṣinā’at al-fatwā wa-fiqh al-aqalliyāt*, 292-3.

⁸⁹ *Ibid.*, 304.

understanding of national citizenship and how it differs from pre-modern ones: modern citizenship expresses a reciprocal, mutual (*mutabādil*) relationship between individuals living on a territory not necessarily bound by descent, religion or common memory; its framework is a constitution and system of laws; it is similar to a voluntary association of cooperation based on contractual belonging; and those belonging to it today have the same rights as the longest-standing members.⁹⁰ His understanding of liberal conceptions of citizenship is thus nearly identical to the liberal self-description. Ibn Bayya even cites Habermas's conception of constitutional patriotism ("the feelings of an individual towards his own membership in a civil society established on the basis of participation in certain basic values") as the ideal expression of the modern conception of "citizenship as a voluntary bond joined within national horizons and ruled by a constitution." He suggests that this conception "is the most important bridge to the respect and acceptance of religious values in all human societies which is compatible with Islam's conception of human coexistence. A Muslim does not find an objection to it but rather cooperates with it."⁹¹

This solidarity based on shared needs is complemented by a second idea implicit in Mawlawī's understanding of *da'wa* through "good-willed warning." Consider the following statements: "We conclude that there can and must be affection and love towards a person whom you wish to call to God and that this affection is a small piece of the affection that God wills be directed towards him. This is the foundation which is considered to be stronger and weightier than all that which opposes it." While it is natural for bonds of love and affection to arise amongst neighbors and co-citizens, "this affection has nothing to do with [shared] faith, but rather is connected exclusively to religious considerations as far as we Muslims are concerned. For God has commanded us to bestow mercy on all mankind as a part of faith."⁹² This statement helps alleviate some of the general concerns about the compatibility of the aims of *da'wa*

⁹⁰ Ibid., 302.

⁹¹ Ibid., 303.

⁹² Mawlawī, "al-Mafāhim al-asāsiyya," 214-5.

with citizenship in a pluralist society. On this view, *da'wa* is not merely motivated by the aim of winning adherents to one's way of life, but rather by a desire to extend to the other a good (perhaps the greatest good) unconditionally. This motivation reflects a very authentic and deeply sincere form of recognition of the moral status and importance of the other.

2. The second important theme in the *da'wa* literature is that of argumentation [*jadal*]. Q. 16:125 instructs Muslims to "argue with them in the most kindly manner" [*jādilhum bi'l-lāti hiya aḥsan*]. The second part of this injunction has been dealt with above; here we are concerned with how the very command to argue can imply an attitude of recognition. A central feature of the Muslim understanding of *da'wa* is the belief that faith need not conflict with reason. Faḍl Allāh, in discussing the methodology of *da'wa*, goes so far as to compare *da'wa* to the scientific method: he emphasizes the need to erase all preconceptions and prejudices, to present evidence and proofs, and to follow the rules of deduction and logical inference.⁹³

For our purposes we are not so much concerned with Islamic beliefs about the precise relationship between faith and reason, such as traditional proofs of God's existence or doctrines of the rational proof of Qur'anic inimitability, as with the ethical implications of the commitment to rational argumentation. Not unlike some of the principles of "discourse ethics" in contemporary Western political philosophy (a comparison to which I return below), the Islamic commitment to invite to Islam through reason and proof is a commitment to transparency, honesty, respect and, most importantly, a position of discursive equality between inviter and invitee. Faḍl Allāh writes that "this is the call which lays out its message clearly and openly without confusion, obscurity or distortion."⁹⁴ Also not

⁹³ Faḍl Allāh, *Uslūb al-da'wa*, 74-5. Although Faḍl Allāh is a Shi'i scholar, his views echo those of his Sunni counterparts. The views presented in this section do not seem to be based on any sectarian Shi'i methods or metaphysics. I am thus using them as examples of the development of certain themes related to *da'wa* and moral recognition which seem to be present in both Sunni and Shi'i texts.

