

Palgrave Series in Islamic Theology, Law, and History

Fiqh al-Aqalliyyāt

History, Development, and Progress

Said Fares Hassan



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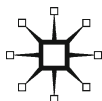
Said Fares Hassan

FIQH AL-AQALLIYYĀT

HISTORY, DEVELOPMENT, AND PROGRESS

SAID FARES HASSAN

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FIQH AL-AQALLIYYĀT

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For Nora, Omar,
Ali, and Meriem

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The love and support that one receives from one's family is likely to be taken for granted, but it is also the most critical of all. I must express my heartfelt gratitude to my father who was the first to take my hands through the bookshelves to teach me the value of learning. My gratitude goes to my kids, Omar, Ali, and Meriem, for their patience, love, and smiles that were always there to alleviate the burden of the day. Words are not enough to convey my gratitude to my "better half," Nora, for her unwavering love, unconditional support, and confidence in me. THANK YOU.

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Series Editor's Preface

This new volume in the Palgrave Series in Islamic Theology, Law, and History by an accomplished and gifted scholar of the Islamic tradition makes an integral and urgent contribution to the growing body of scholarship focusing on Muslim minorities in the West. One can hardly imagine a topic more germane to the ongoing debates about the future of Muslim minorities in the West and the role that they could play in a world full of paradoxical dualities. On the one hand, we live in an increasingly globalized and interdependent world, but on the other hand, it is also a world smitten by real or imagined cultural and civilizational conflicts. On the one hand, we live in a world that often claims to have achieved a global consensus over a universal humanistic ethic embodied in the normativities of international human rights, but on the other hand, there has been an alarming rise in religious bigotry and prejudice, which includes the virtual explosion of Islamophobia in Europe and the United States. The growth of the field of Muslim minorities studies is, in part, a way of interrogating the paradoxes of identity, community, diversity, and universalism. Scholarship on Muslim minorities could serve as the means to thinking creatively and constructively about the ways of addressing many of the challenges of modernity. This underscores not just the importance of such studies, but also the imperative that works on this sensitive and often misunderstood subject to be the product of the most exacting and rigorous scholarship.

It was not that long ago when the sole existing wisdom in the Western academia insisted that the Muslim tradition perceived the world only through the prism of the dichotomous division of two abodes: the abode of Islam and the abode of infidels or war. My own research interests in this field were piqued when I was taught as a graduate student at Princeton that Shari'a considers the residence of Muslims among infidels to be unlawful or illegitimate, and that Shari'a imposes an obligation upon all Muslims to migrate to the abode of Islam. After a careful and exhaustive reading of the original sources, it was not long before I discovered that this so-called accepted wisdom taught me much more about the researcher making these arguments than the actual discourses found in the Islamic theological,

ethical, and legal traditions. The sad irony is that more than 20 years after discovering that this dogmatic and simplistic interpretation of the Islamic tradition is not supported by the original sources, one still finds this view entrenched in many places including the media, research institutes, and think tanks, as well as in many academic departments in the West. Even worse, most recently, we have watched the curious phenomenon of various states in America passing legislations or resolutions condemning or banning Shari'a law. We have also observed a swarm of xenophobic cultural expressions manifesting in the Internet, television, community events, and even on billboards on buses warning Americans against an impending conspiracy to place the West under the tutelage of Shari'a law.

This is precisely why Said Hassan's *Fiqh al-Aqalliyāt*, which analyzes contemporary discourses on Muslim minorities in the West and their relationship to Shari'a, is an invaluable study. This is the first scholarly work to undertake a thorough and systematic analysis of the actual Muslim debates on the nature of Shari'a as it relates to Muslim minorities living in the United States and Europe. It is also the first study of what many Muslims have called *fiqh al-aqalliyat* or Islamic law as it applies to Muslim minorities living in liberal secular democracies. Away from dogmatic presuppositions or simplistic dichotomies, this book takes its readers through the dynamics and challenges of internal Muslim debates about the meaning and nature of Shari'a and the way it is supposed to affect the lives of Muslim minorities, and how it is in turn shaped and constructed by them. An important part of these debates are the ways by which modern Muslims creatively negotiated the historically inherited concepts of dynastic territorial polities while adapting Shari'a to the realities of the modern nation-state. This necessarily meant having to place the very idea of citizenship within the normative parameters of the living Shari'a. And to a great measure, Muslim debates on Islamic law and Muslim minorities are about the ways in which Shari'a relates to citizenship, nationality, and identity.

Said Hassan has done scholarship an enormous favor by writing this meticulously and exhaustively researched book. This book is indispensable to a broad range of readers, including those interested not only in Islam and Shari'a, but also in comparative religions and cultures, and cross-civilizational dynamics and interactions, and indeed, to anyone who has an interest in making sense of the all-too-often boisterous disputations about the meaning and import of Muslim minorities in the West, and in fact, the very future of the West. Said Hassan's book is a rare accomplishment. Not only does it succeed in serving as a requisite and essential reference source for scholars and students, but it also serves an immediate and essential sociopolitical function. To my mind, this book is the perfect antidote to the pestilence of Islamophobia, and similar maladies of the intellect that

might predispose some people toward the dogmatic essentialism of bigotry and prejudice. But as in the case of the other volumes of the Palgrave Series on Islamic Theology, Law, and History, this book charts new scholarly pathways for future studies on Muslim minorities, Shari'a, and the West. *Fiqh al-Aqalliyât* raises the bar for scholarship in the field by setting a new standard for any well-informed discussion that seeks to interrogate the point at which Shari'a, Muslim minorities, and the West meet, and the meaning of such a meeting for our moral trajectories and aspirations as human beings.

KHALED ABOU EL FADL
Los Angeles, California
February 2013

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Notes on the Transliteration of Arabic Words

Transliteration of Arabic words

Ar. Letter	Eng. symbol	Ar. Letter	Eng. symbol	Short Vowel	Long Vowel
أ	ʾ	ب	b	Fat-ha: a	أ: ā
ت	t	ث	th	Kasrah: i	و: ū
ج	j	ح	ḥ	Ḍammah: u	ي: ī
خ	kh	د	d		
ذ	dh	ر	r		
ز	z	س	s		
ش	sh	ص	ṣ/Ṣ		
ض	ḍ/Ḍ	ط	ṭ/Ṭ		
ظ	ẓ/Ẓ	ع	ʿ		
غ	gh	ف	f		
ق	q	ك	k		
ل	l	م	m		
ن	n	ه	h		
و	w	ي	y		

- The transliteration table above is used throughout this book to transliterate Arabic words. However, it is departed from in cases where specific transliterations have come into general use such as Qur'an, Islam, Hadith, Sharī'ah, fatwa, imam, mufti, and jihad (instead of Qur'ān, Islām, Ḥadīth, Sharī'ah, fatwā, imām, muftī, and jihād). To pluralize such words, an (s) is added to the singular (e.g., pl. of fatwa is fatwas)
- Unless it comes at the beginning of the sentence, all transliterated words are lower case. Exceptions to this rule are the following words: Qur'an, Islam, Hadith, Sharī'ah and Ummah.
- In case of quoting other works, I followed the transcription system adopted by the authors of the quoted work.
- ء (hamza) in initial position is not transliterated as (').

- ا, و, and ي are not transliterated when used to support ء (hamza).
- اى (alif maqṣūrā) is transliterated as /ā/.
- ة (tā' marbūṭa) is transliterated as /h/, but if it is part of a genitive construct, it is transliterated as /t/.
- Final inflections are not transliterated.
- Inseparable prepositions, conjunctions, and other prefixes are connected with what follows with a hyphen.
- (-) is used to connect the definite article ال with the following word. In bibliography, ال is not counted.
- (-) is used to separate two letters representing two distinct consonantal sounds, when the combination may be read otherwise as a digraph.
- Transliteration of the word "Allah" loses the first "A" when connected to other words as in /ʿAbdullah/.
- The combination of عبد ال is transliterated as (Abdel-).
- ابن and بن are both transliterated as /ibn/.

Introduction

Consecutive waves of Muslim migration to modern Western liberal democracies during the twentieth century gradually challenged Muslims' traditional conventions of the role of religion in their life. Immigrant Muslims gradually started to question internally, that is, among themselves, the function and role of Islamic Law in a modern world that constantly changes its political, economic, and philosophical orientations. This internal quest of how Islam may adapt or be adapted to ongoing changes in the world did not occur suddenly or gain momentum in a short period of time. At first, early immigrants were concerned with questions/*fatwas* pertaining to *ḥalāl* standards (e.g., whether certain food ingredients are permitted according to Islamic Law) and the *ḥilāl* (moon sighting, especially in the months of Ramadan and Shawwāl). When these questions were raised for the first time, necessity-based answers/*fatwas* were given, that is, Muslims may eat meat that was not slaughtered in a proper Islamic way or consider the moon sighting of another Muslim country out of necessity since they do not have the means or the power to apply rules of Islamic Law in their localities. By the 1970s and 1980s, immigrants responded to these concerns with more practical solutions. They turned to institution-building: the *ḥalāl* became a business venture where Islamic-permitted food ingredients were manufactured, imported, or sold. The *ḥilāl* became the concern of the Islamic centers that focused primarily on community religious observance. These centers started to assign people to observe the moon sighting themselves and then inform their communities of the result. In so doing, Muslims were trying to add an "Islamic" dimension to their lives. Though the meaning and scope of the word "Islamic" varies from one group to another, the aspiration remains the same: *to lead an Islamic life*.

The quest for leading an "Islamic" life has led some Muslims to encounter the dilemma that submission to their belief requires them to abide by the *Shari'ah*, while at the same time, as alien residents or citizens of a non-Muslim polity, they are required to adhere to the laws of their state that may contradict their beliefs. In order to resolve such a dilemma and to respond to such a critical situation, Muslims tend to resort to the advice of an *imam* or a *mufti*.

Although the advice of such personnel is not binding, it is used to guide, comfort, and justify what is happening on the ground. Although some of these questions are not new and have long been debated in Islamic jurisprudence, the new position and experience of Muslims in the modern nation-states of the West have obliged muftis and imams to reconsider the traditional fatwas and examine their application and relevance to the present situation.¹

The particularities of the new context prompted Muslim scholars to argue for the establishment of a new category of *fiqh* known as “*fiqh al-aqallīyyāt*”² (jurisprudence of minorities), “*fiqh al-muḡtaribīn*”³ (jurisprudence of the expatriates), “*American Fiqh*,”⁴ or “*European Islam*.”⁵ To establish/develop a *fiqh* for Muslim minorities is not a new thing in the Islamic tradition. In fact, classical *fiqh* sources have dealt with questions that are quite relevant to Muslims living in non-Muslim territories, though under various titles such as *Nawāzil*⁶ and *Waqā’i’*.⁷ What makes the situation different now is that these calls aim to generate a general framework of objectives, characteristics, and fundamentals of a minority-based *fiqh*, according to which the distinctive traits of each minority and their position in the new land are considered.

This book examines the development of a specific form of Islamic jurisprudence among Muslim minorities living in Western European and North American liberal democracies. It specifically explores the internal debate among Muslim jurists, as it constitutes an integral part of the development of minority life in the West. This internal debate demonstrates the tension, the aspiration, and the struggle of Muslims in adapting to their new life on terms that are in harmony with their cultural and religious self. The debate seeks to create a theoretical jurisprudential framework that strikes a balance between the Muslim minority as Muslim individuals and their civic identity as citizens in liberal states. This study argues that as Muslim jurists debated over the status of a Muslim minority, they developed three key trends: the puritan-literalist, the traditionalist, and the renewalist.⁸ *The puritan-literalist trend* continues to look at present-day Muslim immigrants through the lens of medieval jurisprudence, ignoring the contextual realities that led medieval jurists to take such positions.⁹ This trend argues that Muslim immigrants should not reside outside the abode of Islam without a legitimate reason. Once the purpose of settlement outside of the abode of Islam has been realized, then Muslims should reemigrate to their Muslim homelands. *The traditionlist trend* argues that the legal rulings pertaining to Muslim minorities, especially in modern-day conditions, require exceptional rules that are to be maintained as long as they are in the minority. *The renewal trend* asserts the need for a new category of jurisprudence and a new methodology that generates a framework of objectives, characteristics, and fundamentals of a minority-based *fiqh*, which is to be known as *fiqh al-aqallīyyāt*¹⁰ (literally, jurisprudence of minorities).

The present study delineates these trends in detail, and investigates their background, development, and current conditions, with special focus on the renewal trend and the discourse of *fiqh al-aqalliyāt*, since it has become the prevailing trend in the last decade. It explores the jurists and institutions behind the production of this *fiqh*, and examines the factors that account for its production, dissemination, and limitations. It investigates the ways in which this new *fiqh* is justified and contextualized and what it has produced in legal and social terms.

Study Focus and Methodology

This study provides a legal historical narrative of *fiqh al-aqalliyāt*. While other researchers have written about specific fatwas and case studies, there has been little research done on the history of its legal development—a matter of paramount significance for understanding not only the legal shifts but also the structure, the changes, and the aspirations of the parties involved: the Muslim minority, the non-Muslim majority communities; and the jurists involved in reshaping doctrine. *Fiqh al-aqalliyāt* is not a completely new phenomenon; as will become clear throughout the book, it relies heavily on historical legal precedents that date back to the first centuries of Islam. The focus here, however, is on the immediate forerunners of *fiqh al-aqalliyāt* as represented in legal discourses. The book starts by studying the Saudi fatwa committee and the Egyptian al-Azhar institution. The study of these two discourses constitutes chapters 1 and 2. These two trains of thought were chosen for various reasons. First, both were the main source of religious guidance for Muslim minority communities in the West during the early stages of their immigration. Second, they represent two different schools of thought, a matter that demonstrates the variety and complexity of the positions to be taken. Third, and most important, many of those who contributed to the discourse of *fiqh al-aqalliyāt* had a connection with one of these two schools at one point in their life.

Chapters 3 and 4, which represent the kernel of the original research conducted for this study, examine the thought of the two main contributors, and actual creators, of the discourse of *fiqh al-aqalliyāt*, Sheikh Yūsuf al-Qaraḍāwī¹¹ and Dr. Ṭahā Jābir al-ʿAlwanī.¹² These chapters address questions about the relationship between modernity, reform, and tradition. They also examine how religious knowledge is produced through the negotiation of text and context and the interpretative community of legalists. In these two chapters, one can see the forces and the variables that have been at work to ensure the creation of new religious paradigms in order to make Islamic Law compatible with non-Muslim polities.

Chapter 5 provides a clear example of how *fiqh al-aqallīyyāt* challenged the doctrinal positions of traditional Islamic Law to normalize Muslims' lives in the West and to make them a solid part of their new homes and societies. It discusses questions of the division in the Islamic legal tradition between a Muslim and a non-Muslim sphere, as well matters of citizenship and loyalty to non-Muslims. It demonstrates how debate over these questions made Muslims redefine the role of Islamic Law in the West.

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

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

Introductory Issues

Legal Debate Continued

The presence of Muslims as minorities is not a new phenomenon. Muslims used to live in a minority context since the advent of Islam. Their migration to Abyssinia in 615 A.D. is the first recorded presence of a Muslim community in the midst of a non-Islamic polity outside the Arabian Peninsula. After

the establishment of the Islamic state in Medinah, many Muslims used to move in and out of the Muslim territories for trade, for seeking knowledge, or for taking part in wars. Such a movement raised various legal questions that resulted in the development and the production of a legal debate. For the purpose of this book and as a kind of an introductory chapter, I thought of providing a brief expose of this history and of the legal debate surrounding it. However to do this will be a kind of repetition of what other scholars did before, and I would be also repeating myself as I refer briefly to this history in chapter 5, when I discuss the transformation of the question of *hijrah* in our present-time debate from a question of individuals to a concern of a community. Therefore, I chose to refer the reader to other sources if s/he is interested in investigating the details of earlier historical stages. However if the reader would like to get an overview I recommend s/he reads chapter 5.

An excellent review of the earlier legal debate on the question of the presence of Muslim minorities in non-Muslim lands is the contribution of Professor Khaled Abou El Fadl. He published four significant articles on the juristic discourse of Muslim minorities as early as the second/eighth century until the beginning of the twentieth century. His review establishes the fact that Muslim legal tradition on Muslim minority is complex and diverse. The jurists of various schools debated almost every single issue and projected different positions based on their geopolitical setting and juridical orientations. They debated the ruling pertaining immigration, definition of *dārs* (both *dār al-Islām* and *dār al-ḥarb*), the boundaries of Islamic jurisdiction, the limitations of manifesting one's religion and the role of *amān* in defining their relation to the non-Muslim territory.¹³ Khaled Abou El-Fadl, however, argues that there are three main questions that the debate focuses on: Are Muslims permitted to reside in a non-Muslim territory? Are Muslim minorities part of the Muslim *Ummah* or do they constitute a special class of Muslims? What are the obligations of Muslim minorities towards Islamic Law, and toward their host states? These questions are discussed within the framework of four key issues: residence in a non-Muslim land; ability to practice Islam, especially rituals; jurisdiction; and interaction with non-Muslims. Definitely, these three questions have derived the debate with all its complexities and other subissues throughout Islamic legal history up till the present time. *Fiqh al-Aqallīyyāt* is a new attempt to revisit these questions and reconsider them in light of the new space and time.

Note on Terminology

This study is based on the assumption that there are three main trends involved in the discourse of *fiqh al-aqallīyyāt*: the puritan-literalist, the

traditionalist, and the renewal. Admittedly, to classify jurists into categories is problematic. Giving labels often carries loaded connotations that may not be intended by the author or may be misinterpreted by the reader. Also in legal discourse, it is hard to categorize jurists, because one jurist can be identified under a certain category, say literalist, in a certain issue, while in another, his position may belong to a completely different category, say traditionalist. Categorization, however, is a useful tool for analysis and leads, if done properly, to substantial conclusions. This places a burden on the shoulders of the researcher to carefully define his categories. An attempt has been made in the present study to work out the closest labels possible that fit the orientation, ideology, and conclusions of the jurists studied.

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

The traditionalist trend acknowledges the richness of the tradition to the extent it holds that the tradition encompasses all needed answers and guidance. The advocates of this trend, however, distinguish between the tradition’s different sources: text, legal reasoning, customs, etc. They also appreciate the urgencies of time and space. In order to strike a balance between the tradition and the condition of Muslim minorities, they search the tradition for a possible solution. Once they found it, they adopted it, though with cautious phrasing and conditional language.

The renewal trend holds that the tradition has all the necessary potential for renewal and revival. It can reintroduce itself as a viable way of life in the present context. Renewalists always go beyond the immediate questions (which normally the traditionalists limit their answers to). They examine the various dimensions of the question, trying to define priorities and to seek the fulfillment of the objectives of *Shari’ah*, not the mere ruling. They may be called reformers. However, I prefer “renewal” as it is close to how they define their discourse. They call for *tajdid*, which recalls the concept of renewing one’s faith. This renewal process is personal, as every individual is responsible for renewing and reviving his religion. It is also a scholarly duty

as the report narrated by Abū Hurayrah indicates. Abū Hurayrah narrates that the Prophet has said that Allah will send at the turn of each hundred years, someone to the *Ummah* to renew its faith.¹⁵

Shari'ah, Fiqh, and Aqalliyyāt Static

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

Concerning the first point, advocates of *fiqh al-aqalliyyāt* stress that a distinction should be made between *Shari'ah* and *fiqh*. *Shari'ah* is the set of laws and principles contained in the revelation and in the verified *Sunnah* of Prophet Muḥammad. *Shari'ah* is elaborated upon through the work of the interpretative community of Muslim scholars and intellectuals. *Fiqh*, on the other hand, is the human application of reason for the purpose of comprehending and interpreting God's will, whereby jurists deduce from the Qur'anic text and prophetic tradition what they believe to be relevant to people's lives. *Fiqh* is the attempt to discover, explore, describe, interpret, and derive rules in a legal fashion. This understanding of *fiqh* is a basic component of *fiqh al-aqalliyyāt*, through which the minority *fiqh* advocates

respond to Western claims that Islam is inherently unable to “renew” itself in order to adapt to modern life. Such a claim does not see the intricacy of the Muslim tradition that developed various mechanisms to distinguish between *Shari‘ah*, as seeking the wisdom of the divine, and *fiqh*, as the intellectual human process of interpreting this wisdom. Through *fiqh*, Islamic tradition goes through a constant process of adaptation that never gets polarized into one dominant sect throughout the Muslim world. The juristic schools, the theological groups, and the political sects are all evidence that Islam is in continuous dialectic relation with its environment. The essence of *fiqh* is its ability to renew and adjust itself to its surrounding social realities.¹⁶ Asserting this point, the proponents of *fiqh al-aqallīyyāt* argue that they belong to the same tradition, and their work is to understand the wisdom of the divine in relation to their present world, and that is *fiqh* and not *Shari‘ah*.

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

An Immigration Phenomenon

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

The dominance of Arab immigrants in the discourse of *fiqh al-aqallīyyāt* raises serious questions about how this phenomenon should be understood. This study argues that it has to do with an individual’s attitude toward the

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

Local indigenous Muslims, on the other hand, knew no other home. Islam for them was a spiritual path that did not require relocation to other lands. Coming to Islam from outside the tradition, they mostly believed in the secular nature of the state. As such, they did not see a connection between their faith and forbidding themselves from serving or working for the benefit of their fellow citizens, who largely consisted of their families and friends. It is true that some converts have the belief that it is better for them to emigrate from the West and go to a Muslim land to enjoy a better Islamic experience and dwell in *dār al-Islām*, but those were not in the majority. Local Muslims developed their own Islamic paradigm of worshipping the divine and serving the human. Most of them knew little about the legal traditions of the obligation to immigration or the questions of *iḥbār al-dīn*, that is, manifesting one’s religion. And even if they knew, they would not pay much attention, because they believed that these traditions did not apply to their contemporary life.

It should also be noted that Arabs were the ones who have played the leading role in the discourse. Although many non-Arab immigrants, especially Indian and Pakistani scholars, are increasingly participating in the legal debate, the discourse itself is dominated by Arab jurists and intellectuals. This may be due to the fact that non-Arab immigrants, who are mostly South Asians, have had prior experience with both secularism and minority issues in their home countries, having engaged and worked with non-Muslims in an open environment. Therefore, they did not have much problems seeking Western citizenships or politically engaging with the non-Muslim polity. But Arabs did not have this experience. Instead, their

memories are alive with colonized histories followed by despotic regimes that used puritan forms of religion to control the masses and galvanize them against the “liberal” West. This created an internal dynamic of distancing oneself from the culture and politics of the “other.”

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

Another characteristic of this phenomenon is that most of those involved in the discourse have an affiliation with modern movements of political Islam, especially the Muslim Brothers. It will be demonstrated through the study that this affiliation has influenced the reasoning of their discourse and their vision of the nature of *fiqh* in modern life. As activists in an alien setting, they needed to justify their presence in relation to their faith and to their country of origin. Also as activists within their new residence, they sought to maintain an Islamic vision of life and promote it among their fellow Muslims. This was done through establishing national institutions such as Muslim Student Association in the United States and the Federation of Islamic Organization in Europe. The more engaging these institutions were with their local and non-Muslim community, the more was the need felt for a specific legal discourse that responds Islamically to the new challenges.

Shi‘i scholars have developed their own positions toward *shi‘i* Muslim minorities, but their debate—under the rubric of *fiqh al-mughtaribin*—is framed within their own legal and theological experience. While there are definite points of convergence and divergence between the *sunni* and the *shi‘i* discourses, the focus of the present study is on the *sunni* one. The

significance of the *sunni* discourse emanates from the fact that the majority of Muslims living in the West are *sunnis*. Of additional relevance is that due to their historical minority experiences and legal philosophy of accommodating minority life, the *shi'i* minority developed an early clear stance on the legitimacy of minority life, a fact that makes the transformation in the *sunni* discourse more appealing for investigation.

The position of indigenous Western Muslims is also not discussed in this study. There is no doubt that they have developed a complex stance toward the role of Islamic Law in their lives that reflects their own understanding of the role of Islam in a “pluralistic world.” Studying their position, however, requires a separate volume.

Combating Victimization

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

Conscious affirmation of Islamic identity in response to discrimination and victimization has been empowered by the establishment of Muslim advocacy groups that, although led primarily by older immigrant generations, have cultivated new young Muslim leaders. Educated and cultured in the West, these young leaders and their generation gradually started to develop their own interpretation and discourse on Islam. They ignited a discourse not only among themselves but also among the Muslim public and intellectuals about “claiming democratic America” against “colonial America.” This paradigm shift toward “*believing in the West*” as a space of coexistence is clearly reflected in the discourse of *fiqh al-aqalliyyāt*. Although the discourse itself started in the 1990s, as will become evident in this research, its real influence began in the first decade of the twenty-first century.

Minority Discourse and the Muslim Question

The discourse on minority rights in the context of globalization and liberalization challenged many Western intellectuals to produce a coherent vision and a theoretical framework that attempt to counteract the atrocities perpetrated against past minorities (e.g., the Jewish case) and to address the ethnic and cultural bias against them. Ongoing debates about pluralism, multiculturalism, and nationalism incorporated and defined the question of “minorities.” Although many positions were reformulated and developed throughout the last few decades by proponents of various schools, for example, the liberal school and the multicultural school, the prevailing notion seems to be that minorities should enjoy the right to maintain their cultural traits, including their customs, language, and ethical beliefs, as long as these traits are within the framework of the liberal ideology of individual freedom and pluralism. In his *Multicultural Citizenship*, Will Kymlicka argues that minorities should be categorized according to their relationship to the land they live in and, as such, two main categories can be established. The first is the minority of the indigenous population, and the second is the minority of the immigrant communities. In both cases, each minority group has a set of rights that is justified.²⁰ In the same vein, Hellyer, author of *Muslims of Europe, the Other Europeans*, states that the multiculturalism paradigm, in its fully developed version, allows space for religious minorities, including Muslims, to maintain their peculiarities. On a proportional basis, it is feasible for these minorities to be integrated into the wider society to the extent that they can become a part of the national cultural story, be included in the national political culture, and project citizenship-civic values.²¹ In the case of Muslim minorities, Andrew March uses overlapping liberal consensus theories to confirm that many of the diasporic juridical arguments (i.e., *fiqh al-aqallīyyāt*) that Muslims formulate to strike a balance of identities, for example as American Muslims, do not contradict the liberal expectations of residents of liberal democratic states.²²

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

as those scholars do not elucidate the form of Muslim participation in the society.²³

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

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

Convergence of Law, Context, and Identity

In her analysis, Kathleen Moore argues that the ways in which law, context, and identity converge in the Muslim diasporic jurisprudence create social and legal dilemmas that both mirror points of tension and provide opportunities for interaction. The law represents the mechanism through which people try to understand, justify, and reinterpret dichotomies resulting from history, culture, or religion. Law—especially in the minority context—has a considerable impact on the cultural and religious reproduction of elements of distinction, specificity, and difference.²⁵ Legal structures, as Moore indicates, are where ideas can be found in support of one position and rejection of another, regardless of what each may represent. Alternatively, the law is an area where common ground can be found in order to facilitate interaction with those holding opposing positions. Both law and context acquire their meaningful presence through people who themselves aspire to fulfill their distinct selfhood both as individuals and members of a community. This distinctive selfhood is the identity that creates one's worldview, conception of life, and perceptions of the other. Therefore, identity, by its very nature, cuts across law and context by shaping—as well as being shaped by—law and context. This dialectic relationship between law, context, and identity is present throughout the discourse of *fiqh al-aqalliyyāt*, in which the advocate of this *fiqh* argues that law should be recontextualized to fit the current moment, with a view to affirming the identity of Muslims. For example, Friday prayer (a question of law) is better delivered in the native language of the land (context) and not in Arabic, because its ultimate goal is to teach Muslims about their religion (identity). A Muslim may donate his blood (a question of law) to a fellow non-Muslim citizen (context) because this shows the real “identity” of Muslims as caring individuals (identity). Muslims should engage in politics (a question of law) in a democratic system (context) to promote justice and welfare for his society and fellow Muslims (identity). *Fiqh al-aqalliyyāt* is not only a legal paradigm as it may sound from its title, but an internal discourse among Muslim jurists, if not a reform project, that addresses Muslims' questions on the function of law in maintaining Muslim identities in the context of globalization. *It is that “internal discourse” that this book examines.* Internal discourse refers to the debate of Muslim jurists among themselves as interpreters of law to negotiate the interconnection between rules of law, people's aspirations, and realities, with a view to finding a balance that maintains the integrity of each element.

At this juncture, it should be asked, what the benefits of this “internal discourse” would be. The answer for this question will reveal itself

throughout the present research, but for now the following may be stated: this internal discourse is intended to normalize Muslims' life in the West via *an Islamicized package* that addresses individuals' religious aspirations, the integrity of traditions, the authority of jurists, the threat of identity erasure in a globalized context, and the theoretical discourse of globalization and liberalization. Kathleen Moore elaborates that diasporic jurisprudence is a form of legal strategy designed to "normalize" Muslims' presence in the West, not necessarily in terms of the dominant institutions of a society, but internally, through the conscious use of Islamic idioms.²⁶ The use of Islamic idioms serves multiple purposes: it empowers the identity of Muslims by connecting it to its historical roots; it assures the non-Muslim society that Islam has internal dynamics that fit their framework of reference and that Islamophobic claims are not warranted; it provides verification that the discourse participants are legally qualified and authorized to examine the issue; it renders their discourse authoritative enough for the satisfaction of diverse groups; and it constructs normative claims that can serve as principles for future debates. These various elements have been evident in the discourse of minorities. One may venture to argue that were it not for this internal discourse, Muslim integration into Western societies would not be complete.

Significance

A frequent question that arises with regard to research on Islamic Law in the West is "Who cares?" Statistics indicate that significant numbers of Muslims in the West are neither observant Muslims nor interested in fitting Islamic Law into a Western context.²⁷ If this is indeed the case, then what is the significance of *fiqh al-aqalliyāt* to local communities? The present study argues that the discourse of *fiqh al-aqalliyāt* is highly relevant to those "non-observant" Muslims in the same way as it is relevant to "practicing" Muslims. One of the functions of the law is that it offers identity and legitimacy whether people apply it or not. Two points are in order here. First, it may be argued that one of the main reasons for the development of *fiqh al-aqalliyāt* is the growing number of "non-observant" Muslims in the West and the fear of the impact of privatizing religion or stripping Islam of its meaningful presence in Muslim's lives, especially the younger generations.²⁸ *Fiqh al-aqalliyāt* represents an effort to preserve a particular sense of community and to protect offspring from secularizing pressures.²⁹ In other words, the lack of interest of some Muslims in *fiqh al-aqalliyāt* does not mean they are not participants in the making of the discourse. On the contrary, they are "negative" participants who are expected to join in at any

moment, especially given the increase in racial profiling of Muslims that does not make any distinctions between the observant and the nonobservant.

The second point is the relative definition of terms like “non-practicing” and “observant” when it comes to religious practices or, to put it differently, how one measures the (non)religiosity of certain individuals, especially in modern life where religious interpretation has taken on nontraditional forms. Distinctions should be made between religion, religiosity, and legal legitimacy as a reflection and product of modes of globalization and pluralization norms. Religion represents the comprehensive container that covers a whole range of modes of interpretation and praxis that includes—but is not limited to—categories such as nominal Muslim, cultural Muslim, practicing Muslim, emotional Muslim, and heritage Muslim. Religiosity is the personal mode of interpretation of ethical concepts as understood from religion. Religiosity based on ritual practices is just one of its manifestations. Others may focus on spiritual or behavioral aspects to express their religiosity. As such, the argument that it is only observant Muslims who care about the meaning and application of Islamic Law in the West is imprecise. On the contrary, it may be argued that “puritan” observant Muslims do not care as much about *fiqh al-aqalliyāt*, since they have a set of convictions that leaves no space for negotiation with the other. Conversely, this also does not mean that the nonobservant cares more. The point is the significance of *fiqh al-aqalliyāt* to local community should not be tied only to the question of practice but also to the meaning of the religious experience of the self.

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

culture), and *Shari'ah* (the law) on one side and the West, the home, globalization, the context, and secularization, the mode, on the other.

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

Chapter 1

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

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

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

The puritan-literalist trend looks at the present-day Muslim minorities through the lens of medieval jurists and traditional manuals of *fiqh*, without taking into account the difference of the historical moment or the necessities of the present time. The proponents of this trend tend to belong to the traditional literalist school that emphasizes literal readings of religious legal texts over their context and the wisdom behind them.² They continue to treat Muslim minorities today as did the early and medieval jurists who regarded residents of non-Muslim lands as subject to non-Muslim rule and laws. They presume that those Muslims will eventually reemigrate back to Muslim countries, and that, in the meantime, they must protect their religious and cultural identity by isolating themselves from their host societies.³

The literalist discourse is best represented by many of the *Wahhābī*⁴-Saudi-affiliated institutions and muftis. The impact of this discourse cannot be ignored in shaping the lifestyle of Muslim immigrants in its formative stage from the early 1970s up to the late 1990s. Till date its impact is felt in some Muslim circles in the West. However, a point of caution here should be noted: not all Saudi imams, scholars, or institutions belong to this trend. There are a number of Saudi-based, or educated, imams and scholars whose discourse and contributions can be placed on a different point of the spectrum of the legal debate on the jurisprudence of Muslim minorities.

The focus here, however, is on the official Saudi religious institutions, and their endorsed muftis and fatwa collections. Specifically, the focus

here is on the fatwas and publications of the Ministry of Islamic Affairs, Endowments, *Da'wah* and Guidance, the General Presidency of Research and *Ifta'* Administrations, and the Permanent Committee for Scientific Researches and *Ifta'*.

The Saudi Impact: Traveling Money and Ideology

The *Wahhābī*-Saudi's relations with Muslim minorities date as far back as the 1960s. However this relationship reached its peak between the late 1970s and the 1990s, particularly after oil revenues began to generate real wealth for the Kingdom of Saudi Arabia, through which it "could fulfill its ambitions of spreading the word of Islam to every corner of the world, of assisting Muslim countries less well endowed economically and of alleviating the suffering of Muslim minorities wherever they might live."⁵ The Saudi government and individuals generously supported Muslim minorities. They donated billions of dollars to help minorities build mosques, establish Islamic schools, and organize Islamic work. They provided them with tutors and imams. They funded projects for translation and publication of religious materials to be distributed to minority communities. In 1980, for example, the Department of Islamic Affairs, then affiliated with the Ministry of Treasury, donated around 37 million Saudi riyals for various Muslim minority communities.

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

43 million riyal, in Rome, 50 million dollars, in Munich, 350 thousand sterling, etc.⁶

The constitution of the Saudi Ministry of Islamic Affairs, Endowments, *Da'wah* and Guidance, established in 1993, stresses the Saudis' concern for the conditions of Muslim minorities. This concern developed into a working plan executed by the ministry's various departments. According to recent sources and statistics, the department of *Da'wah* and Guidance has 2 offices spread in various world cities. This department dispatched *dā'iyyah*, that is, preachers, to more than 90 countries throughout the years until 1994. In addition, the Department of Printing and Publishing translated 77 books and distributed them, for free in some cases, to Islamic schools and institutions all over the world.⁷

The Saudi government led initiatives to establish a number of international Islamic organizations. In 1962, it established, along with 22 other Islamic countries, the Muslim World League (MWL), whose main tasks include supporting Muslim minorities and helping to resolve their problems. The MWL has 32 offices in the Muslim world countries, in addition to six offices in Europe. Moreover, the MWL has a special department devoted to preparing Islamic educational curricula for Muslim minorities. It also awards fellowships for Muslim minority students to study in the Saudi kingdom or in other Islamic institutions. In 1994, there were 891 fellowships granted to students from 63 countries. In 1972, the World Assembly of Muslim Youth (WAMY) was established mainly through the funds of the Saudi government. WAMY helps establish mosques and other Islamic institutions. Every year it organizes youth camps in various parts of the world. In 1982, for example, they had at least 8 youth camps in Argentina, Gambia, Holland, France, Sudan, Cyprus (Turkish side), and the Philippines.⁸

Given such significant contributions and funds to Muslim minorities and the symbolic role of the Kingdom of Saudi Arabia as the guardian of Muslim holy places, the center to obtain Islamic knowledge and guidance gradually shifted toward Saudi-*Wahhābī* religious institutions and muftis. This can be confirmed through a review of the official fatwa collection of the Saudi Ministry of Islamic Affairs. The 13-volume collection contains a considerable number of fatwas relevant to Muslim minorities and their interaction with wider non-Muslim societies.

The ministry received questions coming from almost every country in the world, including Belgium,⁹ Bangladesh,¹⁰ and Thailand.¹¹ They also received numerous questions from London,¹² America,¹³ Canada,¹⁴ France,¹⁵ Germany,¹⁶ and Bengal.¹⁷ It also received questions from Australia,¹⁸ Singapore,¹⁹ Brazil,²⁰ India,²¹ Russia,²² Denmark,²³ Ireland,²⁴ and Africa²⁵ among others. The questions dealt with virtually all aspects of

life: immigration, citizenship, rituals, marriage, divorce, education, food, dress, interacting with non-Muslims, interfaith dialogue, etc.

The reference to *Wahhabism* in relation to the Saudi influence on Muslim minorities stems from a number of reasons. First, *Wahhabism* or, as commonly called by the Saudi institutions themselves, *Salafism*, is the state religious ideology that it attempts to promote and export to other Muslim communities.²⁶ Second, the fatwas, under study in this chapter, were based on the Muḥammad ibn ‘Abdel-Wahhāb ideological stands. ‘Abdel-Wahhāb was hostile to non-Muslims, insisting that Muslims should adopt none of their customs or befriend them. He even asked Muslims to make visible and unequivocal their dislike, if not enmity, to non-Muslims.²⁷ Third, the literature translated and distributed to Muslim minorities was either directly related to the *Wahhābi* school, authored by people who lived or studied in the Kingdom of Saudi Arabia, or was supported by Saudi institutions.²⁸

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

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

For the sake of brevity and focus, an attempt will be made in the following pages to draw a portrait of a Muslim life in a non-Muslim polity according to the collection of fatwas of the Permanent Committee for *Fatwa* and Research, especially those fatwas of late Saudi Sheikhs, Sheikh ‘Abdel-‘Azīz ‘Abdullah ibn Bāz and his colleague Sheikh Muḥammad ibn Ṣāliḥ al-‘Uthaymīn. Sheikh Ibn Bāz (1912–1999) was appointed Grand Mufti, the highest religious authoritative rank of the kingdom, by King Fahd in 1993. Ibn Bāz’s connection to the Saudi religious and political institution, however, goes back to the early years of the establishment of the kingdom when he was chosen as the *qāḍī*, judge, of Dilam in 1938.²⁹ “From that moment, the two histories, i.e. the history of the Kingdom and the history of Ibn Bāz, interconnected and lived together until this very moment.”³⁰ Sheikh Ibn al-‘Uthaymīn (1929–2000) was a student of Ibn Bāz and a member of the Council of Senior Scholars of the Kingdom. He was also a teacher in the faculty of *Shari’ah* and *Usūl al-Dīn*, Muḥammad ibn Sa‘ūd University. Both Ibn Bāz and Ibn al-‘Uthaymīn were titled “*al-Shaykhan*,” the two sheikhs.³¹ This title originally goes back to the famous scholars: Imam Muḥammad ibn Ismā‘īl al-Bukhārī (810–879) and Imam Abū al-Ḥusayn Muslim ibn

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

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

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

According to the proponents of this trend, the best thing a Muslim can do, when in a minority position, is to immigrate to a Muslim country. A fatwa states, "Whoever has the means to immigrate and he does not and contents himself to live in the land of disbelief, then he harms his religion, himself as well as Muslims and it is assured that he will face the Hellfire."³⁸ The fatwa quotes Ibn Kathīr's *Tafsīr* for *sūrah* 4, verse 97. The verse reads,

Lo! as for those whom the angels take (in death) while they wrong themselves. (The angels) will ask: "In what were ye engaged?" They will say: "We were oppressed in the land." (The angels) will say: "Was not Allah's earth spacious that ye could have migrated therein"? As for such, their habitation will be hell, an evil journey's end.

Ibn Kathīr comments, "This verse is applicable to everyone residing among the disbelievers, having the means to immigrate and unable to manifest his

religion. [In such a case,] he does injustice to himself and he commits *ḥarām* according to the consensus of Muslim scholars.³⁹

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

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

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

A Muslim is not allowed to enter non-Muslim churches or temples unless it is for the purpose of *da'wah*.⁴⁹ The unbelievers are not allowed to give speeches in mosques because they can raise doubts in the creed of Muslims or may earn prestige from speaking there.⁵⁰ A Muslim is not to look like their customs and dress.⁵¹ A Muslim does not initiate greetings with the unbelievers, unless there is a dire need to do so.⁵² A Muslim does not take part in burying an unbeliever or carrying his/her corpse, unless there is nobody else to do it.⁵³ A Muslim also cannot condole the family of the deceased, unless this is done with a view to inviting them to Islam or to avoid harm or to gain some benefits for Muslims.⁵⁴ A Muslim should not carry the Qur'an with him to the land of disbelievers and it is not permitted to hand it to a disbeliever. It is possible however to give it or mail it in translation.⁵⁵ If a Muslim is known to be in love with a disbeliever, other Muslims are not allowed to visit that Muslim except to give advice and to admonish.⁵⁶ A Muslim is not allowed to visit the land of disbelief for tourism or for work.⁵⁷ A Muslim is not allowed to give his *Zakah* to disbelievers. Only charity, gifts, and *uḍ-ḥiyyah*, that is sacrifice, meat can be given to the disbeliever, provided he is not in a state of combat with Muslims.⁵⁸

The bottom line of all these fatwas is to prohibit any kind of relationships that involve social or religious engagement with the disbelieving wider society. Business transactions, such as work engagement and selling and

buying Islamically lawful merchandise, are allowed.⁵⁹ However, to avoid partaking in business with non-Muslims is better in order to stay away from suspicion and doubts.⁶⁰ If there is a Muslim merchant, then he has a priority over the disbeliever. It is *ḥarām* to prefer a non-Muslim merchant over a Muslim if there is no clear reason. If preferred, this is a kind of *muwālāh*,⁶¹ which is *ḥarām*.⁶² Also eating, buying, or accepting their invitation for food is permitted, especially if *da'wah* is intended.⁶³ A Muslim can invite non-Muslims to his house provided that it is guaranteed that they will not cause *fitnah*, that is, seduction—and they will maintain the *hurumāt*, that is, the sanctity of the place. This will hopefully incline their hearts toward Islam.⁶⁴ A Muslim is allowed to learn English only if there is a need, otherwise it is *makrūh*, that is, disliked.⁶⁵ A Muslim is allowed to receive education in non-religious fields from disbelievers' institutions provided that it involves good intention and benefits Muslims. If it is useless education or leads to *fitnah*, such as learning Darwinism, then it is not permitted.⁶⁶ Muslim women are permitted to learn English in a female-only class provided that the teacher is also a female and no intermingling between genders is involved.⁶⁷ A Muslim, especially a student, is not allowed to seek usurious loans from banks.⁶⁸ A Muslim can only use credit cards if no interest is involved.⁶⁹ It is also *ḥarām* for Muslims to steal or cheat or do mischief in the land of disbelief, claiming that their money, property, and women are *ḥalāl*.⁷⁰

Discourse of Isolation and Alienation

The advocates of the literalist discourse live in tension with the West.⁷¹ They regard its people, culture, and products with suspicion. They continually recall the status of war and enmity that governed the interaction between the East and the West throughout past centuries. This fear and enmity of the West reveals itself in Ibn Bāz's introductory speech to young international Muslims attending the WAMY sixth conference held in Saudi Arabia in 1986. In his speech, Ibn Bāz called upon the young audience to "hold firm to the rope of Allah [his religion] and exhort each other... in order that Allah will give them [the young people] victory over their enemies, elevate their conditions, answer their prayers, defeat their enemies and give them authority and leadership on earth."⁷² Ibn Bāz invites them to seek victory over the enemy. The question to be raised here is "who is this enemy and where it is located." Although there is no mention of the "West" or of any other specific place, the message is not vague—the enemy is the ideological West and its governing system, rather than its people, that young Muslims need to "defeat." The use of the term "*kuffār*" not only

confirms the message, but it precludes any attempt for compromise or reconciliation between the two worlds.