⁹⁴ *Ibid.*, 164.

unlike theorists of discourse and deliberation, many Muslim thinkers reject an antagonistic, conflictual, zero-sum form of *da'wa* and debate in favor of something more collaborative and open-ended.⁹⁵ This commitment to transparency, simplicity and honesty reflects a belief in the manifest truth and superiority of the Islamic message, but applied to the methodology of *da'wa* reflects also a commitment to an attitude of inter-subjective respect and recognition towards non-Muslims as moral and intellectual subjects. I will return to this theme below in the conclusion to this section.

3. The attitude suggested by the requirement of open, rational argumentation is enhanced by the rejection of coercion in proselytizing. In addition to Q. 2:256 cited above, Q. 10:99 reads: "If it had been your Lord's will then all on earth would have believed. Will you then compel them until they believe?" It is a staple of Islamic discourses that *da'wa* must be undertaken free from any spirit of aggression or coercion, that the only faith which counts with God is that which is sincere and freely adopted, and that the moral value of acts or beliefs is derived only from their intent.

The subject of coercion demands a more technical philosophical discussion about what precisely constitutes coercion and free will. What is clear is that a theological belief in the existence of free will, or a belief in morality requiring right intentions or motivations, does not necessarily result in the endorsement of any particular kind of political institution. There is no necessary logical contradiction in believing that faith must be voluntary and sincere, while also believing that the state is called on to advantage a particular doctrine or way of life. There is also no necessary intellectual contradiction in believing that faith must be voluntary and sincere for it to count with God, and believing that society is justified for punishing behavior or thought that violates divine command. Muslim scholars have traditionally been quite clear on this. Faḍl Allāh, for example, in

⁹⁵ Ibid., 72. See also Khurram Murad, *Da'wah among non-Muslims in the West* (Leicester: The Islamic Foundation, 1986), 21. From the *Risālat al-Muslimīn fī bilād al-gharb* collection of essays, see Aḥmad Jā'billāh, "Qawā'id al-ta'āmul bayna al-muslimīn wa ghayrihim fī'l-mujtama'āt al-awrubīyya," 45-9; 'Abdallāh al-Jadī, "Risālat al-Muslim fī bilād al-gharb," 130; and 'Iṣām al-Bashīr, "al-Ḥiwār sabīlunā."

discussing the implications of Q. 2:256, writes that *da'wa* "leaves others to take responsibility for themselves. For mankind is in the first and last reckoning responsible for its faith or unbelief." But he quickly adds that

all of this is within the bounds of *da'wa* in its specific purview when the conflict is between ideas or doctrines as such. However, when *da'wa* shifts to the realm of the state, which organizes the affairs and lives of people according to a particular doctrine, and the conflict shifts to a war between the Islamic entity and the entity of unbelief or a conflict between two states, the position of *da'wa* then also shifts. The method changes and the matter takes on a new direction, focusing now on protecting the Islamic entity and the state of truth.⁹⁶

For classical and classically-minded Muslim thinkers, the question of religious tolerance and freedom of choice is never merely about the right of individuals to believe what they wish and to seek out information about various ways of life; the discussion almost always assumes such concepts as an Islamic "public order" or an Islamic entity which there is an obligation to preserve and defend. This results in such positions as a ban on non-Islamic propagation within Islamic polities, punishment for any heresy or "slander" of Islamic beliefs, punishment for "sins against oneself" or against God, or Quṭb's position, introduced earlier (Section I.2), that true religious liberty consists in removing all barriers to obeying God's law (namely any non-Islamic legal and political system) so mankind can be "free" to choose Islam. The implication is often that the Qur'anic phrase "*lā ikrāh fī'l-dīn*" is a descriptive statement: it is simply a matter of fact that faith cannot arise out of coercion; coercion cannot *cause* faith and save the unbeliever. But acts which in the liberal tradition might be referred to as coercion may have other justifications, such as upholding Islamic honor or public order or, more precisely, fulfilling the Islamic obligation to "command the right and forbid the wrong."

Here it is once again appropriate to emphasize the present focus on the minority political context, where the standard rejection of coercing faith based on Q. 2:256 and 10:99 takes on a different

⁹⁶ Faḍl Allāh, *Uṣūb al-da'wa*, 164-5.

force. The recognition that coercion cannot cause belief and the concomitant belief that one must not try to cause belief through coercion or manipulation are not sufficient to result necessarily in the endorsement of widespread toleration in religious and moral matters. However, what we are considering at the moment are precisely Islamic beliefs about *how to cause faith*, how to bring about faith in others. This is what *da'wa* involves, rather than (at least directly) defending an Islamic public order or an Islamic polity. Thus, insofar as Muslim thinkers regard residence in non-Muslim liberal democracies largely as a space for *da'wa*, for inviting to Islam, it is deeply significant for an inquiry into recognition and moral obligation that these efforts are universally regarded by Muslim thinkers to proceed entirely free from any inclination towards force, deception or coercion. While such an understanding may be insufficient to ground support for modern religious freedoms in Muslim-majority societies, it contributes towards a respect for the autonomy, equality and intellect of the non-Muslim other in a society already governed by liberal institutions.

4. A fourth concept, wisdom [*ḥikma*], also comes from Q. 16:125. According to most commentators, the injunction to “call to your Lord’s path with wisdom” essentially involves adapting one’s methods and approaches according to time and place. Faḍl Allāh refers mostly to the need to understand one’s circumstances and realities, to be more flexible in addressing non-Muslims in order to be more relevant and effective.⁹⁷ This notion raises clear questions about the motivations implied by this interest in appropriateness, flexibility and efficacy. Is this simply a tactical imperative, grounded not in any concern about the genuine needs or interests of the other, but merely in a desire to win as many adherents to Islam as possible? Note that the same concern applies to the duties to preach and argue in a kindly manner. Is the injunction to approach non-Muslims with kindness, openness and respect valid or compelling simply because alienating non-Muslims is counter-productive to the aims of *da'wa*? At one point Faḍl Allāh suggests that one must make the addressee “*feel as*

⁹⁷ Ibid., 58.

though you are a fellow-traveler on a journey towards truth, and that you respect him and his ideas,” not that one must indeed *be* so, and describes arguing in the best manner as “the best practical method to arrive at that goal [of winning adherents to Islam].”⁹⁸

Without denying the possibility that some may approach *da'wa* without a genuine respect for or recognition of the other, there are a number of possible responses to this challenge. The first is one suggested before in other contexts: that what is crucial is not the explanation or justification given by certain exegetes of a divine injunction, but the mere fact that the action or attitude in question *is a command*. The attempt to explain why the command might be there (its *hikma*) may reveal tactical considerations, preferences or inclinations, but the justification and reason for acting in such a way lies in the command itself, not in the explanation. If the result of the command is to produce an attitude of recognition and tolerance in the political sphere, then the religiously authoritative nature of the command can be deemed sufficiently ethical for the demands of modern citizenship, whatever further explanations of the *hikma* there might be.

There is a further, more interesting, reason for thinking that the command to call to Islam with “wisdom” constitutes a genuine attitude of recognition, even on its more pragmatic, tactical interpretation. To the extent that “wisdom” is understood as inviting to Islam in a way appropriate for one’s social surroundings, it is a call for *knowing the other* and *integrating with the wider society*, which are inclinations to both recognition and solidarity. It is largely in the name of *da'wa* that Muslim thinkers call for this. Mawlawī, for example, writes that the preliminary forms of relations between Muslims and non-Muslims crucial for *da'wa* (before attaining the stage of *ḥubb fiṭrī* discussed earlier) are mutual knowledge, coexistence and cooperation, adding that “we are a part of the society in which we live. Although a Muslim feels a part of the Islamic community... when he chooses to live in the West and chooses to be a part of this society in which he lives, then he must also think about this society—its issues, worries and problems—from his Islamic perspective.

⁹⁸ Ibid., 64.

This is what requires him to look into the matters of the Islamic call in the West.⁹⁹ This is a common sentiment in Islamic writings on *da'wa* and living in non-Muslim countries.¹⁰⁰ I would argue that a minimal conception of citizenship, as opposed to what one might refer to as an attitude of “loyal resident alienage,”¹⁰¹ requires some affirmation of positive relationships to fellow citizens and a willingness to contribute to common welfare; it is clear that the Muslim understanding of the means and aims of *da'wa* contains powerful motivations for such integration and involvement.