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

The attitudes of Ibn Bāz and other advocates of this trend toward the West emanate from the classical doctrine that the land is of two categories: the abode of Islam and the abode of war. The abode of Islam is the legally chosen abode for Muslims to live, where they enjoy sovereignty and autonomy over their religious affairs. The land of war is the land of disbelief, nonbelievers, the enemy, the immoral, etc. This being the case, the logical outcome is that Muslims have to abandon this land. This abandonment is required physically through immigration to Muslim lands. If, however, this is not possible for a specific reason, then social abandonment of the society is required. In other words, a policy of segregation and isolation from the wider society is recommended.

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

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

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

The question of what to call non-Muslims, disbelievers or People of the Book, is an old question. There are various references in the Qur’an for both terms, which are used to describe the same people. On one occasion, Christians were described as nonbelievers because of their belief in Jesus as God.⁷⁸ Muslim theologians and interpreters of the Qur’an subtly debated these verses in an attempt to define how to compromise between the two, apparently contradictory, descriptions. Al-Qaraḍāwī confirms that the *naṣārā* are nonbelievers as they do not believe in the message of Islam. Muslims are also nonbelievers in the eyes of the *naṣārā* because they do not believe in Jesus as God. Therefore identifying people as nonbelievers is a matter of theology and faith conviction that should not interfere with social life and lead to disassociate people from each other. The *naṣārā* are nonbelievers in terms of belief and the People of the Book in terms of Muslims’ interaction with them.⁷⁹ The Egyptian intellectual Muḥammad Salīm al-ʿAwwā argues that the Qur’anic verses that talk about the People of the Book as nonbelievers are describing their relationship to God and not to Muslims. He argues that “there is not one single Qur’anic verse [that indicates the *kufṛ* of the People of the Book] in contexts where the Qur’an talks about human relationships and our [Muslims’] relationship with them.”⁸⁰

The literalist trend does not make such a distinction between worldly matters and religious conviction. Actually they did not make such a distinction for Muslims. If a Muslim, for example, does not pray, he is about to leave the fold of Islam.⁸¹ The superficial approach of dividing people and their actions into two groups, Muslims and *kuffār*, with monopolizing the definitions of what is Islamic and what is not, is troublesome for many Muslims, let alone non-Muslims. If the land of the minority is a land of

kufr and if the people are *kuffār*, then *barā'ah* has to be declared. A Muslim has to detach himself from the disbelievers. Detachment should be social, economic, and political. An expression of love or a feeling of brotherhood leads the Muslim to a state of loyalty, a sign that he is about to leave the fold of Islam. Therefore the Muslim has to distinguish himself from them in terms of food, dress, conduct, festivals, holidays, etc. This is what it is referred to in the literature of this trend as the concept of *mukhālafah* or *barā'ah*, the former means being different and distinguished from others, especially nonbelievers, and the latter is to declare rejection and refusal of non-Muslim's religion, culture, traditions, etc. In a clear statement, it is argued, "it is also reported to do what disagrees with their customs and traditions, be they religious, social or national."⁸²

Muwālāh is a key argument in this trend's fatwas. Important as it is, the proponents of this trend did not attempt to define precisely what it means. It is always coupled with terms like loyalty, showing love, expressing brotherhood, or revealing friendship.⁸³ One fatwa argues that relationships among people are of different types. If it reflects love and brotherhood from a Muslim to a disbeliever, then it is *muḥarramah*, that is, prohibited, and in some cases it may lead to the *kufr* of the Muslim. A reference to *al-Mujādalah*, *sūrah* 58: 22, is used in this context.

The verse reads,

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

But if the relationship and the interaction are limited to business transactions or the exchange of food, then it is permissible. If there is an intention of *da'wah* involved, then it is recommended.⁸⁴ In another occasion, it is argued that a disbeliever can be given from the meat of the *ud-hiyah*, that is sacrificial meat, if he is a relative, a neighbor, or a poor person.⁸⁵ Food, business, and gift exchange are all permitted.⁸⁶ These forms of interaction in themselves reflect a certain level of intimacy, tolerance, and love; so one wonders what will be the manifestation of *Muwālāh* / *mukhālafah* in the minds of the muftis of this trend. Basically, *mukhālafah* and non-*muwālāh*, according to their fatwas, are of three levels. First, a Muslim is not allowed to take their citizenship because this entails an agreement with their wrong

beliefs and doings.⁸⁷ Second, a Muslim is commanded to disagree with their traditions, religious creed, and rituals. Therefore a Muslim is to grow beard, not to eat with his left hand, nor to intermingle with the opposite sex, or to attend mixed weddings.⁸⁸ A Muslim is not to celebrate or congratulate non-Muslims on their festivals and religious occasions because this is a form of aiding them in their sins and it also reflects one's content and love to them.⁸⁹ A Muslim should not follow the non-Muslim cultural traditions such as putting flowers on the graves of martyrs or standing a minute in memory of dead people.⁹⁰ A third level of *mukhālafah* or non-*muwālāh* is the spiritual and internal rejection of the actions of the disbelievers. A Muslim has always to entertain a feeling of discontent and dislike for the disbelievers' creed and behavior. In other words, the interaction has to be superficial and any feelings of admiration should be avoided so as not to risk *fitnah*, that is, being seduced, by their faith or tradition.⁹¹

Da'wah is the key word that makes the existence of Muslims in non-Muslim countries permissible. The muftis envision the main purpose of Muslims residing in non-Muslim territories to be that of making *da'wah*. Muslim minorities can attend non-Muslim gatherings, participate in inter-faith dialogues, and interact with non-Muslims with a view to inviting them to Islam. If Muslims are unable to perform this duty, they should immigrate to a Muslim country.⁹² On the other hand, it is allowed for a Muslim to travel to the land of disbelievers for the sake of *da'wah*, in spite of the *kufri* status of this land.⁹³

"*Da'wah* to Allah" was the title of the speech given by Ibn al-'Uthaymīn to the youth group at the sixth WAMY conference in Saudi Arabia. In his speech, Ibn al-'Uthaymīn advised the gathered youth on the tools they needed to make *da'wah* among non-Muslims: acquiring knowledge, practicing this knowledge, appropriately handling *da'wah* issues, unity, sincerity, and graduality, to name a few. He advised the young people not to use "insulting words [such as] 'you are misguided, you are from the people of fire, you are a devil'" "because no good will be achieved by this. Rather it causes alienation and repulsion."⁹⁴

Controversial Methodology

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

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

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

Some fatwas of the literalist trend may be long. The length, however, is due to the amount of Qur'anic and *Hadith* references that are introduced without comments on their relevance to the question, as if these references are self-explanatory and do not require an elaboration, even on the linguistic level. The absence of such an elaboration, which is a basic component of the Islamic legal tradition, reflects the basic ideology for both the classical and contemporary literalist schools that the text, that is, Qur'an, Sunnah, and the statements of the early companions of the Prophet, is comprehensive and covers all aspects of human life and all its questions. According to them, Islamic legal schools are of little significance and that a mufti can reach his opinion drawing mainly from the Qur'an and *Sunnah*.⁹⁵ This lack of appreciation for the legal tradition subjected this trend to a severe criticism from many other Islamic trends.

In a nutshell, this methodology led the muftis of this trend to issue fatwas heavily based on a literal reading of the text without due regard to

the context. The wording of their fatwas is very explicit and categorical in their conclusions, compared with other muftis. They do not leave a room for interpretation, using unequivocal language such as: "No doubt it is prohibited"; "One has to..."; "It is not permitted to..."; "The prohibition of..." etc.

If one looks closer and examines their Qur'an or *Hadith* references, one can notice that they frequently refer to a specific set of verses and *Hadiths* that, according to books of *tafsīr* and *Hadith*, have causes of revelation that made them context specific and historically bound.⁹⁶ In formulating their answers, they do not stress this aspect of interpretation as if it does not exist or is irrelevant to the fatwa. Such a literal reading of the text does not even attempt to hint at the linguistic possibilities of a given term that may yield a different interpretation or position. To give an example, on a question about the meaning of *muwālāh*, the fatwa argues that Allah forbids Muslims to ally with Jews and other polytheists. Muslims must not show nonbelievers affection, love, brotherhood, or support. To support this position, literalist muftis quote the following verses:

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

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

Then the fatwa goes on to say that *muwālāh* is forbidden, but it does not include legal transaction or gift exchange.⁹⁷

If we consider, for example, the first verse, which according to the muftis is a clear prohibition against befriending non-Muslims, one finds that the muftis do not attempt to explain the contradiction of simultaneously prohibiting *muwālāh* and permitting Muslim men to take Jewish or Christian women in marriage. How can a marriage based on love and mercy be permitted without a *muwālāh* bond between husband and wife? Linguistically, the verse stipulates clearly that the nonlove is for those who *yuhād* Allah and his messenger. *Yuhād* here in Arabic means "at war with Allah and his messenger." Therefore it does not include everyone. Generalization of the fatwa here does not stand on a firm ground of linguistic interpretation. This can even be more clearly affirmed by another verse that the muftis of this trend also use improperly. The verse reads, "O you who believe do not take my

enemies and your enemies allies" (Qur'an 60:1). The verse is very clear that enemies should not be taken as friends. Enmity in Islamic tradition does not refer to non-Muslims because even if they are not Muslims, according to this tradition Muslims still respect their humanity and only hate the quality of their disbelief.⁹⁸

Conclusion

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

According to the literalist tradition, the text becomes the conveyer of God's will, and human beings can faithfully identify the divine determinations and consequently enforce it.⁹⁹ Abou El Fadl describes this position of the text in the discourse of the literalists as if the text was created for human beings: human beings were not created for the text. He argues, "Puritans imagine that human life with all its diversity, richness and complexity can be imprisoned within a text and the divine will with all of its transcendence and omnipresence can be captured in a text, whatever the nature of this text and this text can be fully represented by human beings."¹⁰⁰ This approach produces a resolute authoritarian discourse that has become a subject of severe criticism from various Islamic Law experts. For example, Fathī Othmān, a well-known Muslim intellectual, argues (commenting on the fatwas concerning women given by the Saudi Permanent Committee for *Fatwa*), "I confess that I find the virtual slavery imposed on women by the Saudi Permanent Council for Scientific Research and *Ifṭāa* and like-minded to be painful offensive and unworthy of *Shari'ah*."¹⁰¹

Contrary to the claims that they rely mainly on the text without relating their fatwas to the context, the literalists' muftis argue they are aware of the conditions and situations of the minority life and that they care about their life.¹⁰² A counterargument would prove that they did not have firsthand experience with those minorities. They relied on reports and meetings with personnel representing those minorities.¹⁰³ One can imagine how misleading this may be. Most probably the people they met or received their reports had the same puritan inclination and attitudes. Therefore a reflection of real minority life, let alone experiencing it, is absent from their discourse.

Reading through this trend's fatwas provides more evidence to their lack of knowledge of minority problems and context. The peculiarities of the minority situation are absent from formulation of their fatwas. For example, according to one fatwa, the Muslim cannot gain a livelihood through any work that involves any *ḥarām* practices. This means abstaining not only from working in Islamically prohibited transactions, but also from work involving the mere mixing of men and women.¹⁰⁴ Marrying non-Muslims, greeting Christians or people of other faiths on their religious festivals, and even appealing to the non-Muslim court system are signs of one's moral fault that reveal disobedience to one's religion and are therefore prohibited.¹⁰⁵ In case of dire necessity that may force Muslims to be involved in such transactions, such an involvement should be as brief as possible and should be carried out in accordance with the general provisions of Islamic Law. The muftis of this trend are clearly restrained by both the methodology and the worldview of the old times. They use the term "enemy countries" for the abode of Muslim minorities. Clearly, Ibn Bâz did not use the term in its literal sense. "It is the compulsion of analogical reasoning to measure the modern situation in terms of the old categories of House of Islam and House of War."¹⁰⁶ This position toward the West, as *dār ḥarb* has been a subject of critical revision by many contemporary Muslim scholars, as will be discussed later.

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

The advocates of this trend regard Muslim minorities as an extension of the religious and cultural home-country tradition. They want to maintain a form of tradition in which an *amīr*, that is a leader, runs the affairs of

the community.¹⁰⁷ This creates a hierarchy with a religious leader at the top. From where does the community get this knowledgeable leader? Most probably from the home country. This process of recruiting imams reproduces the same cultural and social organization of the home country. For example, the mosque boards rarely have women members. Child education is based on home-country curriculum. This type of authority-authoritative structure cannot easily be comprehended or held by Muslim minorities for many reasons: the nature of societal organization in their “host” countries, the emergence of a free-of-home-country-tradition in second and third generations, and the living experiences in the new environment. At the time when muftis were seeking to impose a unitary global image of Islam, the real agents, the minorities, were driven to create their own local traditions. Over the course of time, tensions arose between the vision this trend promotes and the ambitions of the Muslim communities who were becoming key players in the organization of their new homes. This tension led to a reconsideration, if not a rejection, of the positions taken by the literalist trend. It produced its own response, represented in the emergence of a new school calling for the establishment of a new *fiqh* for minorities that considers the peculiarities of the Muslim minorities’ situation. This does not mean that the literalist trend died. It does exist and is still active in certain circles and supported by some organizations, but not on the same level that it was a decade ago.

Chapter 2

Voice of Tradition Muslim Minorities and Application of Islamic Law

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

The presence of Muslim communities, mostly as a result of immigration, in modern Western liberal democracies is another stage in this Muslim–non-Muslim interaction. Such a presence, as explained earlier, challenged the traditional convention of Muslims toward the position and meaning of *Shari'ah* in their lives. Because of this challenge, ritual, moral, social, economic, and even political questions have emerged and are being directed to Muslim jurists, *imams* and *muftis* who mostly live in the heartland of Islam. Those jurists and imams responded by issuing fatwas. Examining these fatwas, three key trends, as mentioned in the previous chapter, can be identified: the puritan-literalists, the traditionalists, and the renewalists. The present chapter focuses on the second trend, that is, the traditionalists, the ideology of its proponents and the extent of its impact on Muslim minorities.

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

The traditionalists’ trend was dominant among Muslim minorities until the 1990s when a new trend calling for the establishment of Muslim minority jurisprudence emerged.² The traditionalists’ trend is best represented by fatwas issued by members of al-Azhar fatwa committee³ and Egyptian muf-tis (mostly graduates of al-Azhar). This chapter attempts to explore their fatwas and study their methodologies on issues of relevance to the lives of Muslim minorities. It also poses the question of how the Azharites looked at the West and how this vision impacted their ideological as well as their juridical stand toward it.

Al-Azhar: A Center for Islamic Guidance

Al-Azhar, established in Egypt in 970 A.D. by the Fatimids, soon became an important center of Islamic knowledge that not only received students of Islam but has also been a reference and source of religious authority for Muslims all over the world.⁴ This fact is ascertained on paper and in reality. The 1961 al-Azhar reform law states: “al-Azhar is the major Islamic scientific institution that preserves and disseminates Islamic heritage and traditions. It also carries the responsibility of conveying the Islamic message to all peoples of the world.”⁵ In 2012, the new Egyptian Constitution states, in Article 5, that “Al-Azhar is... responsible for preaching Islam, theology, and the Arabic language in Egypt and the world.”⁶ In reality, al-Azhar has a historical record of scholars and students coming in and out from the Muslim world and beyond. It has been the destination and meeting point for seekers of religious knowledge from every corner of the Muslim world.

After obtaining their education in al-Azhar, those knowledge seekers “dispersed; each back to his land of origin, to teach . . . and to judge the affairs of their community in accordance with the principles and rules they acquired [from their stay at al-Azhar].”⁷

The intellectual life of al-Azhar and its impact on the Muslim world, however, have not always been on the rise. Al-Azhar went through stages of weakness and stagnation, mostly due to the political orientations and ideologies of successive Egyptian governments.⁸ Such stages, however, did not last for long, and al-Azhar regained its leading position in the Islamic world because of two factors. The first is the substantial funding of *awqāf* and state support.⁹ The second is al-Azhar’s internal diverse nature of accommodating various schools of thoughts.¹⁰ Al-Azhar, for example, has the tradition of teaching the famous *sunni* and *shi’i* schools of jurisprudence. Its fatwa committee constituted of muftis belonging to the four *sunni* schools of thought. This made al-Azhar a center for guidance for peoples of different jurisprudential and theological orientations. This second element specifically helped al-Azhar occupy a position of unprecedented authority in the eyes of people all over the world.¹¹

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

Another important element in the affirmation of the status of al-Azhar in the Muslim world, especially in the world beyond the heartland of Islam, is its continuous support for non-Arab Muslim students to come and study in its schools. The number of foreign students who studied in al-Azhar between 1986 and 1996 amounted to 57,189. Although most of them came from African and Asian countries, there were around 1000 students from Europe, especially from the Balkan region, and around 50 from Latin and North America, as well as 16 from Australia.¹² It should be noted that the enrollment of non-Egyptian/non-Arab students in al-Azhar is not a twentieth-century phenomenon. There were *riwāq*s¹³ for Chinese and South African Muslim students back in the nineteenth century.¹⁴ The history of overseas students coming to al-Azhar can even be traced back to earlier times.¹⁵

At this conjecture, it is noteworthy to argue that in the 1960s, the Egyptian state institutionalized al-Azhar and gradually organized it as one of its apparatuses. Al-Azhar has become a tool to propagate the foreign policy of the Egyptian state. This can be seen in al-Azhar's 1960s dissemination of socialistic ideas, the state ideology of that time. This political affiliation with the state, however, did not negatively affect the position of al-Azhar beyond Egyptian borders. Actually the state's support was used to promote al-Azhar's status as a place where Muslim students could come to obtain their religious education and then return to their homelands and occupy prestigious positions in their countries.¹⁶ Even later on, when the state dominated the official discourse of al-Azhar, the graduates of al-Azhar still enjoyed credibility in local and international settings.¹⁷

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

Al-Azhar in the West

The interaction between al-Azhar and the West in modern times can be traced back to the eighteenth century. At that time, a number of Muslim countries, Egypt at the forefront, were trying to pursue the path of "Western" modernity as they searched for their own modern identity. The West, on the other hand, represented in the colonial ambitions of some European countries, such as France, Great Britain, and Italy, endeavored to strengthen its grip over weak Muslim and Arab lands that were then torn apart by its internal conflicts and wars among kings, monarchs, and others. Striving for Egypt's progress in the midst of these challenging times, Muḥammad 'Alī (1769–1894), who was appointed under the pressure of the 'ulama to be the *wali* of Egypt in 1805, set out plans to establish modern Egypt through a process of administrative, industrial, and educational reforms. His intention was to make Egypt a model similar to European states.¹⁹ He sent successive missions of outstanding Egyptian students to Europe to acquire knowledge. The first mission left to France in the year 1820. Although these scientific missions started with a focus on military education, in due time they opened up to other scientific fields such as medicine, agriculture, law, and the humanities. Al-Azhar students constituted an essential part of these

missions, to the extent that Ṭaha Ḥusayn,²⁰ who was known for his severe criticism of al-Azhar's educational system, argued, "al-Azhar absorbed the European civilization and re-produced it in Egypt and the East. Al-Azhar is the foremost significant element in modern Egyptian life since Egypt started interacting with Europe in the late 18th century until today."²¹

It is on record that since 1826, there have been students from al-Azhar in Europe. There were 5 Azharites out of 44 Egyptian students sent to Europe in 1826. In 1832 there was a full mission for al-Azhar medical students. In 1847, there was also a mission to study law. It is a fact that some went to accompany the missions as religious imams and spiritual guides, but soon they themselves became students. Rifā'ah Rāfi' al-Taḥṭawī is a case in a point.²² Although early missions were sent to acquire modern sciences, teaching about and guiding Europeans to Islam were explicit objectives of many of these students. In his address to King Fuad's²³ mission of al-Azhar students to Europe in 1936, al-Azhar's Grand Imam, Sheikh Muḥammad Muṣṭafā al-Marāghī (1881–1945), who was known for his reformist ideas and his calls for the need of *ijtihād* in modern times,²⁴ stated that the mission of those students is immigration to Allah and His Messenger, and that their journey is a "peaceful conquest" to guide people to virtue and to correct their information about Islam. "In these countries, you are [spiritual] leaders first and students second."²⁵ In some cases there were Azharites who were sent for the sole purpose of preaching. In 1948, al-Azhar's Grand Imam, Sheikh Muḥammad Ma'mūn al-Shinnāwī (1878–1950),²⁶ who was known for his keen interest in sending Islamic missions to the Muslim world, sent some outstanding Azharites to Great Britain to learn English. Then they were charged to deliver the message of Islam to the world.²⁷ By the 1950s, there were at least ten PhD Azharite students in France, ten in Great Britain, three in Germany, and, two in the United States. Soon after graduation and upon returning to Egypt, most of those students held teaching positions in al-Azhar University.²⁸

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

immigrant community. He delivered the Islamic speech in the ten-year anniversary of the United Nations in San Francisco, 1955. Dr. Muḥammad al-Bahy is another Azharite scholar who taught in McGill in 1955–56.³¹

Furthermore, a number of al-Azhar's Grand Imams of the twentieth century studied or lived in the West, such as Sheikh Muṣṭafā 'Abdel-Rāziq, Sheikh Muḥammad al-Khidr Ḥusayn, Sheikh 'Abdel-Raḥman Tāj, Sheikh Muḥammad al-Faḥḥām, Sheikh 'Abdel-Ḥalīm Maḥmūd, and Sheikh Biṣār. Sheikh Muṣṭafā 'Abdel-Rāziq (1885–1947) was appointed as the Grand Imam of al-Azhar in 1945. He attended the Sorbonne before he got his PhD from Leon University, with a dissertation on Imam al-Shāfi'ī. Sheikh Muḥammad al-Khidr Ḥusayn (1876–1958) was a Tunisian scholar who fled Tunisia to Germany in 1934, where he studied for a while before he settled in Egypt in 1939. He acquired Egyptian nationality and became a member in the Senior 'Ulama Committee. He was appointed as the Grand Imam of al-Azhar in 1952. Sheikh 'Abdel-Raḥman Tāj (d. 1975), at the age of 40, was one of the members of al-Azhar mission in 1936 to the Sorbonne to read for his PhD, which he got in 1943, despite the eruption of World War II. He was appointed as the Grand Imam of al-Azhar in 1954. One of his main decisions after his appointment was to instate languages as an obligatory part of the curriculum of al-Azhar students. Sheikh Muḥammad al-Faḥḥām (1894–1980) was one of the Azhar mission students in 1936 to the Sorbonne. In the beginning he earned diplomas in Latin, Greek, and Spanish languages, before obtaining his PhD in literature in 1949. He was appointed as the Grand Imam of al-Azhar between 1969 and 1973. He was known to be the owner of the largest personal library of 100,000 thousand titles. Sheikh 'Abdel-Ḥalīm Maḥmūd (1910–1978) got his PhD from France in 1940. He occupied important positions in the religious circles in Egypt. He was the secretary general of the Assembly of Islamic Research, the minister of Endowment, and then the Grand Imam of al-Azhar between 1973 and 1978. He earned a distinguished reputation among Muslims due the reforms he made in al-Azhar and because of his firm stand on many Islamic issues. Sheikh Muḥammad 'Abdel-Raḥmān Biṣār (1910–1982) studied in Cambridge before getting his PhD from Edinburgh. In 1955, he was appointed as the director of the Islamic center in Washington, DC. Later, in 1978, he was the minister of Endowment, and a year later he became the Grand Imam of al-Azhar.

As far as my research indicates, there is no detailed information about the lives of these Azharite students and scholars in their non-Muslim environments. The only exception to this is al-Shawārbī's monograph on his visit to the United States in the mid-1950s,³² and Sheikh 'Abdel-Ḥalīm Maḥmūd's book on Islam and Europe.³³ The absence, however, of such information is positive evidence that they adapted to the new cultural Western milieu. Before traveling to Germany, the interview committee asked Dr. al-Bahy

about his reaction if he were to attend a coed class. He replied that his main goal was to acquire knowledge and his main focus would be on the teacher's explanation. It is interesting that the question was about his personal attitude, and not on the Islamic ruling pertaining to mixed-education classes. During his journey to Russia, Sheikh Muḥammad 'Ayyād al-Ṭaṭāwī attended the German opera twice wearing his Azharite dress, in a clear indication of accommodating the new culture, if not accepting it. In their journeys to Europe, Azharite students ate meat, without asking how the animal had been slaughtered.³⁴ The point here is that the Azharite students and scholars of the nineteenth and twentieth century accommodated to the European and American way of life. If this had not been the case, one would have found traces of their objections or criticism in their writings, memoirs, fatwas, or even on the pages of the *Majallat al-Azhar*. In fact, reviewing the various volumes of *Majillat al-Azhar* reveals that there were no significant negative news pieces or articles about these missions. There was also no reference if the mission students encountered hardships during their stay in their non-Muslim host land that might have resulted in terminating the missions. It is noteworthy to mention that the Grand Imam of al-Azhar Sheikh al-Zawāhiri (1878–1944) was against sending students of al-Azhar to Europe lest they learn atheistic philosophies. But his case was exception.³⁵

The absence of negative feedback from al-Azhar mission students to their non-Muslim environment should not mean that they were not committed Muslims or that they ignored the prescriptions of their religion. On the contrary, reports have been found that indicate the commitment of those students and scholars to their religion and their efforts to convey the message of Islam. Dr. Muḥammad al-Bahy was the first to organize the Friday Congregational Prayer in one of the halls of the Islamic Studies Institute in the School of Theology, McGill University in 1955. He declined the post of the Egyptian ambassador to Canada because he would not have been able to accommodate the protocols of attending parties where alcohol was served or where there was dancing. Dr. Maḥmūd al-Shawārbī urged American Muslims in New York to establish their own *ḥalāl* groceries. He called upon them to convey to the American army the necessity to offer *ḥalāl* food to Muslim recruits. Furthermore, as an imam of the Muslim community, he was asked to present the Islamic Call at the ten-year anniversary of the United Nations. In his speech he introduced the Islamic concept of international relations. It becomes evident that the presence of Azharite students and scholars in the West at this formative stage in the life of Muslim immigrants helped to raise the consciousness of those immigrants concerning their Islamic identity and provided them with a channel to voice their religious concerns and Islamic aspirations. This channel can be noted on the pages of *Majallat al-Azhar* and in fatwa records.

Majallat al-Azhar: Connecting the Muslim World

Majallat al-Azhar is the official voice of al-Azhar. It provides its reader with not only educational and spiritual guidance, but also gives him information about the Muslim world community. It also reveals al-Azhar's position on various important issues that are encountered by the Muslim world. *Majallat al-Azhar* plays a significant role in terms of al-Azhar's concerns with Muslim minorities. If necessary, it publishes their news and comments on these issues. From its early issues, it has a section on "News of the Muslim World," which basically covers the entire world. For example, it published news about the abolishment of the Islamic courts in Yugoslavia,³⁶ the establishment of the first Chinese Islamic company, and the establishment of the Islamic University in Switzerland.³⁷ The *Majallah* dedicates articles to the history, the life of those communities, and other relevant issues.³⁸ It offers reviews of books that were originally published in foreign languages and comments on them.³⁹ It has an English section at the end of each issue that introduces some Islamic concepts to its English-speaking readers. Reviewing the English section in *Majallat al-Azhar*, one may notice in its early issues, it started with mere translation of Qur'anic passages and Prophetic statements, then it moved on to incorporate articles on other general subjects, such as peace, tolerance, justice, etc. Sometimes it introduced some historical events like *ghazawāt* and biographies of the companions of the Prophet. In the 1950s, the *Majallah* decided to publish only ten issues a year in Arabic and then dedicate the last two issues to English.⁴⁰ This suggestion did not last long, and the earlier formatting was retained. It also publishes fatwas that are concerned with the lives of people living as minorities.⁴¹

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

Fatwa Review

Al-Azhar, due to its historical and religious significance, has been a source of religious guidance for Muslims. Muslim individuals, social organizations, and political entities resort to al-Azhar seeking what they believe to be proper legal Islamic verdicts related to issues concerning them. Muslim

minority communities are not an exception in this regard. They have a long history of approaching al-Azhar for reliable authoritative responses to their religious questions. Literature shows questions coming to al-Azhar as early as the 1900s from Western countries. Throughout the century, one can easily locate fatwas coming from Germany, Italy, Great Britain, America, France, South Africa, Brazil, and so on. For the sake of brevity and focus, this chapter will briefly review the official fatwa publications of Egyptian Fatwa House, *Al-Fatawa al-Islāmiyyah min Dār al-Iftā' al-Maṣriyyah*,⁴² fatwas published by *Majallat al-Azhar*, and other fatwa collections by the Grand Imams and well-known scholars of al-Azhar.⁴³ To review minority fatwas in such varied and voluminous sources, one has to be aware of the historical settings of the fatwas spanning more than a century, the position of the mufti and its school of thought, as well as the concerns of the fatwa seeker. Still, however, one may be able to draw the framework through which al-Azhar muftis and imams were working.

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

1900s–1970s Fatwa Review

Minority Muslims were concerned about using a language other than Arabic in their rituals. Are they allowed to translate the Qur'an? Is it possible to transliterate the *mushaf*? Are they allowed to translate their Friday Congregational sermon to another language? Can a Muslim pray in a language other than Arabic? Al-Azhar engaged in the debate over such questions. The given fatwas tended to take tolerant positions. The meaning of the Qur'an can be translated.⁴⁴ Al-Azhar even launched a project with the Egyptian Ministry of Education to translate the Qur'an into English.⁴⁵ The Friday sermon can be translated, provided it is delivered in Arabic first, because the sermon is meant for education, a matter that will not be fulfilled if it is only given in Arabic. If no one in the congregation knows Arabic,

then the sermon can be delivered in another language, on the condition that the Muslims entrust some of them to learn Arabic. If they fail to do that, they would have committed a sin.⁴⁶ The transliteration of the Qur'an is, however, not permitted because there are no equivalent symbols of Arabic sounds in other languages, a matter that may result in incorrect pronunciation.⁴⁷ To pray in a language other than Arabic is also not allowed, because prayer is a ritual and using other languages would be like using exegesis, something that is not acceptable in prayer.⁴⁸

Minority questions related to prayer also frequently appeared in al-Azhar-published fatwa literature. How should a Muslim pray in a city where the red horizon does not disappear until after the time of the Morning Prayer? How should a Muslim pray in a country where night/day may extend over 24 hours? How should a Muslim pray on board an airplane? Can a Muslim combine prayers if work does not allocate time for prayers? Can the Friday prayer be delayed to allow more people to come to the congregational area? The general position of al-Azhar muftis was always that God did not intend to make things difficult for believers. If Muslims do not see the red horizon, then according to the *Hanafi* School, the Evening Prayer is no longer an obligation, that is, may not be performed. Other jurists argue that it can be made up after the Morning Prayer and the Muslim will not incur any sin.⁴⁹ If night/day exceeds more than 24 hours, the Muslim may calculate prayer times according to another country where the night/the day is of regular length.⁵⁰ If it happens that the Muslim needs to pray on board an airplane, he can pray on board in any possible position: standing, sitting, or even by nodding his head.⁵¹ If there is any reason, including work, that prevents the Muslim from praying on time, he can combine prayers in a way that fits his schedule.⁵² Friday Congregational prayer can also be delayed to help people gather for it.⁵³

Questions on fasting during the month of Ramadan were also asked by Muslims living in non-Muslim polities. Do Muslims in remote areas follow the moon sighting of a certain Islamic country? How should Muslims fast in a city where the day is very long? The question of moon sighting and the beginning of Ramadan is common and continues to occupy Muslims till date, without a solution. Recognizing the juristic debate and the differences of opinion on the issue, al-Azhar—hoping for the unity of Muslims at a time that was very close to the memory of the Ottoman Caliphate—always favored the unification of moon sighting for Muslims all over the world. So, if a Muslim community declared it had seen the moon, Muslims should follow it and fast.⁵⁴ In 1952, a question was asked about fasting in Northern Europe, where daylight extends for more than 19 hours. Mufti Ḥasanin Makhḷūf argued that the length of the day does not matter as long as one can distinguish between day and night. But, if it is sure that fasting such long

hours will result in severe illness, then Muslims should not fast, and the rules of the sick are to be applied in this case—making up the missed days later on or paying a *kaffārah*.⁵⁵ Although he argued that there was no clear rule for this in the *Ḥanafī* School, an earlier fatwa was given to the same effect.⁵⁶

Besides questions on rituals, Muslim minorities directed a sizeable number of inquiries on personal status to muftis affiliated to al-Azhar. The answers were given according to the “book,” that is, they followed traditional juristic opinions to the letter. In such cases, there were no exceptions made. A Muslim man can only marry from the People of the Book, but a Muslim woman is not permitted to initiate marriage with a non-Muslim.⁵⁷ If she is a convert, she has to leave her husband until he embraces Islam, otherwise separation is final.⁵⁸ If one of the parents converted to Islam, then his or her children must be raised as Muslims.⁵⁹ The children may stay with their non-Muslim mother, if she would not try to spoil their religion or convert them to her religion. If so, she will not be given custody of the children.⁶⁰ If a Muslim marries a non-Muslim in a civil non-Islamic court, then the marriage is valid, but the husband, in case of divorce, may follow the Islamic way.⁶¹ A Muslim cannot inherit from a non-Muslim relative.⁶² A Muslim cannot adopt children according to the European system.⁶³

Questions on social interaction with non-Muslims early in the twentieth century up to the 1970s were not as complicated as they were at the turn of the twenty-first century. They were limited to questions concerning food, bequest, being buried in non-Muslim cemeteries, and the like. The fatwas, given to such questions, relied greatly on Islam’s tolerant attitude and acceptance of the other, as long as there is no clear textual evidence that prevents a Muslim from certain practices. The Muslim can eat the food, including the slaughtered animals, of the People of the Book, even if they did not mention the name of God at the time of slaughtering. If the animal was killed by a strike from hard instruments and it was confirmed that it was killed because of being struck then the animal is not *ḥalāl*.⁶⁴ A Muslim can include a non-Muslim in his bequest and he can accept the bequest of a non-Muslim.⁶⁵ A Muslim can ask non-Muslims to be witnesses on his contracts if he is traveling.⁶⁶ A Muslim can work in a business owned by a non-Muslim but he should avoid dealing in things that are prohibited in Islam like alcohol. In case of necessity, such a job, involving *ḥarām* items, may be permitted.⁶⁷ A deceased Muslim cannot be buried in a non-Muslim graveyard.⁶⁸

Business transactions did not appear in the fatwa literature of that time. This was most probably due to the fact that Muslim immigrants did not have the ability to venture into long-term businesses that involved dealing extensively with the economic system of the non-Islamic environment.⁶⁹

At this conjecture, one can argue that pre-1970 fatwas were traditional in the sense that they have precedents in jurisprudence literature. The muftis

explored this literature, and presented the various positions taken by jurists to the fatwa seeker and then made recommendations according to their judgment of the questioner's condition. The final recommended opinion is mostly that of the majority of jurists or, at best, the dominant position of a certain juristic school, based on the affiliation of the mufti or the preference of the fatwa seeker. In certain situations, however, the mufti may recommend a certain marginal opinion over the dominant position, if he deems it more practical in the case of the *mustaftī*. Examples of such fatwas may include, but are not limited to, the preference of the *Shāfi'ī* School to take unlawful bank interest with a view to spend it on charity;⁷⁰ the preference of the *Hanbali* School to acknowledge the legality of taking *dhimmī* witnesses in contracts concluded by Muslim travelers;⁷¹ and the preference of the *Hanafi* School to acknowledge bequests between individuals who include Muslims and non-Muslims.⁷² Generally speaking, however, the given fatwas of that period were traditional and reflect the basic concerns of the small Muslim minority in their early stages in their host countries.

Post-1970s Fatwas

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

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

discussed them openly, simply because the legitimacy of these institutions were indirectly based on the answers to these questions. That is why on many occasions, a number of questions from this period came from Islamic organizations, and not from individuals. As institutions, they needed to obtain an authoritative opinion and they could not find a better source of knowledge, support, and guidance than al-Azhar.

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

Jād al-Ḥaqq’s three-volume *Buḥūth Islāmiyyah fī Qaḍayā Mu‘āṣirah* is a rich source and an important reference of fatwas given to minorities. Besides the frequently repeated questions about rituals and personal status, there were questions that may be considered “new” in the context of contemporary Muslim minority experience. They reflect the tensions of the new life that was forming within the framework of liberal systems of governance. There are questions on the role of *ijtihād* in the West,⁷³ political participation in non-Muslim polity,⁷⁴ the role of immigrant parents toward their children,⁷⁵ praying ‘*Id* in a rented hall that is commonly used for dancing parties,⁷⁶ and so on. These questions clearly reflect a change in the Muslim mind-set toward their new life: they do not want to live in isolation or get assimilated. Instead they wanted to establish a comfort zone where they positively engage with the wider society. This process was not as easy as it may sound. These and similar questions were directed to various Islamic entities, not only to al-Azhar, by different people/organizations whose understanding of Islam varies from radical to moderate to liberal. As seen in the previous chapter, one position was the rejection of the West and the necessity to depart the evil land for the abode of Islam.

Al-Azhar, represented in the views held by its scholars and muftis, adopted a cautious methodology, in which the mufti does not give a direct answer to the question but actually investigates the question. The fatwa is like a research paper that has an introduction, a definition of the specific question asked, a presentation of the arguments of various Muslim Schools of thought, recommendation of one of these arguments, or suggesting an

alternative that may be a combination of two opinions from two different schools. At the very end, a conclusion is given, combined in most cases with pedagogical advice beyond the scope of the fatwa itself. This methodology was one of the features of Azharite scholars, both in modern and earlier times. One may refer here to the fatwas of Rashīd Riḍā at the turn of the century and Jād al-Ḥaqq at the end of the century. In the following paragraphs, an attempt will be made to elaborate on how Jād al-Ḥaqq applied this methodology in his fatwas.

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

Reading Jād al-Ḥaqq's fatwas as a representative sample of this trend, a number of observations can be made. Al-Azhar, as a representative of the traditionalist trend, appreciates the unique position of minority Muslims and their need to interact with their non-Muslim environment. After quoting verses on the legality of marrying with and eating the food of the People of the Book, Jād al-Ḥaqq concludes that "this is a clear indication to the permissibility of dealings in all affairs of life between Muslims and non-Muslims,

as long as there is no harm done to Islam or Muslims in matters related to Islamic belief.”⁷⁷ Such appreciation, however, does not negate the obligation to follow the teachings of Islam regardless of where one lives.⁷⁸ The balance between these two elements, the appreciation of minority situation and the need to abide by the teachings of Islam, can be achieved through a detailed analysis of the questions and knowledge of the various positions of different jurisprudential schools and, hence, arriving at a better and well-grounded argument.⁷⁹

The West: A Residence

A review of al-Azhar fatwas demonstrates that the theme of *hijrah*—immigration back to the home country, the land of Islam—which was at the core of the debate among Muslim minorities did not appear to have much weight in the eyes of al-Azhar muftis. They take for granted the permissibility of a Muslim residing in non-Muslim lands. In the fatwas presented in the previous chapter on the puritan ideology, it is noted that the muftis stress the need to reside in a Muslim land, even if the question did not focus on immigration. In the fatwas presented in this chapter, muftis rarely raised the need for a Muslim to leave his place of residence to seek another Muslim land. Rather, the focus is more on the need to commit oneself to the regulations of one’s “new” country and to adapt to its environment, as long as Muslims are able to manifest their religion in an atmosphere that does not deny them their rights or the fundamental tenets of their religion, or mock their religion. The continuous missions of Azharite students and scholars, as noted earlier, to the West exemplify this position. Moreover, some of Azharite scholars even settled for good in the non-Muslim land. The example of Sheikh Muḥammad ‘Ayyād al-Ṭaṭṭāwī, referred to earlier, is a case in point. He settled in Russia in the 1850s. Another example of an Azharite scholar who settled in non-Muslim territories is the researcher’s secondary school personal tutor, Imam Mabruk Al-Ṣawī, who traveled to Brazil in the early 1990s and ended up living there for the rest of his life as an imam.

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

the tragedy of 9/11, al-Azhar sent delegates to various academic centers in Western countries (Germany, Britain, and the United States) to hold dialogues with educated Westerners about the role of Islam in the contemporary world. All these efforts were aimed at reinforcing the settlement of Muslims in their non-Muslim polities.

Citizenship was another problematic question for Muslim minorities in the last quarter of the twentieth century. Al-Azhar looked at it as a natural element for those Muslims who were born into the land and the culture of non-Muslims like Chinese, Russian, or even African American Muslims. In the 1950s, Dr. Maḥmūd al-Shawārbī, a member of the committee of Introducing Islam, voiced his concerns about the failure of the United States to permit African American Muslims to join the American army. He confirmed that they, as American citizens, should join the army. They have the same obligations, rights, and duties as any other American. He argued that the teachings of Islam do not contradict cooperation for the welfare of their own country.⁸⁰ In 2009, almost 50 years later, the Grand Imam of al-Azhar, Sheikh Muḥammad Sayyid Ṭanṭāwī, reaffirmed the same message, "We believe that any Muslim who goes to live in the United States of America, should join ranks with other sons and daughters of America to enrich its culture, to spread peace and welfare and to benefit from the goodness with which God blessed the residents of those lands."⁸¹ He also argued, "Citizenship is the basis for equality among citizens, regardless of their beliefs, ideologies and numbers."⁸² The tense political situation and colonial history of some Western countries, however, made permission to immigrate and acquire citizenship context specific. When some Muslims sought to obtain citizenship from the colonial power of their country, al-Azhar scholars issued a fatwa that prohibited acquiring citizenship on the plea that it shows, among other things, alliance and support to nonbelievers, which God prohibited in His Book.⁸³ This position is a reaffirmation of an earlier position taken by Rashīd Riḍā who responded to the question of the Tunisian Nationalist Party pertaining to some Tunisians seeking French naturalization. Rashīd Riḍā responded that whosoever accepts French naturalization is an apostate.⁸⁴

The question of *muwālāh*, alliance, support, and befriending non-Muslims, is an intriguing one in the case of minorities, because it is not just a mere question of *ḥalāl* or *ḥarām*; it is the basis upon which all other fatwas are established. The answer to this question reflects the ideology and the worldview of the mufti. It informs how he reads the text and whether he is a literalist, a traditionalist, or a renewalist. It sheds light on his vision of the world and how it is divided, that is, his position toward the world division into *dār Islām* and *dār ḥarb*. If the mufti thinks that the concept of *muwālāh* is applicable only toward the people who are in a state

of war against Muslims, then his fatwas on immigration, citizenship, and interaction with non-Muslims tend to be permissible. It is a fact that the question of Muslim's *muwālāh* and imitation of non-Muslims is an age-old question that goes back to the Prophet Muḥammad's time. There were various reports that the Prophet commanded Muslims not only not to imitate non-Muslims, but also to intentionally do things differently in order to be distinguished from them. For example, the Prophet ordered Muslims to shave their moustaches and grow their beards against the customs of the People of the Book. He even warned Muslims, "Whoever imitates a certain people, i.e. the People of the Book, is one of them," meaning that he no longer belongs to the Muslim community. Muslim jurists debated the significance of such commands and to what extent they are context specific, if at all. This debate has continued until our present time and has produced various, sometimes contradicting, positions. Some argue for a literal follow-up of the commands, while others hold that they are inapplicable in our present time and conditions. A third group argues for a case-by-case study. Al-Azhar scholars had also to engage in the debate, not as a response to a question coming from Muslim individuals, but rather as a question of concern to the Egyptian and Arab community who witnessed, at the turn of the twentieth century, a heated debate on questions of identity and affiliation.

On the question of Westernization and imitating the West, many Azharite scholars made the distinction between religious matters and everyday affairs. Grand Imam of al-Azhar Muḥammad al-Khiḍr Ḥusayn argued that there are five cases where Muslims imitate non-Muslims. First is to imitate them in things that are not against the teachings of Islam and at the same time are clearly beneficial for Muslims, such as applying the Western administrative apparatus in Muslim lands. Such "imitation" is not only permitted but also affirmed by Islam. Second is to imitate the non-Muslims' religious tenets and rituals, such as following their model of prayer. In this case, the person who does so, rejects Islam. Third is to imitate them in things, though not religious, that are not permitted according to the Islamic faith. Imitation in this case is also prohibited. Fourth is to imitate them in things that do not have a religious connotation, like clothing and furniture. If Muslims see a benefit in such practices, then they may follow suit. Fifth is to imitate them in things that have no religious significance or mundane benefits, such as using certain colors in their clothing. Adopting these things (e.g., colors) is permitted in Islam provided it does not have national or religious implications.⁸⁵

Given this framework, one may understand the fatwas and opinions given by Azharite scholars on questions of *mushābahah*, *mukhālafah*, and *muwālāh*. Muḥammad 'Abdu argued that a Muslim may befriend non-Muslims and even may seek their help in worldly affairs as long as this does

not involve humiliation or consent of the non-Muslims' beliefs. Therefore, Muslims are allowed to wear, for example, Western-styled hats and clothing, if they help Muslims to avoid the heat or the cold.⁸⁶ Prophetic reports that indicate otherwise were abrogated or are context specific in light of other confirmed reports that the Prophet sought help from non-Muslims, even during times of war.⁸⁷

It should be noted here that, according to the majority of the fatwa literature presented in this chapter, there is no objection to Muslims residing in non-Muslim territories, taking their citizenship and befriending them as long as they are able to practice their religion and protect the faith of their families. Basically this was the main goal of the missions sent by al-Azhar to Muslim minorities. Al-Azhar scholars were sent to educate, guide, and advise the Muslim community, in the first place, more than to be missionaries seeking to convert non-Muslims to Islam.⁸⁸ Even though it is officially stated that these Azharite missions were sent to correct people's misunderstanding and misconceptions of Islam, the main task, however, was the hearts and minds of Muslims. Addressing this concern, Grand Imam Sheikh 'Abdel-Ḥalīm Maḥmūd criticized members of al-Azhar missions saying they were sent to only teach Arabic and math. "If compared with Christian missionaries we do not have real missionaries," he argued.⁸⁹ In the 1958 bill to add European languages into the curriculum of the al-Azhar educational system, it was stated that many Muslim communities ask for al-Azhar's teachers and scholars to help them with their religion. Since this task cannot be achieved without the scholars being able to communicate with those communities in their native languages, then it becomes a must to add foreign languages to the al-Azhar curriculum.⁹⁰

Keeping this priority in mind, that is, strengthening the faith of the Muslim community itself, one of the main concerns that these scholars tried to address is how to unify minority communities regardless of their juristic schools or religious sects. The 1930s al-Azhar mission's report to India argues that scholars should work to eliminate differences between Indian Muslim groups who had split mosques on a sectarian basis and remind them that al-Azhar students pray together regardless of their sectarian differences.⁹¹

Given the above-mentioned review and analysis, it becomes evident that al-Azhar has always maintained a positive position toward the residence and life of Muslims living among non-Muslims as long as it did not result in the Muslim neglecting the teachings of his religion. If under certain circumstances, a Muslim is not able to protect his faith, then he should leave the land. It is significant to note that leaving the non-Muslim polity is not an inherent requirement of a Muslim. Rather, it is a transient stage that is subject to negotiation and a case-by-case evaluation. Islamic jurisprudence

is rich and can accommodate all situations based on the basic principle of moderation and tolerance. This moderate way, however, should be seen as a life between the two worlds, the abode of Islam and the abode of Disbelief.

Conclusion

Since its inauguration in the eighth century, al-Azhar and its scholars have always been part of the global intellectual religious heart of Islamic knowledge. It functions as “a structure of mediation between the Divine and the human that offers an interpretation of the scriptures to the faithful, manages religious ritual and transmits religious knowledge.”⁹² Moreover, the history of al-Azhar reflects the sociopolitical manifestations of the Muslim world due to its constant engagement with ongoing debates and discourses whether local, national, or transnational. It has been working as a conflict-resolution center to which any individual, group, or country may resort to for an expert reliable opinion. This can be attested to in the fatwa literature of the twentieth and twenty-first centuries, where one can see questions coming from individuals, Islamic or social organizations, politicians, embassies, and even states.

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

In his introduction to *Al-Fatawa al-Masriyyah*, Jād al-Ḥaqq states that the fatwas of al-Azhar follow the tradition of the great *mujtahids* in terms of their piety “to identify as ‘*makrūh*’, despicable, what they may consider as *ḥarām* (unlawful), lest they say something is *ḥarām* without having a clear-cut legal text.”⁹³ This approach made their fatwas look like what one may call conditioned fatwas or license-based fatwas. This means that the fatwas take a tolerant position by permitting certain practices provided certain conditions are observed. This technically means that the final decision was left to the fatwa seeker to determine which way to go. Some researchers regard this approach as “ambiguous.”⁹⁴ I would like to argue here that this is one distinctive feature of traditional jurisprudence whose function is not to issue legal court verdicts to be executed by force; rather, it is a process in which the mufti tries to bring the questioner close to the fold of *Shari‘ah*

and sometimes attempts to reach a compromise between ideal Islamic propositions and the urgencies of time and place. This is exactly the tradition of the trend that has been presented in this chapter. Traditionalist muftis recall juridical concepts of necessity, *rukhsah*, coercion, and the abode of non-Muslims to justify their sometimes unorthodox positions.

The subtlety of the traditionalist trend is that it issues *rukhsah*-based *fatwas*, while at the same time keeping a positive attitude toward the Muslim minority host countries. They do not only permit Muslims to reside in non-Islamic environment, but also permit them to follow and abide by their laws and regulations. This position can be justified by many reasons, including a long history of the proponents of this tradition, al-Azhar in this case, in dealing with minority Muslims through mutual visits and correspondence, expertise in the legal tradition that makes them able to contextualize their fatwas, positive interaction with non-Muslim traditions and communities, awareness of contemporary politics of the nation-states and how they influence relations between people, law, and the state, and the role of the Egyptian state, in the case of al-Azhar, to maintain good relations with other countries by directing the official position of al-Azhar not to issue fatwas that may create social or political disturbances in other countries. For such reasons, traditionalists attempted to take the middle way and to strike the *wasatiyyah* “middle way” balance. This balance, however, was framed in a language of the “minorityness” of a religious group in a “host” country where the position, for example, of the *Hanafis* in permitting non-*Shari‘ah* transactions in the abode of disbelievers can still be applied.⁹⁵ This trend prevailed in the 1990s as indicated by fatwa collections that were presented here and also those of Muslim imams living in the West and early online fatwas such as that of Islamonline.net.

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

Chapter 3

Yūsuf al-Qaraḏāwī: An Ideologue for Muslim Minorities

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

Given his growing impact on Muslim contemporary thought, Yūsuf al-Qaraḏāwī has become a subject of interest for researchers and a focus of attention for media people in both the Muslim and the non-Muslim world. In their 2009 edited monograph *Global Mufti: The Phenomenon of Yusuf al-Qaradawi*, Bettina Gräf and Jakob Skovgaard-Petersen briefly review the available literature on al-Qaraḏāwī, his activities, and his publications.⁴ They also introduce papers that examine various dimensions of

al-Qaraḍāwī's thought and impact on Muslim scholarship and life. The title of the monograph reveals how al-Qaraḍāwī is seen in today's world: *global* reflects the landscape his message/voice covers and *mufti* suggests the level of authority his opinion carries. The present chapter, however, explores the role of al-Qaraḍāwī in the growing discourse of *fiqh al-aqalliyyāt* and the place of *Shari'ah* in Western liberal democracy, through an attempt to answer the following questions: How has the Egyptian-born Qatari-based Sheikh al-Qaraḍāwī become a reference point for Muslim minorities? How does al-Qaraḍāwī see the relationship between Islam and the West, and Muslim minorities and Western societies? To what extent has this relationship shaped the authority of al-Qaraḍāwī in the eyes of his followers and his critics? How does al-Qaraḍāwī situate the modern Muslim life, especially that of Muslim minorities, in the Islamic discourse of *Shari'ah*, *fiqh*, and *ijtihad*? Why was al-Qaraḍāwī the running force behind the jurisprudence of Muslim minorities? According to him, what are the main sources and methodology for this jurisprudence? And what is its ultimate goal?

Building a Minority, Creating an Authority

Yūsuf al-Qaraḍāwī's interest in *fiqh al-aqalliyyāt* and the life of Muslims in the West started as early as 1960, when he was asked by the General Department of Islamic Culture to participate in a project that would involve the production of more than 30 books, written in a simple nontechnical language, that would introduce the teachings of Islam to Muslims and non-Muslims in Europe and America.⁵ Al-Qaraḍāwī was assigned to write about *Al-Ḥalāl* (the lawful) and *al-Ḥarām* (the prohibited) in Islam, which became the title of one of his most famous and enduring books.⁶ In his introduction to the book, al-Qaraḍāwī states that such an interest in educating Muslims living in the West about Islam should have been started earlier. He argues that Muslims there know very little about their religion. Some of them, he was told, earned their living by trading in alcohol, unaware that it is one of the major sins in Islam. If this is how Muslims saw their religion, he argues, then the image of Islam among non-Muslim Westerners would surely be much worse.⁷ Although *Al-Ḥalāl wa-al-Ḥarām* was intended to be published and translated into English through al-Azhar, eventually it was published by a different publishing house⁸ and was translated in the 1970s by the Federation of Islamic Organizations (FIO). Although the book was written in 1960, it remains popular among Muslim minorities till date. In May 1995, the book was banned in France by a decree from the then French interior minister Charles Pasqua on the claim that the book

represented a threat to the national security due to its hostile tone against the West. French Muslims rallied successfully against this decision until it was annulled shortly after.⁹

Other than the publication of *Al-Halāl wa al-Harām*, it seems that al-Qaraḍāwī did not have a strong relation with Muslims in the West from 1960 through the early 1980s. This period in al-Qaraḍāwī's life was transitional. In 1961, he relocated himself in Qatar for fear of political persecution due to his active membership in the Muslim Brothers. In Qatar, he gradually established himself as a scholar and was a host in two broadcast programs, *Nūr wa-Hidāyah* "Light and Guidance" (Radio) and *Hady al-Islām* "Guidance of Islam" (TV). Al-Qaraḍāwī did travel outside Qatar in the 1960s and the 1970s for educational and *da'wah* purposes, but his travels were mainly to Muslim countries. His few trips to the West were only to attend events organized by members of the Islamic movement, who at the time had started to establish themselves in the West and use it as a platform for their political activism. One of al-Qaraḍāwī's earliest trips to Europe was to Switzerland, in 1977 to attend a conference on Islamization of Knowledge and Muslim presence in the West. The focus of the conference was on how to promote unity among Western Muslims and how to integrate them in their host society.¹⁰

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

In the 1990s, Muslims living in the West were heading toward more participatory and active engagement with their non-Muslim host societies. This led to internal debates among Muslims about the position of Islam toward such an engagement and toward their life in general. They sought guidance from various contemporary scholars and jurists. The Federation of Islamic

Organizations (FIO) held two symposiums and invited well-established Muslim jurists, mainly from the Arab world, to come to France and discuss certain critical questions related to the life of Muslims in the West. Among those scholars invited were al-Qaraḍāwī, Mustafā al-Zarqā,¹⁴ ‘Abd al-Fattāḥ Abū Ghuddah,¹⁵ Mannā’ al-Qaṭṭān,¹⁶ ‘Abdullah ibn Bayyah,¹⁷ Fayṣal Mawlawī,¹⁸ and others. It is interesting to note here that those scholars had strong connections with the Muslim Brothers, if not members of the movement. An observer may conclude that this gathering had deeper concerns than that of finding answers for minority questions. It informs that Islamic activism was starting to organize and coordinate itself. Muslim activists around the same time, 1990s, started to engage with political and social organization and ask for certain religious concessions or rights, such as taking time off for prayers or getting concessions for their daughters not to take coed swimming classes at school. Their activism made Islam politically visible to the wider society. In order to prove its authoritative position to Muslims and non-Muslims, they used the *fiqh* discourse through their religious scholars. This *fiqh* discourse gave them ground to appeal to the Muslim public, to negotiate with the non-Muslim politics, and to encounter other religious trends that may oppose such interaction.

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

As a president of the ECFR, al-Qaraḍāwī became intensely involved in issues related to Muslims in the West. He became the pronounced authority for many of them. He achieved this authoritative status for various reasons: he had a religious traditional affiliation as a graduate of al-Azhar; he had an affiliation with the political activist organization of the Muslim Brotherhood; his methodology of moderation and consideration of people’s needs and necessities made him different from other hardliner muftis who were on the rise at the time; and he was one of the first accessible scholars through various mediums, such as al-Jazeera Channel program “*Al-Shari’ah wa-al-Hayāh*,” the Abu Dhabi Satellite Channel program “*Al-Muntadā*,” Islamonline.net website, and his qaradawi.net. His *al-Shari’ah wa-al-Hayāh* became so famous that many Muslims who live in minority conditions used to wait from week to week to watch it. When al-Jazeera wanted to change

the times of the program, he objected because the new timing slot would not allow Muslims in Europe and America to follow it. Al-Qaradāwī confirms that this program is a good chance for his voice to reach Muslims in other places of the world.²¹ As for his website, it served as a platform for al-Qaradāwī's aspiration to recognition as a global authority for Muslims.²²

With the growing interest of Western Muslims in debating their religious life and affiliations in the West, al-Qaradāwī has become an influential voice and a well-received guest speaker in their activities and conferences. For example, al-Qaradāwī visited the United States at least six times during the 1980s and the 1990s to participate in conferences organized by Muslims.²³ He became an ideologue and an opinion maker for Western Muslims, even for those living in Iberia.²⁴

Al-Qaradāwī's popularity, especially among Muslims living in the West, has gone sky-high with the vast spread of modern technology. Although al-Qaradāwī's publications are in Arabic, some publishing houses exerted great efforts to make them available to non-Arabic-speaking readers. Al-Falah Foundation for Translation, Publication and Distribution, Egypt, dedicated most of its early translation projects to publish al-Qaradāwī's works in other languages, especially English and French.²⁵ His satellite program, *al-Shari'ah wa-al-Hayāh*, that is, *Shari'ah* and Life, first broadcasted in 1997, received millions of audience. Al-Jazeera Channel estimated al-Qaradāwī's audience to range between 35 and 45 million.²⁶ Al-Qaradāwī's promotion and leadership of Islamonline.net opened up new spaces for his presence in the private sphere of Muslim homes in the West, at a time when there were no equivalent authority alternatives. Al-Qaradāwī advertised his website as a "trustworthy global pulpit."²⁷ As an indication of how the Internet played a significant role to promote his authority, al-Qaradāwī's supporters extensively voted online for him in the Foreign Policy referendum of the world's top 20 public intellectuals. He ranked third in the list.²⁸

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

Al-Qaradāwī's authority does not cease at the individual level as a "global *mufti*," but it has become institutionalized through establishing and leading

the growing entities of the ECFR and IUMS. It is very significant to note that these two institutions were created on the periphery of the heartland of Islam, Ireland. Still these organizations, especially the IUMS, claim to represent and speak of the concerns of the *ummah*. This is a critical shift in understanding concepts like *ummah* and abode of Islam. Here the concept of the *ummah* is disconnected from the concept of land, and the *ummah* representative figure, the caliph, loses its authoritative status. The *ummah* becomes the “imagined community” of the believers whose meeting ground becomes virtual more than political. In other words, far from being able to create a political or a material unity on the ground, Muslims transform their religious bond (*ummah*) into a spiritual-social construct that focuses on creating a transnational social and religious networks/organizations to maintain an Islamic-*ummah* identity. Undoubtedly, al-Qaraḍāwī and his institutions were key players in the struggle for modeling an inclusive transnational Muslim identity through a normalization of Muslim’s life in the West via institutional endorsement of *fiqh al-aqalliyyāt*.

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

Al-Qaraḍāwī: A Liberalist, a Fundamentalist, or a Mujtahid

On many occasions, al-Qaraḍāwī’s fatwas and opinions provoke debate not only in Muslim intellectual circles but also among the public. For example, in the political arena, his recent severe criticism of the Iranian *shi’ite* attempts to spread *shi’ism* in the *Sunni* world³⁰ caused considerable controversy in the Muslim world, both among those in favor of or against his position. His fatwa against the Israeli occupation of Palestine and the legality of the martyrdom operation added to his prestigious position among the Muslim populace, but at the same time it made him a notorious figure in the world news.³¹ In the jurisprudential arena, his fatwa over the permissibility of drinking a beverage that contains a certain percentage of alcohol (0.05%) received wide media coverage.³² Given his intellectual history, political orientation, and educational background, al-Qaraḍāwī, ideologically, is difficult to categorize. On the one hand, he is praised by his students and colleagues for his erudite knowledge of Islamic sources, for his

methodological approach and for his candid fatwas. Some call him “*al-imam al-akbar*,” that is, the Grand Imam, and others argue that he has reached the stage of absolute *ijtihād*.³³ On the other hand, another Muslim group, who are mostly “*wahhābī-salafī*”-oriented, severely criticizes him to the extent that they accuse him of being “the devil” and a secret agent for the West and Zionism. They argue that his real intention is to abrogate *Shari‘ah* under the cover of revivalism.³⁴ Many Westerners, including some Muslims who live in the West, see him as a fundamentalist for his fatwas against Israeli and American troops in Palestine and Iraq. They tag him as one of “the theologians of terror” in their campaign “Stop Terror *Sheikhs*.”³⁵ Within Western intellectual circles, his thought defies characterization. Some see him as a liberal,³⁶ or a fundamentalist,³⁷ or an extremist,³⁸ or an antimodernist/antiliberalist,³⁹ or a *Salafī*-reformist,⁴⁰ or a latter-day *Salafī*.⁴¹ In the *Encyclopedia for Islam in the United States*, he is described as “ultimately an Islamist, committed to the application of Islamic Law in all areas of life.”⁴²

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

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

The question of what constitutes a religious authority, ‘*ālim*, in the present time is hotly debated in various circles, Muslim and non-Muslim, alike. The baseline for this debate is that the authority of a “modern” ‘*ālim* is by no means taken for granted today. Religious authority has become a field of competition among various rivals—lay preachers, intellectuals, activists, and politicians, along with others who claim ability to read original sources and reach a proper legal determination with no less authority than the traditional ‘*ālim*.⁴³ This absence of clear powers of authority is a result of various factors, such as the deterioration of religious education, state hegemony over religious institutions, the rise of individualization sentiments, the spread of liberal thoughts, and the proliferation of modern technology. Delineating these factors lies outside the scope of this research; however, it is noteworthy that al-Qaradāwī responds to these factors and sometimes utilizes them to strengthen his claim of authority. On the question of the deterioration of traditional religious education, al-Qaradāwī, on the one hand,

associates himself with the well-established Muslim *‘ulamā* of his time. He is a student of Sheikh Maḥmūd Shaltūt, the ex-rector of al-Azhar, Sheikh al-Bahy al-Khūlī, as well as Sheikh Muḥammad al-Ghazālī.⁴⁴ At an early stage of his career, al-Qaraḍāwī was entrusted by Sheikh al-Azhar Maḥmūd Shaltūt with the drafting of fatwas he was going to sign.⁴⁵ Al-Qaraḍāwī, on the other hand, was one of the people who called for reforming al-Azhar system.⁴⁶ In terms of state affiliation, al-Qaraḍāwī was imprisoned and was known for his state opposition. As for the liberal ideas of modernity like democracy, justice, and human rights, al-Qaraḍāwī Islamicizes them. He makes clear that Islam calls for democracy, advocates human rights, and promotes justice in the society.⁴⁷ In terms of using modern technology to promote his authority, his website and satellite program *al-Shari‘ah wa-al-Ḥayāh* pioneered the airwaves by being among the first to cross national borders.

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

The question to be posed here is, what kind of authority does al-Qaraḍāwī have and what can it accomplish? The present researcher argues that al-Qaraḍāwī's authority is of the traditional category with a charismatic touch. Traditional means that he derives his authority from the long-established religious tradition and customs of learning at the hands of earlier scholars and getting their approval. Since early stages of his life al-Qaraḍāwī was praised by many of his teachers.⁴⁸ Then al-Qaraḍāwī himself established his own circle of students who promoted his ideas and thoughts.⁴⁹ Although al-Qaraḍāwī uses state-of-the-art technology, it is dressed in a traditional attire. In his TV program, for example, he sits dressed in his Azhari attire and addresses the questions of listeners, exactly as if he sits in a mosque talking with his students. Although he does not have the power to execute his fatwas, his claim of legitimacy is based on the tradition he represents. As for

al-Qaraḍāwī charismatic authority, it is derived from the aura of his religiosity, the power of his language, his affiliation with the Muslim Brothers, and his stand in questions pertaining to the Muslim nation. With this type of authority, al-Qaraḍāwī's *fiqh* appeals to Muslim activists. They often use his positions to empower their discourse. Also, it appeals to the ordinary people who trust and follow such a discourse. However, at the same time, it does not appeal to groups affiliated ideologically with other religious or political orientation. One may refer here to the *Wahhābi* trend, and *Hizb al-Tahrir*.

At this conjecture, a question may be posed: If al-Qaraḍāwī had not been supported by the Qatari government and Gulf funds, could he have achieved this "global" presence? Would his affiliation, for example, with the Muslim Brothers have been enough to establish his authority? A difficult question to respond to, but the fact remains that his early settlement in Qatar was instrumental in the growth of his authority. To put it in other words, his popularity soared through the support he received from Qatar, but his authority continued over the years due to the nature of the message he conveys. Gräff's argument that al-Qaraḍāwī "claims global authority rather than possessing it"⁵⁰ is understood in light of the various competing trends, sects and orientations in the Muslim world, but on the other hand, al-Qaraḍāwī possesses a global authoritative presence, at least through the positions he holds as president of the International Union of Muslim Scholars, the president of the ECFR, and as member of the Islamic *Fiqh* Academy, to list a few. His honorary titles and awards testify for this authority position. He was given the International Award of King Faysal in Islamic Studies, along with Sheikh Sayyid Sābiq; Sultan Hasan of Brunei Award, in 1997; and the Islamic Personality of the Year, 2000, to name a few. Winning these awards demonstrates to what trend al-Qaraḍāwī belongs to and what audience relates to him. It is the traditional activist circles.

There is no doubt that the majority of al-Qaraḍāwī's followers in the West are Arab immigrants, especially those in relationship to Muslim Brothers and other Islamic movements. But this does not negate the fact that he is well received in other circles. The rector of the French Grand Mosque, Dalil Boubekou, submitted a Muslim charter to the French ministry of interior in which he invoked al-Qaraḍāwī's authority in a number of instances. The Muslim Council of Britain endorsed al-Qaraḍāwī as a "force of moderation." Interestingly, even *Hizb al-Tahrir*, a severe critic of al-Qaraḍāwī, addressed him as "Our Noble *Sheikh*," in a move that was interpreted as a strategic step to broaden the party support base, but still indicative of the respect and authority al-Qaraḍāwī enjoys.⁵¹ Moreover, al-Qaraḍāwī's name is used as a trademark to ensure potential marketing opportunities or as an authoritative stamp for some publishing houses or research centers. *Allo Fatwa*, a short-lived payphone line established in Qatar in 2003 to give

fatwas for those who call in from everywhere in the world, displayed its list of muftis, of whom al-Qaraḍāwī comes first.⁵² Al-Falah Foundation for Translation, Publication and Distribution, an Egyptian publishing house for Islamic materials in foreign languages, named al-Qaraḍāwī as one of its editorial board. *Al-Tanwīr al-Islamī*, a series in modern Islamic thought, lists al-Qaraḍāwī as one of its board members. In a nutshell, al-Qaraḍāwī has become a voice of authority and authenticity for a large number of audiences in the *sunni* world.

Al-Qaraḍāwī: Perspective on *Shari'ah*, *Fiqh*, and *Ijtihād*

Reading al-Qaraḍāwī's various publications, especially the ones produced in the last two decades, one may realize that his work on *fiqh al-aqalliyyāt* does not represent a new line of thought. Rather it is a reassertion of what he has already written and produced. In the following paragraphs, al-Qaraḍāwī's perspective on *Shari'ah*, *fiqh*, and *ijtihād* will be presented in an attempt to understand his position and fatwas for Muslim minorities.

Shari'ah, according to al-Qaraḍāwī, is divine, complete, comprehensive, and permanent until the Day of Judgment. It governs all affairs of individuals, groups, and states throughout time and space. Although *Shari'ah*'s texts are fixed, they are flexible enough to embrace every new situation.⁵³ Even if a Muslim lives outside the land of Islam, *Shari'ah* does not leave him until it makes clear to him/her what is *ḥalāl* and what is *ḥarām*, what is recommended and what is not.⁵⁴ *Shari'ah*, however, has two categories. First is the affirmative one that is based on clear-cut texts from the Qur'an and Sunnah. Although, this category constitutes a small portion of the Qur'an, it covers the fundamentals of one's belief. Second is the non-affirmative category, which is based on the work of the intellect of jurists. This category is known as *fiqh*.⁵⁵ The affirmative category of *Shari'ah*, al-Qaraḍāwī argues, does not establish rules without identifying first the wisdom behind them. The jurists generally identify the ultimate wisdom of these rules as *taḥqīq maṣāliḥ al-'ibād*, fulfilling the interests of people. Jurists specified three levels of these *maṣāliḥ*, interests, of the people: the necessities, the needs, the luxuries. At this conjecture, al-Qaraḍāwī asserts that such a classification of levels of human interests according to the demands of *Shari'ah* is a result of the human attempt to understand divine wisdom. It is a product of the human intellect. Therefore, jurists may add to or modify this classification as long as what is added has a basis in *Shari'ah*. Early jurists, al-Qaraḍāwī continues, recognized these interests based on their position that the welfare

of the individual was at the center of their investigations. This position needs to be reconsidered in the light of societal, political, and economic changes in our contemporary life. More focus on the interests of the community as a whole needs to be given preference. Social values, for example, should be part of these basic necessities that *Shari'ah* guarantees. These values would include justice, freedom, solidarity, equality, human rights, and brotherhood.⁵⁶

To further support his argument on the flexibility of the *Shari'ah* and the rule of the human intellect, al-Qaraḍāwī asserts that definite rulings of *Shari'ah* are limited, leaving a huge space for the human intellect not only to decide for each case, but also to develop some methodological tools, such as *qiyās* (analogy), *istiḥsān* (discretion in legal matters), or *maṣāliḥ mursalah* (public interest) to help him reach proper rulings.⁵⁷

This presentation of the role and position of *Shari'ah* conceals the tension on the relationship of *Shari'ah* and *fiqh* and where one can draw the border line between the two. Al-Qaraḍāwī always stresses the divine nature of *Shari'ah* but he does not attempt to define it. He suffices himself with the general qualification of *Shari'ah* as divine, comprehensive, and flexible, etc. On one occasion he referred to *Shari'ah* as having two meanings: (1) a meaning that includes all tenets of religion, creed, and morals and (2) a meaning that covers rituals and transactions.⁵⁸ This attempt complicates the issue rather than solving it, especially when combining rituals and transactions together.

By widening the gate of *fiqh* and describing it as a product of the human intellect, al-Qaraḍāwī gives himself the right to critically approach it, rejecting, approving, or modifying its rulings to fit his understanding of contemporary life. *Fiqh*, according to al-Qaraḍāwī, is not what is frequently repeated in jurisprudential literature or what is currently taught in colleges of *Shari'ah*. Rather it is the Qur'anic *fiqh* that is based on *fiqh* of God's signs in the universe, in the community, and in oneself. It is the science of understanding the content and the wisdom of the subject matter.⁵⁹ The Qur'anic reference to *tafaquḥ fī al-dīn*, that is, understanding one's religion,⁶⁰ does not mean the traditional *fiqh* in the eyes of al-Qaraḍāwī. Such a traditional understanding of *fiqh* does not result in an increase of *imān* or elevation of faith. The verse, according to al-Qaraḍāwī, refers to gaining *baṣīrah*, an insight, into the reality of religion, its secrets and objectives.

This understanding of *fiqh* reflects al-Qaraḍāwī's affiliation with and promotion of Islamic activism. It reflects what is called in the literature of Islamic movements "al-*Fiqh al-Harākī*," in which *fiqh* does not merely relate to the technical imperatives and determinations of jurists, but it opens up for everyone's input and understanding of his/her religion. There is a sense here of inviting people to take off the garb of submission to both the traditional

literalist scholars and to the state-dictated form of Islam. This understanding of *fiqh* may be rooted in the thought of Muḥammad ‘Abdūh and Rashīd Riḍā at the turn of the twentieth century. In their struggle against colonial powers as well as the political and economic conditions of the Muslim world, they called for a social and religious reform that revives the true spirit of religion and not the blind imitation of juridical rules. Al-Qaraḍāwī recalls a similar type of activism to encounter the corrupt political institutions and to embark on religious reform.

Al-Fiqh al-Ḥarakī is a term that is used effectively and with subtlety in al-Qaraḍāwī’s discourse. At the same time as it indicates an affiliation with Islamic activism, it also opens up a wide range of other *fiqh* categories: *fiqh al-muwazānāt*, *fiqh al-awlawiyyāt*, *fiqh al-sunan*, *fiqh al-ikhtilāf*, *fiqh al-tadarruj*, *fiqh al-dawlah*, *fiqh al-maqāṣid*, etc.⁶¹ Al-Qaraḍāwī contributed to all these categories, though he was not the first to introduce and label them in contemporary time. *Al-Fiqh Al-Ḥarakī*, however, is not left for personal individual choices. Its determinations lie in the hands of the ‘*ulamā*’ who will provide a mature leadership to the movement members and a proper guidance for the Muslim community at large. The reference to ‘*ulamā*’ in this context is significant. ‘*Ulama*’ is the link between the tradition, the reality, and the change, or as Qasim Zaman describes, “Custodians of change” in a “discursive tradition”. ‘*Ulama*’ work as agents of change that enables the community to meet the ongoing challenges of its time, place, and condition and at the same time defends the tradition’s core and guards its values.⁶²

Al-Fiqh al-Ḥarakī also represents another layer of debate in al-Qaraḍāwī’s methodology. *Ḥarakī* indicates moving, changing, and alive. This is against the common understanding of traditional *fiqh* and the question of *taqlīd* of a certain imam or school of thought. Al-Qaraḍāwī considerably elaborates on this point, making clear the distinction between *fiqh al-naṣṣ*, jurisprudence of the text, and *fiqh al-wāqī’*, jurisprudence of real life. Al-Qaraḍāwī criticizes Imam Shawkānī’s view⁶³ for his reliance on the text, that is, the Qur’an and hadith, as the main source of legislation and rejecting the “legal opinion” that is derived from intellectual reasoning. Using intellect to understand the text in light of the real-life conditions is one of the objectives of *Shari‘ah* and the purpose of religion.⁶⁴ To argue further for his position, al-Qaraḍāwī refers to Ibn Taymiyyah’s opinion on not forbidding the Tatar soldiers from getting drunk. Ibn Taymiyyah argued that in their case it is better to let them get drunk. Drinking is forbidden due to its effect on the mind that causes negligence of one’s prayers. But for those soldiers, drinking prevents them from killing people and taking their money. Ibn Taymiyyah implies that it is better to let them drink and neglect prayers than to forbid them, according to the Qur’anic injunctions, and let them kill Muslims or to take people’s property without due rights.

Al-Qaradāwī comments that Ibn Taymiyyah's position illustrates the difference between *al-faqih al-harfī*,⁶⁵ the literalist *faqih* or the *faqih* of papers, and the *faqih* of life or of *midān*, battlefield. The former condemns the sin without taking into consideration the objective and the reality of things while the latter looks at the real objective of *Shari'ah* in maintaining people's quality of life.⁶⁶ The former is not really a *fiqh* because the real *fiqh* is based on the life of people, their experiences, and their sufferings. *Fiqh* of religion should not be disconnected from *fiqh* of life, which is the *fiqh* of Qur'an.⁶⁷

Al-Qaradāwī warns that his methodology of accommodating the reality of specific situations does not imply that he negates or ignores the cumulative *fiqh* legacy and sticks only to the *Shari'ah* itself. He argues this is practically impossible. He stresses that *fiqh* is a science that grows and develops with every generation, and it is unimaginable to interpret the Qur'an without the classical legacy of earlier generations. *Ijtihād* means to reread the available juridical literature with all its schools and in all its ages in order to be able to reach a proper ruling based on objectives of *Shari'ah* and contemporary people's interests. This should not lead us to permit what God forbids, such as usury and gambling. A jurist should try to bring *wāqī'* as close as possible to *shar'* and not vice versa.⁶⁸

Given this perspective on the role and function of *Shari'ah* and *fiqh*, al-Qaradāwī delineates three trends among Muslims in their attempt to understand *Shari'ah*.⁶⁹ The first trend is the neo-Zaherites who do not recognize the connection between the text and people's life. They dismiss the role of intellect in concluding legal determinations. The second trend is the neo-Mu'tazilites who want to do away with legal heritage and maintain only the objective of *Shari'ah*, only to legitimize their actions. They are mostly oriented toward the West and call for the suspension of *hudūd*, legal punishments. The third trend is the moderate trend that recognizes the *thawābit*, fundamentals of religion. It distinguishes between the objectives and the mechanisms. The former is basic and determines the direction of the legal ruling while the latter is changing and open for *ijtihad*. Al-Qaradāwī holds that the middle-way trend⁷⁰ is the true Islamic one.⁷¹ This approach of categorizing the people or their orientation into groups is typical of Qaradāwī. For example, on the question of *jihad* in Islam, he distinguishes between three trends: the first group is those who deny the need for *jihad* in the present time, the second comprises those who declare war against the whole world, and the middle group redefines the meaning and scope of *jihad* in the modern world.

This exposition of al-Qaradāwī's position on the relationship between *fiqh* and *Shari'ah* reveals a number of issues. First it demonstrates the level of involvement of al-Qaradāwī in Islamic activism through, first, his strong

affiliation and participation in the Muslim Brotherhood, especially at the early stage of his life. The impact of Ḥasan Al-Bannā's ideas was like the seed that grew as al-Qaraḍāwī matured. It provided him with a different perspective than he was exposed to in the traditional Azharite education. This combination of traditional education and Islamic activism produced a mix that is hardly to be categorized. For some, al-Qaraḍāwī represents a new ideologue of renewed *salafism*. For others, he belongs to the moderate trend of Islam. For a third group he represents a certain layer of liberal Islam, and finally for another group he is counted among the fundamentalists. I would argue that he is all that. He belongs to the multilayer hyper category of intellectuals. He is like his *fiqh*, changing and flexible. This should not be taken as a negative criticism of him but rather as an attempt to read him in an objective way. This flexible changing quality creates ambiguity in analysis. For example, the question of *ijtihād* was exhaustively explored in his writings. He elaborated on its definition, types, categories, conditions, and roles. He even referred to examples of his and other jurists' *ijtihād*. But still ambiguity and complexity remain. Questions are yet to be solved: How does one develop a framework of the objectives of *Shari'ah*, or are they to be open-ended? How does one choose between *ijtihād inshā'i*, that is, *ijtihād* based on text and analogy, and *ijtihād ibdā'i*, that is, creative *ijtihād*? How does one determine the relationship between the legal opinions of the majority of jurists and those of the minority? How does one lay out the relationship between the text, the human intellect, and life conditions? Which one of them has precedence over the other? Is it possible to textualize the context or is it legitimate to contextualize the text?

The West: *Jihad* of the Age

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

Al-Qaraḍāwī's position toward the West is complex. Though he affirms that the people of the West are *kāfirs*, unbelievers, he uses all his juristic abilities to negate the need to declare *jihad* against them. The Westerners' *kufri*, al-Qaraḍāwī's argues, is a linguistic identification, that simply means that they do not believe in the prophet of Islam and his message. Such a

reason is not enough to wage war or declare *jihad* against them.⁷² *Jihad* is declared not to convert people but to convey the message of Islam. In the present world, due to the proliferation of information technology, no political power can stand against the propagation of the Islamic *da'wah* or prevent people from recognizing what is right and what is wrong.⁷³ If the message of Islam becomes known to everyone, then it becomes the responsibility of the receiver to accept it or not. No force can ever be applied to coerce people to convert. In another way, *jihad al-talab*, that is, War for *da'wah*, is no longer needed to convey the message of Islam.⁷⁴ So saying, al-Qaradāwī neutralizes the abode of the West: it is neither the abode of Islam nor that of war.

Al-Qaradāwī, however, to maintain the legal categorization of land in the Islamic tradition, called the West *dār al-'ahd*, an abode of contract, which means that there exists a kind of contract of peace between the abode of Islam and the West. Thus, al-Qaradāwī problematizes his previous argument. *Dār al-'ahd* implies that if a Western country carried on a certain policy or action that is considered by some Muslims as a breach of contract, then the abode of contract becomes an abode of war. This understanding leaves Western Muslim communities in an uneasy situation and threatens their conceptualization of what home means. Although al-Qaradāwī realizes that such a classical categorization of lands has negative implications in modern-day life, he does not try to suggest an alternative. He rather appeals to Muslim scholars to make collective *ijtihād* to find better descriptive terms.⁷⁵

Apart from this legal discussion, al-Qaradāwī resorts to a more pragmatic approach when it comes to the question of the relationship between Muslim minorities and their Western home on the one hand and their relationship to the rest of the Muslim world on the other. He affirms the possibility of dual identities. A Muslim belongs to both the Muslim *ummah* and to his own residential community, wherever this community is. This notion of dual identity is based on a concept of "reverse necessity." Traditional Islam requires Muslims to depart the land of the unbelievers, "Western" land, and to settle in a Muslim land. For al-Qaradāwī, this position lacks the comprehension of the present reality, that is, the West has become the center of world. This reality requires "a reverse necessity," that Islam should not only immigrate to the land of the West, but also interact with it.⁷⁶ This position represents a paradigm shift in the Muslim legal tradition where *jihad* turns into the search for an Islamic role model in an open world.

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

Theory of *Fiqh al-Aqalliyyāt*

At the outset of drafting his theory, al-Qaraḍāwī argued that Muslims have a comprehensive religion. It comprises a divine creed, purified rituals, high morals, and a guiding *Shari'ah*. Comprehensive and realistic as it is, *Shari'ah* is binding upon every Muslim; wherever, whenever, and however s/he might be. It is enacted upon all people of all generations. It does not promote secularism or separation between worldly and religious matters. However, one's commitment to *Shari'ah* is based on one's ability to abide by it in light of the urgencies of his place, time, and condition. In other words, no Muslim can live outside the boundaries of *Shari'ah* or assume that he is exempt from observing its principles, unless the *Shari'ah* itself exempts him according to its principles, rules, and proofs. The jurist cannot ignore this principle, even if he deals with "the jurisprudence of minorities," or "the jurisprudence of expatriates," or the jurisprudence of "Muslims in non-Muslim polity."⁷⁷

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

Al-Qaraḍāwī begins his analysis with an overview of the meaning of the word "minority." It refers to a group of people who live in a certain country, distinguished from the majority of the population of that country in terms of religion, sect, race, or language, or any other trait that is used to differentiate between groups of people. One basic characteristic of being a minority is mostly the state of *da'f*, that is, weakness, in face of the majoritarian power.⁷⁸ Al-Qaraḍāwī's identification of the state of weakness for "minority" people explains his attitude toward Muslims in the diaspora. *Da'f* becomes a key word in his analysis and frequently appears in his fatwas for Muslim minorities. His concern is how to relieve Muslims in minority situations from their condition of weakness and empower them to stand on firm ground in their relationship to the authority of the majority.