As suggested above, some comparison to the discourse ethics of German philosopher Jürgen Habermas and theories of deliberative democracy may be in order here. Briefly, Habermas holds that the actual pragmatics of communication and argumentation commit participants to certain substantive normative presuppositions, namely equal respect, the rejection of coercion, the freedom to form opinions, and the intersubjective validity of reasons, trust and honesty. Simply by engaging in discourses based on argumentation, participants acknowledge the incoherence of claims to normative validity achieved

⁹⁹) Mawlawī, “al-Mafāhīm al-asāsiyya,” 196.

¹⁰⁰) See also, Jā'billāh, “Qawā'id al-ta'āmul,” 53 and al-Ghannūshī, “al-Islām fī'l-gharb,” 113, where he writes that “a foreign plant such as Islam cannot lay down its roots so long as it doesn't interact with its environment [and] so long as it doesn't establish cooperative relations and connections with the elements of this environment.”

¹⁰¹) This concept is a moral-affective one, not a legal one. It refers to the attitudes citizens themselves have towards their state or political community, not to policies of exclusion the latter adopt towards undesirable or recalcitrant members. See, in particular, Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, MA: Harvard University Press, 1970), 226-7: “the alienated citizen receives whatever protection the state provides and lives every day with his fellows in the shadow of that protection. But he does not participate at all in political life; he chooses not to participate. He thinks of the state as an alien though not necessarily as a hostile force, and he wants only to live in peace under its jurisdiction.” Jeff Spinner-Halev prefers the term “partial citizenship” to describe the attitude (not legal status) of communities who shy away from political participation and involvement in civil society in *The Boundaries of Citizenship: Race, Ethnicity, and Nationality in the Liberal State* (Baltimore, MD: Johns Hopkins University Press, 1994). It is clear that certain “Salafi” groups in Europe, who ask whether it is permissible to adopt the citizenship (*tajannus*) of non-Muslim polities, would have no problem characterizing their attitude in this way.

through coercion, lies or exclusion, and thus implicitly endorse various principles of recognition.¹⁰²

To be sure, there are important differences between discourse and *da'wa* in their assumptions and motivations. Chief among them is that discourse ethics is presented by its advocates as the *search* for truth; ethical knowledge is not posited beforehand. Islamic *da'wa* obviously presumes the result and the norm sought before contact with the other. Second, unlike discourse or deliberation, *da'wa* is not necessarily reciprocal. Habermas discusses empathy and putting oneself in the other's position, but this is not something to be called for in *da'wa* except in the most limited way. While *da'wa* theorists do speak of listening to and getting to know the other, this is either purely instrumental to the aim of conversion, or sincere but unrelated to the search for truth. The idea cannot be seriously entertained by orthodox Muslim scholars that the actual process of debate and dialogue might result in greater ethical knowledge or a change of heart by Muslim "callers." Quite the opposite: the *da'wa* literature is replete with admonitions about who is allowed to engage in *da'wa* (only the confident and well-trained who are unlikely to be tripped up by non-Muslim rhetoric), about the moral and intellectual preparations they must make in advance in order to be immune to the inevitable opposition they will face, and even against engaging in too much arguing with non-believers, lest one get bogged down in obscurantist debates.¹⁰³

Yet, while *da'wa* is strategic in a certain sense, or at least there is certainly the possibility for strategic thinking or motivations, the ethics of *da'wa* do in some sense incline towards the values of discourse ethics. While *da'wa* may call for a certain cultivation of

¹⁰² See Jürgen Habermas, "Discourse Ethics: Notes on a Program of Philosophical Justification," in *Moral Consciousness and Communicative Action* (Cambridge, Mass: MIT Press, 2001).

¹⁰³ Verses 22:67-69 are often cited against entering theological disputes with non-Muslims: "To every People have We appointed rites and ceremonies which they must follow, let them not then dispute with you on the matter, but do invite (them) to your Lord: for you are assuredly on the Right Way. If they do wrangle with you, say, 'God knows best what it is you are doing.' God will judge between you on the Day of Judgment concerning the matters in which you differ."

the other in order to create a positive identification with Islam and Muslims, this cannot be compared to strategic action proper, which uses the promise of threats and rewards to motivate action by the other. Just as in communicative action where “one seeks *rationally* to *motivate* another by relying on the illocutionary binding/bonding effect of the offer contained in his speech act,”¹⁰⁴ the aim of *da’wa* is to genuinely motivate the other towards accepting Islam for the right reasons. Just as the “structure of communication rules out all external or internal coercion other than the force of the better argument and thereby also neutralizes all motives other than the cooperative search for truth,”¹⁰⁵ *da’wa* forbids coercion or threats as a motivating tactic and nullifies any motive for either spreading or accepting Islam other than the search for truth and salvation. Conversion must be voluntary, sincere and for the right reasons. One cannot lie or deceive in order to bring about conversion. Just as in discourse and deliberation everyone is allowed to question all assertions, introduce any assertions, express attitudes, desires and needs, *da’wa* does not presume that the non-Muslim must be silent and passive. It is true that the Muslim is not looking to the non-Muslim for truth, but his confidence in Islam’s perfection allows him to welcome any concerns, objections or (mis)-perceptions of the other. Finally, as in both discourse and deliberation, the *process* of *da’wa* itself has a certain value. *Da’wa* proponents do not expect everyone to convert, but there is a value placed on merely engaging with the other and presenting Islam to him.¹⁰⁶ A Muslim “caller” (*da’i*) can discharge his obligation merely by engaging with non-Muslims, which he cannot accomplish through a conversion brought about by ignoble

¹⁰⁴) Habermas, “Discourse Ethics: Notes on a Program of Philosophical Justification,” 58.

¹⁰⁵) *Ibid.*, 89.

¹⁰⁶) On at least one conception, *da’wa* “must not be confused with either proselytism or efforts to convert: the duty of the Muslim is to spread the Message and to make it known, no more no less. Whether someone accepts Islam or not is not the Muslim’s concern for the inclination of every individual heart depends on God’s Will. The notion of *da’wa* is based on one principle which is the right of every human being to make a *choice based on knowledge* and this is why Muslims are asked to spread the knowledge of Islam among Muslims as well as non-Muslims.” Ramadan, *To be a European Muslim*, 134.

means. The attention that Muslim theorists devote to the methodology and procedure of *da'wa* reveals the value placed on merely exposing others to Islam in a way that preserves the dignity of both parties.

In short, *da'wa* does not share the epistemic ambitions of discourse ethics or the community building ambitions of deliberative democracy, but in the social context there is a shared result of recognizing the other. Good will, transparency, honesty, sincerity, reason, freedom of choice, non-coercion, patience, openness to getting to know the other and respect are all *da'wa* values that might be interpreted as comparable to those advocated by Habermas, thereby revealing certain implicit attitudes of recognition.

The *da'wa* discourse thus reveals both a weak and a strong form of moral concern and solidarity with non-Muslims. The weak form holds that *da'wa* requires a certain integration into and concern for the wider non-Muslim society. On this view, *da'wa* is the higher value and objective, but a certain concern for non-Muslims and their societies—which we are assuming here to validate non-voluntary contributions to such societies—may be not only compatible with, but also supportive of, or necessary for, the aims of *da'wa*.

There is also a stronger view which holds *da'wa* itself to be one way of discharging a yet higher duty. In Mawlawi's words, "God has commanded us to bestow mercy on all mankind as a part of faith." Here the focus is not only on the non-Muslim's ultimate duty to save himself, and all mankind's duty to God, but on what is due the non-Muslim in this world: "We conclude that there can and must be affection and love towards a person whom you wish to call to God and that this affection is a small piece of the affection that God wills be directed towards him. This is the foundation which is considered to be stronger and weightier than everything that opposes it."¹⁰⁷ The foundational belief for *da'wa* is, of course,