Al-Qaraḍāwī then focuses his analysis on Muslim minorities in the West, because there the state of "weakness" is apparent. Eastern Muslim minorities, for example, Indian Muslims, should not be considered minorities per se because they are natives of these lands, although they may be minorities in terms of their numbers compared to other groups of population. These indigenous Eastern Muslims, such as those in China, India, and Thailand, are part of the heritage, culture, and institutions of their lands. In contrast, early immigrant Muslims came to the West in a critical historical moment

when many countries of the Muslim world were suffering from (post) colonization problems, let alone internal political and economic tensions. Many of them came mainly for work and had little religious commitment.⁷⁹ However, after two generations and for various reasons, including the rise of Islamic Awakening in the Muslim world, and the arrival of a new wave of educated immigrants who fled their countries for fear of political or religious persecution, Muslim minorities started a new age of their existence in the West: the age of Islamic awareness.⁸⁰ This new age of Islamic awareness, according to al-Qaradāwī, went through different stages: (1) identity awareness, (2) awakening stage, (3) action initiation, (4) grouping process, (5) congregation building, (6) settlement process, and (7) interaction. As they are in the last stage now, Muslim immigrants can no longer isolate themselves. They have to face their challenges, whether they be political, economic, cultural, or social. It no longer suffices to build mosques, which at one point was an inevitable step for early immigrants. But given the numerous changes that the Muslim community has undergone, the focus shifted to the development of scientific, educational, professional, and outreach institutions.⁸¹ Many of these challenges have jurisprudential dimensions that required Muslims to seek answers from qualified religious authorities. The main concern of those minorities is how to lead an Islamic life. This concern, al-Qaradāwī argues, should not worry Muslims. Rather it is a positive sign that Islam still has an impact on the Muslim's conduct and actions, even if the Muslim is an expatriate, away from his native Islamic community.⁸² It becomes evident that al-Qaradāwī is talking specifically about immigrants from Muslim countries.

The questions posed by those who live as a minority were answered by a good number of Muslim scholars. Those scholars were mainly located in the immigrants' home countries and were known for their piety, knowledge, and perhaps political orientation. Al-Qaradāwī, however, does not endorse most of these fatwas, arguing that the scholars who responded to these questions lack the specific knowledge of the immigrants' conditions and their sufferings in their non-Muslim land. In their answers, those jurists rely on *fiqh* manuals, which is not enough to provide proper answers. Muslim minorities need a jurisprudence that is based on three pillars: reality, text, and *Shari'ah* deduction rules.⁸³

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

- the role and nature of *fiqh*;
- the significance of the contemporary Muslim presence in the West; and
- a methodological framework.

The Role and Nature of *Fiqh*

Fiqh is a science that guides the practical life of a Muslim. It helps the Muslim find the right solution in his everyday life. *Fiqh* is not enough to make someone a Muslim. The internal dimension in one's life, which is the focus of the science of purification and ethics, is more significant than his external application of jurisprudential rules.⁸⁴ Al-Qaraḍāwī's stress on the secondary position of *fiqh* in relation to ethics is important and represents a departure from other jurisprudential attitudes that stress the literal dimension of *Shari'ah* and make following a *fiqh* ruling a merit of its own. This position toward the role of *fiqh* in a Muslim's life explains al-Qaraḍāwī's stand on the necessity of better holding to one's belief in Islam, a creed of the heart, than the relaxation in some jurisprudential rules that may lead to deserting one's belief. This is reflected in many of al-Qaraḍāwī's fatwas and positions. For example, in his fatwas on a Muslim convert staying with her non-Muslim husband, al-Qaraḍāwī gives a detailed answer reviewing at least nine opinions on the issue, including those of well-known jurists 'Umar, Sufyān al-Thawrī and Ibn Taymiyyah. He concluded that the convert woman may stay with her non-Muslim husband. He argues that if one adopts the juristic majority opinion that the new convert woman has to be separated from her husband, the woman may renounce Islam because of her love for her children or husband. But if one gives her the option of the possibility of staying with her husband, the worst case, if this ruling is wrong, is that she would commit *zinā*, that is, adultery. Which is better, al-Qaraḍāwī argues: To commit *zina* or to denounce the faith? For him to keep someone under the fold of Islam is more important than to follow a certain *fiqhi* jurisdictions, even if it is the majority opinion.

Given this understanding of the position of *fiqh*, *fiqh* of the minority is not a unique type of its own. It is part of the general *fiqh*, with the same sources and methodologies. The only difference is that it focuses on a certain subject matter that was not known to previous jurists in such a pressing way or with such present-day world changes in the realms of politics, societal structure, and religion. In questioning the role of *fiqh* in the life of a Muslim, the jurists always argue that *fiqh* is the science that guides the life of a Muslim.⁸⁵

Al-Qaraḍāwī interestingly argues that the role of *fiqh* in the life of the Muslim minority exceeds this normal description. It helps Muslims become flexible and positively interact with the society they live in. It helps them recognize, practice, and maintain their religious, cultural, economic, and political rights that they were entitled to in the constitutions. It helps them perform their duties, religious, cultural, and social, without being held back

by a religious fanatic or being left to their whims and desires. It helps them also preach the message of Islam within their society due to their understanding of the culture of the place and its language.⁸⁶

Al-Qaraḍāwī's use of terms like "interaction" and "constitution" in describing the role of *fiqh* suggests two readings. The first is that al-Qaraḍāwī is utilizing a "modern" language to relate to the role of law in a society that used to be in classical books: achieve justice and maintain order. Positive interaction cannot be but through mutual respect and justice. Constitution is meant to maintain order. The second is that al-Qaraḍāwī wants to open the door wide without barriers, and even to make it obligatory upon Muslims living in the non-Muslim polity to integrate with the non-Muslim society. This engagement is not based on religious superiority but on concepts of constitutional rights and duties. Any fanatic religious understanding of isolating oneself has to be ignored. This understanding and such a formulation of the role of *fiqh* in the life of the Muslim minorities represent a paradigm shift in the contemporary legal debate. It departs from the traditional jurisprudential legacy of limiting the minority questions to the legality of staying in a non-Muslim territory and what it follows of rules pertaining to the *hijrah* from these lands. Reading his works for the minority, one does not see the classical debate on questions of Islamic jurisdiction (if it territorialized or extra-territorialized, that is, applied only within the Islamic state or also applicable outside), or on the issue of *Izhār al-Dīn* (manifesting one's religion) and its different interpretation (is it limited to rituals, or mundane practices or to legal punishments?). The absence of the various juridical debates of these issues from his discourse indicates his unwillingness to reproduce the controversy in an era that has different rules, that is, constitution, civil society, human rights, minority rights, etc.

The Significance of the Contemporary Muslim Presence in the West

For centuries, the relationship between Islam and the West had been based on war, enmity, and hatred. The image of "the enemy other" prevailed in their minds and governed their positions. No Muslim was allowed to stay in "the Other's" land but for a strong justifiable legal reason. Trade and education were not enough reasons to stay permanently in the non-Muslim territory, especially those in war against Muslims.⁸⁷

Al-Qaraḍāwī rejects this historical position. He argues that Muslims should realize that their presence in the contemporary West has become an obligation. Muslims are carriers of a universal message that has to reach

the West, the leading power of our present time. If Muslims don't have this presence, they should exert their utmost efforts to create it. Muslims should have an influence like that of the Jews, who are a religious minority like them, on the cultural and political life of the West. Al-Qaraḍāwī concludes, "There is no space to ask a question about the legality of residence in a non-Muslim country, or as some jurists call it "the abode of disbelief." If we prohibit that, as some scholars might want us to do, we will close the door for conveying the message of Islam to the world. If this was the case, Islam would have been confined to the Arabian Peninsula and would not have spread beyond it."⁸⁸

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

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

A Methodological Framework

The main challenge that the advocate of *fiqh al-aqalliyyāt* encounters is how to develop a concrete methodology that allows them to both achieve their goals and at the same time not depart from the traditional juristic framework and style. Al-Qaraḍāwī was the first to draft a methodology on

this line. Within less than 20 pages, he laid down the basic framework of his methodology.

He distinguished between the methodology and sources of *fiqh al-aqallīyyāt*, which in most *uṣūlī* contemporary *fiqh* literature is not highlighted. The *fiqh* of minority sources are the same as the general traditional *fiqh*: Qur'an and Sunnah come first, with the Qur'an having the leading power. Then follows *Ijmā'* and *Qiyās* respectively. After that come the contested sources of *Istiṣlāh*, that is, consideration of public interest, *Istiḥsān*, that is, a ruling based on jurists' discretion without a legal proof, *Sadd al-Dharā'i'*, that is, a ruling based on precaution to block the means for an unlawful act, *Urf*, that is, a ruling based on custom, and other similar categories.⁸⁹ After outlining the sources, al-Qaradāwī then embarks on the task of elaborating on his methodology, which qualifies the use of these sources and directs them to serve his general position. The baseline of his methodology upon which other methodological principles are built is the need for sound contemporary *ijtihād*. Whatever the question posed in a minority context, it does not leave the circle of *ijtihād*. The question either exists in *fiqh* manuals or not. If it exists, then the mufti has to apply the "elective *ijtihād*," that is, select the best opinion that corresponds to the present reality, even if it is the opinion of an individual jurist and not the one that is agreed upon in consensus by jurists. If the question does not exist, then a "creative *ijtihād*" is sought.⁹⁰ One should approach the process of *ijtihād* not as an innovation in religion but as a part of the renewal process of religion that the Prophet envisioned.⁹¹ If *ijtihād* is the baseline, then the general comprehensive jurisprudential rules are the pillars. Rules such as "Matters are judged with their objectives," "Custom is legislative," "What leads to a *wājib*, an obligation, is *wājib* in its own right," "Hardship requires easiness," etc., have to be considered and utilized by the jurist when he investigates the questions.⁹² *Ijtihād* and general comprehensive jurisprudential rules have to be tied with the jurisprudence of reality. Text does not lead to solutions if disconnected from real facts on the ground. If the text informs us about the illegality of bank loan transactions because it might entail dealing with usury, and then the reality, as defined by experts, informs us that purchasing houses in the West is a necessity for the Muslim community to support itself, and the only way to purchase the house is through a bank loan, then the jurist has to consider this reality and suspend the text because of the factual necessity.⁹³

The question of reality-based *ijtihād* in minority situations complicates the analysis. The reality changes from one minority to the other and even from one group of a certain minority to the other. This means that one will have multiple *ijtihāds*, resulting in multiple rulings. That is why some advocates of this *fiqh* call for case-by-case studies/*fatwas*. This constitutes a

problem because one of the goals of *fiqh* is to provide rules so as to unite people but it seems in the minority situations, the *fiqh* will be localized/individualized, exactly like the nature of the societal structure in the West.

Along with the principle of multiple *fiqhs* comes another methodological focus, that is, the community is the center of this *fiqh* and not the individual. Since *fiqh al-aqallīyyāt* deals with a special case of necessities, it entails a reconsideration of the traditional jurisprudential framework in which jurists' focus in cases of necessities was mainly on the practice of the Muslim individual in the Muslim state. In the context of Muslim minorities, the community as a whole, al-Qaraḍāwī argues, should be seen as a collective entity and the ruling could and should consider their collective interests, and not only the interests of certain individuals.⁹⁴

At this conjecture, one can see the dilemma of al-Qaraḍāwī. He wants to empower the minorities and extend his intellectual support to them, but he cannot do that but through the reality of their disempowerment as minorities, which means weakness, exceptions, and necessities. The result is somehow a confusing methodology that on one side calls for a well-defined category of *fiqh*, but on the other hand, when asked about its framework, subjects, or parameters, does not provide a clear answer. The question that arises is that of how a legal framework can be based on exceptions and cases of necessities.

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

Here it is worthy to note that this approach of al-Qaraḍāwī is not only adopted in minority questions. It is actually a basic principle in al-Qaraḍāwī's thought that he did stress in many of his publications. Al-Qaraḍāwī always states that materialistic life drives people into hardships. It is, therefore, the role of the mufti to facilitate things and to take the side of licenses so as to encourage people to stick to their religion.⁹⁵ For him, the principle of *taysīr* should take two parallel lines: *taysīr* in understanding and *taysīr* in application. On one hand, people in contemporary times are not familiar with the language or the methodology of traditional *fiqh* discourse. There is

a pressing need to rewrite the *fiqh* in an easy understandable language that avoids technical ambiguous terms so as to make it accessible for contemporary Muslims. On the other hand, this *taysir* in understanding should be paralleled with *taysir* in application through a consideration of license-based rulings that take into considerations people's needs.⁹⁶ This principle, however, should not contradict with the clear-cut texts of *Shari'ah*.⁹⁷ Although this argument may be theoretically accepted, practically it raises many questions, such as, what is meant by a clear-cut text, and who would define such a text? How does one relate this rule to other rules of *darūrah*? And to what extent can a legal ruling based on *taysir* survive? In other words, is such a rule permanent? This approach made al-Qaradāwī a target for criticism from certain jurists and trends, to the extent that they called his book *The Lawful and the Prohibited in Islam* "the lawful and the lawful in Islam."

Another problem with al-Qaradāwī's notion of *taysir* is that it makes *fiqh* an egalitarian and open source for everyone, not only to learn from but also to teach others. In this type of *fiqh* manuals, *fiqh* becomes as a codified law book with specific rules and regulations. This makes everyone a jurist and results in the loss of the integrity, subtlety, and creativity of jurisprudence. Al-Qaradāwī unconsciously reproduces the era of *taqlid*, that is, imitation, but this time it is not a *taqlid* of a deceased imam, but a book. At the same time, al-Qaradāwī calls for *taysir*, he demands a special position for jurists and *fiqh*. This situation will always create a tension between the expert jurist and the "lay" jurist. This is actually one of the main problems in modern-day Islamic discourse, where the voice of lay jurists is followed more than that of the real experts.

A second methodological point in al-Qaradāwī's discourse is his call for gradual application of the rulings of *Shari'ah*. He argues if the conditions of some groups of Muslims require applying the rulings gradually, then one can follow the early example of the Qur'an and the practice of the Prophet to do the same. Here again, this methodology is not limited to Muslims in minority positions. Al-Qaradāwī actually calls on various occasions for the gradual application of *Shari'ah* even within Muslim countries.⁹⁸ Al-Qaradāwī's stress on gradual application in the case of Muslim minorities, especially for the new converts, is voiced in many of his publications. For example, in his defense of Sayyid Sābiq's book *Fiqh al-Sunnah*, al-Qaradāwī argues that such types of books that do not stick to one *madh-hab* are essential, especially for new Muslims who come to Islam with no commitment toward a school or a certain sect.⁹⁹ On another occasion, he was asked about Japanese converts who love to drink alcohol and if they are commanded to stop drinking, they may leave Islam. Al-Qaradāwī responded that it is better to teach them first the fundamentals of faith before *furū'*, that is, the subrules. He advises the Muslim imams to follow a gradual path with new converts.

After that, if they still do not give up drinking, they should be left to Allah, without forcing them or leading them to leave the religion. It is better, al-Qaraḍāwī affirms, to leave them die while they are still Muslims and leave their accountability to God.¹⁰⁰

Freeing oneself from following a certain *madh-hab* is a basic tenet in al-Qaraḍāwī's thought. In his first book, *Al-Ḥalāl wa-al-Ḥarām*, he states, "it is not proper for a Muslim scholar who has the ability to balance among the opinions of jurists to be a captive of one *madh-hab* or one *faqīh*."¹⁰¹ *Ijtihād* is never final, al-Qaraḍāwī argues. If this is so, Muslims should free themselves from fanatic obedience to one *madh-hab* or sect.

Using the no-sect-based *fiqh* argument in the Muslim minority context is significant for two reasons. First, Muslims in the minority situations do not have the basic knowledge of *madh-habs*' debates and arguments to stick to one only. Even if Muslims come to follow, say the *madh-hab* of a certain country, Muslims will have a wide array of *madh-habs* since they come from different places, a matter which will create disputes among them. So it would be more reasonable to free oneself from following a certain *madh-hab*. Second, applying this principle will allow al-Qaraḍāwī himself to choose and combine opinions of different *madh-habs* without having the burden to justify his jumping from one *madh-hab* to the other, other than the fact that he is relying on a jurist.

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

Al-Qaraḍāwī's Fatwas

An overview of the minority fatwas that are included in al-Qaraḍāwī's books reveals a number of points. First, on many occasions the minority's questions are identical to questions asked by Muslims everywhere. There are questions about "stealing" the spirit of the prayer, shortening of woman's hair, intermingling between men and women, etc. Second, almost 40 percent of the questions raised by minority Muslims have to do with family issues, mainly those questions about the relationship between husband and wife in terms of rights and duties.¹⁰² In many such questions, the fatwas given represent a sort of social counselor advice rather than a religious ruling. Third, the peculiarity of Muslim minority questions appears when the question has to do with Muslim-non-Muslim interaction, be it on the personal level or on the business or political level. In this case, the fatwas present a challenge for

the muftis and reveal his/her knowledge and expertise in the field as well as his/her methodological approach. Given these three remarks, one may wonder if the term “*fiqh al-aqallīyyāt*” fits more than *fiqh* for Muslim-non-Muslim interaction.

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

Generally speaking, al-Qaradāwī's fatwas correspond with his general approach: an approach of easiness combined with a pragmatic discourse that focuses more on “wisdom-narrative” rather than “closed textual reading.” For example, in the case of taking usurious loans to buy a house, al-Qaradāwī argues that usury is categorically *ḥarām*, but since there is no other equal-in-benefit alternative, and based on the jurisprudential rule “necessities renders the unlawful lawful,” and in order to free Muslims from the economic burden and to empower them as a community and to enable them to convey the message of Islam, bank loans may be taken. The *wisdom-narrative* overcomes other traditional juristic legacies. The Muslim can inherit from his non-Muslim relative, *especially if he is in need of the money*. The newly convert *muslimah* may stay with her non-Muslim husband, *especially if he is caring and is expected to convert to Islam*. The new convert should not be forced to do all Islamic Law rulings at once. If s/he could not, for example, stop drinking, *s/he should be left as such with no accountability from the Muslim community other than kind advice and admonition*. A main argument presented in the previous three fatwas is the need *to maintain people's Islam* even if they committed an act that is deemed *ḥarām* by many Muslim jurists.

Al-Qaradāwī's pragmatism appears in giving two different fatwas for two almost identical questions. The first question comes from a Muslim student writing a research paper on the issue of dealing with non-Muslim neighbors in a non-Islamic polity. To complete his research, the student asked Al-Qaradāwī about the legal ruling pertaining to an invitation of a non-Muslim to his Muslim neighbor to have food with him. Having the possibility of serving alcohol on the table, the student asked, what the Muslim

should do. Can he accept the invitation and sit at the table with the intention of making *da'wah*? Al-Qaraḍāwī responds that a Muslim should not accept the invitation if he knows that there will be prohibited things served, especially if he cannot change that. Then al-Qaraḍāwī concludes that if there is a great hope that the neighbor will convert to or come close to Islam if his invitation got accepted, the Muslim may accept it.¹⁰³ Here the fatwa structure suits the purpose of a research paper and comes close to the traditional position of the majority of jurists. The second question comes from Muslim immigrants in Japan asking about accepting an invitation from their non-Muslim coworkers or neighbors to attend their social gatherings. The questioner indicates that accepting the invitation will strengthen the relationships and facilitate the *da'wah*. Al-Qaraḍāwī's approach is completely different. First he elaborates the different categories of prohibited commandments, to end up arguing that the prohibition of attending the gatherings that have, for example, wine served is meant "to block the forbidden" and not forbidden in itself. If this is the case, al-Qaraḍāwī argues, "it is permissible [to attend such gatherings] due to the need to befriend the people and strengthen their relationships with Muslims as well as freeing Muslims from the prison of isolation so that they would have a presence and an impact in the society."¹⁰⁴

It is clear that the driving thought of al-Qaraḍāwī in the first fatwa is to warn, if not to forbid, Muslims from taking this step, while in the second the attitude was clearly toward empowering Muslims to engage with their non-Muslim community. Al-Qaraḍāwī's electivism in issuing his fatwas is clear. Such electivism is based on the place, the purpose of the question, and the end result. It seems that the place has a say in al-Qaraḍāwī's conclusion. The first question comes from France where there is a large Muslim community that is already empowered with its institutions and infrastructure. In the second case, Muslims in Japan constitute a small community that is working to build itself. This is clear in al-Qaraḍāwī's other fatwas on the need to do more *da'wah* in Japan and be optimistic about it.¹⁰⁵ Also, the question determines the direction of the answer. The first question is for a research paper, so the answer is textually oriented. In the second case, it was a real problem that will have further consequences. Therefore it was more context based.

Al-Qaraḍāwī's fatwa structure is complex. Although the language used is simple and clear, al-Qaraḍāwī follows a subtle structure that serves two purposes. First, it attempts to convince the reader of the ruling, proving that it is based on proper understanding of *Shari'ah*. Second it responds to other scholars' objections and criticism, if any. Normally he starts with identifying the general outline of the subject matter of the question. Then he presents the opinions of the various schools, ending up usually with the opinion of Ibn al-Qayyim or Ibn Al-Jawziyyah, if there is any. He ends this

overview with what he thinks right in the present context. In conclusion, al-Qaradāwī blends the text and the context, trying to maintain the integrity of both. To create the balance, he mostly does not use any of the categorical *ahkām* labels, *wājib* or *ḥarām*, in his conclusions. He maintains the balance by arguing it is “permissible,” “It is not a must,” “It is the priority to,” etc. Also, the presence of exceptionality, lifting hardships, making *da’wah*, and utilizing the legal license are felt in almost all the fatwas. One here may pose the question, if necessity is the determinant factor in this *fiqh*, why make such extensive efforts to establish a minority *fiqh*? Is it to legalize necessities? Is not that like legalizing the already-legalized?

The interactive dynamism between the text and the context is a key feature in Al-Qaradāwī’s fatwas. On one hand, one can note an “apologetic relationship,” where the context limits the application of the text. An example of this case is his fatwa that Muslims should respect the laws and regulations of the country they live in, even if these rules may prevent them from enjoying rights given to them by Islam, say, for example, the right to polygamy.¹⁰⁶ On the other hand, one can note “an exploitation relationship,” where the context is indirectly utilized to put the text into action. In one fatwa, the questioner explains that his British wife suffers from ovarian cancer and has to undergo a surgery. As a result she cannot get pregnant and does not feel sexual desire. Then the questioner argues that he wants to marry another woman, but the law in the country where he lives does not allow that. So he wonders if it is possible to divorce his wife in order to get a permission to marry another woman. He suggests also that after a while he will take his first wife back, that is, officially he will be married to the second wife and religiously he will be married to both the first and the new wife. The questioner confirms that his wife is content with this solution. If one follows al-Qaradāwī’s above-mentioned fatwa that one should follow the rules of the countries one lives in, then the answer should be clear that this is not possible. Actually in other fatwas, al-Qaradāwī ruled illegal of what is called “paper marriage.” However, in the present situation, al-Qaradāwī issued a contesting fatwa. He argues:

There is no Islamic objection for that person to officially divorce his wife in order to be able to get married to another wife...and it is permissible for this same husband, outside the official bureaucracy, to take his first wife back immediately or after a while as he wishes as long as she is still observing her waiting period...the laws of western countries do not prevent the man from intimate relationship with a woman, even if there is no marriage contract. The laws of these countries do not have any authority over him or the woman. [so our case here], the woman is his wife in front of Allah and among Muslims, even if not considered as such by the law. The man, however, has to guarantee the rights of this woman [the first wife].¹⁰⁷

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

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

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

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

is centered on the person of al-Qaraḍāwī. It is not surprising that many of the fatwas in the ECFR fatwas collections are identical with, even verbatim to, al-Qaraḍāwī's published fatwas.¹⁰⁸

Given the above-mentioned analysis, it becomes evident that Qaraḍāwī's discourse on Muslim minorities has led to a heated debate on a subject that once was thought to have predetermined rules.¹⁰⁹

Conclusion

Undoubtedly, al-Qaraḍāwī is a pioneering figure in the discourse on the role of *Shari'ah* in modern life. For Muslim minorities, he is more than a mufti or an authority. His position is like the bridge that connects their life to *Shari'ah*. Although his name might not be known to every Western Muslim individual, especially the young generation, his discourse has been a point of reference to many intellectuals, activists, and imams. The prevalence of al-Qaraḍāwī's discourse emerges as a central criterion by which Muslims' integration and cultural assimilation are measured,¹¹⁰ along with maintaining a level of religiosity, which has been called "civil Islam."¹¹¹ Based on *Shari'ah*, *ijtihād*, and reality, al-Qaraḍāwī attempts to build a discourse of a normative Western Islam from within.

Chapter 4

Ṭaha Jābir al-‘Alwānī *Fiqh al-Aqalliyyāt*, a Model of Islamization of Knowledge

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

This chapter attempts to explore the reasons that made al-‘Alwānī strongly advocate this *fiqh*, and the relationship of such a position to his thought on Islamic reform. This chapter also examines to what extent al-‘Alwānī’s contribution influenced the debate on *fiqh al-aqalliyyāt*. However, in the beginning, a brief outline of al-‘Alwānī’s academic life is presented. The purpose of this section is not intended to present a biography of al-‘Alwānī, but rather to focus on how the issue of the *fiqh* of minorities carved its way into his thinking. The chapter will then briefly introduce al-‘Alwānī’s intellectual project of the Islamization of knowledge, with a view to examining the relationship between his project and his theoretical framework of *fiqh al-aqalliyyāt*. The chapter then focuses on al-‘Alwānī’s contribution to *fiqh*

al-aqalliyyāt and to what extent it differs from current and earlier trends. A review of some of al-ʿAlwānī's fatwas will be provided to see to what extent his theoretical writings can be applied to real questions. Finally, a conclusion will be furnished to summarize the argument of this chapter.

Seeking an "Intellectual Home"

Although al-ʿAlwānī was born in Iraq in 1935, his career as an intellectual and Muslim jurist flourished in Egypt, where he studied in al-Azhar for almost 20 years (1953–1973). His main field of specialization was *Shariʿah* and law—the name of the same faculty from which he obtained his BA in 1959, MA in 1968, and PhD in 1973. In 1975, al-ʿAlwānī moved to Saudi Arabia, where he became a professor of Islamic jurisprudence and its principles in the Faculty of *Shariʿah*, Muhammad bin Saud University. In addition to his position at the university, al-ʿAlwānī also served as a legal counselor in the Saudi Ministry of Interior in 1975–76 and as a teacher of Islamic Culture at the Police Institute in Riyadh (1977–1983). At this stage in al-ʿAlwānī's life, teaching appeared to be his main focus. He did not produce significant writings during the ten years he spent in Saudi Arabia, with the exception of the publication of his PhD dissertation,³ an introductory book about *Ijtihād*,⁴ and a verification of Muṣṭafā al-Wirdānī's *Al-Nahy ʿan al-Istiʿānah wa-al-Istinṣār fi Umūr al-Muslimīn bi-Ahl al-Dhimmah wa-al-Kuffār*.⁵ He did publish a number of articles, but they were limited in scope and circulation.⁶ His stay in Saudi Arabia, however, gave him the opportunity to participate regularly in international conferences, especially those organized by Saudi-based institutions for the purpose of international *daʿwah* activities, such as the Islamic Youth Camp, the Islamic Federation for Islamic Organization, and the World Assembly for Muslim Youth. It seems that through these conferences, he became more attached to Muslim communities living in non-Muslim countries and their concerns. Also in 1977, al-ʿAlwānī became involved in the process of the establishment of the International Institute of Islamic Thought (IIIT) in Virginia, USA, and its main project of the Islamization of Knowledge. In 1983, he immigrated to the United States and assumed the position of the director of the research unit at the institute between 1984 and 1986. He then became the vice president of the IIIT for ten years from 1986 to 1996. He became the president of the institute for a couple of years in the late 1990s and the beginning of 2000s.

In the United States, al-ʿAlwānī dedicated most of his writings to the question of the Islamization of Knowledge, which he considered to be the

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

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

question in a direct way but also presented a sociolegal historical perspective on the issue.¹⁰

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

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

Until this moment, to the best knowledge of this researcher, no satisfactory critical study of al-'Alwānī and his thought exists. There are a few online and newspaper reviews of his recent books, but they are mostly limited in scope and failed to present a comprehensive overview.¹⁴ This lack of critical resources may be due to the nature of al-'Alwānī's personality as he attempted to keep a low profile and preferred not to engage in controversial issues. Also, his writings were mostly dry and sociologically oriented. They were published on a very limited scale, through the publications of the IIIT. On the other hand, there are Western voices that accuse al-'Alwānī of links to terrorism. This claim is mainly based on his position on the Palestinian-Israeli conflict. It is more of a politicized Islamophobic claim that reflects fear, rather than intellectual endeavors to examine the

thoughts and publications of al-ʿAlwānī. One of the few available writings on al-ʿAlwānī's thought is Shammai Fishman's article "Ideological Islam in the United States: *Ijtihād* in the Thought of Dr. Ṭaha Jābir al-ʿAlwānī."¹⁵ Shammai concludes that al-ʿAlwānī is a mainstream orthodox Muslim cleric, and his program is no more than a reconstruction of Muhammad's days.¹⁶ According to Shammai, the proper way to solve the *ummah*'s current problems, in the eyes of al-ʿAlwānī, is through Islamic methodologies, that is, the Islamization of knowledge.¹⁷ Although Shammai tried to present a balanced overview of al-ʿAlwānī's position on *ijtihād*, his data were limited. He relied mostly on a number of online news articles, a few articles of al-ʿAlwānī in the *American Journal of Islamic Social Sciences* (AJISS) in 1992 and 1999, and al-ʿAlwānī's book *Usul al-Fiqh al-Islami: Source Methodology in Islamic Jurisprudence*. With such limited sources, Shammai's conclusions reveal another form of generalization that does not withstand critical analysis. As will become clear in the following section, al-ʿAlwānī's version of the Islamization of knowledge does not simply mean limiting oneself to Islamic methodologies. Rather, it transforms the current scientific methodological apparatus in various fields of knowledge to be divine conscious, that is, adding an element of divine intervention/revelation that will guide humanity to develop purposeful knowledge—not knowledge for the sake of knowledge. Al-ʿAlwānī's "reconstruction of the Prophet's days" does not intend to restore the fatwas and the rulings of these days. Rather, it attempts to understand the wisdom and the methodology that the Prophet and early Muslims followed in the context of their time, and then try to benefit from this methodology in the context of the present time.

Project of Revival: Islamization of Knowledge

In the summer of 1977, a group of Muslim intellectuals met in Lugano, Switzerland, to discuss the current condition of the *ummah* and possible ways of reform. It was argued that one of the main reasons for the weak condition of the *ummah* is its lack of a vision of its own. To materialize this vision, they collaborated to establish an international institute that would provide a platform for the reform and revival of the Muslim *ummah*. A few years later, they founded the International Institute of Islamic Thought in Virginia, USA, in 1980. As a strong advocate of the project and as a founding member of the Institute, al-ʿAlwānī became the head of the research unit of the institute in 1983. In the following years, he became the vice president and then the president of the institute.

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

From an Islamic perspective, al-‘Alwānī argues that neither pure experimental science nor dogmatic theology produces purposeful comprehensive human knowledge. Islamic sources of knowledge are exclusive and appreciate input from various sources. Revelation, however, is the first essential source of knowledge. This does not imply a rejection of the role of intellect or experimental knowledge. Rather it affirms that man should derive his knowledge concepts from a divine source, that is, Qur’an and *Sunnah*.²⁰ In other words, knowledge is produced according to two parameters: Islamic in terms of goals and objectives and scientific in terms of tools and production processes. The combination of these two factors represents the core of the concept of Islamization of Knowledge. According to al-‘Alwānī, Islamization of Knowledge is a product of the interaction of three elements: the Unseen, the Universe, and Man. Each plays a role in the construction of knowledge: the Unseen, that is faith, sets the objective; the Universe represents the material and the substance; and Man is the agent and the intellect. Faith determines the direction of the intellectual, psychological, and emotional life of the Muslims and is reflected in art, literature, architecture, etc. Faith provides Man with a number of hypotheses that constitutes the basis for analytical and scientific methodologies for all sciences: theological, social, and natural.

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

that of the universe. To see the connection between al-‘Alwānī and other reform scholars, one may refer here to al-‘Alwānī’s reference to Rashīd Riḍā in his writings. As for his connection to al-Qaraḍāwī, both belong to the Islamic movement, are members of transnational Islamic organizations, and were in contact with each other.

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

Based on the first Qur’anic verses revealed “Iqra’ 96:1–5,” “Nūn 68:1–2,” and “al-Raḥmān 55:1–3,” al-‘Alwānī argues that humanity has been ordered to understand its role in the universe by undertaking two complementary readings. The first reading is the reading of Revelation, that is, Allah’s Book, the Qur’an, in which the world of the Unseen is unfolded and matters of religious significance are explained. The second reading is that of the Book of Creation (the natural universe) in which the laws of nature and existence are demonstrated. To undertake a reading of either without referring to the other will disrupt human life. If one ignores the first reading, he loses sight of the Unseen and his relationship to God and his role as His vicegerent on earth. It makes life ego driven and self-centered and produces a positivistic understanding of knowledge that negatively influences the structure of society. On the other hand, if one focuses only on the first and ignores the second, it can easily lead one to isolation, or authoritarianism. Reading both, that is, the revelation and the universe, creates balance. The Book of Revelation discovers the worlds of the Unseen and how they manifest themselves in nature. It links what is absolute to what is specific to the best of the ability of the human intellect, while the second reading links what is particular to what is general and absolute. In so doing, life reveals its purpose and man fulfills the trust assigned to him by God.²² After presenting his main hypothesis about the dual reading of *wahy* and *wujūd*, al-‘Alwānī focuses on how to read the *wahy*, arguing that the Muslims’ reading of their book needs to be reconsidered and reevaluated.

Reading the *Wahy* in the Age of Methodology

Muslims need to develop a new methodology of how to read the Book of Allah. Reading it through the eyes of earlier interpreters makes it lose

its relation to modern times. The early Arabs understood the Qur'an from within their social and intellectual sphere that was different from the nature of the current contemporary civilization:²³

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

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

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

The Qur'an should be understood from within itself, through its unity of structure and its own language constraints and discourse. To understand the meaning of a certain Qur'anic concept or principle, a methodological scholar would search for various references of the same concept and its meaning in each context. Based on this search, a scholar can reach a better understanding of the word and its relevance to the higher value structure of the Qur'anic message.²⁸ This research mechanism requires one to give "intellect" its due role as a partner to the text, in terms of the function and the limits of the text in the present time.

Al-'Alwānī argues that this dual reading should be the methodology that guides the process of reading and understanding Islamic sources: the Qur'an, the *Sunnah*, and the *turāth*, that is, Islamic heritage. Applying this methodology aims at deconstructing the modern jurisprudential hypothesis of the nature of the interrelationship of the text, the tradition, and the *turāth* to each other and their relationship to the present world. Moreover, al-'Alwānī's methodology reconstructs a new framework of the roles and function of the objectives of *Shari'ah* through recharging long-held objectives of *Shari'ah*,

such as the universality of Islam, the sovereign nature of *Shariʿah*, and the finality of the Islamic message, with new meanings that are inclusive to humanity, regardless of religion or ideology.

The role of the *Sunnah* in relation to the Qurʾan must be thoroughly understood. The Qurʾan is the source of legislation, while the *Sunnah* presents a model of its application in a real-life situation.²⁹ Without the *Sunnah*, it would be impossible to elaborate on how to apply Qurʾanic values to real existential circumstances.³⁰ It should be understood that the *Sunnah* responds to the reality that the Prophet had to deal with. This reality differs considerably from what Muslims confront today. This means that Muslims need to construct a methodology to understand how to relate the teachings of the revelation to real life. In other words, when reading the *Sunnah*, the focus has to be not on its legal rulings but on its reasoning. The *Sunnah* is to be utilized for *taʿassy*, that is, a role model, and not for *taqlid*, an emulation model.³¹ Such a methodology will release the *Sunnah* from being a collection of particularized responses to specific questions and circumstances that are transformed by the litigious into conflicting statements, much as if they were legal opinions voiced by different imams.³²

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

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

Following this methodology in reading the Qurʾan, the *Sunnah* and the *turāth*, the ultimate higher values and objectives of the Message of Allah reveal themselves to us as *Tawḥīd* (unity and oneness of God), *Tazkiyah* (purification of the soul), and *ʿUmṛān* (applying the values and objectives

of the message into the existential world).³⁷ This categorization is a new understanding of the objectives of *Shari'ah*, which was entertained by the jurists for centuries. Jurists used to categorize these objectives into five, *al-Kullīyyāt al-Khams* that is, protecting oneself, religion, lineage, honor, and property. Some *'uṣūlī* scholars attempted to expand these objectives and recategorize them into *ḍāruriyyat* (necessities), *ḥajīyāt* (needs), and *taḥsiniyyāt* (luxuries). Contemporary scholars developed these objectives to include contemporary concepts such as human rights, preserving the environment. But here al-'Alwānī leaves the circle of practical categories such as that of body, money, and wealth, and introduces constructs that present abstract concepts. As such they are comprehensive, covering the dogmatic, spiritual, and social life aspects, but at the same time, they are vague too, allowing for more inclusive interpretations.

Controversial Methodology

The question of the impact of time and space on Islamic legal texts has always been a source of debate and tension among Muslim scholars, who always attempted to approach it from within the tradition by introducing legal principles,³⁸ legal tricks,³⁹ etc. Some contemporary scholars, however, departed from this tradition. They called for a new methodology that incorporates philosophical assumptions, sociological hypotheses, and linguistic adaptations.⁴⁰ This methodology, to which al-'Alwānī belongs, raises various methodological problems. For example, al-'Alwānī's argument on "the combining of two readings" poses many questions concerning its conceptual framework. Al-'Alwānī creates a duality: the Qur'an versus the Universe, the Unseen versus the Known, as if both have different realms of existence. Although al-'Alwānī may argue that this philosophical duality does not exist in reality since the Qur'an and the Universe lead to each other, still it is unclear, at least, methodologically, how to realize this combination, especially when this reality is subjective, as it is based on the understanding of an interpretative community of a certain time and place.

Another controversial argument of al-'Alwānī is his point to use the *Sunnah* as a model of application and not as a source of legislation. Such a generalization does not stand up to historical or legal analysis. This conclusion might have been better presented if it had been preceded by an analysis that distinguished between the different layers, roles, and functions of the *Sunnah* in Islamic Law. Al-'Alwānī is well aware of this debate as an expert in Islamic Law, but he opts to leave his thesis open for criticism. In Islamic tradition, the distinction is always made among *Sunnah*, *Hadith*, and *Sirah*.

Each one of these categories has its own subcategories and serves a specific purpose. Certain reports serve as legal arguments, while others may serve as historical narratives. The legal arguments themselves can be context specific or general statements. A report such as "I denounce a Muslim who lives among the non-believers," is a case in point. Does it report a mere historical incident? Or does it represent a legal ruling? If so, is it applicable to everyone at all times and in all places? Al-ʿAlwānī's position toward the *Sunnah* as only a model of application of divine wisdom, and not of legislation should have been supported with a definition of terms and examples of its application in modern life settings.

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

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

The critics of this trend argue that such a methodology leads to the denial of certain rules, for example, apostasy, that enjoyed consensus in the ranks of legal schools. Al-ʿAlwānī's argument, especially that the *Sunnah* is a source of illustration of *Shari'ah* and not a source of legislation, subjected him to severe criticism to the extent that he was accused of apostasy.⁴³ The basis of such a criticism is the generalization in al-ʿAlwānī's thinking and presentation of ideas. Although he has been writing about the need for a new methodology in dealing with the Qur'an, a new approach to legal studies and a different mechanism in reading history, he has not yet provided

a thorough well-thought-out monograph on the subject. It seems that al-ʿAlwānī prefers not to delve into such critical issues of text and jurisprudence to avoid raising controversy among the masses, further than what is already in existence. It seems he follows the tradition of earlier scholars who avoid talking about certain issues for fear of spreading *fitnah*, that is, dissension, in the community.⁴⁴ Also he may have avoided more indulgence in this issue to avoid confrontation with the contemporary dominant religious discourse in the Muslim world, the literalist-*wahhabī* tradition. Instead of taking these issues of *Sunnah* and *turāth* as his starting points, al-ʿAlwānī turned to *fiqh al-aqalliyyāt* as a new ground in which he can apply his controversial methodology without the need to face immediate opposition or creating dissension in the ranks of ordinary people. Even with this new *fiqh*, al-ʿAlwānī presented his position in concise research as early as 1990. Since then, the same research was republished a couple of times with minor modifications, without taking the next step of elaborating on his methodology or testing it on a wider scale.