¹⁰⁷ Note also the views of Pakistani-British Muslim scholar Khurram Murad: "We should be kind and compassionate, just and fair, to everyone, irrespective of one's faith, race, colour, or social status, and in all situations. God has commanded us to be just and kind. Deep involvement in human welfare and service to mankind is basic to Islam and of central importance to Da'wah. The Qur'an places these values and conduct on a par with faith in God and His worship (68:27-37; 74:42-6; 107:1-7). Why should Muslims be

Islamic universalism, which itself presumes certain commonalities amongst all humans, including a common origin, nature and purpose. This is a frequent theme in contemporary Islamic treatments of living in a shared political space with non-Muslims. Scholars often point to the numerous Qur'anic verses addressed to mankind in general (including 2:21, 4:1, 4:174, 10:57, 34:28) as well as those which speak of God's beneficent intentions for mankind, amongst the most popular being Q. 17:70: "We have honored the sons of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favors, above a great part of Our creation."¹⁰⁸ The belief that the message of Islam is directed towards all humanity, that all mankind shares a common origin, nature and purpose, and that God's creation was an act of love for mankind, is often reduced by contemporary scholars to the simple formula that "Islam seeks to bring benefit and improvement to all people and all races."¹⁰⁹ While the "benefit to humanity" implied is, of course, religious in nature,¹¹⁰ the argument of contemporary scholars is that it is un-Islamic to regret one's own proportional contribution to the welfare (material, *inter alia*) of people whom God wishes to bless.

indifferent to the uncared for, the lonely, the old, the hungry, who live in their societies?" Khurram Murad, *Da'wah among non-Muslims in the West* (Leicester: The Islamic Foundation, 1986), 23.

¹⁰⁸ While Q. 17:70 is cited by many contemporary scholars to argue that all of mankind deserve a certain quality of treatment from Muslims, most classical exegetes seemed to read it as a declaration of man's superiority over animals and his claim to the earth's natural resources. (See, for example, the commentaries of Ṭabarī and Zamakhsharī on this verse.) By the 19th century, however, exegete Maḥmūd al-Ālūsī (d. 1854) read the verse as teaching that "everyone and all members of the human race, including the pious and the sinner, are endowed with dignity, nobility and honor." See al-Ālūsī, *Rūḥ al-mā'ānī fī tafsīr al-Qur'ān al-'Azīm* (Cairo: Dār al-Turāth, n.d.) 15:117.

¹⁰⁹ Mohammed Hashim Kamali, *The Dignity of Man: An Islamic Perspective* (Cambridge, UK: The Islamic Texts Society, 1999), 7.

¹¹⁰ This attitude also has multiple possible implications, including a belief in the justness of subsuming non-Muslims into a Muslim political or social order; this is because the belief that "Islam seeks to bring benefit and improvement to all people and all races" is hardly a formula that obviously leads to a doctrine of political restraint or religious neutrality for the state.

Conclusion

The main argument of this article is that many of the works of the contemporary Islamic literature on the “jurisprudence of Muslim minorities” attempt to provide an Islamic foundation for a relatively thick and rich relationship of moral obligation and solidarity with non-Muslims. This attempt takes the form of a “comprehensive-qualitative” approach to ethics which appeals not to juridical reasoning of the type “is x permissible and in which conditions?” (of which the juridical debate on contracts is the principle form discussed here), but rather to Islamic ideals of what it means to live a good life, of what believing, normatively-committed Muslims *want* to pursue in this world, not only what they *may* pursue without fear of punishment. This meta-ethical approach builds on and goes beyond other Islamic meta-ethical approaches, which I have referred to as the “revelatory-deontological,” the “contractualist-constructivist” and the “consequentialist-utilitarian.”

The force of the argument is that this fourth “comprehensive-qualitative” approach to moral obligation to non-Muslims is found not in the writings of self-declared reformers or Sufi thinkers, but in those of conservative, “neo-classical,” *sharī'a*-minded—even Muslim Brotherhood-affiliated—Muslim scholars such as Yūsuf al-Qaraḍāwī, Fayṣal Mawlawī, ‘Abd Allāh Ibn Bayya and Khālīd ‘Abd al-Qādir. This demonstrates that somehow grounding the idea of deeper moral obligation to non-Muslims is clearly a problem for thinkers who might not be assumed to be engaged with such questions.