Al-ʿAlwānī: Pioneer of *Fiqh al-Aqalliyyāt*

In his capacity as the director of the research unit at IIIT and the president of the American *Fiqh* Council in the mid-1980s, al-ʿAlwānī used to encounter legal questions that were posed by American Muslim communities. Having observed the conflicting answers given by various muftis to these questions, al-ʿAlwānī compiled 28 questions, which he considered the most relevant to a Muslim minority context. This compilation included questions on naturalization, marriage, bringing up children, work, selling mosque lands, food, and taking usurious loans. With a view to getting authoritative answers that unite Muslim communities and end the fatwa chaos among them, al-ʿAlwānī sent these questions to the Islamic *Fiqh* Academy in Jeddah, Saudi Arabia, attached to a letter that explained the dire need for minorities to get authoritative answers that consider their specific context. The letter states,

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

led them to a critical situation that resulted in terrible consequences—the least of which is their assimilation into the countries they live in, then their overlooking of their Islamic identity and their Muslim brothers.⁴⁵

The Islamic *Fiqh* Academy forwarded the questions to seven muftis, asking for their individual take on these questions. In its 1986 third annual meeting in Jordan, the Islamic *Fiqh* Academy discussed the fatwas given by those different notable muftis and issued a number of resolutions pertaining to a number of these questions and deferred others for more research. The given resolutions were not very different from the fatwas given by other traditional jurists. The resolutions presented conditional fatwas based on concepts of necessity. For example, Muslims can bury their dead in a non-Muslim graveyard, or work in a place that deals with illegal Islamic food, such as pork or wine, in case of necessity. They, on the other hand, made illegal shaking hands between men and women and prohibited Muslim women to live alone in a non-Muslim land. These answers and their reasoning were not good enough for al-ʿAlwānī. He became more convinced of the need for developing “indigenous *fiqh*” that combines legal tradition with the living context. Al-ʿAlwānī introduced his call to establish a *fiqh* for minorities.⁴⁶ He justified his call by arguing that the present Muslim minority experience is completely different from earlier ones. Throughout the history of Islam, Muslims’ life was centered in the Muslim world where the space was officially Islamic and the laws claimed to be *Shariʿah* based. Muslim travelers, traders, Sufis, diplomatic envoys, political dissidents, or indigenous converts were few in number and were scattered in various lands. They did not occupy a prominent place in the legal thought. Jurists dealt with them as people in transition who had to resettle at the nearest occasion in a Muslim land. Given the nature of traditional societal structure, Muslim jurists developed a distinct Islamic culture that at times facilitated *daʿwah* while at others caused friction with their non-Muslim host society that forced them into assimilation or otherwise persecuted and enslaved them. Encountering new conditions, those Muslims who live in a non-Muslim space would seek fatwas, especially during *hajj* season, from ‘*ulama*’ and jurists. The jurists were aware of the legal, cultural, and psychological conditions of those Muslims, and consequently they issued them appropriate fatwas that can be easily and conveniently applied to this time and space without infringing the main principles and aims of *Shariʿah*, as understood at that time. This perception of Muslim’s presence outside the land of Islam as a transient one did not urge Muslim jurists to think of them on their own terms as an independent category of Muslim communities. Rather those minority questions and fatwas were seen as simply a *fiqh* of crises or emergency.⁴⁷

In addition to this attitude of earlier jurists toward the position of Muslim minorities, al-ʿAlwānī argues that legislation or jurisprudence, whether divine or man-made, is shaped by the cultural tradition of the group that produces it.⁴⁸ In other words, legislation and tradition establish a polemical relationship that within time becomes very hard to disintegrate. Islamic Law is no exception. Muslims in the heartland of Islam establish a legal ground that stems from their religious tradition, historical experience, and cultural customs, creating a mix that dominates to a great extent the Muslim jurist's mind-set. When approached by an individual who does not belong physically to his legal ground and asked about something that lies outside the scope of his legal environment, the jurist might not see the real underpinnings of the question and might not realize the need of the questioner. In some cases, the jurist may give an answer that would lead to unintended results. Although this polemical relationship between legislation and culture did not have a great impact on earlier Muslim minority experience, because of the structure of the world powers and the then-ongoing war between Islam and Christendom, the contemporary Muslim minority experience is completely different. They cannot break away from the modern parameters, such as economics, public life venues, media, education, politics, etc., that control the society they live in.⁴⁹ Given this modern societal structure, the response of jurists who live outside this context will mostly be inadequate.

In order to deal with minority concerns properly, al-ʿAlwānī argues for a new *Ijtihād* that goes beyond the inherited *fiqh* legacy. The jurisprudential heritage should be seen as context specific, that is, is produced for a certain historical moment and cannot be literally taken to answer questions of another historical context. Conversely, it can be used as a legal precedent that can be studied in order to discern its internal principles and objectives to make use of them in other contexts.

The "non-applicability" of the Islamic legal heritage in contemporary minority contexts represents an integral part in al-ʿAlwānī's thesis on *fiqh al-aqalliyyāt*. This non-applicability argument is based on methodological concerns and conceptual formulation. Methodologically, the sources of legislation for the *fiqh* heritage need to be reevaluated. The Qur'an should be the only absolute source. The *Sunnah* is the application of the Qur'an in the context of the Prophet's era with a view to presenting us with a model of how to apply the higher principles and objectives of the Qur'an and the message of Islam. In terms of concepts, the Islamic legal heritage is based on the medieval geopolitical map of dividing the world into two, "Us" and "Them," which was translated in the Islamic tradition as "the abode of Islam" and "the abode of war." The jurists overlooked the Qur'anic concept of the world and human geography. Moreover, they ignored the principles

of the “universality of Islam,” “the witnessing *ummah*,” and “the final message” in their discourse as defining factors in their rationalization of the nature of the relationship between Muslims and non-Muslims. Instead they developed a *fiqh* of individualistic nature that focuses on the Muslim individual who lives in a Muslim environment rather than developing a synthetic approach that relies more on the values and principles of *Shariʿah*.⁵⁰

This is a significant argument because it is the second time where a minority jurist stresses the need for a society-oriented *fiqh*. Al-Qaraḍāwī made the same argument. He confirms that the nature of the traditional *fiqh* is individual oriented. The cases were decided for specific individuals and for personal application.⁵¹ *Fiqh al-aqalliyyāt* is different. It has to be community based because of the absence of the political power that maintains the community welfare. In other words, *fiqh* in the case of minority becomes the polity, and the jurist is like the *amīr* whose job is not only giving advice but also maintaining order and public interest.

The novelty of the current minority context adds another dimension to the unsuitability of the Islamic legal heritage at the present time. In the early days, the relationship between a kingdom and its subject was based on ideological and cultural affiliation. Today “citizenship” changed this relation and created a completely different pattern to organize the relationship between the state and its citizens. The right of citizenship now is given on the basis of birth or marriage rather than on creed or cultural background. In earlier times, the rationale of power controlled the relationship between empires and their subjects. The introduction of “International Law,” “diplomatic conventions,” “United Nations,” etc. challenged this rationale and required states to protect immigrants and their rights. Above all, the world of earlier Muslim jurists did not experience the “global village” where cultures mix and positively interact on various levels, politically, socially, and even virtually. In another way, early Muslim jurists lived in a world where people of different cultures mostly met on war zones. This created “*fiqh al-ḥarb*,” that is, *fiqh* of war, and developed a culture of conflict, while what is needed in our present time is a *fiqh al-taʿāyush*, that is, *fiqh* of existence.⁵²

With such a complex analysis of the non-applicability of Islamic legal rulings in modern times, al-ʿAlwānī becomes a difficult target for analysis. He is not a literalist as he focuses on the wisdom of the text and its application in a specific context. He is not a traditionalist as his main objective is to eliminate fatwas based on concession and licenses. He does not claim to be a reformer or a modernist. The key word for his approach is “renewal.” But what exactly does this word mean? It does not mean Rashīd Riḍā’s or al-Qaraḍāwī’s approach, because unlike al-ʿAlwānī, both view the classical Islamic legal history as an integral part of their discourse. Renewal may actually mean, in the context of al-ʿAlwānī, renewal of faith values as

illustrated in the Qur'an. This is reflected at the end of his research when he stresses the place of mercy, equity, and justice in Islamic jurisprudence. This connection between values and *fiqh* redefines the meaning of *fiqh*, something that he acknowledges when he argues for the revival of *al-fiqh al-akbar*, that is, *fiqh* of creed, principles of faith.

Given all these above-mentioned arguments, the modern jurist, especially in the context of minorities, cannot take his fatwas from earlier *fiqh* manuals. The only way out of this dilemma is to establish a new *fiqh* that has its own internal mechanism derived from authentic Islamic sources and based on the social, political, and cultural ground of the community in context. This *fiqh* needs a new *ijtihād* that is based on the general objectives of the Qur'an and its values and relies on the *Sunnah* in terms of how it applied the Qur'anic values in the Prophetic era.

New *Fiqh*: New *Ijtihād*

At the outset of his theory of *fiqh al-aqallīyyāt*, al-'Alwānī de/reconstructs what is meant by *fiqh*. *Fiqh*, as defined in jurisprudential manuals, was not known among early Muslims. *Fiqh* originally, al-'Alwānī argues, means *fahm*, that is, "comprehension" of the wisdom of God, or as described by Abū Ḥanīfa "*al-Fiqh al-Akbar*," that is, greater *fiqh*, as opposed to the minor one that focuses on day-to-day specific questions.⁵³ *Fiqh al-aqallīyyāt* needs to restore this original meaning with a view to releasing it from the *fiqh* vacuum that reproduces nothing but a projection of the past into the present. The main goal of this *fiqh* is not to repeat the past or to give concessions or privileges to minorities but to develop a model of a Muslim rigorous, fully engaged community.⁵⁴

Trying to establish this *fiqh* requires, according to al-'Alwānī, the jurist to recognize the fundamental principles of his legal framework as well as the methodological tools that are valid for his research. This should not mean ignoring the rich *fiqh* legacy or its mechanism of technical sources or deductive methods. Rather, the jurist attempts to deploy the techniques and tools of *ijtihād* in a way that is compatible with time and current knowledge paradigms in order to restore the role of *Shari'ah* in modern life. The first of these fundamental principles is to understand the meaning and the function of *fiqh*, not as a manual of dos and don'ts but as a guidebook to direct the actions of man on this earth to assure that these actions are in line with the ultimate objective of man, as a viceroy of God.⁵⁵ *Fiqh*'s ultimate objective is to instill pure monotheism in the heart, to guarantee the prosperity of the universe, and to develop the ethical values of the individual.

In order to achieve this objective, al-‘Alwānī argues, the Muslim jurist needs to develop a new *ijtihād*, neither that of the liberals nor that of the traditionalists. Liberals use *ijtihād* as a pretext to temper and distort the role of *Shari‘ah*. The traditionalists use it to forge a link between the past and the present. Both parties use *ijtihād* to maintain a dogmatic position that is always constrained by predetermined juristic decisions. *Ijtihād*, according to al-‘Alwānī, is an intellectual state of mind that inspires man to think systematically and according to certain rational methods toward the establishment of the universal role of the message of Islam.

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

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

Tawḥīd is the belief in the absolute and the pure oneness of God Almighty as the Creator, Maker, Everlasting Lord. *Tazkiyah* relates to man as God’s vicegerent on earth, entrusted by and accountable to Him, charged with building and developing the world. He can only achieve this through self-purification. *‘Umrān* refers to the cultivation and development of the world as the arena harnessed for discharging man’s mission and the crucible for his trials, accountability and development.⁵⁶

Based on these values and objectives, man’s actions on earth should be valued. In other words, these values are the criteria upon which man’s actions are measured and the legal rulings should be based. These values were the ones in action in the early days of Islam before jurists became influenced by the language of logic and philosophy and framed their stands in logistic formalistic jargon as obligatory, recommendable, despicable, and prohibited.⁵⁷ Modern jurists need to go back to the principal values and view man’s

actions through this lens. They should not only evaluate the minor legal questions from the perspective of these higher values, but also tie the higher values of *tawhīd*, *tazkiyah*, and *‘umrān* to the juristic contribution of categorizing man's actions into necessities, needs, and luxuries. In short, these higher values work like ethical check points for legal determination.

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

The *Sunnah* interprets the Qur'an in its historical context but it does not govern nor limit the Qur'an. Debates over the abrogation of some Qur'anic verses by certain prophetic narratives or the argument that the *Sunnah* controls/governs the Qur'an are flawed. The Qur'an is the ultimate source, and the *Sunnah* runs in its orbit and does not depart from it. Therefore if the Qur'an states the principle of justice and righteousness in dealing with non-Muslims, then prophetic *hadith* such as "do not initiate peace greeting, i.e. saying 'peace be upon you,' with the Jews and oblige them to take the side of the road" should be reinterpreted in terms of the Qur'an and not otherwise. Such a statement should not be taken at its face value. The *Sunnah* has to be considered as an integral structure in its own right, however closely linked to the Qur'an as an elaboration of its values in a relative specific context.⁵⁸ Based on this principle, the above *hadith* is applicable only in its specific context. It is reported that the Prophet instructed Muslims not to greet the Jews when he was heading to war against the Jewish community of Banū Qurayzah for the breaching of their covenant with him. Muslims were advised not to greet them because if they exchange greetings, this will be like giving the Jews an *amān*, that is, concluding a peace treaty, which is not desired in this specific situation. Against this specific incident, the Qur'an lays the general principle that "Allah does not forbid you to deal justly with those who fought not against you on account of religion nor drove you out of your homes" (Qur'an 60:8). If one adds to this some other prophetic *hadiths* that support the Qur'anic principle, one can conclude the inapplicability of the statement preventing the greeting of non-Muslims.⁵⁹

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

of these methodological concepts is the concept of *ghāʾiyyah* or the Qurʾanic logic that guides the intellect to the general wisdom behind a certain action regardless of the predispositions inherited from one's own culture or tradition. A second concept stressed by al-ʿAlwānī is the Qurʾanic concept of geography: the whole earth belongs to Allah, and Islam is the religion of God. Therefore, every country is either the land of Islam or will be in the future. According to the Qurʾan, all humanity is a nation of Islam, either a nation that has already embraced the religion or a nation that should be receiving *daʾwah*. A third methodological concept is the universality of the Qurʾanic message. The Qurʾanic discourse, according to al-ʿAlwānī, is different from the discourse of previous prophets in the sense that earlier books or prophets addressed specific, sometimes local, communities. The Qurʾan, on the other hand, addresses the whole of humankind. Thus, it becomes the only book capable of dealing with contemporary global situations as it presents common rules and values.⁶⁰ By using these concepts as his starting points, al-ʿAlwānī sets the ground for an exclusive version of legal literature where universality, or, in other words, parameters of modernity, become Islamicized and hence ready for Muslim engagement.

Although the concept of the universality of the Islamic message is not new in the Islamic literature, al-ʿAlwānī rediscovers it as a legal paradigm and not only as a theological argument. This new legal paradigm threatens long-standing positions of Islamic schools of thought in terms of their overview of the world as divided between the abode of Islam versus the abode of war, in terms of the relationship between Muslims and non-Muslims, and in terms of questions of *walāʾ* and *barāʾ*, that is, loyalties. It is true that many of the advocates of *fiqh al-aqallīyyāt* stress the concept of the universality of Islam and its *daʾwah*, but it is al-ʿAlwānī who did not stop at the generalization of such a statement. Rather, he provided a well-thought-out argument for the universality of the Qurʾanic discourse compared with other earlier prophetic discourses and why it is the only scripture capable of addressing modern-age humanity. It should be noted here also that this approach to the Qurʾan is a way to relate knowledge to religion and to intellect, composing a circle of world existence. Although his exposition is controversial and critically approached by other Muslim intellectuals, al-ʿAlwānī is a key figure in the debate on *fiqh al-aqallīyyāt*.

Qurʾan and Minorities

In support of his position, al-ʿAlwānī extracts some Qurʾanic general principles that are relevant to Muslims' life in minority contexts. The first role

is “the golden rule” of Muslim–non Muslim interaction, which is the principle of kindness and justice toward all belligerent communities as revealed in the verses of *al-Mumtahinah* 8 and 9:

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

All life matters and concerns should be judged according to this principle. Muslims cannot deviate from this principle because this is the main objective of their message, which is to establish good and justice.⁶¹

The second Qur’anic principle is the principle of “the best nation ever raised for mankind,” as indicated in Surah Āl-‘Imrān, “You are the best community that has been raised up for mankind. You enjoin right conduct and forbid indecency; and you believe in Allah...” (Qur’an 3: 110). God has raised the Muslim nation, according to al-‘Alwānī, in order to lead mankind out of the darkness and into the light, from servitude to man to submission to God. Given this principle, the role of the Muslim nation is not limited by land nor confined in space. It has to reach out to others to convey to them the message of God. Thus all references to *dār al-kufr* or *dār al-Islām*, as geographical entities, become superfluous and restrictive for the role of the message. Moreover the concept of *ummah*, nation, in Islamic Law, is not associated with quantity, or space, that is, the number of Muslims in a certain region. It is used to represent the Islamic principle of “doing good for the people,” even if it revolves around one single person, as actually the Qur’an did when God talked about Prophet Abraham as “a nation.”⁶² This understanding is not new in Islamic thinking. Muslim jurists recognized this dimension and linked “the islamicity of the land” to concepts of the security of Muslims and their ability to practice their religion. Islam has no geographical limitations. *Dār al-Islām* can be anywhere a Muslim is secure, even if he lives in the midst of a non-Muslim majority, and *dār al-kufr* is where he cannot fulfill the duties of his religion, even if he lives in the midst of a Muslim community or culture. Al-‘Alwānī refers here to a number of jurists, including Abū Yūsuf, Muḥammad, and the al-Mawardī and al-Rāzī.⁶³

Unfortunately, al-‘Alwānī does not engage the original arguments of those jurists who, according to Abou El Fadl, developed, along with other jurists, a spectrum of positions that is quite relevant to contemporary debate. Earlier jurists debated the meaning of *dār al-Islām*, the ability to practice one’s religion, and the question of jurisdiction, among others. The meaning

of *dār al-Islām*, for example, presented a challenge to earlier Muslims as it did to al-ʿAlwānī. Some jurists held that *dār al-Islām* is where Islamic Law is applied. Others focused on numbers and argued that *dār al-Islām* is where there is a sizeable Muslim majority. A third group argued that *dār al-Islām* requires an Islamic state.⁶⁴ This disagreement over definition led to other alternative classifications for the *dār*, such as Ibn Taymiyyah's *dār murakkabah* or Rāzī's *dār al-daʿwah*, a land ready for missionary activities. Al-ʿAlwānī developed Rāzī's term but with more affirmative language, as he argues that this is the task of the Muslim. So in the case where Rāzī focuses on the potentials that others may accept Islam, al-ʿAlwānī concentrates on the task of Muslims as all the land is Allah's, and it is the Muslim who gives it its designation by conveying the message of his faith.

A third Qurʾanic principle that al-ʿAlwānī derives from the Qurʾan that can guide Muslim minority life is the concept of positive life. The Qurʾan praises Muslims for being positive and standing up for their rights. The Qurʾan says, "Save those who believe and do good works, and remember Allah much, and vindicate themselves after they have been wronged" (Qurʾan 26: 227). "And those who, when great wrong is done to them, defend themselves (Qurʾan 42: 39).

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

It is clear that al-ʿAlwānī has in mind the question of Muslim's political participation in the American or the Western democratic governance system. This was very clear in the conclusion when he argues,

It is a duty upon Muslims to positively participate in the political and social life, to stand for their rights and to support their brothers in Islam wherever they are, to convey the truth about Islam and to fulfill its universal call. We said that this is their duty because we do not consider it as a right that we can give up or a concession that we can forfeit.⁶⁶

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

Al-ʿAlwānī: The Mufti

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

Al-ʿAlwānī's claim is right to a certain extent, at least from his own perspective. There is no single fatwa clearly issued in his name. Neither his website nor the IIIT has a fatwa section or a fatwa link. The only fatwas that are published under his name were available in the islamonline.net fatwa page before restructuring the website and changing its content. Although technically these texts are considered fatwas, at least by their recipients, they may not be seen as fatwas proper by al-ʿAlwānī, as they were normally given as opinions where no reference was made to a textual or legal school. Some of these fatwas will be discussed later in more detail.

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

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

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

“Paper Marriage” and the US Constitution

In a response to an immigrant’s question,

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

Al-‘Alwānī argues,

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

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

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

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

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

Comment

As said earlier, there were few fatwas available at Islamonline.com (IOL) for al-'Alwānī. These fatwas cannot give a thorough understanding of the mufti's orientations or legal positions because the IOL fatwa mechanism production allows the website fatwa editor to intervene in the process on various levels. The editor may, for example, regenerate an old fatwa from the website data bank or from another website to answer a new question.⁷² The editor also may rework his translation and organize the fatwa and sometimes may also call other muftis if he feels that the first mufti was not clear enough. On many occasions the fatwa editor may combine two opinions into one fatwa. Although the editor attributes every opinion to its holder, during the process of translation, editing, and combining, the fatwa may lose certain elements, a matter that makes it hard for analysis. However, it may still provide us with the mufti's general stance on certain issues, as is the case here.

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

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

the questioner, to be good representatives of Islam by not cheating or lying. In other words, to follow the rules and regulations of their country.

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

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

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

Upon receiving the question, al-‘Alwānī did not follow the regular procedure by referring the question to the fatwa committee in the *Fiqh* Council or in the *Fiqh* Academy. Instead he presented a 29-page research/fatwa that concluded that there is no legal Islamic objection to maintain the image of the Prophet on the frieze. Before getting into the details of the fatwa, the first question that comes to mind is, why al-‘Alwānī did not seek a fatwa from other legal authorities, especially those in the East, as he used to do with other fatwas. The best hypothesis here is that he realized that such a fatwa needs an insider who is aware of the historical background of the

frieze and the nature of the constitutional relationship in the United States. Also, he might have expected that the incoming fatwa would be against his conviction that keeping the portrayal is of more benefit for Muslims than to remove it. Additionally, if he referred the fatwa to somebody who lives outside the country, this may have been considered by some Americans as interfering in the country's internal affairs. So he preferred to take the issue upon himself, despite his reluctance to deliver fatwas.

The fatwa structure takes the monograph fatwa form that reflects the significance of the issue under scrutiny, its novelty or controversial nature and its relevance to the mufti's advocacy of his school of thought or jurisprudential orientation. The fatwa begins with a section on legal premises that should guide the mufti. It is expected that the introductory legal premises of a fatwa include jurisprudential principles (mostly cited from the Qur'an or based on Prophetic tradition) and/or a reference to certain legal rules. Al-'Alwānī's fatwa premises do not include any of these. His premises are sociohistorically oriented rather than legal *fiqhi*-based. He argues that each civilization has its own means of self-expression. Islamic civilization expresses itself through the "Word," while Western civilization tends to be represented through "Imagery." Islamic culture and civilization regard the Word as the medium best capable of expressing their specificity and symbolism! For Arabs and Muslims, "[t]he "culture of the Word" is thus the ultimate culture of abstraction, comprehension and limitless possibilities!"⁷⁵ On the other hand, the Western culture of imagery regards "the image as the most capable symbol for expressing ideas in a precise, physical and defined manner because the image represents an embodiment, not an abstraction."⁷⁶

Based on these introductory premises, al-'Alwānī argues that when the Supreme Court room displays the image of Prophet Muhammad as one of the world leaders to symbolize justice and strength in human history, it expresses its own view of how to represent the diversity of cultures and civilizations that had a significant impact on the legal system in the United States. Whether this expression is consistent with the Islamic juristic vision in general, or with the vision of a particular school of Islam is another matter.⁷⁷

Given this introduction, al-'Alwānī lays the foundation of his legal methodology of giving fatwas in a Western platform: the West is a setting that is different culturally and religiously from the Islamic one, and hence the traditional Islamic legal approach needs to be adapted to the new setting. In other words, the Islamic legal culture cannot force its worldview outside its land. It needs a renewal movement that maintains its core principles as dictated in the Qur'an and applies them contextually into our modern world. Such a premise reflects al-'Alwānī's methodology on *fiqh al-aqalliyyāt*.

After the premises section, al-‘Alwānī discusses the question of the frieze portrayal of the Prophet’s image from an Islamic perspective. In this section, al-‘Alwānī introduces a typical fatwa structure: providing arguments in order of their authoritative considerations: first the Qur’an, then *Sunnah*, and thirdly the opinions of different schools of thought. Qur’anicly, “There is no single text that directly addresses the question of whether making or possessing ‘pictures’ and ‘images’ is prohibited.” Rather the Qur’an provides examples of prophets who praised images.⁷⁸ It was the second source of Islamic Law, that is *Sunnah*, that provided Prophetic traditions indicating the Prophet’s despising of the making and dissemination of images. Al-‘Alwānī argues:

We must inquire whether the ahadith have totally prohibited the making of images as an act of worship, or whether this prohibition is contextual. We must ask about that, which is critical in making proper Islamic rulings on this matter: the ratio, or causal reason that determines the *manaat* (basic rationale on which the legal rulings hang). That is we must ask whether the meaning of the precise prohibition, warnings, or even descriptions of the text necessarily also depend on the interpreter’s knowledge of the events, circumstances and other situations about which these ahadith are concerned.⁷⁹

This quote comes at the core of al-‘Alwānī’s methodology and understanding of the relationship between the Qur’an and the *Sunnah*. Qur’an is absolute and eternal while *Sunnah* is the application of the Qur’an in a certain context. Therefore its rulings are bound to this context. Al-‘Alwānī goes on to elaborate this context: worshipping idols, using images as Allah’s representation on earth, and emulation of Allah’s creation. Given this context, the Prophet’s prohibition of images is plausible. So the Prophet’s *hadiths* are context specific and hence “the fundamental rule is one of non-prohibition of images.”⁸⁰ To support his position, al-‘Alwānī examines the different prophetic traditions, juristic opinions, and fatwas of earlier scholars with a view to showing his expertise on the subject matter as well as to demonstrate that the issue at hand is far from having a consensus in the Islamic legal tradition.

Al-‘Alwānī concludes that the cause of prohibiting “imagery making” does not apply to the US Supreme Court frieze.⁸¹ Moreover, al-‘Alwānī criticizes the artist who designed the Prophet’s image for not considering the Muslim tradition that describes in details the Prophet’s figure and attributes so that his portrayal would have been a true and honest reflection of the Prophet’s image as done by the Turkish and Persian artists in earlier times.⁸²

Al-‘Alwānī concludes:

My answer to this question is as follows: What I have seen in the Supreme Courtroom deserves nothing but appreciation and gratitude from American

Muslims. This is a positive gesture toward Islam made by the architect and other architectural decision-makers of the highest court in America. God willing, it will help ameliorate some of the unfortunate misinformation that has surrounded Islam and Muslims in this country. For this reason, I would like to express my gratitude and appreciation to the early twentieth century architect and his associates who brought, in their own way, the essence of what the Prophet (SAAS) symbolized, namely, law with justice, to the attention of the American people. I hope that the Muslim leadership in the United States and around the world will join me in expressing this appreciation even though the frieze is over 60 years old.⁸³

If one attempts to relate this legal analysis to al-ʿAlwānī's theory on *fiqh* of minorities and his overall project of Islamization of Knowledge, one may argue that it is an honest reflection of both. First of all, he redefines the question, that is, reproducing the question with a positive tone. Al-ʿAlwānī's fatwa was not centered only on religious legal argument, but it also incorporated historical and sociological analysis along with the legal one. The fatwa was balanced between the three elements. This is a unique approach that is not seen often in contemporary fatwas where the muftis often resort to legal precedents and arguments, without discussing the historical or the sociological implications of their fatwas.

Al-ʿAlwānī's recognition of the sociological setting in defining the legal ruling brings into the discussion the new-old historical legal debate of the role of custom in legal determinations. Although al-ʿAlwānī did not refer to this debate, the link is clear. One can notice the argument that the legitimacy of the local custom, although foreign to Islam, and the welfare of the Muslims, individually and collectively "*maṣlaḥah*," are key arguments that take precedence over preferences of juristic schools. It is the *maṣlaḥah* of the Muslims to keep the Prophet's portrayal as a way of enforcing a positive image of the Prophet that Islamophobes attempt to damage and to preserve the status of the Muslim community as an integral part of the American mosaic.

Muslims and Political Participation in a Non-Muslim Polity

Al-ʿAlwānī's research/fatwa on this issue represents a step-by-step application of his theory on *fiqh al-aqalliyyāt*. He first started by presenting the premises upon which his opinion is based. These premises can be categorized into three groups. The first group is Qur'anic-based, that is, the general principles of the Qur'an as understood by al-ʿAlwānī, such as the unity of the human family, the universality of the message, the positivity of the

Muslim *ummah*, and the application of the principle of justice regardless of belief or territory. The second group of premises is contextual. They include the borderlessness of the contemporary world, the presence of international human rights agreements, the role of citizens in modern states, and the duties of Muslims as members of a certain society. The third group addresses the peculiarity of the American situation as a young nation of immigrant plural communities that is comparatively less racist and open to the influence of Islam and Muslims. In addition, the American Constitution respects the rights of minorities, despite the shortcomings in the practice and the enforcement of these rights. These premises are a reiteration of the principles that al-ʿAlwānī indicated in his paper on *fiqh* of minorities.

Based on these premises, al-ʿAlwānī concludes that it is incumbent upon Muslims to actively engage with the political process if they want to protect their rights as American citizens; to support their fellow Muslims around the world; to prove the universality of Islam; and to preach its message. To achieve these goals it becomes obligatory upon Muslims to nominate qualified Muslims for public offices and to support Muslim candidates in their efforts to promote good and to forbid and prevent evil. Muslims can also support (both politically and financially) non-Muslim candidates whose beliefs and values are most compatible with Muslims.

Al-ʿAlwānī did not stop at the level of presenting his legal position toward political participation. He introduced to the Muslim community a working agenda to guarantee an optimum level of positive participation. He argues that in order for American Muslims to obtain their full rights as citizens, exercise those rights, and be effectively involved in the American political system, they must consult with one another to come to a mutual agreement on the main principles of Islam, and to excuse one another on minor differences. Muslims should understand that interaction with non-Muslims will not lead to concessions of their belief. Conversely, they should work on conveying the message of Islam to non-Muslims by revealing the humanitarian spirit in Islam, and manifesting its eternal values. Muslims should become skillful in the art of communication and public relations to get their message through.

To support his argument, al-ʿAlwānī refers to the first immigration history of Muslims to Abyssinia. Al-ʿAlwānī's reference to such a story provides a practical legal precedent that he uses to justify his position, regardless of the categorical differences between the two experiences in terms of the status of Islam and the accumulative legal debate. Had this experience not occurred, al-ʿAlwānī would still likely argue for the positive participation of Muslim in politics in a non-Muslim majority society.

Since this issue has occupied Muslims in various circles and fatwas were issued by various imams and muftis to the effect of the impermissibility

of political participation, al-ʿAlwānī finds it necessary to respond to these claims. He argues that muftis who give fatwas against political participation do not properly understand the general principles of Islam. His criticism of the other muftis' position is actually more important for the purpose of this chapter than his personal position.

Al-ʿAlwānī argues that the objections of some Muslims to political involvement are based on five points. First is that such participation contradicts the principles of Islam as it establishes *loyalty* to non-Muslims, which is prohibited in the Qur'an. Al-ʿAlwānī states that this is an inaccurate understanding of the prohibition of loyalty. The pragmatic aspect of a creed differs from the creed itself. Fair treatment of and cooperation with non-Muslims are not synonymous with loyalty. Rather, they are pragmatic methods for promoting good and fighting evil. Also, al-ʿAlwānī criticizes the attempt to equate loyalty and cooperation. The type of loyalty the Qur'an warns against is that when a Muslim favors non-Muslims over Muslims in love and support.

The second objection against political participation is that it involves "inclination" toward non-Muslims, which is prohibited by Qur'an. The verse reads, "And incline not to those who do wrong, or the fire will seize you; and ye have no protectors other than Allah, nor shall ye be helped" (Qur'an 11:113). This verse prohibits all types of cooperation with non-believers. Al-ʿAlwānī rejects this interpretation and holds that "inclination" means the acceptance and support of unbeliever's actions. Involving in politics differs significantly from cooperating with non-Muslims for the sake of safeguarding rights and protecting fellow Muslims from the injustices of unbelievers and from taking actions that may help non-Muslims find the right path.

The third objection is that political participation prevents Muslims from positively changing the status quo in non-Muslim countries as it indicates the acceptance of state laws by Muslims. Al-ʿAlwānī thinks that this is an upside-down understanding. It is the isolation and withdrawal from public life that keep the status quo. Participation, however, is an attempt to change such conditions. Muslims' positive participation reveals Islam's morals and values that can be of help to transform ideas and laws.

The fourth objection is that participation in the American political system supports the American system and works against establishing an Islamic system. Al-ʿAlwānī rejects this notion on two grounds. First, Muslims should distinguish between two cases—one where they have the majority, and the other when they are a minority. There is a great difference between the two situations. It is incumbent upon Muslims to establish the Islamic system in Muslim countries; however, it is not required when Muslims are a minority. Furthermore, it is logically inconceivable in America today. The second

reason to reject the claim that Muslim's political participation results in ignoring the establishment of an Islamic system is that it limits the definition of an Islamic system to the area of politics. However, any activity that enhances the implementation of positive and moral values in society should be promoted whether it is of a political nature or not. Activities that oppose crime, abortion, drugs, etc. are important, and they strengthen the good in society and work to prevent evil.

The fifth reason is that political participation contradicts the obligation of immigration. Muslims are in the West on temporal basis and they should work on leaving to the land of Islam. This objection, al-‘Alwānī states, is based on an inaccurate understanding of the historical concepts of the abode of war and that of peace, which do not apply to contemporary world affairs. It contradicts history, as the first Muslim community was established in a place where the Prophet and the Muslims had migrated to temporarily. The first Muslim community was not established in the land of revelation, Mecca, but rather in Madinah, the land of immigration.

Loyalty, befriending non-Muslims, promoting non-Islamic practices, and the requirement to immigrate from the land of disbelief or the work to establish an Islamic State are the issues at stake in the age-old debate over the role of Islamic Law in the life of minorities. Responding to these questions determines the mufti's legal orientation, his legal sources and mostly his personal living experiences. In the present fatwa al-‘Alwānī takes two main lines of argument. First, reading the Qur'anic text is inaccurately done. Words are not taken at their face value. Words like *walā'*, that is, loyalty, and *mayl*, that is, inclination, have different layers and refer to various contexts. One needs to analyze these layers first before reaching a conclusion. Even such a conclusion should not exclude other possibilities. Second, concepts like *hijrah* and the Islamic state are historically laden concepts that do not establish legally binding rules. Moreover they are subject to modification and redefinition. This is exactly the role of *fiqh al-aqallīyyāt*.

Conclusion

Al-‘Alwānī belongs to the twentieth and twenty-first centuries' reform movement. His reform ideology, however, has taken a complex path. He argues that the *ummah* needs to press ahead with an agenda of reform that is based on the revival of *Ijtihād*. This *Ijtihād*, however, not only provides innovative answers for contemporary legal questions but also establishes a new research methodology and new *uṣūlī* principles of jurisprudence. The word "new" here is misleading. Actually, he calls for a drastic change. First, *ijtihad* needs

to be institutionalized and academized. Second, Islamic sources of legislation need to be reorganized. Third, the relationship between *Ijtihād* and legal tradition needs to be reconstructed according to a number of procedures such as understanding the Qur'an through its internal language structure and not only through its interpretative cultural community, focusing on the Qur'anic universal message instead of causes of revelations, and maintaining the higher objective of *Shari'ah* in the legal determination rather than the cultural production of the past.

In short, al-'Alwānī hopes to go back to the "original state" of the law, where *Shari'ah*, *Uṣūl*, and *Fiqh* were undistinguishable from each other, and then from there, reconstructing a new science that corresponds to the current stage of human progress. This new science surely will be informed by early experience and may produce some similar conclusions, but more importantly it will be based on an inclusive methodological debate of the present time and place. Is that possible?

To prove the applicability and the significance of his methodology, al-'Alwānī provides a number of research papers on the capital market, the testimony of women, and the language of the Qur'an and the question of abrogation in the Qur'an. However his most significant contribution is his research on *fiqh* of minorities.

Al-'Alwānī was the first not only to declare the need to establish this *fiqh* but to put it on the table of research and debate through his controversial papers. Other scholars took the lead and presented their own vision for *fiqh al-aqalliyyāt*. Al-'Alwānī's vision is still unique in its arguments and aspirations. His attempt to take *fiqh al-aqalliyyāt* outside the circle of *turāth* and link it to the main objectives of *Shari'ah* and Qur'an was a daring step that no one had taken before.

The writings of al-Qaraḍāwī and al-'Alwānī and their calls to establish a certain distinctive category of Islamic Law for Muslim minorities were just the starting points that were soon developed into a discourse in legal and intellectual Muslim forums, a matter which has resulted in a surge of literature in the last few years. It started with articles and research papers by scholars affiliated with Muslim minority organizations, such as ECFR and the Association of Muslim Social Scientists (AMSS). These research papers were mostly known on a limited scale, among scholars interested in the legal debate on Muslims in the West. The debate went public when conferences, seminars, and symposiums were held by various Islamic institutions to discuss the significance and the ramifications of such calls.⁸⁴ Within a couple of years, *fiqh al-aqalliyyāt* was increasingly found on the research table of many interested parties. Books, monographs, and university theses and dissertations have since been produced, creating an enormous body of literature that has been studied by a good number of scholars.

A good deal of these *fiqh al-aqallīyyāt*-related publications, however, are descriptive in nature. They review the classical legal position on minorities, and either maintain such a position or argue for al-‘Alwānī’s and al-Qaradāwī’s main thesis of the need to have a *fiqh* for minorities.⁸⁵ Some of these writings, however, may be singled out as they enrich the debate, as they elaborate on the arguments of al-‘Alwānī and al-Qaradāwī or provide new arguments that were not part of earlier contributions.⁸⁶ Reference can be made to Dr. Ismā‘īl al-Ḥasanī’s *Al-Ikhtilāf wa-al-Taḥkīm fī Fiqh al-Aqallīyyāt*, which focuses on the mechanism to determine minority legal rules based on societal criteria rather than traditional *fiqh* manuals.⁸⁷ Sheikh Ibn Bayyah’s *Ṣinā‘at al-Fatwa* is another example.⁸⁸ He attempts to legalize *fiqh al-aqallīyyāt* through the gate of fatwas. Ibn Bayyah presents an approach that builds *fiqh al-aqallīyyāt* as a fatwas genre that is based on *qawā‘id kullīyyah*, legal comprehensive rule. Dr. Ṣalāḥ Sulṭān’s study presents a challenge to conventional jurists as he considers *fiqh al-aqallīyyāt* a bridge to *fiqh al-muwaṭṭanah*, that is, jurisprudence of citizenship.⁸⁹ Dr. Jamāl ‘Atīyyah’s work, on the other hand, introduces a comprehensive vision of *fiqh aqallīyyāt* that applies to all minorities of the world regardless of their religious convictions.⁹⁰ These studies will be frequently referred to in the next chapter as we turn to the important question of how *fiqh al-aqallīyyāt* is transforming Muslim minorities’ presence on the ground through providing coherent answers on questions of residence, citizenship, and loyalty.

Chapter 5

Fiqh al-Aqalliyyāt A Debate on World Division, Citizenship, and Loyalty

The discourse of *fiqh al-aqalliyyāt* is not merely a theoretical debate among jurists on mechanisms, methodologies, or preferences. It started as a response to practical empirical questions of Muslims on how to respond to challenges facing them in their non-Muslim environment. Questions covered almost every aspect of Muslims' mundane life, including food, dress, education, rituals, and above all living in or immigrating to non-Muslim countries. Jurists of *fiqh al-aqalliyyāt* worked their way through these particular questions to arrive at a theoretical conceptualization of the new *fiqh*. As with many legal systems, the process starts with technical determinations before forming its theoretical framework. In the case of *fiqh al-aqalliyyāt*, although it addresses multiple layers of questions on worship, society, economy, etc., the discourse emanates from one primary issue: the nature of the relationship between Muslims and their non-Muslim society. This issue represents the core of the discourse upon which various positions were taken, whether for or against *fiqh al-aqalliyyāt*.

The relationship between Muslim minority communities and their "host" countries starts with the question of residency. Are Muslims allowed to reside in a non-Muslim country? This question may sound irrelevant because it defies the reality of things. Muslims were and still are residing in non-Muslim societies. Nevertheless, from a legal perspective, any discussion on *fiqh al-aqalliyyāt* has to start there for various reasons. First, the legal tradition of Muslim–non-Muslim interaction begins with identifying the nature of the non-Muslim's lands. This nature of land, that is, *dār ḥarb*,

dār Islām, *dār ‘ahd*, etc., is determined by various elements, including the Islamicity of the land, the safety of residence, the limits of religious freedom, and the application of jurisdiction. After assessing these elements, the jurists would decide over two things: first, the question of residency (are Muslims allowed to reside in a non-Muslim polity?); and second, the ethical obligations one has toward the non-Muslim society. Another reason for the significance of this question of residence in non-Muslim lands is its close connection to issues of citizenship and loyalty. A jurist would not be able to promote a concept of citizenship if legally one should not live in or be loyal to his country of citizenship. Therefore, in order for *fiqh al-aqallīyyāt* to prove its validity and strength, it has to address the question of residency.

This chapter examines how *fiqh al-aqallīyyāt* transformed the reluctance and the non-desirability of jurists for Muslims to reside in a non-Muslim territory into not only an appreciation of this residence, but also a call for a full engagement with its political, social, and economic apparatus. In order to demonstrate this process of transformation, the chapter examines briefly how the *fiqh al-hijrah*, that is, the doctrine of emigration, evolved in Islamic legal discourse from a question of individuals to a concern of a community. This doctrine played a significant role in drawing the boundaries of the presence of Muslims in non-Muslim polities and the role they can play. It determined their space, conduct, and moral obligations toward their religion, their families, and the “other” non-Muslim. This chapter then raises the question of how this doctrine was compromised in the modern context and led at the end to a doctrine of civic engagement through the establishment of the legality of assuming citizenship of a non-Muslim state and paying loyalty to its system and fellow citizens.

Fiqh al-Hijrah

Fiqh al-hijrah, a doctrine of emigration, is a relatively new question that was researched in the second half of the twentieth century as an independent question of research after the unprecedented waves of Muslim emigration to non-Muslim lands.¹ However, the new *fiqh al-hijrah* is informed by a legal tradition that was developed over centuries through a wide array of sources extending from *tafsīr* books and *ḥadīth* compilations to books of biographies and *jihad* to *fiqh* manuals and fatwa manuscripts. It should be noted that although a variety of sources referred to the question of *hijrah*, these sources do not provide detailed analysis or formulate clear positions on the issue. Rather, they suffice themselves with brief comments when the occasion arises. Scrutinizing legal sources, however, reveals that the question

of *hijrah* went through at least three stages. Each stage has a specific version of the question that responds to the sociohistorical context of that specific stage.²

As early as the first and the second centuries of Islam, Muslims expanded their territories far beyond the boundaries of Arabia to regions whose population believed in religions other than Islam. Given this rapid expansion, jurists of that era were concerned with the elaboration of rulings pertaining to the conditions of non-Muslims under Muslim's rule. The corresponding question of Muslims under non-Muslim rule was not completely developed at the time. The juristic discussion focused on the situation in which a non-Muslim residing in a non-Muslim territory would convert to Islam, or when a Muslim merchant would travel to a non-Muslim territory for trade. In other words, the questions were: Was it obligatory upon the convert to immigrate to the abode of Islam? Is a Muslim allowed to travel to the land of non-Muslims for trade or for other legitimate purposes? In response to the question of converts, the Ḥanafī jurist Ṣaḥnūn (d. 804), for example, argues that converts may not migrate to the land of Islam after conversion because the Prophet allowed the Bedouins who converted to Islam to stay in their lands and not migrate to Medina. Shāfi'ī (d. 819–20) also argues that converts may stay in their non-Muslim territory if there is no fear of being seduced away from their faith. In the case of trade, Mālik (d. 796) strongly disapproved of Muslims traveling to the land of nonbelievers for trade because they might be subject to the laws of nonbelievers. The Ḥanafis, on the other hand, did not oppose trading with non-Muslims, claiming that it may be a necessity for the welfare of Muslims.³ Careful reading of sources indicates that early jurists took various positions and manifested a degree of ambivalence toward the problem of Muslims' emigration and residence in non-Muslim territories.⁴ Their responses however reflected a dynamic process by which doctrinal sources, legal precedents, juristic methodologies, and historical reality interacted to produce various results.⁵ They utilized different operative causes to conclude their rulings. These operative causes revolved around the supremacy of Islamic jurisdiction, the ability to practice one's religion, the fear of being seduced away from religion, and the opportunity to gain knowledge of religion.

To get a sense of the range of the juristic variations, one may refer to the following jurists: the Andalusian Ṣāḥirī jurist Ibn Ḥazm (d. 1065), equivocally disapproved Muslims entering or residing in non-Muslim territories, even for the purpose of trade if such residence would entail being subject to non-Muslim law.⁶ The Shāfi'ī jurist al-Mawāridī (d. 1058) holds the position that if a Muslim is able to manifest his religion in non-Muslim land, then his residence is *dār Islām* and his residence is better than his migration to *dār al-Islām*. The Mālikī jurist al-Mazārī (d. 1141) argues that a Muslim

should not reside in a non-Muslim land even under the best circumstances. But his residence does not affect his credibility as a Muslim and can be justified if his stay is for a necessity or for an erroneous *ijtihād*.

While Muslim jurists were trying to reconcile between various positions and conditions, they categorized the world into two entities: *dār al-Islām* (abode of Islam), *dār al-kufr/al-ḥarb* (abode of nonbelief/war), or into three if *dār al-‘ahd* (abode of contract/treaty) is added. The intriguing question here is on what basis they made this division. One group sets the division on the ability of the Muslim to practice his religion. Another group, led by Imam Abū Ḥanīfah,⁷ based the division on the safety of Muslims. This technical difference has various repercussions whether in the formative age of Islam or in our present time. It produces two theories that have dominated the discourse until our present time. The first theory divides the world into two (*dār al-Islām* and *dār al-ḥarb*) according to whether there is peace with, or aggression against, Muslims. This does not allow for a third division because, according to this view if there is a peace treaty with a certain territory, this territory is designated as *dār Islām* even if ruled and inhabited by non-Muslims. The main criterion here is not the “Islamicity” of the land but “the security” of Muslims. The second theory held by the Shāfi‘ī⁸ jurists divides the world into Muslim/peace and non-Muslim/war. Thus they proposed a third division, *dār al-‘ahd*, in case there is a treaty signed between *dār al-Islām* and *dār al-kufr*.⁹

By the approach of the sixth/thirteenth century, non-Muslim competing forces started to take over certain Muslim territories.¹⁰ This new context introduced a compelling second version of the question of emigration: Can a Muslim, whose land was dominated and controlled by non-Muslim forces, stay in his land although he may be unable to practice his religion and may suffer injustices and persecution? The jurists acknowledged that there is no direct textual evidence that responds to this question. The Moroccan jurist Aḥmad ibn Yaḥyā al-Wansharī¹¹ argued, “Our earlier guided *imams* dedicated their writings to the question of those who converted to Islam and did not emigrate. As for [our present situation of] befriending the polytheists,¹² it did not exist at the beginning of Islam and its sublime era and it only took place after hundreds of years and after the demise of the *mujtahid imams* of the various regions [of the Muslim world]. Therefore there is no doubt that none of them discussed the legal rulings [of our present condition].”¹³ What the jurists did was to reinterpret the texts used to answer the previous questions on converts and merchants and apply it to the new context,¹⁴ forming the core of what came to be known in the modern literature as the doctrine of *hijrah*.¹⁵

The real question that Muslim jurists attempted to give a systematized answer to was whether a Muslim whose land was occupied by a Christian

army should stay, or whether he must migrate to a land ruled by the Muslim authority. In other words, the question was not merely about emigration but rather about Muslim political and religious authority and hegemony over their territories. The question is political more than doctrinal, even if it was formulated as the latter. This is a crucial point because it explains the various positions taken by the community of jurists in accordance with the geopolitical situations they encountered and the scenario they addressed.

The Mālikī school¹⁶ holds an uncompromising position that a Muslim, even if he is able to practice his religion freely, should never reside in a non-Muslim territory because he will be subject to non-Muslim laws.¹⁷ Al-Wansharīsī goes further than that, arguing that whoever believed in the permissibility of such emigration is an apostate.¹⁸ Although less radical Mālikī positions were heard in various places (e.g., the Egyptian Mālikī jurist al-ʿAdawī (d. 1775) sees the resident as a sinner and not as an apostate),¹⁹ the dominance of the hardliner position is conceivable since it emanates from the historical-political experience of Muslim decline in al-Andalus and Sicily, where the Mālikī School was predominant. The Ḥanbalī²⁰ and the Jaʿfarī²¹ schools argue that if Muslims can manifest and practice their religion, migration is not obligatory but recommended, because by their stay Muslims would contribute to the material wealth and strength of unbelievers.²² The Shāfiʿī²³ and the Ḥanafī schools agreed that residence in non-Muslim territories might at times be recommended or obligatory. It all depends on the extent to which a Muslim can manifest his religion and whether he lives in an area formerly controlled by Muslims but now under non-Muslim control.²⁴

This brief exposé of the jurists' position does not do justice to the mechanism jurists utilized to derive their positions and the technicalities they tackled to arrive at such conclusions. A detailed analysis of such positions is outside the scope of the present book. However, the point to be stressed here is that the jurists' discussions raised controversial questions that still infuse modern-day discussion about *hijrah* such as: What is the basis of jurists' designation of the land as an abode of Islam or an abode of war? Is it the presence of a ruling power? Is it jurisdictional question? Is it the people? Is it safety? What is the meaning of manifesting one's religion? Does it refer to rituals or to some form of personal application of Islamic Law or to the ability to apply Islamic Law in its totality? How does one qualify the land? Is it *dār al-ḥarb* or *dār al-ʿahd* or *murakkabah* or even *dār al-Islām*? Moreover, how does one qualify *dār al-Islām*? Can it be called *dār al-Islām* even if injustices were practiced against Muslims? What is the nature of the relationship with the non-Muslim community? What is the meaning of their *muwālāh* or *mushābahah*, befriending and imitation?

Although the debate on these questions was part of the classical *fiqh* of the middle ages, it was strongly revived in the nineteenth and the twentieth

centuries. During these two centuries, the political map of the world was changing due to the rise of nationalism, competing Western ideologies (e.g., liberalism and socialism), and political exploitation (e.g., colonialism). The Muslim world was affected by these factors and had to react, sometimes in resistance and at other times in reconciliation. Under colonialization, the pressing question of whether Muslims are obliged to continue armed resistance or to emigrate to an area governed by a Muslim ruler was posed in many countries such as Algeria, India, and Sudan.²⁵ The range of the debate even went beyond the issue of emigration or resistance to include other sociopolitical issues such as questions of clothing (e.g., the French hat),²⁶ of naturalization (e.g., the French law of naturalization in 1923/27 in Tunisia and Algeria),²⁷ of renting buildings to non-Muslim foreigners,²⁸ of teaching Muslim children in schools run by the colonizers,²⁹ to mention but a few. More recently, in the 1970s and 1980s, the question of *hijrah* took other forms when some radical Islamic groups claimed that Muslim states, due to their non-Islamic government system, had become part of *dār al-kufr*; and hence emigration from these lands was required.³⁰ In both cases, that is, emigration from colonized Muslim territories or emigration from secular Muslim states, the classical debate on *hijrah* shaped the contours of the debate in modern times, widening the schism between the world of Islam and the non-Muslim world.

The question of emigration took on a different form in the second half of the twentieth century, when an unprecedented number of Muslims migrated from the land of Islam to non-Muslim lands, mostly Western Europe and North America, in search of a better life or to escape political persecution. As a result of this *reverse* emigration, the third version of the question appeared: Is it permissible for a Muslim to emigrate from Muslim lands to non-Muslim lands to seek a better economic life, or political freedom, or advanced education, etc?

What made the question different this time was not only the Muslims' initiative to emigrate but also the qualitative change in the attitude of the host non-Muslim lands. Around this time, the struggle of the Western world to develop a model of a modern nation-state based on principles of secularism and pluralism led to the reconsideration of the role and function of minority communities in the establishment of a modern state.

This new situation presented a challenge to contemporary Muslim jurists who, following the vibrant tradition of their predecessors, took different positions. The literalists, as explained in chapter 1, took a hardline position toward emigration. The traditionalists, as presented in chapter 2, provided a qualified answer regarding the permissibility of emigration. Both trends remained within the limitations and views expressed by the classical jurists. The advocates of *fiqh al-aqalliyāt*, however, whose main goal is to

normalize Muslim life in the West, had to start by addressing this question of emigration because it is the hinge that governs subsequent questions on, for example, naturalization and social solidarity.

The researcher may argue that it was the question of *hijrah* that represented the common factor in the debate on *fiqh al-aqalliyyāt* and in the discussion on the position and role of Muslims in the West. The manifestations for this argument are various. The following section reviews a number of contemporary fatwas on *hijrah* issued by a number of well-known muftis to Muslim minorities in Europe and North America.

Hijrah “Never Ends”³¹

Around 1994, the Islamic Fiqh Academy of the Islamic Conference received a collection of 28 questions from the Virginia-based International Institute of Islamic Thought, IIIT. These were pressing questions of Muslim minorities who live in non-Muslim territories. One of these questions pertained to the fears of bringing up Muslim children in a non-Muslim environment. The questioner stressed that the same fears may apply to certain Islamic countries where children may get exposed to atheistic ideas present in the school curriculum of some Muslim secular governments. The academy solicited answers from a number of jurists³² who did permit emigration to and residence in non-Muslim lands, but with certain conditions: the emigration (1) must not be for the purpose of loving disbelief or for increasing the strength of disbelievers; (2) should be for a lawful purpose such as seeking knowledge or a needed job; (3) can be to escape persecution even if it is from Muslim lands to non-Muslim lands because a Muslim is required to protect his soul from injustices; (4) should not be for the mere sake of joy and tourism; and finally (5) should be able to manifest his religion, maintain his identity and culture, and be able to raise his children on Islamic terms. As one can easily note, the fatwa mirrors various elements in the classical debate but without getting into the details of each school and the sociohistorical background of each of these conditions. Issuing the ruling without referring to legal authorities or to juristic schools or to historical events can be read in two ways. First, it can be an affirmation of the classical positions since the fatwa makes it practically difficult for the individual to take the decision to emigrate, especially with the overwhelming inclination in religious issues to take the side of precautions, that is, if there is a mere possibility that a sin may be committed, then it is preferable not to do the action altogether—in our case here not to emigrate. A second reading may indicate that such rulings represent a sort of transitional fatwa that would

make it easier for other muftis to follow up with milder positions. Because if the fatwas as presented here are not clearly based on textual evidence and express only personal positions of the muftis, then there is a space for other jurists to voice their own minds as well, not only to permit emigration but also to make it a positive moral act, as it will shortly become clear when the opinions of *fiqh al-aqallīyyāt* advocates are discussed. The second reading is more appealing to the researcher because of the language used in drafting the fatwas. There was no reference to terms such as *dār al-kufr* or to the negative impact of interaction with non-Muslim community. The wording of the fatwas reflects an internal debate among Muslim jurists and their appreciation for the dilemma the Muslim minority is facing. This becomes more evident when the academy, although having received five fatwas for the question, decided not to issue a resolution. The academy preferred to let each mufti decide his answer to such questions on a case-by-case basis.

Sheikh Mannā' al-Qaṭṭān³³ issued a fatwa permitting Muslims to emigrate and reside in non-Muslim lands. His position is based on the classical tradition of a division of the world into *dār al-Islām* and *dār al-ḥarb* and *dār al-'ahd* and how these terms apply to modern times. It should be noted here that the division of the world is used as an anchor to argue for the permissibility of emigration to *dār al-'ahd*, the abode of contract. However again, the *hijrah* is permitted only if there is a necessity for it, and the immigrant is able to find a secure place for his life and for the practice of his religion. Voluntary emigration is not recommended. Moreover, if emigration is intended only to accompany nonbelievers out of love, then it may turn a Muslim into an apostate. Sheikh Mannā' also stressed that to work under non-Muslims is in principle not allowed unless one is obliged to. Such work should be in itself legal, as long as it does not harm Muslims or lead to the *muwālāh* of non-Muslims.³⁴ This fatwa recalls the position of the literalists where *dār al-kufr* or even *dār al-'ahd* is seen with suspicion as it entices Muslims away from their religion. It limits the Muslim's engagement with non-Muslims, even in the field of work.

In his *Qaḍayā Fiqhiyyah Mu'āṣirah*, Dr. Muḥammad Sa'īd al-Būṭī,³⁵ an anti-*fiqh al-aqallīyyāt* jurist, presents a different perspective. He argues that the *aṣl*, that is, original rule, of emigration is permissible. This is in accordance with verses from the Qur'an and prophetic traditions. The purpose of this emigration varies from preaching for Allah, to trading, or for worldly material gains. This principle, however, should be governed by other legal rules such as *sadd al-dharā' 'i'*, that is, blocking the means to illegitimate actions and *dār' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ*, that is, preventing evil is prior to securing interests.³⁶ The application of these rules changes the *aṣl* from the merely permissible to either obligatory, or forbidden or despicable. Sheikh Muḥammad al-Ghazālī³⁷ follows a similar line

of argument for disallowing Muslims from emigrating or residing in non-Muslim lands because it would lead to losing one's religion. In such a case the Muslim has to return to his country, otherwise he is a sinner.³⁸

The famous fatwa of the Moroccan 'Abdel-'Aziz al-Šiddiq al-Ghamārī³⁹ entitled *Ḥukm al-Iqāmah fī Bilād al-Kuffār wa-Bayān Wujūbiha fī Ba'd al-Aḥwāl* introduces an opposite line of argument. The fatwa came in response to the question of an Algerian student who studies in the Islamic University, Saudi Arabia. The student asked the opinion of 'Abdel-'Aziz al-Šiddiq on the position of some Algerian scholars who issued a fatwa prohibiting emigration to Europe and other non-Muslim lands. Al-Šiddiq argues that those who argue for the illegality of emigration are ignorant of the rules of *fiqh* and the Islamic tradition.⁴⁰ The Algerian mufti's argument is similar to the logic of other anti-*hijrah* scholars. He argues that the reason for the impermissibility is fear for the religion and for not being able to practice its tenets. Al-Šiddiq argues that this reason does not exist today and therefore one cannot conclude that *hijrah* is forbidden. According to him, it is permissible to stay in a non-Muslim country as long as one can perform one's religious duties and is not in danger of losing one's belief. To argue his case, al-Šiddiq refers to the legal position that *hijrah* is abrogated after the conquest of Mecca, and that Muslims' current position in non-Muslim Western countries is similar to Muslims' first ever *hijrah* to Abyssinia, when they were commanded by the Prophet to emigrate to Christian Abyssinia to enjoy the safety of its just king. Al-Šiddiq, however, makes preaching Islam a requirement for those who chose to stay.⁴¹ Interestingly, he did not provide or state conditions for its permissibility. Moreover, he argues, "Residence in Europe today for the Muslim is better than his residence in his homeland due to the hope of spreading Islam among non-Muslims and to convey the message of the word of monotheism in the world of Trinity and among the worshippers of the Cross, i.e. Christians."⁴²

This discussion of fatwas represents just a sample of many other fatwas and studies that were produced in the last few decades. This search for a modern position on *hijrah* reveals a number of points. First, is the urgency of the question of emigration in the 1990s, the same time that *fiqh al-aqallīyyāt* discourse started to appeal to many jurists. Second, the same points discussed in the context of emigration, for example, the preaching of Islam, the manifestation of one's religion, and the fear of losing one's religion, represented the backbone of the legal discourse on the division of the world into *dār al-Islām* and *dār al-kufr*. Therefore, in order for *fiqh al-aqallīyyāt* to establish itself, it has to resolve the dilemma of emigration, which in turn cannot not be approached except through the lens of Islamic legal debate on the division of the world.

Fiqh Al-Aqalliyyāt, Division of the World, and Jihad

The debate over world division used to be studied within the framework of larger issues such as *jihad* or immigration. It was not a focus of independent research until the rise of *fiqh al-aqalliyyāt*, which made it central to its theoretical construction. Some jurists and intellectuals dedicated whole treatises to the question of world division and its relation to the Muslim *ummah* in general and to Muslim minorities in particular.⁴³ Others responded with a detailed discussion or a section in one of their publications.⁴⁴ A third group wrote articles or issued fatwas or statements in response to questions that revolved around world division in light of international relations in Islam.⁴⁵ Even minority jurists, who did not explicitly discuss the classical position, voiced their position on the world division by discussing how Muslims should see their position and role as citizens in non-Muslim countries.⁴⁶ Examining these different sources, positions and attitudes regarding the question of world division show the various areas that minority jurists discussed to prove the inapplicability of this division in modern times. They debated: (1) the origin of these terms, (2) the relation between the world's division and the concepts of *hijrah* and *jihad*, (3) the logic of *hijrah*, (4) definitions and categorization of the world's territories, (5) the qualitative change of the world context between contemporary time and earlier times of Islamic history, and (6) the original Qur'anic conception of the world. In the following paragraphs, these elements are highlighted with the purpose of examining the mechanism of *fiqh al-aqalliyyāt* to challenge the *hijrah* doctrine and to establish a doctrine of citizenship of Muslims in non-Muslim states.

Origin of *Dār al-Islām* and *Dār al-Ḥarb*

The origin and meanings of these terms (abode of Islam and abode of War) is a common factor in the jurists' debate on *fiqh al-aqalliyyāt*. Jurists acknowledge that these terms, along with other similar terms that have similar connotations,⁴⁷ did exist at the time of the Prophet and his Companions. Many of them, however, argue that these terms were used by the Prophet and his Companions for mainly descriptive and rarely for legal purposes.⁴⁸ However these terms went out of their limited descriptive functions and became, over time, the center of a "legal" doctrine that was developed by the intellect of successive generations of jurists in the formative period of Islamic Law

in their attempt to deal with their socio-religio-political environment.⁴⁹ In that environment, where *jihad* was the key word guiding interaction with other surrounding kingdoms, *hijrah* was seen as an initiation of the new Muslims into Islam and as their share in *jihad*. That is why the question of *hijrah* is always discussed in the context of *jihad*, which was then a basic component of the worldview of the Islamic state and law.⁵⁰

Hijrah and Jihad

Now the question asked by some minority jurists is whether this relationship between *hijrah* and *jihad*, that is, emigration from the land of non-Muslims to the land of Muslims to maintain one's religion and strengthen the Muslim army in its *jihad* against non-Muslims or the emigration from Muslim lands to non-Muslims territories for the purpose of fighting non-Muslims to surrender to the Muslim ruler, is still valid in our present time. This question becomes even more relevant when some Western activists and writers argue that Islam is taking over the West, and that it represents a threat to Western society and its conception of secularism and liberalism.

Minority jurists tried to address the tie that connects the question of *hijrah* with that of *jihad* in two steps. First they expounded on the meaning of *jihad* itself. *Jihad* does not mean only fighting on the battlefield. They stressed the literal meaning of *jihad*, the major *jihad*, as a way of striving for the good and forbidding the evil. *Jihad* can be against the whims of the self, the whisper of the devil, the tyranny of the ruler. *Jihad* can be with the word, with the pen, with action, etc. 'Abdullah al-Juday⁵¹ opposes the common meaning of *jihad* as fighting by arguing, "...confining the meaning of *jihad* to 'fighting' is a minimization of the comprehensive meaning of *jihad* to one of its means. [This had been the practice] until this interpretation (of *jihad* as fighting) became the common usage and replaced the true meaning."⁵²

The second move to untie the relationship between *jihad* and *hijrah* is to prove that *jihad*, as fighting, was enjoined in Islam to defend the Muslim territories. Minority jurists provide extensive arguments, both textual and historical, to prove this point.⁵³ They argue that the basis of the relationship between Muslims and non-Muslims is not war per se. *Jihad* is meant to defend the territories of the state in case of aggression and to convey the message of Islam and its mercy to the whole world.⁵⁴

Arguing that *jihad* is a defensive obligation that has little to do with the question of *hijrah* and that the division of the world is mainly descriptive of its historical moment, it is not hard to argue that the legal division of

the world is not part of the fundamental principles of religion. Rather it is a product of a time when powers were fighting over the hegemony of the world. The Muslim state worked within the limitations of the day either to defend its territories or to spread its religion. At that time, as long as there was no contract/truce between competing powers, a war might be waged to expand a kingdom's hegemony. To further argue for their point, jurists refer to various Qur'anic statements (e.g., 22:39–40)⁵⁵ to prove that *jihad* was meant as a defensive mechanism against the atrocities of the time.⁵⁶

Abū Zahrah⁵⁷ argues, "Almost all jurists agree that non-Muslim land is called the abode of war because it was as such in the formative era of legal writing because of the frequent aggressions from the enemy and their continuous fights against Muslims."⁵⁸ Therefore the notion of dividing the world into *dār Islām* and *dār kufr* is contextually bound and can be changed, modified, or even eliminated according to the particularities of a certain moment.

Logic of *Hijrah*, Islamic State, or Safety

After proving that the terms used to divide the world are a product of human reflection on their geopolitical situation, some jurists go further and re-pose the questions of *hijrah*, that is, presenting the classical legal positions in a discursive fashion so as to arrive at a qualitatively different ruling. Out of these questions, two frequently stand: What is the purpose of *hijrah*? And what is the ruling of *hijrah*? These two questions will be addressed in the following paragraphs.

What is the purpose of *hijrah*? Is it to live in the abode of Islam so as to enjoy the protection of the Islamic state? Or is it essentially to seek one's safety, security, and livelihood? Reviewing the two *hijrahs* in the Prophet's time to Abyssinia and to Medina and other prophetic statements, minority jurists mostly argue for the latter. In the following, al-Juday's arguments will be presented as a case in a point. 'Abdullah al-Juday' (1959) is an Iraqi Muslim jurist who was the general secretary of the ECFR and the president of the ECFR fatwa subcommittee. His book on *Taqṣīm al-Ma'mūrah*, that is, the division of the world, has become a reference on the subject of the Islamic view of world categorization. Al-Juday' argues, "*Hijrah* had become obligatory upon whoever converted to Islam to where he could find safety, provision, and support. When Mecca became a Muslim land, the reason of emigration from there was removed. The same applies to every land that guarantees to the Muslim what the *hijrah* was meant for, i.e. enabling the Muslim to practice his religion and guarantee him protection."⁵⁹ It is important to

notice here al-Juday'ʿs avoidance of getting into the polemics of the jurists that the abode of Islam is the land that is meant for emigration because there the Muslim not only practices his religion but also reigns superior over others through the political authority and the power of jurisdiction.

This approach of evading polemics with different schools becomes more evident when al-Juday' poses the second question: What is the ruling pertaining to *hijrah* for those who converted to Islam while living in the abode of disbelief? Here al-Juday'ʿ, instead of presenting the various legal schools' positions, compiles textual references, mostly Prophetic traditions, stressing two points. First is that these traditions were in the context of new Muslims living in a land in a state of war with Muslims. Second is that their emigration is meant for their safety.⁶⁰ To resolve the complexity of the issue, al-Juday' presents the juristic debate as different positions on one continuum. The *hijrah* is obligatory upon those who cannot practice their religion and are able to undertake it. It becomes preferable for those who can practice their religion and are able to undertake it. It turns to be nonobligatory upon those who are unable to undertake it.⁶¹ As such, the argument goes toward the preference of emigration. At this point, al-Juday' presents al-Mawārdī's⁶² position on another continuum, but this time argues for non-immigration to a Muslim land. Al-Mawārdī argues that if the resident in a non-Muslim land is known for his religion and able to practice his faith and to make *daʿwah*, then he should stay there and his place will become his own *dār al-Islām*. If he can manifest his religion but is unable to practice *daʿwah*, then it depends on if he is convinced that his stay will make Islam known; if so, then it is preferable for him to stay. If Muslims in the abode of Islam request for support, then he should migrate. If the Muslim fears losing his religion and is able to undertake *hijrah*, then he has to emigrate. If he is unable to make *hijrah*, then he is relieved from this obligation.⁶³ Al-Juday' then concludes this section by adopting a more positive tone toward the permissibility of staying in a non-Muslim land by quoting Ibn Taymiyyah's statement in one of his fatwas, "Residence where the conditions are conducive for obedience to Allah and his Messenger and encouraging for doing good deeds and [where the Muslims] are knowledgeable and have authority over his life and more enthusiastic about much better than staying in a place where the conditions are less than (what is mentioned before). This is a fundamental principle."⁶⁴

The Problem of Definition and Categorization

Understanding the controversial nature of the dichotomy of *dār al-Islām* and *dār al-ḥarb*, the jurists of *fiqh al-aqallīyyāt* argue that Muslim jurists and

legal schools through the ages did not reach consensus on defining these terms⁶⁵ nor did they articulate unified positions.⁶⁶ Rather, they debated almost every aspect of this division. They debated, for example, the question of how *dār* may be transformed from that of war to that of Islam and vice versa. They debated whether this transformation should be based on population or on authority or on conditions. They debated the conditions of staying in *dār al-ḥarb*. Their disagreement over the concept of “manifesting one’s religion” as one of the conditions to stay in *dār al-ḥarb* is a case in point. Some interpreted it as the ability of enforcing Islamic jurisdiction. Others limited it to the practice of rituals. A third group understood it to refer to each one’s ability to apply Islamic Law in its own right.⁶⁷

Muslim jurists, moreover, introduced other division categories based on their perception of the time and their conception of the Islamic message. We referred earlier to al-Mawārdī’s designation of *dār al-ḥarb* as *dār al-Islām* if Muslims living there are able to practice and preach their religion. Some other jurists introduced *dār al-‘adl*, an abode of justice, to describe *dār al-ḥarb* if Muslims were protected therein, as was the case during the first Muslim migration to Abyssinia. Al-Rāzī coined a completely different division of the world. He coined the two divisions: *dār al-da‘wah* and *dār al-ijābah*, that is, the abode of inviting people to Islam and the abode of those who accepted Islam.⁶⁸ Ibn Taymiyyah created the concept of *dār murakkabah* when he was asked about the people of Mardin whose land was conquered by a Christian ruler who allowed them to practice their religion. When asked if the land of Mardin was an abode of war or an abode of Islam, Ibn Taymiyyah argued that it was neither. Since each group is treated according to its system of laws and convictions, one cannot prefer one description over the other. He concluded that it can be called *dār murakkabah*, that is, a composite *dār*.⁶⁹ The jurists of *fiqh al-aqalliyyāt* utilize the juristic difference to affirm that the division is open for debate and for the creativity of jurists in reading his reality. Al-Juday’ follows Ibn Taymiyyah and argues that the governance system of the contemporary West makes more sense to call it *dār murakkabah* where each party, Muslims, Christians, etc., are legally permitted to practice their own religions. “By necessity this [position] creates a non-religious bond among people of different religions, through which they coexist. It is the bond of citizenship.”⁷⁰

Contextuality

Given the above discussion, minority jurists argued that an absolute doctrine of *hijrah* or a world division is flawed. Judgment over questions of

hijrah or the division of the world is conditional and contextual.⁷¹ This conclusion takes the question of world division from the realm of ‘*aqidah*’⁷², that is, creed and tenets of faith, to the realm of legal technicalities of jurisprudence. Questions on world division or *hijrah* used to be thought of as manifestations of one’s creed and an affirmation of one’s faith. As reported in many fatwas, if one does not emigrate from the land of *kufir* to the land of Islam, he is to be seen as a sinner and on certain occasions as an apostate. In the current debate, by arguing that the understanding of these concepts vary from one jurist to the other, the questions went out of the faith realm to the legal sphere where the ruling becomes contextual and individual based. This shift creates a space for negotiation between tradition and reality. On the question of *hijrah*, for example, minority jurists would count the conditions that tradition brought in to justify its protective position against emigration to non-Muslim lands. These conditions include: (1) the fear of losing one’s religion (*fitnah fi al-din*), (2) the application of the laws of nonbelievers upon Muslims, (3) the inability to practice one’s religion (*iḥḥār sha’ā’ir al-din*), (4) the fear of Muslim children losing their religious identity and their inclination toward non-Islamic ways of life, and (5) the superior social position of non-Muslims over Muslims, as Muslims may work under their leadership. After discussing each one of these conditions as expounded in *fiqh* literature, the jurists of *fiqh al-aqalliyyāt* argue that these conditions are no longer definite in our modern context. These conditions can be dealt with in our current minority situation where Muslims by law are permitted to practice their faith and uphold its tenets.⁷³

In order to inform their discussion of the qualitative change in modern times compared with earlier times, minority jurists refer to three main points: (1) the creation of nation-states, (2) the development of a new international order, and (3) the weakness of the Muslim nation and the collapse of the Caliphate in 1924.

During the last century, notions of modernity and secularism have become part of modern life. A new world order was introduced, where everyone, whether a member of a majority group or of a minority community, enjoys fundamental rights guaranteed by universal declarations or entities. The violation of human rights through wars or genocides or racial discrimination urged the international community to interfere. Within three decades in the middle of the twentieth century, the UN Charters (1945), the UN International Declaration of Human Rights (1948), the European Convention on Human Rights (1950), and the UN International Convention on the Elimination of all Forms of Racial Discrimination (1965), along with other international conventions, were signed by the international community. These agreements refer to minority rights of existence, of self-determination, of maintaining their identities, of freedom to practice

one's religion, etc. This shift in world affairs, although being applied in different ways on various occasions, is considered enough grounds for jurists of *fiqh al-aqalliyyāt* to argue for the inapplicability of the classical world division into *dār al-Islām* and *dār al-ḥarb*. This division is based, as mentioned earlier, on the constant status of war in previous times. If this status changed into peaceful recognized borders, rights, and laws, then the world should be divided differently, if it needs to be divided at all. To argue for this conclusion, some minority jurists refer generally to changes in world politics, while others discuss these agreements in detail (referring to dates, places, and rules). A third group would still discuss the principles of these agreements and compare them with Islamic principles with a view to proving that they are Islamically recognized and Muslims should abide by them.⁷⁴ One jurist argues that "the logic of power that controlled the ancient world was the language of every one. Separation for safety [between ancient world kingdoms] was required. But nowadays it is the power of international law that directs things. This awareness of the variation in power mechanisms in controlling international relations leads us to a different conclusion when it comes to the nature of the land and the ruling on emigration."⁷⁵

The comparison between past and present reality is not only limited to the political shifts. Jurists refer to a legal linguistic shift. In classical literatures the term used to describe people was *ahl al-milal wa-al-niḥal* (communities of religions and sects),⁷⁶ in a clear indication that people were seen and dealt with from the perspective of their religious convictions. This usually meant that those groups were deprived of certain rights that the rest of the people may enjoy. But once the modern state came into existence, the positions of other groups within the boundaries of the nation-state were looked at differently. Terms like "minority" "group" or "community" are utilized not to single them out but to legally guarantee them certain rights (not to deprive or exclude them).

In the last couple of years, one can observe a further change. Terms such as "minority" or "group" became less used in the debate, in favor of terms such as "citizens" or "resident aliens." Using such terms would negate any possibility to call such a non-Muslim land a *dār of kufr*.

Furthermore, pragmatism and practicality are also used to produce another type of argument. Al-Judayʿ argues that the current international context "became a reality that cancelled all distinctive markers of the Muslim state(s) that were based on religion, at a time when it was known as *dār al-Islām* versus all other countries which were known as *dār al-ḥarb*." He states that Muslims had to deal with this new context either with absolute denial or to interact with it and accept what agrees with the principles of Islam and do the best to create an impact in the making of world decisions to come in line with the *Shariʿah*. For example, the UN declaration

stipulates that its members have to be peace loving. This is a part of the ultimate objective of Islam. Therefore Muslims should uphold it and join forces with others to maintain it.⁷⁷ A Muslim's character of openness and his positive interaction with the world around him obliges him to reject the traditional position of classifying the land through man-made categories.⁷⁸

In light of this discussion, can America, for example, be *dār al-ḥarb*? Al-Ḥasanī and others definitely argue negatively. It cannot be *dār ḥarb* in light of all these agreements and conventions that Muslims upheld. A contemporary Muslim scholar states that Muslims look at the West as a hotbed of *kufṛ*, while in reality it is not. The West represents a civilization that cannot be described as *kufṛ*, but as a human accumulation of the creativity of humans over centuries.⁷⁹ This positive overview of the West is thought provoking. The distinctions between a civilization, including its cultural products, and *kufṛ* as two different components that may be disconnected limit the description of *kufṛ* to the private sphere, that is, to the individual not to the land. So the Westerners may be *kuffār* in terms of their belief but not in terms of their land or civilization.⁸⁰ This distinction between the public and private spheres and between residency and religious practices reflects clearly the impact of modern ideologies on the Islamic legal debate to the extent that according to Prof. Ja'far 'Abdel-Salām, the secretary general of the League of the Islamic Universities, the classical Islamic division of the world has fallen into abeyance in our modern time.⁸¹

Qur'anic Philosophy

Apart from the legal debate discussed earlier, some jurists advanced a philosophical argument derived from Qur'anic teachings against the dual division of the world. The argument stresses that the earth/the land and what walks on it belong to Allah; the whole earth is made for the benefit of Man; humanity belongs to the same father, Adam; man by nature is inclined to belong to a group, that is, his people, tribe, ethnicity, etc; and the basis of interaction between humanity is to get to know each other. Reading these "principles," one may conclude that the land in principle is Islamic, and if turns out to be an abode of *kufṛ*, this is transitional. One may also argue that man can freely move in the land of Allah and establish a sense of belonging with various communities based on peaceful coexistence, that is, in Arabic *ta'āruf*.

The Qur'anic understanding that the earth belongs to Allah prevents jurists from producing legal rulings based on the land as such. The land becomes a neutral space "*arḍ mujarradah*" (except for certain areas that God

defined as sacred such as Mecca, Jerusalem, and Sinai that were granted to man for specific “Qur’anic/ritual” purposes). Man regards this land a *sakan* (a home, a comfort), *‘umrān* (cultivating “a civilization”), and *istikhlāf* (viceroy), and not for *fasād* (mischief) or *baghy* (rebellion) or *istid’āf* (being weak).⁸² As such, the Qur’an provides a philosophical conception of the world that is surely not in conformity with a dichotomy of the world based on personal beliefs.

Another Qur’anic philosophical argument is the universality of Islam. The Qur’an and *Sunnah* are full of references to this principle.⁸³ The early jurists, however, did not consider this aspect in their debate. Their view of the world was based on their local social construct, producing what can be called “localized *fiqh*.” Al-‘Alwānī argues, “[early jurists] did not think of the universality of Islam as part of the methodological factors in determining their *ahkām*, legal rulings. They distanced themselves from the Qur’anic perspective on geography. The jurisprudence has become local in character and individual in focus.” This logic, in the contemporary qualitatively different era, should be rejected. It threatens the existence of Muslims and makes Muslim children feel inferior and marginalized.⁸⁴

Al-‘Alwānī then concludes that the Qur’an (3:110) states that the Muslim *ummah* has two characteristics: (1) it is chosen by God for (2) leading mankind. The Muslim’s mission, as an *ummah* raised by God, is to lead others out of the darkness of servitude to man to the light of faith and submission to God. Reviewing the exegeses of this verse states that Muslims are chosen as the best of mankind provided they are the most obliged to benefit mankind. The chosenness of the *ummah* is not an inherited element per se, but it depends on whether they will do work for the benefit of all humanity. “A nation that has these two characteristics cannot be limited by land or confined in space. It has to reach out to the people to convey the message of God. Thus all references to *dār al-kufr* or *dār al-Islām* or *dār al-ḥarb*, as geographical entities, become superfluous and restrictive.”⁸⁵ Given this understanding, Islamic legal tradition started to see not only theoretical debates but also fatwas and collective scholarly statements that reflect this new position. The statement of “Mardin: The Abode of Peace” stands here as attestation to the birth of a new juristic vision of the world.

Mardin: The Abode of Peace

Realizing that the classical juridical division of the world does not correspond to our modern reality, a group of Muslim scholars held a peace summit conference in 2010 in Turkey under the title “Mardin: the Abode

of Peace.”⁸⁶ The scholars collectively studied one of the most important (classical juridical) foundations of the relations between Muslims and fellow human beings, namely, the (classical juridical) classification of “abodes” (*diyār*), as Islamically conceived, and other related concepts such as *jihad*, loyalty and enmity, citizenship, and migration (to non-Muslim territories) as conceived by Ibn Taymiyyah’s fatwa to the people of Mardin. In this fatwa, Ibn Taymiyyah challenges the classical division of the world and “came up with a compound/composite classification by virtue of which civil strife amongst Muslims was averted, and their lives, wealth, and honor safeguarded, and justice amongst them and others established.”⁸⁷

The scholars argue that Ibn Taymiyyah’s fatwa is exceptional in its formulation and that, to a large degree, addresses a context similar to our time: a political state of the world that is different from the one encountered by past jurists, and which had formed the basis for the particular way in which they had classified territories. If Ibn Taymiyyah took into consideration the political change, then it is imperative that contemporary jurists learn from him and review the classical classification, because of the changed contemporary situation. Contemporary jurists need to develop a sound Islamic and legal vision that does not violate Islamic religious texts, is in harmony with the higher objectives of the *Shari‘ah*, and engages with contemporary context. They argue that Muslims are now bound by international treaties through which security and peace have been achieved for all of humanity, and in which they enjoy safety and security, with respect to their property, integrity, and homelands. Consequently, Muslims are interacting with others in unprecedented ways: politically, socially, and economically.⁸⁸

The scholars describe the contemporary world as a world of recognized international treaties, a world of civil states, which guarantees, on the whole, religious, ethnic, and national rights, a place of tolerance and peaceful coexistence among all religions, groups and factions in the context of establishing common good and justice among people.

These traits of our contemporary life, the scholars continue, is “what the *Shari‘ah* has been affirming and acknowledging, and to which it has been inviting humanity, ever since the Prophet (peace and blessings be upon him) migrated to Medina and concluded the first treaty/peace agreement that guaranteed mutual and harmonious co-existence between the factions and various ethnic/race groups in a framework of justice and common/shared interest. Shortcomings and breaches perpetrated by certain states that happen to scar and mar this process cannot and should not be used as a means for denying its validity and creating conflict between it and the Islamic *Shari‘ah*.”⁸⁹

Proving that the classical division of the world is historically bound, jurisprudentially human, and contemporarily illogical, jurists have attempted

to develop a better classification that corresponds to the historical moment and religious precepts.

Fiqh al-Aqalliyyāt: A New Vision of the World?

Fiqh al-aqalliyyāt jurists had to address the question of the abode at a certain moment of their discourse because it is the base that their position will be built on. As mentioned earlier, some examined the question of the abode in detail and made it an essential argument in their debate. They provided different historical, linguistic, philosophical, and legal evidence for its inapplicability in modern times. Others referred to the question occasionally in their writings and fatwas. They argued that this classical classification is not valid nowadays for various reasons. If the case is as such, then how one will define the contemporary world? Here one may note different approaches and trends. Some jurists regenerate/reinterpret the tradition, that is, using the same classical definition but with new meanings. Others reconstruct the tradition by using general Islamic principles to define the land.

Re-interpretation of the Tradition: *Dār al-‘Ahd*

In his *Fiqh al-Aqalliyyāt al-Muslimah*, al-Qaraḍāwī did not examine questions of *dār*, *hijrah*, or citizenship. This may be surprising since these issues represent the basics for any discussion on *fiqh al-aqalliyyāt*. On his list of the legal questions that are frequently asked by Muslim minorities, the questions on *hijrah* and world division come at the top of the list, but are totally ignored in the fatwa section.⁹⁰ One wonders why? Is it because they are controversial and the mere discussion of them will distract attention from his main fatwa framework, that is, coexistence with the non-Muslim society? Or is it because his theoretical introduction to the book, studied in chapter 3, is enough to respond to these questions? In the introduction, al-Qaraḍāwī stresses the necessity of the Islamic presence in the West for two reasons. The first is to join ranks with the West, the most influential power in the modern world, to cherish human freedom, dignity, and solidarity. The second is to convey the message of Islam. Having said that, he explicitly argues that there are no grounds to ask such a question on the permissibility of staying in non-Muslim lands. Moreover, al-Qaraḍāwī disliked the description of non-Muslims as disbelievers and he prefers to use words such as “society” or “country” in place of “abode” and “non-Muslims” in place of *kuffār*.

It can be argued that the absence of this discussion in al-Qaraḍāwī's *fiqh al-aqallīyyāt* is an indication that Muslims have passed to a new stage in their debate on Muslim minorities. Muslims need to move on to debate the urgent issues, rather than getting involved in political and philosophical debates that will not change the reality. Muslims strive to establish a new home, that is, in the West, and they will not forsake it.

The place where al-Qaraḍāwī argues for the question of *dār* is in his discussion on *jihad*, as if this is the place where one may debate the issue of the relationship between Islam and the West, and not about Muslims living in the West.⁹¹ This distinction between the political West and Western people is evident in many *fiqh al-aqallīyyāt* writings. Muslims may be against the political administration of certain countries, but not against the people. Those people may be either Muslims trying to strive for their life or non-Muslims who are moral subjects and potential targets for *da'wah*.