What adds to the force of this argument is that the other meta-ethical discourses of “contract” and utility (*maṣlaḥa*) already get these scholars quite far towards a doctrine of “loyal resident alienage” in non-Muslim societies. The obligation to obey contracts allows such thinkers to say that Islam commands Muslims to obey the law and avoid violence at all costs. For many people, that is all citizenship requires of anyone. Thus, such thinkers could easily stop there, remaining at the restraints vis-à-vis non-Muslim societies called for in the Qur’anic verses and Islamic legal discussions on contract. Indeed, many Muslim scholars writing on Muslims in the West do stop there.

However, scholars such as Qaraḍāwī, Mawlawī, Ibn Bayya and ‘Abd al-Qādir go beyond this; they are not satisfied with the “loyal resident alienage” allowed for by the legal trope of the “*amān* contract.” It would be a mistake to assume that all of these Muslim scholars are approaching citizenship in non-Muslim liberal democracies from a purely defensive posture—while holding their noses, as it were. They do have some interest in giving a theological or principled foundation to a much thicker and richer form of moral obligation to non-Muslims, a relationship which involves recognizing non-Muslims *qua non-Muslims* and contributing to their well-being.

The common theme in all of these efforts to thicken the moral relationship with non-Muslims is *da‘wa*. Whereas *fiqhī* reasoning (of which the legal trope of the “*amān* contract” is the example *par excellence*) can tell Muslims what they are *permitted* or *commanded* to (not) do, it cannot always tell Muslims what they might have extra reasons to do within the realm of the permissible. This is precisely the role of *da‘wa*. *Da‘wa* is the strongest answer to the question, “But what is *Islamic* about my deep integration into this non-Muslim society?”

Yes, that answer can involve a commitment to altering that society in ways the non-Muslim majority do not presently want. But that is not all the scholars derive from *da‘wa*. It also answers questions about how to move beyond the classical *jihād* doctrine, how to conduct all relations on a basis of reasoning and argumentation, and how to move beyond the classical prohibitions on loyalty (*muwālāh*), brotherhood and affection with non-Muslims. Indeed, I would submit that it is precisely this ambiguity between *da‘wa*-as-expansion and *da‘wa*-as-recognition which gives this argument its force and significance. It would hardly be noteworthy for semi-secularized outright “moderates,” “reformers” or “multi-cultural dialogue” professionals to be touting Islam’s moral concern for non-Muslims in vague terms with an ambiguous relationship to the Islamic tradition.¹¹¹ What *is* noteworthy is when scholars whom one

¹¹¹ By way of contrast to the views canvassed in this article, see Farid Esack, “Muslims Engaging the Other and the Humanum,” *Emory International Law Review*, 14 (Summer 2000), 530-69. In this article, the author, a Muslim scholar, activist and former Commissioner

would not expect to be interested in such problems are found to be working on them (in Arabic texts far from the scrutiny of Western publics) in creative ways within and at the margins of the Islamic tradition. At the very least this should give us some pause before assuming that the “Muslim Brotherhood” attitude towards non-Muslim societies is a purely tactical or contingent one. At the most, we might be witnessing the precise terrain on which a *sharī‘a*-minded Muslim moves beyond an attitude of “loyal resident alienage” in non-Muslim societies to seeing them as places of rich moral engagement, as places where his deepest and most important aims may be fulfilled, and as “communities with whose moral unity or participatory politics he can beguile himself.”¹¹²

for Gender Equality in South Africa, also appeals to *da‘wa* as a source of moral recognition of non-Muslims but explicitly distances himself from “the form of proselytization that regards the other as being in various states of damnation” in favor of “intra-religious and extra-religious proselytization based on liberative praxis aimed at creating a world of socio-economic and gender justice where all human beings are free to explore and attain their unique fullness, intended with their creation” (529-530).

¹¹² Walzer, “The Problem of Citizenship,” in *Obligations*, 217.

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