After reviewing the Qur'anic and prophetic origin for the classification of the world into two categories, the abode of Islam and the abode of war, and the jurisprudential discussion on the definition and boundaries of each abode,⁹² al-Qaraḍāwī acknowledges that such a classification of the world is logical and attested to by historical experiences of dividing the world into entities.⁹³ As for the world of today, this classification is still valid. He states,

There is still a space to argue for the validity of this classification. We cannot accept the position of some who argue that the abode of Islam no longer exists in our world, because our new world, the age of globalization, is not divided on a religious basis. Such a position is not completely sound. While others took religion away from their lives and constitutions, we did not and it is not permissible to us to do that, as long as Islam is our faith and our way of life, upon which our identity is based and our authority is derived.⁹⁴

Al-Qaraḍāwī continues to argue,

All so-called Islamic countries, inhabited by a Muslim majority, are part of the abode of Islam, even if some Islamic countries do not follow the *Shari'ah* in its totality.... The rest of the world to us, Muslims, is an abode of contract, with the exception of Israel. We are tied with the world around us through [our signing of] the United Nations Charter, in our capacity as members of this entity. It is true we did not sign the charter as one entity, as was the case during the Caliphate time, but we signed it as states bound together with some umbrella organization such as the Islamic Conference.... the moment we signed [to be members of the UN], there established a contract and *mithāq* that we are Islamically bound to follow and to fulfill all its requirements, as long as they do not contradict the religion.⁹⁵

It is not only the United Nations, but also other types of state-state relationships such as educational treaties, developmental agreements, diplomatic missions, etc., that charge Muslims with moral and ethical obligations toward other states, a matter that does negate the possibility of describing these states as an abode of war. The best way to describe them then is that they constitute *dār al-‘ahd*.⁹⁶

The whole world as “*dār al-‘ahd*” is the bridge that al-Qaraḍāwī builds between the tradition and modernity. He uses the concept as an absolute term without ascribing to it the legal debate if *dār al-‘ahd* itself is a part of *dār al-kufr* or a third category of *dārs*. He does not refer to the legal conditions of concluding contracts with *dār al-ḥarb*. It will be misleading if one compares al-Qaraḍāwī’s conception of *dār al-‘ahd* with its traditional definition. *Dār al-‘ahd* for him is very close to, if not the same as, an international civil political domain of human brotherhood. This becomes clear when al-Qaraḍāwī disfavors the use of the term of “*dār al-‘ahd*” in the modern world because of the historical connotations it implies. So he suggests changing these terms with others that are acceptable to a wider audience. He argues that these terminologies are not sacred. Rather it will work better with the Qur’anic direction to debate others with what is best. Al-Qaraḍāwī himself advises Muslims not to use the word *kuffār* in addressing others. He argues that the Qur’an used this word only twice in addressing nonbelievers: the first in connection with the Day of Judgment and the second when non-believers were bargaining with the Prophet. Al-Qaraḍāwī confirms that in his books, he always calls them “non-Muslims.” Nowadays people use the term “the other” to talk about those who disagree with them. So there is a need to develop a different way of addressing the other that fits today’s moral standards.⁹⁷

Al-Qaraḍāwī is not the only one to rely on the notion of *dār al-‘ahd* to rationalize his argument of the validity of Muslims’ residence in a non-Muslim abode. Ibn Bayyah used the same method but his understanding of *dār al-‘ahd* is different from al-Qaraḍāwī’s. He maintained the traditional understanding of *dār al-‘ahd* as a territory where an official treaty or contract is concluded between such a land and a Muslim individual or state. However his conceptualization of the treaty incorporates modern forms: Visa or citizenship represents this contract. For Ibn Bayyah, *dār al-‘ahd* is a real signed individual contract that results in moral and legal obligations and not a civil moral commitment that is innately established with the others, as understood from al-Qaraḍāwī’s disposition.⁹⁸ Ibn Bayyah argues that the world is not classified into two abodes, that of Islam and that of war. It actually has a third abode, that is, the abode of contract. This is the current relation between Muslims and non-Muslims. Through a visa or citizenship, Muslims enter into a binding contract that imposes a state of

dialogue between Muslims and non-Muslims. A binding Islamic contract creates moral responsibility and legal obligations. Muslim minorities should respect the law of the land and should prohibit themselves from aggression. Good citizenship is part of the deal. This *amān* contract is not only for regulating life with non-Muslims but in itself reflects three aspects of the religion of Islam: the moderation of Islam in dealing with the other, the acceptance by Islam of the concept of diversity and pluralism, and thirdly the exclusivity of the Islamic *da'wah*, since those non-Muslims are potential Muslims.⁹⁹

At the time where al-Qaraḍāwī and Ibn Bayyah were clear about their position toward introducing *dār al-ʿahd* as an alternative to *dār al-ḥarb*, al-Judayʿ, it seems, has not come to a decision yet. As a traditional jurist, he wanted to stay within its legal options, that is, *dār ʿadl* (abode of justice), or *dār Murakkabbah* (composite abode), or *dār Islām* (abode of Islam) that were produced by earlier jurists. On one occasion, he argues that modern liberal countries cannot be described as *dār Islām* since they follow a non-religious governance system. It can be described as *dār ʿadl*, an abode of justice, because it guarantees the dignity of man, and works on his protection.¹⁰⁰ On another occasion, he states that the governance system of the West makes more sense to call it *dār murakkabah*, a composite *dār* where the two parties, Muslims and non-Muslims, were legally permitted to practice their own religion. By necessity this [position] creates a non-religious bond among people of different religions, through which they coexist. It is the bond of citizenship¹⁰¹ On a third occasion, al-Judayʿ subscribes to al-Mawārdī, al-Haytamī, and al-Shirbīnī's position that a non-Muslim land can be *dār Islām* as long as one is able to practice one's religion safely in a non-Muslim territory; then his place is *dār Islām* in his own right.¹⁰²

Reconstruction of the Tradition

Jurists of *fiqh al-aqalliyyāt* vary in their methodology of how to label the world of non-Muslims. In the previous section, al-Qaraḍāwī, Ibn Bayyah, and al-Judayʿ attempted to reconcile tradition with the current reality through a process of reinterpreting the already available traditional legal positions. Some other jurists sought another path. They have a different vision of the non-Muslim world. Using Qurʾanic principles, al-ʿAlwānī argues that recognizing the Qurʾanic understanding of geography as "the earth belongs to Allah and Islam is his religion" would lead to a conclusion that every and each country is either an abode of peace as a matter of fact or will be, eventually, in the future. All humanity is the community of Islam,

ummatu al-Islam, either by adopting the faith “*ummat millah*” or as a prospective follower of it, “*ummat da’wah*.” Al-‘Alwānī supports his position by going back to the legal tradition by referring to al-Mawārdī and al-Rāzī. He quotes al-Mawārdī’s position, referred to earlier, that *dār al-Islām* is the land where Muslims can practice their religion therein. He furthermore adopts the Rāzī’s division of the world into *dār da’wah* and *dār ijābah*, arguing that those positions are close to the objective of the *Shari’ah* and Qur’anic meaning of geography.¹⁰³

The use of the term “*dār*” in Islam is indicative. The Qur’an did not use the world, country, or state “*balad*” or “*arḍ*” because “*dār*” is tied with the Muslim. It is part of his life. Where he goes, his *dār* goes with him. The Muslim has no single country that he sanctifies and defends while the rest of the world has no obligation toward him. This *dār* has no qualifications other than that he can manifest his religion therein.¹⁰⁴ *Dār* is like a tent. One day it is set up in a place and the next day it is carried to another place, holding with it one’s religion and values. So if the land is all for Muslims, then the question of world division or residing in a certain land is meaningless. Moreover Muslims are required by their religion to have a proactive interaction with the environment they live in and to have an affirmative and constructive engagement. Even if this participation entails some courtesies that may have some negative aspects to the minorities, this is all right as long as they do not have an impact on the fundamentals of faith.¹⁰⁵

Ṣalāḥ Sultān comes close to al-‘Alwānī’s conclusion when he states that it is a methodological error to apply certain juridical positions that might have been valid in another time to modern times. One of these positions is the division of the world into *dār al-Islām* and *dār al-ḥarb*. However, it is better to consider in our context *dār al-‘ahd* and *dār al-da’wah*,¹⁰⁶ based on these countries’ attitudes toward Muslims.

In his *al-‘Usus al-Shar’iyyah li-al-‘Ilāqāt bayna al-Muslimīn wa-Ghayr al-Muslimīn*, Fayṣal Mawlawī (1941–1911), member of the ECFR, argues in the same venue. He states that Muslims in Western countries are not in *dār al-ḥarb* for various reasons: they entered these countries on the basis of a contact/treaty, that is, visa, that must be fulfilled; they are also able to practice their religion in a way that goes beyond what is permitted in some Muslim countries; Muslims, as individuals, are not responsible to declare a state of war against other countries. Such a declaration is a matter of state concern and requires certain state procedures and conditions. If Muslims happen to be in the West, they are in *dār ‘ahd* or *dār da’wah*. If one accepts the classical legal division, then Muslims are in *dār al-‘ahd* but if one argues that this division is not applicable in our current world, then we are in *dār da’wah* similar to the situation of Muslims in Mecca before their *hijrah* to Medina. At that time, Mecca was not *dār ḥarb*. It was *dār da’wah*, along

with the whole Arabian Peninsula. If people in *dār al-daʿwah* accept the call and establish Islam in their lands, then their place becomes *dār Islām* and the rest of the world is *dār daʿwah*.¹⁰⁷

This redefinition of the non-Muslim territories as *dār al-ʿahd*, *dār al-ʿadl*, *dār al-Islām*, or *dār al-daʿwah* establishes the basis for not only allowing Muslim to emigrate and reside in non-Muslim territories but also for bringing different perspectives on questions of citizenship and loyalty to non-Muslims, matters to which jurists have always negatively responded.

Citizenship and Loyalty Redefined

The creation of the nation-state redefined the relationship between the political entity of the state and its subjects. Categories such as citizens, alien residents, minorities, ethnicities, illegal immigrants, etc. became integral in determining the rights and duties of every individual toward the society he lives in. While Muslims were trying to navigate their status through these categories, Muslim jurists and muftis were searching for ways to negotiate, accommodate, or even reject these categories with a view to maintaining the integrity and authority of Islamic Law. The muftis who ruled for the undesirability of emigration to non-Muslim countries had no problem with the challenge of citizenship. For them the question does not exist because Muslims should emigrate and be citizens in a Muslim state. As for those muftis who permitted Muslims to reside in a non-Muslim land, they had to tackle further a long list of questions on Muslims' duties and obligations toward their non-Muslim country, as well as their religion. Questions of citizenship and loyalties come at the top of their list.

Citizenship is a complex challenge because it requires certain duties and obligations that may inherently contradict the "traditional" understanding of Islamic Law. One main obligation of citizenship, for example, is that it assumes loyalty to the constitution of the non-Muslim state. This intersection between citizenship and loyalty triggered the debate on the concept of citizenship and the meaning of loyalty and to what extent they correspond with Islamic teachings and values.

Engaging the debate, Muslim jurists and muftis produced a wide array of complex arguments that undoubtedly mirror each jurist's political and social context as well as its legal orientation. At the time of colonialism, many muftis categorically refused to permit Muslims to take the citizenship of the colonizers whatever the reasons were. Rashīd Ridā considered such a person a sinner, and his sin was said to reach the level of apostasy.¹⁰⁸ These positions became milder in the 1980s and the 1990s. Jurists tended

more to permit Muslims to take the citizenship of the host country for the sake of securing religious and social benefits for Muslims. At the turn of the twenty-first century, however, Muslim status in the "host country" became positively different. They became quite settled and helped in the infrastructural growth of the country. They felt more secure and a good deal of the second and third generations became citizens. By this time, minority *fiqh* too became part of the debate of Islam in the West and produced a different line of argument: Muslims should not only take their country's citizenship but also be active citizens who work not only for their religious community but for the welfare of their people and state as well. To arrive at this conclusion, jurists of *fiqh al-aqalliyyāt* had to resolve a number of intricate questions and various points of contention, such as constitutional supremacy (over Islamic Law), military subscription, and taxation. Each of these questions require a separate study, especially in terms of their impact on a Muslim's legal and moral obligations toward his non-Muslim country and on the process of transformation of Islamic Law in the West. For the sake of brevity and the focus of this present study, the analysis here will be limited to the question of citizenship and its relation to the meaning of loyalty in the thought of jurists of *fiqh al-aqalliyyāt*. The objective is to demonstrate the complexity of the issue and how it was resolved in innovative ways that challenge conventional positions, at the same time establishing a solid ground for *fiqh al-aqalliyyāt* to flourish and respond to minority concerns without a need for conciliatory justifications.

Before presenting the positions of minority jurists on the question of citizenship and loyalty, it is necessary to present an anticitizenship argument in order to understand the type of arguments minority jurists needed to advance in strengthening their argument. The Syrian jurist al-Būṭī argues that assuming the citizenship of a non-Muslim country works against the religiously distinct identity of Muslims in the immigrant countries. Instead of absolute submission to Allah and His *Shari'ah* and instead of emigration to Muslim territories, Muslims often assume citizenship in clear contradiction to verses of *muwālāh*, that is, loyalty. Citizenship, al-Būṭī states, is not a legal or a geographical identification. It has also a creedal aspect and philosophical and ideological objectives. It requires full loyalty to the policies of the country and surrender to its laws. Such surrender to secular man-made laws means that one accepts them and is convinced of their truthfulness. This conviction, according to al-Būṭī, is a grave sin in Islam.¹⁰⁹

Al-Būṭī here advances three arguments. The first argument is that of a Muslim's religiously distinctive identity. Taking non-Muslim citizenship replaces this identity with feelings of *muwālāh* that should be limited to Allah, His messenger, and the believers. The second argument is significant. It shifts the question from being a legal issue into a question of *'aqidah*, that is, one's

faith, which does not allow any room for a compromise. The third argument is directed toward the individual Muslim. If he accepts citizenship, this implicitly means that he is convinced of the truthfulness of the "non-Islamic creed," a matter which leaves the individual with the burden of sin. These arguments are compelling and can easily affect the minds of many Muslims.

The complexity of the question of citizenship becomes more evident when one reviews the fatwas of the Islamic *fiqhi* organizations such as the Islamic Fiqh Academy, the Fiqh Academy of the Islamic Conference, and the position of the muftis of the Fiqh Guide of North African Muslims Living Overseas. The first council decided not to give an opinion and left the fatwa to each individual mufti to decide on the case at hand. The second council so far has not issued a fatwa. The council did send the question to a number of its committee fatwa members, received their answers, and formed a small committee to draft a resolution for the council to review and debate. Until now, however, the question has not been answered. This position recalls the position of the same academy toward the question of *hijrah* when they decided not to issue a general fatwa and asked each individual mufti to give his fatwa on a case-by-case basis. It seems that the same applies here. One may wonder why there is such reluctance although these councils were created to answer *ummah* concerns, of which citizenship has been an urgent one. There may be a number of hypotheses that would respond to this question. First, it seems that these councils mostly recruit members who ascribe to traditional schools that did not formulate strong positions on the question of citizenship. Out of caution, they also prefer not to issue an opinion that may trigger a controversy in their traditional circles. One may venture here and argue that such councils tend to issue their collective resolutions only after the issue has been extensively studied and individual jurists reached strong positions. Then the council issues a fatwa to consolidate that position. If not, the case stays open until such positions are reached. The questions of *hijrah* and citizenship are good examples here. Also it is worth noting that most of the councils' members are traditionally trained and mostly live in Muslim countries. They may not be aware of the various dimensions of the questions or the mechanism that governs Muslims' lives in the West.

Individual muftis, especially those who have connection with Muslim minorities, tend to have more positive and somewhat conclusive positions toward these questions. The muftis of the *Fiqh Guide* of North African Muslims, for example, permitted citizenship on the basis that it is a technical procedure and geographical affiliation that has no effect on the creed of the Muslim and his desire to practice the religion of Islam.¹¹⁰

Şalāḥ al-Şawī¹¹¹ does not agree with the *muftis* of the *Fiqh Guide's* conclusion that citizenship is a simple technical procedure. Rather it is such a

problematic issue that it requires various layers of analysis. On one hand, apparently, acquiring citizenship implies consent with the *Jahiliyyah* law, pre-Islamic Law, and discarding arbitration to Islamic Law. It also implies being loyal to non-Muslims over Muslims. Any of these is by necessity known in religion as *ḥarām*. It does not even preclude the ruling of apostasy against those who are involved in such acts, or at least it is one of the main reasons that leads to apostasy. On the other hand, many of those who got naturalized, al-Ṣāwī argues, are still loyal to their religion. They gained strength out of their citizenship that they utilized in their *daʿwah* activities. They built Islamic centers and institutions in these lands and made Islam part of the land, instead of being an immigrant religion. Through the work of those people, many came to Islam. In addition to this, positive law has become the norm in many Muslim countries to the extent that there is not much difference between the laws applied in these lands and the laws applied in the lands of Muslims. Therefore al-Ṣāwī concludes that, “if the process of citizenship is stripped off from the requirements of absolute acceptance of the laws and systems of the country granting citizenship and does not fully subscribe to its binding laws or express absolute belonging to its community so that one is obliged to show peace to its allies and involve in war against its enemies; and if such a citizenship is necessary to organize the affairs of residents of these societies and to establish their residency, along with keeping one’s commitment to the contracts and agreements one has with the host country, and such a citizenship is needed for urgent necessities and the citizenship-seeker to maintain his *walāʾ* and *barāʾ* and commitment to Allah and His messenger, then the ruling on citizenship is open for *ijtihād* and one should not preclude an opinion to its permissibility with the framework highlighted above.”¹¹²

Ṣalāḥ al-Ṣāwī’s fatwa is actually not a fatwa in the sense that it guides the fatwa seeker to an answer. It problematizes the question by reiterating all concerns and advantages of living in a non-Muslim society. It does not discuss the nature of the host society in terms of values or structures. It deals with the citizenship question as a self-interest issue for the Muslim minority. This position corresponds with al-Ṣāwī’s position of nonsettlement/nonmigration to a non-Muslim land. This position does not contribute much to the discourse of *fiqh al-aqalliyyāt*.

Understanding the problematic nature of the question, Ismāʿīl al-Ḥasanī formulates his position on a cautious, but positive, ground. He argues that the question of *tajannus*, that is, citizenship, requires one to analyze various elements such as the reasons and outcomes of *tajannus* and the meaning of *muwālā* that such practice may entertain. Taking the nationality of a certain country is normally an outcome of social and personal necessities. Muslims admire Western life in terms of its intellectual freedom, political

tolerance, and social solidarity. They made use of these components to build an Islamic community of mosques, schools, and other institutions. When this admiration of the West is compared with the poor economic situation and the limited freedom in the Muslim world, it results in one's privilege to the West. However there are also, al-Ḥasanī continues, other disadvantages of holding the nationality of a non-Muslim country. In some situations Muslims may need to work against the interests of their country of origin. They may also become more attracted to non-Islamic customs and practices. Bringing all these factors together, one cannot arrive at a final resolution that applies to all cases. Acquiring citizenship implies "a level of the *muwālāh*, i.e. loyalty, of Muslims to the *kuffār*."¹¹³ If this *muwālāh* entails any aspect of loyalty to a faith that is not the faith of Allah or to any aspect of treason to the Islamic home country, then I subscribe to the position of those who narrow the permissibility of assuming citizenship within severe limitations. (He is applying here the role of avoiding mischief as prior to bringing benefit.) That is the mischief resulted from upholding non-Islamic morals, taking off national and religious identity, following a Western style of life. All this, if not *ḥarām*, leads to venues of *kufr* and that is *makrūh*, that is, reprehensible. This should not mean ignoring the other conditions and necessities that make becoming a citizen permissible, even if this would lead to *muwālāh* but it is the least level of *muwālāh* that is referred to in the Qur'anic statement, "but if you want to take protection against them."¹¹⁴ These necessities include *da'wah*, meeting the needs of the converts and other members of the Muslim community and also escaping persecution practiced by some home countries, etc.¹¹⁵

Al-Ḥasanī deals with the same concern of al-Būṭī, that is, identity and *muwālāh*. He acknowledges that there is loyalty and admiration involved in taking the citizenship of a non-Muslim country. However, he introduces the levels of *muwālāh* (such as inclination to their beliefs, showing their love for personal gains, betraying Islam or the Muslim state) and the one projected here is a minor form of *muwālāh*. If compared with the benefits, Muslims may bear it for the greater good, that is *da'wah* and support for the Muslim minority community. Al-Ḥasanī's argument reflects the hesitation that some minority jurists may have when they deal with complex minority questions. Al-Ḥasanī shows a progressive approach when talking about societal consciousness of the differences between classical concepts and modern reality. He does not show the same level of consciousness about the meanings and politics of citizenship.

Ibn Bayyah, on the other hand, seems to have a more consistent approach to the citizenship question in lieu of his argument of considering current non-Muslim territories as an abode of contract. He argues that Muslims' residence in the West is based on various levels of necessities and needs. He

refutes the claim that loyalty to one's religion prohibits one from interacting with non-Muslims, including taking their citizenship. The abode of *amān* is based on the contract of citizenship whose meaning does not contradict the meaning of *walā'*. It actually constitutes a different level of *walā'* that does not contradict the religious *walā'*. Rather it can be seen as part of it.¹¹⁶ The concept of citizenship, Ibn Bayyah argues, is a voluntary contractual bond regulated by a constitutional framework and is established on fundamental values. These basic values include mutual respect, recognition of other faiths and cultures, guaranteeing others' freedoms, participation in fair political and economic life, etc. These same values are Islamically required from Muslims.

It is true for a Muslim that his religious loyalty takes priority over other loyalties but this is in case of conflict, something that Ibn Bayyah does not subscribe to. The significant contribution of Ibn Bayyah here is his attempt to transform the debate from a technical religious platform to abstract values. The criteria of evaluating the other, including aligning with him and taking its citizenship, has become the value and not the religion. On this level, many controversial questions raised by Muslim minorities can be positively approached. For example, a basic argument against acquiring the citizenship of a Western country is that the secular nature of these governments requires their citizens to resort to secular courts and not to their religious laws. Ibn Bayyah argues that this understanding of secularism is unfair and does not correspond to the real meaning of secularism. The basic values of secularism such as respecting religion, neutrality among faiths, recognition of human rights, acknowledging plurality, defending aggression, etc., correspond to the basic values that religions call for. According to this argument, values are part of human nature that does not require a religious bond to establish it. Conversely, it is religion that requires their fulfillment.

Ibn Bayyah's approach to questions of citizenship, loyalty, and secularism is thought provoking. He turned these concepts into positive values. If positive, they should be part of the value system of Islam. If Islamic, Muslims should hold to them. The questions become no longer religious based but civilization oriented.

Following a similar line of thought, that is, taking the question of citizenship and loyalty from the realm of religion to other grounds, Jamāl al-Dīn 'Aṭīyyah argues that there is a distinction between political loyalty and religious loyalty. The Constitution of Medina, 'Aṭīyyah argues, is an early case of this distinction. In the constitution Muslims and Jews, the *anṣār*, indigenous population of Medina, and *muhājirīn*, the Meccan immigrants, came together in a political alliance, not a religious *walā'*. Moreover, the Qur'an affirms the same distinction when it considers the people of *dhimmah* part of the people in the Islamic state,¹¹⁷ a clear indication that

there is an established political *walā'* they have with Muslims.¹¹⁸ 'Aṭīyyah adds to these two levels of *walā'* a third one, that is, social *walā'* that leads to social peace. Political *walā'* results in legal rights and obligations but the social *walā'* leads to mutual social and emotional rights and obligations such as the nonexchange of hostility among social groups, Muslims, and non-Muslims.¹¹⁹ Based on 'Aṭīyyah's argument, Muslims can receive citizenship in non-Muslim states and reciprocate with them in political and social *walā'* but keep the religious one to their own Muslim community. This is more or less an affirmation of civil society principles.

The distinction between religious *walā'* and *walā'* of citizenship has been reiterated in various ways with a view to prove that loving one's country is natural and cannot be penalized by religion. Al-Juday' argues that "loyalty to one's beloved country cannot be ignored or belittled. It is a natural tendency that requires one to work for its country's welfare. This is part of the principles and objectives of the religion of Islam that enjoins one to do the good and to forbid mischief. Islam also requires one to defend his country against aggression: to defend the souls, the people, and the property" (Qur'an 22:39–40). Moreover, the *walā'* of citizenship does not mean a *walā'* for the ruler or the governing system. It is for the country. This can be attested to in reality, when the governing system changes, say from republican to democratic, one's *walā'* to the country does not. Another example comes from the Muslim world: if religion were part of the citizenship package, you would not find non-Muslim citizens. Therefore the link between religious *walā'* and citizenship cannot stand the test or be based on religious proof.¹²⁰

Conclusion

The relationship between Muslim minorities and their non-Muslim societies has three connecting circles: residence, citizenship, and civic engagement. One may think that the three circles are the same thing, but actually, as seen throughout the chapter, these are three different steps that do not necessarily lead to each other. Rather they do need a denominator to put them in perspective and connect them for full interactivity and productivity. This denominator has been an ongoing collective societal process that involves many factors such as the liberal modern context, the emergence of young Muslim generations, modes of new ways of thinking, and new transnational spaces. *Fiqh al-aqallīyyāt* comes as a reflection of all these factors to frame things in an Islamic tone, empowering Muslims from within the tradition not to break with their identity in a world that promotes pluralism, but at the same time asserts distinctiveness.

Fiqh al-aqalliyyāt challenges the division of the world into *dār al-Islām* and *dār al-ḥarb*, creating an alternative *dār*. It does not matter how you call this *dār*, because the *dār* is no longer part of one's faith but a place to apply one's belief. The application of the Islamic creed has to take full power: justice, solidarity, and goodness. Here the creed takes another comprehensive meaning, it is not only rituals. It is civic engagement with society, Muslim or not, that proves one's character as a Muslim. *Fiqh al-aqalliyyāt*, for Western Muslims in this case, asserts a new vision of modern Islam that relates to both the private sphere and the public sphere as two distinctive spheres but connected in terms of their desired outcome: a good citizen!

This new vision of modern Islam is not produced *ex nihilo*. It is based on rigorous intellectual argument, whereby jurists go back to the texts to reinterpret or reconstruct them in order to accommodate new realities. This mechanism for relating the text to context is not only due to the legacy of interpretability of the tradition but more importantly due to the acceptability of these interpretations in light of the current context. This process may be described as the "semantics of expectations" on the part of the society where words acquire new meaning according to different sets of expectations.¹²¹ Dividing the world into *dār al-Islām* and *dār al-ḥarb* is no longer part of the expectation of Muslim minorities where "the word" *dār* for them indicates settlement, justice, security, engagement, participation, responsibility, and definitely not *hijrah*.

Conclusion

This study argues that Islamic law and tradition have the capabilities and the resources to accommodate social change. This adaptation has been achieved by passing through a complex process of interpretation, negotiation, and intellectualism. The progress of Muslim legal tradition in terms of establishing competing juridical schools, producing voluminous works throughout the centuries, and recognizing the legitimacy of differences of opinions in judicial matters attests to this conclusion. *Fiqh al-aqalliyyāt* is another step in the progress of the Islamic judicial tradition that continues to demonstrate its vitality as it relates itself to both time and space. With *fiqh al-aqalliyyāt*, the jurists have challenged various traditional concepts and reopened for discussion notions of world division that divide the world into *dār al-Islām* and *dār al-ḥarb*, notions of Muslim's ethical obligations toward non-Muslims (who used to be seen as *dhimmīs*, that is, non-Muslims living in Muslim lands, or *musta'man*, that is, non-Muslim receiving protection during their travel in Muslim lands, or *ḥarbiyyīn*, that is, those who are in a state of war against Muslims), and notions of *Jihad* and *da'wah*. For each one of these concepts, jurists of *fiqh al-aqalliyyāt* have developed a position that responds to the urgencies of modern time and space. The notion of world division is either rejected, being considered irrelevant to our modern life, or is modified to divide the world into *dār of shahādah*, the abode where faith is declared, and *dār of da'wah*, the abode where people are invited to Islam. As for Muslim's ethical obligation toward non-Muslim, it is no longer based upon rules of *dhimmīs* or *amān* but on the principle of citizenship and other international conventions, such as that of human rights and minority rights. *Jihad* is not meant to be offensive. It is only used to defend one's own country so that it corresponds with the principle of the sovereignty of the state on its own territories. *Jihad* of *da'wah* to spread the message of Islam has nothing to do with waging wars. In our modern time, Internet, satellite channels, or even personal communication is enough to pursue this Islamic duty.

However, in order to establish such an understanding and to prove its authoritativeness, jurists and scholars had to engage in a complicated legal

discourse. As presented in this study, three key trends in this discourse deserve our attention: the puritan-literalist trend, the traditional trend, and the renewal trend.

Chapter 1 examines the literalist discourse, mainly through the collection of fatwas from the Permanent Committee for Scientific Researches and *Iftā'* of the Saudi Ministry of Islamic Affairs. The committee received questions from all over the world. These questions dealt with various aspects of man's life: immigration, citizenship, rituals, marriage, divorce, education, food, dress, interacting with non-Muslims, interfaith dialogue, etc. Based on these questions, the chapter provides a portrait of a Muslim life in a non-Muslim polity, and argues that the advocates of the literal discourse live in tension with the West. They look at its people, culture, and products with suspicion. This discourse derives its force from the belief that land can only be one of two categories: an abode of Islam or an abode of war. They see the abode of Islam as being the legally chosen abode for Muslims to live, where they enjoy sovereignty and autonomy over their religious affairs, and the land of war is the land of disbelief, nonbelievers, the enemy, the immoral, etc. This being the case, the logical outcome is that Muslims have to abandon the non-Muslim abode. This abandonment is required physically through immigration to Muslim lands. If, however, this is not possible for any specific reason, then social abandonment of the society is required. In other words, a policy of segregation and isolation from the wider society is recommended.

Chapter 2 focuses on the traditionalist discourse as represented in the collection of fatwas from al-Azhar and its Grand Imams. Literature verifies that Al-Azhar received questions from Muslim minorities in Western countries from as early as the 1900s. Based on fatwa-content analysis, the chapter claims that two groups of fatwas can be identified: one group that covers fatwas before the 1970s and a second group that covers the last quarter of the twentieth century. Studying these two groups of fatwas demonstrates that the trend of al-Azhar is qualitatively different from that of the literalists. The "literalist" muftis stress the need to reside in a Muslim land while the "traditionalist" muftis rarely raise the need for a Muslim to leave his place of residence to seek a Muslim land. Rather, the focus is more on the need to commit oneself to the regulations of one's "new" country and to adapt to its environment as long as one is able to manifest his religion in an atmosphere that does not deny him his rights or mock his religion. The chapter examines various fatwas and relevant concepts such as *hijrah* (immigration), *taqlid* (imitation), and *jinsiyyah* (citizenship) to argue that the fatwas given by Al-Azhar represent the voice of tradition. The muftis regenerate the tradition by reviewing numerous opinions of classical schools, and investigating arguments and counterarguments in order to be

able to recommend one opinion over the other, utilizing the legal concept of *rukhsah*, that is, license-based rulings and concessions. They attempt to appreciate the changes in time and place, and the need, in some situations, to depart from conventional positions by issuing what may be called “conditional *fatwas*,” that is, allowing one to carry out a certain act, which is otherwise considered prohibited, however, only under certain conditions.

Chapters 3 and 4 examine the idea of *fiqh al-aqalliyyāt* as promoted by its early advocates Sheikh Yūsuf al-Qaraḍāwī and Dr. Ṭaha Jābir al-ʿAlwānī. Chapter 3 focuses on the discourse of al-Qaraḍāwī while chapter 4 examines the discourse of Al-ʿAlwānī. These two chapters discuss questions such as, how these two scholars became reference points for Muslim minorities, and how they see the relationship between Islam and the West and Muslim minorities and Western societies? They also discuss how they place modern Muslim life, especially that of Muslim minorities, within the Islamic discourse of *Shariʿah*, *fiqh*, and *ijtihad* and, most importantly, how these two scholars relate their Islamic reform projects to the discourse of *fiqh al-aqalliyyāt*?

The objective of *fiqh al-aqalliyyāt*, according to al-Qaraḍāwī, is to apply the wisdom and spirit of *Shariʿah* and not only the literal interpretation of jurisprudence. They considered that if certain jurists divide the world into two, the abode of Islam and the abode of war, *Shariʿah* does not; if some jurists demand Muslims to be loyal to only one entity, the Muslim *ummah*, *Shariʿah* allows dual loyalty: to the *ummah* and to one’s residential community. Also, if *fiqh* calls upon Muslims to do *hijrah* (immigration), *Shariʿah* repeals this necessity and asks Muslims, in certain circumstances, not only to immigrate to the West but to interact with it to prove the universality of the message and to perform the duty of *daʿwah*. This position represents a paradigm shift in Muslim legal tradition, because instead of supporting a legacy of disengagement and alienation, al-Qaraḍāwī attempts to normalize a Muslim’s life in the West.

Ṭaha Jābir al-ʿAlwānī is the second pioneering figure in the field of *fiqh al-aqalliyyāt*. Al-ʿAlwānī’s work on *fiqh al-aqalliyyāt* should be examined along with his larger projects of the need for a new *Ijtihad*, for a new *usūl* (principles of jurisprudence), and for *Islamiyyat Al-Maʿrifah* (Islamization of Knowledge). In *fiqh al-aqalliyyāt* his analysis resonates with his calls for a rereading of the Qurʾan to identify the general message of Islam and the role of man on earth: *tawhīd* (monotheism), *tazkiyah* (purification), and *ʿumrān* (civilization). This message can only be realized through “the dual reading” of *ʿal-wahy* and *ʿal-kawn* (the revelation and the universe). According to al-ʿAlwānī, such a reading will reshape Muslims’ understanding of the objective of jurisprudence. This revised understanding may include the Qurʾanic concept of geography, according to which the whole earth belongs to Allah,

and is all *dār al-Islam*, the abode of Islam. Therefore, the people living on “earth” are either Muslims representing the nation of Islam or non-Muslims representing the nation of *daʿwah*, that is, potential Muslims. The dual reading would also stress the universality of the Qurʾanic discourse and its values of dignity, equity, and justice that make all people equal. Al-ʿAlwānī argues that if early Muslims represent *abnāʾ al-ʿālamīyyah al-ʿulā*, the first generation of universal Islam, the present Muslim generation living in the West represents *abnāʾ al-ʿālamīyyah al-thānīyah*, the second generation of universal Islam. So arguing, al-ʿAlwānī advances the claim that *fiqh al-aqallīyyāt* has to be considered part of *al-fiqh al-akbar*, that is, the principal jurisprudence of life, and not part of *furūʾ al-fiqh*, that is, mundane technical jurisprudence.

Having established itself as a discourse, *fiqh al-aqallīyyāt* needed to create a space for its jurisdiction to be a prior authoritative collective preference for Muslim minorities, rather than a personal choice regarding atypical rules. In order to create this space, *fiqh al-aqallīyyāt* had to address three basic issues: the question of residence (temporary or permanent); the nature of residence (alien or citizen), and the purpose of residence (*daʿwah* or civic). In other words, Muslim communities needed to define their relationship to their *ummah*, to the political system of their country of residence, and to their “host” societies and their fellow citizens.

Chapter 5 examines these intricate issues and argues that *fiqh al-aqallīyyāt* has become a forum where various Islamic norms can be debated. The question of *hijrah* from the West or that of *Jihad* against the West, for example, is challenged by the position of civic engagement. Such a challenge is not carried out on a superficial level, but involves deconstructing traditional legal views concerning dividing the world into two camps, reconstructing the objectives of *Shariʿah*, contextualizing and historicizing the traditions, and reinterpreting the primary texts. Definitely, such a process of de-/reconstructing traditions will not yield one position. At least two main positions can be noted. The first focuses more on reinterpreting certain basic components of the traditions, and then applying them to the contemporary Muslim minority settings. *Dār al-ʿahd*, that is, the abode with whom contracts have been made, for example, is redefined not only to refer to the contractual relation between the Muslim resident and the non-Muslim polity, but also to subscribe to the idea of an international civil political domain of human brotherhood. Therefore, Muslim minorities living in non-Muslim polities are committed to the welfare of this political domain. The second position criticizes the use of the context-specific categories of the tradition. For example, it rejects the notion of dividing the world as this notion was a product of a specific historical era, and not part of the fundamentals of faith. Instead, this position reconstructs what is thought to be the original

foundation of faith regarding the proper interaction with the land in general, including non-Muslim lands, and its residents. If faith, as the Qur'an argues, states that the earth belongs to Allah, then it cannot be described otherwise. Consequently, it is permitted for a Muslim to "walk wherever he wants," provided he applies the principle of *isti'mār*, that is, building and contributing to its development. Although the two positions differ in their orientations, they affirm the principle of citizenship to a non-Muslim political state and the commitment of Muslims to be loyal citizens.

This complex discourse of *fiqh al-aqalliyyāt* relies greatly on the mechanism of *ijtihād*, which can be defined as the use of the jurist's utmost mental and scholarly efforts to deeply understand the legal texts and be able to deduce the legal ruling regarding a certain issue, as he believes to be the will of God concerning this particular topic. The claim that Islamic law is static and its rules are fixed for good is flawed. On the contrary, Islamic law, for the most part, is founded upon legal human reasoning. The statement that God is the Legislator is restricted in practice. As early as the establishment of the Islamic legal schools in the eighth/ninth century, jurists used to interpret the divine word and consequently develop norms for its application in their lives. One can argue that there are very few binding provisions in Islamic law that cannot be applied without interpretation.¹ This process of interpretation and reasoning is what Muslim jurists define as *ijtihād*, which is the kernel of the progress in the structure of Islam.²

Shari'ah, *fiqh*, and *ijtihād* are greatly interconnected. As one scholar explains, "*Fiqh* develops *Shari'ah* in light of the changing conditions of society through the modality of *ijtihād*."³ In another instance, it is argued that *fiqh* is the embodiment of largely speculative thought and *ijtihād*, and as such it is the unfinished chapter of *Shari'ah* that is amenable to further development and growth.⁴ *Fiqh al-aqalliyyāt* serves this purpose, that is, the growth of the *Shari'ah*. In other words *fiqh al-aqalliyyāt* represents a new step in the ongoing effort of legal construction and reform. The advocates of this *fiqh* developed their own *ijtihādī* projects with a view to making Islam, referred to here as *fiqh*, relative to the questions and conditions, be they political, social, or scholastic, of the present time. Al-Qarāḍāwī, for example, introduced his project of moderation and facilitation, where he attempts to present a moderate vision of how to reclaim the spirit of Islam and of how to redefine the role of Muslims in present-day life. Al-'Alwānī, on the other hand, proposed his *ijtihādī* project of the Islamization of Knowledge, where he aims to revive the universal Islamic philosophy of knowledge by redefining the objectives of the *Shari'ah*. Jamal 'Aṭīyyah is also a good example. He pioneered the project of *al-tanwīr al-Islāmī*, that is, the Islamic Enlightenment Project. In this project 'Aṭīyyah calls for a new *ijtihād* / revival of the science of the principles of jurisprudence. As a product

of these reform attempts, *fiqh al-aqalliyyāt* stands as an innovative attempt in the general discourse of *ijtihād*.

At this conjecture, it is important to argue that these reform projects, including that of *fiqh al-aqalliyyāt*, are not a sudden product of the last few decades. Rather they are, in part, a continuation of the reform movements that started in the nineteenth century. Over the last two centuries, there have been many attempts within Muslim circles to save Islam from the shackles of *taqlid* and puritan ideologies. The writings of Jamāl al-Dīn al-Afghānī, Muḥammad ‘Abduh, Muḥammad Iqbāl, Shah Walli-Allah, and more recently Al-Sanhūrī, and Mustafā ‘Abdel-Rāziq, are just a few examples. The main line of thought in all these writings was to ascertain the relevance of Islam to contemporary life. Observing this development, Weeramantry stated: “A new era of Islamic jurisprudence lies ahead, as full of vitality as any of the past ages, and as full of determination to make of the Islamic Law an instrument relevant to the problems that have been created by the present technological age.”⁵ Cantwell Smith also argued, “Islam is today living through a crucial creative moment in which the heritage of its past is being transformed into the herald of its future.”⁶

This process of transformation that Cantwell referred to is not only the result of internal discourse of *ijtihād* among Muslims, but also an outcome of a complex set of factors that covers a wide array of political, economic, and social elements. In the case of Muslim minorities, one of the basic challenges that Muslim jurists encountered is the nature of a political regime. For example, this regime highly commends the autonomy of the individual and the separation between the private and the public spheres. This individualization of community life is foreign to Muslim culture and religion, whose tradition is communal and does not separate between the public life and the individual sphere. Coming to the West, Muslims have to reconsider the communal nature of their life and religion, and adapt them to the individual nature of the new setting. Pre-*fiqh al-aqalliyyāt* discourse of the 1960s through the 1980s created a counter-individualization paradigm. According to this discourse, a Muslim, as an individual, had to practice his Islam and follow the teaching of *Shari‘ah* to the best of his ability in his private sphere and limit, if not isolate, his interaction with the public sphere. This form of individualization could not survive due to the emergence of younger generations, the urgent need for more interaction with the wider society, and the policies of integration and assimilation of the political regimes. Some studies identified the individualization of Muslim religious practices as the major development among Muslim minorities.⁷ The Muslim communities became part of the modern paradigms of the West, which were identified with secularization, individualization, and privatization.⁸

As *fiqh al-aqalliyyāt* discourse grew, the question of individualization, which was seen by many Muslim activists as a threat to Muslim religiosity, had to be tackled. *Fiqh al-aqalliyyāt* suggests a new approach and proposes a circle made up of three spheres: the private sphere, the public sphere, and the Muslim community sphere. Islamic law, in turn, was also divided into the same three spheres with a view to proving its relevance to all affairs of Muslim life. For example, at a time when individual fatwas and advice were provided based on each individual's condition with a view to maintaining the principle of individualization in the society, Islamic universal values such as justice, tolerance, and mercy, are emphasized in the realm of the public sphere. On the other hand, collective communal efforts are also demanded to serve the religious needs of the community and to limit their dependence on non-Islamic options. To clarify, in terms of the public sphere, *fiqh al-aqalliyyāt* urges Muslims to maintain the nature of the political system, that is, separation of religion and state, and calls upon the Muslim to abide by the laws of the land and show his solidarity with non-Muslim fellow citizens. For example, *fiqh al-aqalliyyāt* demands Muslims who plan to build a mosque to follow the guidelines of construction in the mosque's locality. In case of laws that Muslims believe are against the principles of their religion, they should challenge these laws through the state apparatus. In the context of the private sphere, the Muslim should practice his religious rituals in such a way that it does not interfere with his public duties. For example, he can, at times, combine prayers in case he cannot fulfill his rituals due to pressing work obligations or for similar reasons that have to do with the regulations of the public sphere. As for the Muslim community sphere, *fiqh al-aqalliyyāt* creates an Islamic public sphere where the Muslim community, as a group, works together to maintain its identity. In other words, *fiqh al-aqalliyyāt* provides communal principles where the rules give priority to the benefit of the community over the individual. Muslims, for example, should join hands to produce *Shari'ah*-compliant solutions to support Muslims against taking interest-based mortgages. Muslims also may give their *Zakāh* to establish Islamic centers instead of giving it away to poor Muslims living in the country of origin. If there is no distinction made between the private, the public, and the Muslim community spheres and the examples referred to above are answered using the lens of classical legal tradition, Muslims would continue to live within a framework of legal exceptions, that is, they would be able to perform whatever action, such as combining prayer or taking citizenship, on the condition that it was temporal.

In order to establish these spheres and to escape falling into the trap of puritan-literalist legal positions, the jurists of *fiqh al-aqalliyyāt* need not only to perform *ijtihād* in the practical aspect of jurisprudence, but they

have to start from somewhere beyond practical juridical manuals as well. They turned to the field of *usūl al-fiqh*, that is, the principles of jurisprudence, where the focus is not on practical legal questions, but on the interaction between ethical principles and *maqāṣid al-Shari'ah*, that is, objectives of the *Shari'ah*. In this field, the question is not about "what should one do (a question of law)?" Rather, it becomes what are the principle objectives of *Shari'ah* that should govern one's conception of the good. In other words, there is a shift from a purely legal sphere to an ethical philosophical sphere, or to the sphere of the meta-ethics where the questions are about the meaning and nature of moral judgments and values, and how they can be supported. In the metaethics of *fiqh al-aqallīyyāt*, the focus is on common shared values. We see al-Qaraḍāwī, al-'Alwānī, Ibn Bayyah, and others focus on values of justice, freedom, and human rights. It is noteworthy here to note the shift in the value discourse. Not long ago, and even in some circles until today, the West is often seen as an immoral land without values.⁹ If contemporary anti-Muslim trends promote a conflict of civilizations, the Muslim literature talks about a conflict of values. To challenge this value conceptualization of the West, *fiqh al-aqallīyyāt* provides Muslim minorities with a different evaluation of the Western value system. In fact, it makes them universal, and as such Islamic. In so doing, *fiqh al-aqallīyyāt* promotes not only a normalization of Muslims' lives in the West from a juridical point of view, but also from an ethical and moral point of view. This means a moral commitment to maintain the basic political and social values of the non-Muslim society such as justice, freedom, equality, etc.

One may argue here that many Muslim jurists attempted to encounter "Western" values, such as notions of rights, justice, equity, and tolerance, by providing extensive Islamic arguments that these values are part of the Islamic law.¹⁰ If so, then these values have a divine origin. As such they actually surpass the Western understanding of them. Finally, if these values are Islamic and divine, then Muslims should be part of the value discourse and contribute positively to it.

That being said, one can rightly conclude that *fiqh al-aqallīyyāt* is a basic component in the intellectual growth of Muslim minorities and in their integration in their new homes. Although *fiqh al-aqallīyyāt* started as an immigrant phenomenon, it evolved into a complex discourse that challenges the role of *Shari'ah* in the contemporary world and redefines the identity of the Muslims in today's hybrid world. It rejects completely the claim that *Shari'ah* cannot live in the West because of the inherent contradiction of values (the *Shari'ah* versus the West discourse). It challenges the attitude that *Shari'ah* can live in the West through a process of compromise (the *Shari'ah* in/of the West discourse). Rather, *fiqh al-aqallīyyāt* discourse

promotes the idea that “*dār al-Shari`ah*,” that is, a land where the objectives of *Shari`ah* are clearly present and guaranteed, could be the West.

With this conclusion, this research provided another perspective for studying the question of Muslim minorities. The study of the legal internal discourse of the jurists of *fiqh al-aqalliyyāt* definitely helps Muslims to rethink the role of Islam in their life, and to redefine their spiritual and social objectives. For researchers, this study fills a void in the present state of research by presenting the voice of jurists using their own terms and from within their own tradition. It investigates the internal tension that jurists encountered in their attempt to reconcile between the Islamic tradition, the aspirations of Muslim minority communities, and the expectations of the non-Muslim society. This study enriches current studies that focus on the final statements of the jurists without thoroughly examining the discourse of how they came to such conclusions. For future research, I suggest a follow-up study of fatwas of the jurists of *fiqh al-aqalliyyāt*, to be based not only on their final determinations, their repercussions, and applications, but also on content analysis that dissects the fatwa and relates it to tradition, reform, rules of *uṣūl*, *fiqh al-aqalliyyāt*, and conditions of minorities. Such a study would enrich our understanding of the institution of fatwas in the contexts of minority communities. It would also demonstrate points of convergence and divergence between a theoretical framework as that of *fiqh al-aqalliyyāt* and practical solutions as those presented by fatwas. It also reveals to what extent the discourse of *fiqh al-aqalliyyāt* can be extended beyond the lands of the minorities to actually reach the Muslim territories.

Notes

INTRODUCTION

1. Yusuf Talal DeLorenzo, "The *fiqh* Councilor in North America," in *Muslims on the Americanization Path*, ed. Yvonne Haddad and John Esposito (Oxford: Oxford University Press, 2000), 66–67. Some of these old questions that have been raised for reconsideration include: Is it permissible to stay in a non-Muslim land, to participate in non-Muslim festivals, to take part in their politics, to eat their food, etc.? Along with these traditional questions, there were new ones that require more subtle investigations. Examples of these would include questions like: Is it allowed to donate one's blood to a non-Muslim fellow? Is one permitted to join a non-Muslim polity? Is it permissible to join a non-Muslim army?
2. Al-Qaraḍāwī, *Fi Fiqh al-Aqallīyyāt al-Muslimah* (Cairo: Dār Al-Shurūq, 2001).
3. 'Abd al-Hādī al-Sayyid M. Taqī al-Dīn, *Al-Fiqh lil-Mughtaribīn* (London: Imam Ali Foundation, 1998).
4. Ayad Hilal, *Studies in Usul al-Fiqh* (Walnut Creek, CA: Islamic Cultural Workshop, n.d.) 150.
5. Tariq Ramadan, *To Be a European Muslim* (Leicester: The Islamic Foundation, 2000).
6. *Nawāzil*: lit. new incidents; *Nawāzil* denotes certain incidents, religious, social, or political, that befall on Muslims and that have no explicit judgments in the Qur'an and *Sunnah*. The Muslim jurists exerted their efforts to reach an opinion, taking into consideration the time, place, and circumstances). See 'Abd al-Nāṣir Abū Al-Baṣāl, "al-Mad-khal ilā *Fiqh* al-Nawāzil," *Dirāsāt Fiqhiyyah fī Qaḍāyā Tibbiyyah Mu'āṣirah*, vol. 2 (Jordan: Dār al-Nafā'is, 2001).
7. Incidents and afflictions.
8. I am indebted to Prof. Khaled Masud's discussion and work with me during my MPhil studies at ISIM (International Institute for the Study of Islam). He provided a very close categorization to the one used here. Actually, Prof. Masud's categorization was the inspiration for the one used in the present research. See: Khaled Masud, "Islamic Law and Muslim Minorities," *ISIM Newsletter*, vol. 11 (2002): 17.
9. Calling them literalists does not mean that the medieval jurists were literalists too. Actually, they were "contextualists," in the sense that their positions were

based on the political and social setting of their locality. This may explain why they did not espouse one single unified position pertaining to minority questions.

10. *Fiqh al-aqalliyāt* or *fiqh* of minorities or jurisprudence of minority or diasporic jurisprudence, or minority *fiqh* refer to the same thing. They will be used interchangeably in this study.
11. Alternative transliteration: Yusuf al-Qaradawi; Yousuf al-Qaradawy.
12. Alternative transliterations: Taha Jabir al-Alwani; Taha Jabir al-'Alawani.
13. Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Journal of Islamic Law and Society*, vol. 1, no. 2 (1994): 143–153. Khaled Abou El Fadl, "Muslim Minorities and Self Restraint"; Khaled Abou El Fadl, "Legal Debates on Muslim Minorities: Between Rejection and Accommodation," *Journal of Religious Ethics*, vol. 22, no. 1 (Spring 1994): 127–162; Khaled Abou El Fadl, "Striking a Balance: Islamic Legal Discourse on Muslim Minorities," in *Muslims on the Americanization Path*, ed. Yvonne Yazbeck Haddad and John Esposito, 47–64. Other sources that trace the legal history of Muslim minorities include: P. S. van Koningsveld and G. A. Wiegers, "Islam in Spain during the Early Sixteenth Century: The Views of the Four Chief Judges in Cairo (Introduction, Translation, and Arabic Text)," in *Orientations (Poetry, Politics and Polemics: Cultural Transfer between the Iberian Peninsula and North Africa)*, ed. Otto Zwartjes, Geert Jan van Gelder, and Ed de Moor (Amsterdam: Rodopi, 1996), 133–152; P. S. van Koningsveld and G. A. Wiegers, "The Islamic Status of the Mudejars in the Light of a New Source," *Al-Qantarāh*, vol. 17 (1996): 19–58; Bernard Lewis, "Legal and Historical Reflections on the Positions of Muslim Populations under non-Muslim Rule," in *Muslims in Europe*, ed. Bernard Lewis and Dominique Schnapper (New York: Pinter Publishers, 1994), 1–18; Muhammad Khaled Masud, "The Obligation to Migrate: The Doctrine of *Hijrah* in Islamic Law," in *Muslim Travellers: Pilgrimage, Migration and the Religious Imagination*, ed. D. F. Eickelman and J. Piscatori (Berkeley: University of California Press, 1990), 29–49; Muhammad Khaled Masud, "Being Muslim in a Non-Muslim Polity: Three Alternate Models," *Journal Institute of Muslim Minority Affairs*, vol. 10, no. 1 (January 1989): 118–128; Kathryn A. Miller, "Muslim Minorities and the Obligation to Emigrate to Islamic Territory: Two *Fatwas* from Fifteenth Century Granada," *Islamic Law and Society*, vol. 7, no. 2 (2000): 256–288.
14. Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists* (San Francisco: HarperOne, 2005), 18.
15. Reported in a number of *Hadith* sources such as Abū Dāwūd, *Sunan Abū Dawūd*, Kitāb al-Malāḥim, no 3740.
16. For a study of the difference between *Shari'ah* and *fiqh* see: Mohammad Hashim Kamali, "*Fiqh* and Adaptation to Social Reality," *The Muslim World*, vol. 86, no. 1 (Hartford Seminary: January 1996), 63–65; Ahmed Mohsen al-Dawoody, *War in Islamic Law, Justifications and Regulations*, PhD Dissertation, Birmingham Univ., August, 2009, 122–129; Kathleen Moore,

- The Unfamiliar Abode: Islamic Law in the United State and Britain* (Oxford: Oxford University Press, 2010), 7. Khaled Abou El Fadl, "The Place of Ethical Obligations in Islamic Law," *UCLA Journal of Islamic and Near Eastern Law*, vol. 4 (2004–5): 15–16.
17. See chapter 3.
 18. See chapter 4.
 19. Jocelyne Cesari, *When Islam and Democracy Meet: Muslims in Europe and in the United States* (Palgrave: Macmillan, 2004), 42.
 20. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1996).
 21. H. A. Hellyer, *Muslims of Europe, the "Other" Europeans* (Edinburgh: Edinburgh University Press, 2009).
 22. Andrew F. March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (New York: Oxford University Press, 2009). See also: Andrew F. March, "Liberal Citizenship and the Search for an Overlapping Consensus: The Case of Muslim Minorities," *Philosophy and Public Affairs*, vol. 34, no. 4 (2006): 373–421. Andrew F. March, "Sources of Moral Obligation to Non-Muslims in the 'Jurisprudence of Muslim Minorities' (*Fiqh al-Aqalliyyāt*) Discourse," *Islamic Law and Society*, vol. 16 (2009): 34–94.
 23. Khaled Abou El Fadl, "Muslim Minorities and Self Restraint in Liberal Democracies," *LOYOLA of Los Angeles*, vol. 19, no. 4 (June 1996): 1525–1542.
 24. Examples of this trend include Imam Feisal Abdul Rauf and Tariq Ramadan. Although both scholars have different approaches, both subscribe to the idea that liberal democratic principles are part of the Islamic tradition. See Feisal Abdul Rauf, *What Is Right with Islam, a New Vision for Muslims and the West* (San Francisco: HarperOne, 2004). Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford: Oxford University Press, 2005).
 25. Kathleen Moore, *The Unfamiliar Abode*, 4.
 26. *Ibid.*, 5.
 27. *Ibid.*, 13.
 28. *Ibid.*
 29. *Ibid.*
 30. Legality denotes a concern with the legitimacy of the law as rooted in the individual's belief and acceptance of legal order. Kathleen Moore, *The Unfamiliar Abode*, 12.
 31. *Ibid.*, 75.

I BETWEEN TEXT AND CONTEXT: THE IMPACT OF TEXTUAL LITERALISM AND PURITAN IDEOLOGY ON THE LIFE OF MUSLIM MINORITIES

1. Jocelyne Cesari, *When Islam and Democracy Meet: Muslims in Europe and in the United States* (Palgrave: Macmillan, 2004), 15–16.

2. Sometimes they are called neo-Zaherites, because the methodology of the classical Zaherite's school, established in the third century Islamic Era by Dawūd ibn 'Alī al-Zāhiri (200–270 A.H./815–883 A.D.), is based on literal interpretation of the Qur'an and *Sunnah* with less focus on the context of revelation or the search for the divine wisdom. The neo-Zaherites, however, are different from the original school in terms of their limited knowledge of the tradition and their lack of *ijtihād* tools. See Muḥammad Salīm al-'Awwā, *Dawr al-Maqāṣid fī al-Tashrī'āt al-Mu'āṣirah* (London: Al-Maqasid Research Center in the Philosophy of Islamic Law, al-Furqan Heritage Foundation, 2006), 14.
3. Muḥammad Khalid Masud, "Islamic Law and Muslim Minorities," *ISIM Newsletter* (December 2002): 17.
4. *Wahhābī* and *Wahhabism* denote the followers of Muḥammad b. 'Abd al-Wahhāb who joined forces with the Sa'ūd Family to establish the first Saudi state in the late eighteenth century. Since then the thoughts of 'Abd al-Wahhāb became the formal ideology of the kingdom whether in its second rise in the mid-nineteenth century or in the third Saudi kingdom in the beginning of the twentieth century. For a positive review of the history of Muḥammad ibn 'Abdel-Wahhāb, see Jamal al-Din M. Zarabozo, *The Life, Teachings and Influence of Muhammad Ibn Abdul-Wahhab* (Kingdom of Saudi Arabia: Ministry of Islamic Affairs, Endowments, *Da'wah*, and Guidance, 2003). For another review of Wahhābī Islam, see Natana J. Delong-Bas, *Wahhabi Islam from Revival and Reform to Global Jihad* (Cairo: The American University in Cairo Press, 2005). For a critical review, see Stephan Schwartz, *The Two Faces of Islam: The House of Sa'ud from Tradition to Terror* (New York: Doubleday, 2002). For illustrating the wider impact of Wahhabism on contemporary Muslims, including those in minority situation, see Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists* (San Francisco: HarperOne, 2007).
5. <http://www.kingfahdbinabdulaziz.com/main/m000.htm> (accessed 23/12/2012).
6. For a review of the role and impact of the Saudi government on Muslim minorities and for other statistical information, see 'Abdel-Hakīm 'Abdel-Salām al-Madani, *Dawr al-Mamlakah al-'Arabiyyah fī Khidmat al-Islām* (The Kingdom of Saudi Arabia: Dār al-Salām, 2003), 269ff; see also King Fahd's website: <http://www.kingfahdbinabdulaziz.com/main/m.htm> (accessed 23/12/2012); for a negative evaluation of the Saudi impact on the American scene especially through the distribution of *Wahhābī*-oriented literature, see Center for Religious Freedom, *Saudi Publications on Hate Ideology Invade American Mosques* (Freedom House, 2005).
7. 'Abdel-Hakīm al-Madani, *Dawr al-Mamlakah*. 284.
8. *Ibid.*, 295ff.
9. Aḥmad ibn 'Abdel-Razzāq al-Dawish, ed., *Fatawa al-Lajnah al-Dā'imah lil-Buḥūth al-'Ilmiyyah wa-al-Iftā'*, vol. 9 (the Kingdom of Saudi Arabia: Dār al-'Āṣimah, 1998), 6.
10. *Ibid.*, vol. 9, 72.
11. *Ibid.*, vol. 9, 143.
12. *Ibid.*, vol. 9, 446.

13. Ibid., vol. 9, 420; vol. 10, 46–50, 131; vol. 12, 81, 151, 502; vol. 13, 48, 398, 530, etc.
14. Ibid., vol. 10, 109.
15. Ibid., vol. 10, 120–121
16. Ibid., vol. 10, 235–236.
17. Ibid., vol. 10, 132–133.
18. Ibid., vol. 11, 131.
19. Ibid., vol. 11, 138.
20. Ibid., vol. 12, 56–57.
21. Ibid., vol. 12, 197.
22. Ibid., vol. 12, 247.
23. Ibid., vol. 13, 364
24. Ibid., vol. 12, 381.
25. Ibid., vol. 12, 349.
26. The advocates of the *Wahhābī* thought dislike the *Wahhābī* label and prefer to call themselves *salafis*, the followers of the early Muslim generations. However, in Western scholarship, *Wahhabism* is more commonly used in reference to the Saudi ideology and thought in return to *Salafism*, which is used in Arab and Islamic literature, especially by those who endorse or are inclined to their ideological position. To review a history of the two terms and the difference between them, see Abou El Fadl, *The Great Theft*, 45–95.
27. Ibid., 49–50
28. See for example: *Fatawa lil-Muslim fi al-Mughṭarab* (Kingdom of Saudi Arabia: Cultural Attaché, Washington DC, n.d.); Najd Scholars, *Majmū'at Rasā'il wa-Fatawa fi Masā'il Tamas Ilayhā Hajat al-'Aṣr* (Kingdom of Saudi Arabia: Ministry of Defense, Aviation and General Inspection, n.d.) (Both aforementioned books were obtained for free from an Islamic Center in Canada); Muhammad b. Jamil b. Zino, *The Pillars of Islam and What Every Muslim Must Know about His Religion* (Riyadh: Dār al-Salām Publishers and Distributors, 1998). This book was distributed for free at the Los Angeles King Fahd Mosque.
29. Dilam is a city in the governorate of Kharaj, which is affiliated with the Riyadh Region.
30. Jāsir al-Jāsir, *Al-Majallah*, issue 86, 1406 A.H., cf. 'Abdel-'Azīz M. al-Sadḥan, *Al-Imām in Bāz, Durūs wa-Mawāqif wa-'Ibar* (Cairo: Dār al-Bashā'ir al-Islāmiyyah, 2009), 150. Ibn Bāz was also described as the *jurist of Aal Su'ūd*. See Ṣāliḥ al-Wirdānī, *Ibn Bāz: Faqīh 'āl Su'ūd*, (Egypt: Dār al-Ḥusām, 1998). For a review of Ibn Bāz' works and fatwas, see <http://www.binbaz.org.sa/fatawa> (accessed 25/12/2012).
31. For a review of Ibn al-'Uthaymīn's biography and works, see Walīd ibn Aḥmad al-Ḥusayn, *Al-Jāmi' li-Hayāt al-'Allāmah Muḥammad ibn Ṣāliḥ al-'Uthaymīn* (Leeds: al-Ḥikmah Magazine, 2002). See also <http://www.ibnothameen.com/index.shtml> (accessed 25/12/2012).
32. 'Abdel-'Azīz Ibn Bāz, *Min Fatawa wa-Rasā'il Samaḥat al-Sheikh 'Abdel-'Azīz ibn Bāz* (Cairo: Al-Farūq al-Ḥadīthah li-al-Tibā'ah wa-al-Nashr, 1988); 'Abdel-'Azīz Ibn Bāz, *Fatawā Islāmiyyah*, 3 vols. (Beirut: Dār al-Qalam, 1988);

Muhammad ibn Šāliḥ Al-ʿUthaymīn, *Fatawa al-Mar'ah al-Mu'minah fi Fiqh al-Din Wa-al-Hayah*, ed. Nabil Muḥammad Maḥmūd (Alexandria: Al-Dār al-ʿAlamiyyah li-al-Nashr, 2006); Ibn al-ʿUthaymīn, *Fatawa Arkān al-Islām*, ed. Fahd ibn Nāsir al-Sulaymān (Riyadh: Dār al-Thurayyah li-al-Nashr 2000/2001).

33. <http://www.binbaz.org.sa> ; <http://www.ibnothameen.com> (accessed 12/25/2012).
34. Ibn Bāz, Ibn al-ʿUthaymīn, et al., *Fatawā al-Aqallīyyāt al-Muslimah* (Dār al-Mustaqbal li-al-Nashr, 2001).
35. Sheikh Ibn Bāz and Sheikh Ibn al-ʿUthaymīn, *Muslim Minorities: Fatawa Regarding Muslims Living as Minorities* (London: Message of Islam, 1998).
36. As an example, the Saudi Cultural Bureau in Washington published a 16-page booklet on *Fatawa li-al-Muslim fi al-Mughtarab*, in which Ibn Bāz featured as the main authoritative mufti.
37. Ibn Bāz, *Muslim Minorities*, 15.
38. ʿAbdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 69.
39. Ibid.
40. ʿAbdel-Razzāq, *Fatawa al-Lajnah*, vol. 12, 50–51.
41. Ibid., vol. 12, 54.
42. Ibid., vol. 2, 109–10.
43. Ibid., vol. 2, 95, 98.
44. Ibid., vol. 2, 96; vol. 12, 133.
45. Ibid., vol. 12, 88.
46. Ibid., vol. 12, 168–169.
47. Ibid., vol. 12, 181–182.
48. Ibid., vol. 12, 197.
49. Ibid., vol. 2, 117.
50. Ibid., vol. 2, 100.
51. Ibid., vol. 3, 428.
52. Ibid., vol. 3, 435.
53. Ibid., vol. 9, 11, 14, 132.
54. Ibid., vol. 9, 132.
55. Ibid., vol. 4, 62–64.
56. Ibid., vol. 2, 95.
57. Ibid., vol. 2, 108; vol. 12, 58.
58. Ibid., vol. 10, 28–30, 78; vol. 11, 424–425.
59. Ibid., vol. 12, 253–254; vol. 2, 67; vol. 13, 48–50.
60. Ibid., vol. 2, 99.
61. *Muwālāh* is one of the key words that will be frequently occurred. It means in this context taking non-Muslim allies, befriending or loving non-Muslims.
62. ʿAbdel-Razzāq, *Fatawa al-Lajnah*, vol. 13, 18.
63. Ibid., vol. 12, 253–254.
64. Ibid., vol. 2, 99.
65. Ibid., vol. 12, 133; vol. 3, 113–114.
66. Ibid., vol. 12, 81, 88.
67. Ibid., vol. 12, 152.
68. Ibid., vol. 12, 151; vol. 13, 19–20, 274–275, 295, 364.

69. Ibid., vol. 13, 522ff.
70. Ibid., vol. 12, 320.
71. In fact, the literalists live in tension with many other trends and schools in various places of the world. This tension goes as early as the turn of the century with the scholars of al-Azhar, who criticized its religious stands, and as late as 2009, with the critical remarks of the former law minister of India, Jethmalani, who accused *Wahhabism* of being a reason for terrorism. (<http://www.youtube.com/watch?v=PRbgewBFbpYU>, accessed 12/25/2012) The tension, however, in these cases, is not derived toward isolation and disassociation. It is because of the domination over who has the right to the authentic form of Islam and the nonrecognition of the other's right to interpret or apply Islam.
72. Ibn Bāz, *Muslim Minorities*, 9.
73. Ibid., 18.
74. Ibn Bāz et al., *Fatawa al-Aqallīyyāt al-Muslimah*, 48.
75. Ibid., 40.
76. Ibid., 59.
77. 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 30, 143; vol. 3, 416.
78. The term "People of the Book" is mentioned in the Qur'an more than 30 times in different contexts (see e.g. : 2:105; 2:109; 3:65; 3:75; 4:153; 5:15; 29: 64).
79. See for example: Yūsuf Al-Qaraḍāwī, *Fiqh al-Jihad*, 239ff.
80. Al-'Awwā's comment came in the context of his response to a question by one of the audience in a TV talk show. See <http://www.youtube.com/watch?v=7rYWq8TTPOI> (accessed 8/10/2011).
81. 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 42, 44, 56–57.
82. Ibid., vol. 2, 73.
83. Ibid., vol. 2, 65, 73, 76–77.
84. Ibid., vol. 12, 253–254.
85. Ibid., vol. 11, 424–425.
86. In numerous *fatwas*, see for example: Ibid., vol. 2, 65–67.
87. Ibid., vol. 2, 109–110.
88. Ibid., vol. 3, 428–429.
89. Ibid., vol. 3, 436; vol. 2, 103.
90. Ibid., vol. 9, 89–91.
91. Ibid., vol. 2, 67.
92. Many of the fatwas dealing with residence in non-Muslim lands reiterate the concept of *da'wah*. See for example Ibn Bāz et al., *Fatawa al-Aqallīyyāt al-Muslimah*, 37; 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 66, 68, 96.
93. 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 12, 260–261.
94. Ibn Bāz et al., *Fatawa al-Aqallīyyāt al-Muslimah*, 52.
95. Muḥammad 'Imārāh, *Tayyārāt al-Fikr al-Islāmī*, 2nd ed. (Cairo: Dār al-Shūrūq, 2007), 141–150. Abou El Fadl, *The Great Theft*, 47.
96. Qur'anic references include 3:118–120; 4:97–99; 5:51; 58:22; 60:1, 8–9. *Hadith* references include "whoever imitates a group of people he is one of them" (reported in Musnad Aḥmad 2:50, 92 and Musnad Abū Dawūd no. 4013), "I *baryi*", do not bear the responsibility, of any one residing among

- the polytheists" (reported in Abū Dawūd's *Musnad* no. 2645 and Tirmidhi's *Jāmi'* no. 1605 and Al-Nasā'i's *Mujtabā* 8:36) and "Do not enter the polytheists' churches and temples because Allah's wrath befalls them" (reported in Bayhaqī's *Sunan* 9:234 and 'Abdel-Razzāq's *Musannaf* no. 1609). The best place to locate these references combined in this trend's fatwas see, 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 46–151.
97. 'Abdel-Razzāq, *Fatawa al-Lajnah*, vol. 2, 64–65.
 98. For an overview of the verses of *muwalāh*, their meanings and cause of revelations, and their application to minority situation, see Khālid 'Abdel-Qādir, *Fiqh al-Aqalliyyāt al-Muslimah* (Lebanon: Dār Al-Imān, 1998), 622–649.
 99. Khaled Abou El Fadl, "The Place of Ethical Obligation in Islamic Law," *UCLA Journal of Islamic and Near Eastern Law*, vol. 4 (2004–5): 35.
 100. *Ibid.*, 37–38.
 101. Mathias Rohe, *Muslim Minorities and the Law in Europe: Chances and Challenges* (India: Global Publication, 2007), 156.
 102. 'Abdel-'Aziz M. al-Sad-ḥan, *Al-Imām ibn Bāz*, 108–114.
 103. Both Ibn Bāz and Ibn al-'Uthaymīn did not travel to any European or American countries. The only time Sheikh Ibn al-'Uthaymīn left the kingdom was when he suffered from a sickness, on his deathbed, and he traveled to the United States for treatment.
 104. 'Abdel-'Aziz M. al-Sad-ḥan, *Al-Imām ibn Bāz*, 75.
 105. *Ibid.*, 66, 73, 83.
 106. Masud, "Islamic Law and Muslim Minorities," 17.
 107. Ibn Bāz, *Muslim Minorities*, 29.

2 VOICE OF TRADITION: MUSLIM MINORITIES AND APPLICATION OF ISLAMIC LAW

1. Al-Walīd ibn Rushd's *Faṣl al-Maqāl fī-mā Bayna Al-Hikmah wa-al-Shari'ah min al-Itiṣāl* is a good example here where Ibn Rushd attempted to explain the connection between jurisprudence and theology. Another example is the Andalusian scholar Maslamah ibn Aḥmad al-Majrīṭī (d. 1008 A.D.) who authored *Ghāyat al-Hakīm* where a synthesis of Platonism and Hermetic philosophy was introduced.
2. One may refer here to *fatwa* collections published during that period. See European Council for Fatwa and Research, *Qarārāt wa-Fatāwā al-Majlis al-'Urūbi lil-Ifitā' wa-al-Buḥūth* (Cairo: Dār al-Tawzī wa-al-Nashr al-Islāmiyyah, 2002); *Questions and Answers about Islam* (England: Ta-Ha Publishers Ltd; 2nd ed., 1997); and early fatwas of *IslamOnline.net*, etc.
3. The Fatwa committee in al-Azhar was established in 1935. At the time it constituted a president and eleven members (three members were *Ḥanafītes*, three *Shāfi'ites*, three *Mālikis*, and two *Ḥanbalis*).

4. For a review of al-Azhar's history, see Bayard Dodge, *Al-Azhar: A Millennium of Muslim Learning* (Washington: the Middle East Institute, 1974); Chris Eccel, *Egypt, Islam and Social Change: al-Azhar in Conflict and Accommodations* (Berlin: Klaus Schwarz Verlag, 1984); 'Abdel-'Aziz Muḥammad al-Shinnāwī, *al-Azhar Jāmi' wa-Jāmi'ah* (Cairo: Egyptian Anglo, 1983); Muḥammad 'Abdullah 'Anān, *Tārīkh al-Jāmi' al-Azhar* (Cairo: Mu'assasat al-Khāngī, 1958).
5. Muḥammad 'Awād, *al-Azhar: Ayy Mustaqbal Yantaẓiruh* (Cairo: Wakālat al-Ṣaḥāfah al-'Arabīyyah, 2007), 15.
6. <http://www.egyptindependent.com/news/egypt-s-draft-constitution-translated> (accessed 1/14/2013).
7. Chris Eccel, *Egypt, Islam and Social Change*, 295.
8. For example, when Egypt came under the Ottomans, a policy of isolation was imposed on Arab countries, and consequently the role of al-Azhar was reduced on the international forum. See: Muḥammad 'Awād, *al-Azhar*, 11.
9. The successive Egyptian governments used to have some sort of relationship with al-Azhar. This relationship, however, was based on partnership, that is, the state uses al-Azhar to promote its status internally and internationally, and al-Azhar interferes with the state, sometimes forcing its view upon it. This was the case until Nasser's time, when al-Azhar gradually became part of the state apparatus.
10. Al-Azhar curriculum taught the famous *sunni* and *shī'i* schools of jurisprudence. Its fatwa committee constituted of muftis belonging to the four *sunni* schools of thought. This made al-Azhar a center for guidance for peoples of different jurisprudential and theological orientations.
11. Malika Zeghal, "The 'Recentering' of Religious Knowledge and Discourse: The Case of al-Azhar in Twentieth Century Egypt," in *Schooling Islam, the Culture and Politics of Modern Muslim Education*, ed. Robert W. Hefner and Muhammad Qasim Zaman (Princeton: Princeton University Press, 2007).
12. For detailed statistics of this period, see 'Ilāqāt al-Āmmah, *Jāmi' at al-Azhar fī Suṭūr* (Cairo: Al-Azhar, 1996).
13. *Riwāq* is a designated place for the accommodation of students within the mosque space.
14. Al-Shinnāwī, *Al-Azhar Jāmi'*, vol. 1, 268.
15. For earlier statistics, see Chris Eccel, *Egypt, Islam and Social Change*, 298–309.
16. A brief overview of some of those Azharite-educated personnel was given in Dodge, *Al-Azhar: A Millennium*, 176ff. Also al-Shawārbī referred to two of al-Azhar-educated imams in America who were leading their Yugoslavian and Albanian communities. See al-Shawārbī, *Al-Islām fī Amrikā* (Cairo: Lajnat al-Bayān Al-'Arabī, 1960), 18.
17. Although there are no official statistics on the number of al-Azhar-educated imams and scholars in the West, they are quietly visible within the religious space of Muslim minorities. My personal experience in Great Britain, the Netherlands, the United States, and Canada testifies to this.
18. *Majallat al-Azhar*, vol. 59 (1987): 628.
19. William L Cleveland, *A History of the Modern Middle East* (Boulder: Westview Press, 2009); Hassan Hassan, *In The House of Muhammad Ali* (Cairo: American University in Cairo Press, 2000).

20. Ṭaha Ḥusayn (1889–1973), the dean of the Arabic literature, is one of the prominent figures in *al-Nahḍah*, the Egyptian renaissance movement. He got his PhD from the Sorbonne and then was instated as a professor of History in Cairo University until he was appointed a minister of education in 1950. He advocated the principle of free education for Egyptians and made his motto, “Education is as indispensable as water and air.”
21. Ṭaha Ḥusayn, Introduction to *al-Azhar wa-Atharuh fi al-Nahḍah al-‘Arabīyyah al-Ḥadīthah*, by Muḥammad Kāmil al-Fiqqī, 2nd ed. (Cairo: Nahḍat Miṣr, 1965), 5.
22. See Muḥammad ‘Abdullah ‘Anan, *Tarikh al-Jāmi‘ al-Azhar*, 2nd ed. (Cairo: Mu‘assasat al-Khangī, 1958), 33–42.
23. Fu‘ād I (1868–1936) was the sultan and king of Egypt from 1917 to 1936.
24. Al-Marāghī is one of the early Grand Imams of al-Azhar who advocated the addition of modern sciences into the traditional curriculum of al-Azhar education system.
25. *Majallat al-Azhar*, vol. 7 (1936): 188–189.
26. Muḥammad Ma‘mūn al-Shinnāwī was appointed, due to his erudition in religious sciences, to many religious positions in Egypt until he became the Grand Imam of al-Azhar in 1948. He focused on spreading the Azharite education system in Egypt. He reached an agreement with the minister of education to include the subject of religion into the curriculum of public schools and appointed graduates of al-Azhar to teach it.
27. Wazārt al-Ilām, *Shuyūkh al-Azhar* (Cairo: General Information Administration, nd.), 39.
28. ‘Anān, *Tarikh al-Jāmi‘ al-Azhar*, 307–309.
29. Muḥammad ‘Abdel-Mun‘im Khafājī and ‘Alī Ṣubḥ, *Al-Ḥarakah al-‘Imīyyah fi al-Azhar fi al-Qarnayn al-Tāsi‘ Ashar wa-al-‘Isbrīn* (Cairo: Al-Maktabah al-Azhariyyah li-al-Turāth, 2007), 103ff.
30. There is not enough information about the biography of Dr. Maḥmūd Yūsūf al-Shawārbī other than being a professor in Cairo University and the secretary of the Society of Introducing Islam to the World that was established in 1950s under the directorship of the Azharite *sheikh* Muḥammad ‘Abdel-Laṭīf Dirāz (d. 1977). He was also a member in the Supreme Council of Islamic Affairs. Muḥammad Yūsuf al-Shawārbī, *Al-Islām fi Amrikā*.
31. Dr. Muḥammad al-Bahy (1905–1982) got his PhD in philosophy from Hamburg University, Germany. He was fluent in German, English, Latin, and Ancient Greek. In 1958, he was appointed the general director of Islamic Culture Department in al-Azhar and later the first rector of the “modern” University of al-Azhar in 1961. Muḥammad al-Bahy, *Ḥayātī fi Rihāb al-Azhar* (Cairo: Maktabat Wahbah, 1983).
32. Al-Shawārbī, *Al-Islām fi Amrikā*.
33. ‘Abdel-Ḥalīm Maḥmūd, *Urūbbā wa al-Islām* (Cairo: Dār al-Ma‘ārif, 1993).
34. Al-Bahy, *Ḥayātī*, 28.
35. Ibid., 37–38.
36. *Majallat al-Azhar*, vol. 17 (1945): 329.
37. *Majallat al-Azhar* (October 1986): 263.

38. *Majallat al-Azhar* reviewed the history of Muslims in Uganda (vol. 33, 1961–62, 39ff), America (vol. 33, 1961–62, 468, 1134), Greece and Japan (vol. 47, 1975, 164), India (vol. 8, 1937, 444, 520, 586, 659, 732), Russia (vol. 3, 1932, 74ff, 145ff, 225ff), Eastern Europe (vol. 2, 1931, 526, 575), Australia (vols 9–10, 1986, 53–55), Great Britain (vol. 41, June 1969, English section, 14), and many others.
39. See, for example, “Al-Islām fi ‘Uyūn al-Gharb” vol. 5 (1934): 173, 204; “Al-Islām fi Naẓar Baḥḥāthī Urūbbā,” vol. 3, 1932, 362ff; “Tārikh Ḥayāt Muḥammad,” vol. 7 (1936): 392, 532.
40. *Majallat al-Azhar*, vol. 23 (1951).
41. The fatwas published in *Majallat al-Azhar* will be reviewed in the following section.
42. Muḥammad ‘Abdū, et. al., *Al-Fatawa al-Islāmiyyah min Dār al-Ifṭā’ al-Miṣriyyah*, Higher Council of Islamic Affairs, Ministry of Endowments, Egypt. The publication of the fatwa started in 1980 and so far has reached 20 volumes. It has a huge collection of fatwas given by the various major muftis in Egypt over a hundred years, starting from well-known mufti Muḥammad ‘Abdū based on the official records of the House of Fatwa in Egypt. Although the collections and the fatwas have been produced by the state-run House of Fatwa, an overwhelming majority of the muftis were trained and were graduates of al-Azhar, a matter that makes their fatwas a reflection of their training and education in the al-Azhar educational system. The fatwa collection was digitalized and became available to the public through al-Azhar distribution offices. In the present chapter, the researcher relied extensively on the digital version. The reference is cited in the following format: *Al-Fatawa al-Islāmiyyah*, Fatwa no., name of the mufti, year of the fatwa.
43. Such as Jād al-Ḥaqq ‘Alī Jād al-Ḥaqq, ‘Abdel-Ḥalim Maḥmūd, Abū Zahrah, etc.
44. *Nūr al-Islām (Majallat al-Azhar)*, vol. 3 (1932): 29, 57, 66, 368; see also vol. 2 (1931): 122ff.
45. *Majallat al-Azhar*, vol. 7 (1936): 78–112 (This reference includes the Grand Imam of al-Azhar Muḥammad Muṣṭafā al-Marāghī’s treatise on “the translation of the Qur’an and its religious rulings” based on the Hanafi school of thought.); *ibid.*, 7 (1936): 123. (This refers back to his later-to-be Grand Imam of al-Azhar Maḥmūd Shaltūt on the translation of the Qur’an: the opinions of the scholars.); *ibid.*, 7 (1936): 188–189 (Article by the Moroccan Minister of Education on the translation of the Qur’an). For later debates see, *ibid.*, 26 (1954): 295.
46. *Nūr al-Islām (Majallat al-Azhar)*, vol. 2 (1931): 312; *Majallat al-Azhar*, vol. 36 (1964): 123–124; *Al-Fatawa al-Islāmiyyah*, fatwa no. 744, given by Sheikh Aḥmad Harīdī in 1969.
47. *Majallat al-Azhar*, vol. 7 (1936): 45–46.
48. *Ibid.*, vol. 46 (1974): 900.
49. *Al-Fatawa al-Islāmiyyah*, fatwa no. 15, given by Sheikh ‘Abdel-Majīd Salīm in 1935. Interestingly, here at the end of the fatwa, the mufti referred the question to the *Shāfi’i mufti*, at that time the sheikh of al-Azhar, for elaborating on the *Shāfi’i* position.

50. *Majallat al-Azhar*, vol. 46 (1974): 895–896.
51. *Ibid.*, vol. 3 (1932): 356.
52. *Ibid.*, vol. 46 (1974): 895–896.
53. *Al-Fatawa al-Islāmiyyah*, no. 9, given by Sheikh Muḥammad Bakhīt in 1917.
54. This position is no longer defended extensively as it was in the past after the establishment of Muslim nation-states and their preference to follow their own moon sighting. For earlier positions, see *Majallat al-Azhar*, vol. 9, 523; *Al-Fatawa al-Islāmiyyah*, fatwa no. 760, given by Sheikh Aḥmad Harīdī in 1963; *Al-Fatawa al-Islāmiyyah*, fatwa no. 3315, given by Sheikh Jād al-Ḥaqq in 1979.
55. *Al-Fatawa al-Islāmiyyah*, fatwa no. 3312, given by Sheikh Ḥasanīn Makhlūf in 1952.
56. *Al-Fatawa al-Islāmiyyah*, fatwa no. 15, given by Sheikh ‘Abdel-Majid Salīm in 1935.
57. *Majallat al-Azhar*, vol. 33 (1961/2): 84, 192, 354; vol. 26 (1954), 18; *Al-Fatawa al-Islāmiyyah*, fatwa no. 52, given by Sheikh Muḥammad ‘Abdū in 1900; Fatwa no. 826, given by Sheikh Aḥmad Harīdī in 1962.
58. *Al-Fatawa al-Islāmiyyah*, fatwa no. 3431, given by Sheikh Aḥmed Harīdī in 1966.
59. *Majallat al-Azhar* (October 1986): 206.
60. *Al-Fatawa al-Islāmiyyah*, fatwa no. 3410, given by Sheikh ‘Abdel-Laṭīf Ḥamzah in 1982.
61. *Al-Fatawa al-Islāmiyyah*, fatwa no. 73, given by Sheikh ‘Abdel-Raḥman Qura’ah in 1925; Fatwa no. 905, given by Sheikh Aḥmed Harīdī in 1965.
62. *Majallat al-Azhar*, vol. 26 (1954): 247.
63. *Al-Fatawa al-Islāmiyyah*, fatwa no. 1221, given by Sheikh Jād al-Ḥaqq in 1979.
64. *Majallat al-Azhar*, vol. 21, 1949; vol. 46, 1974, 895–896; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1109, given by Sheikh Aḥmad Harīdī in 1962; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1108, given by mufti Ḥasan Ma’mun in 1955; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1290, given by mufti Jād al-Ḥaqq ‘Ali Jād al-Ḥaqq in 1978; *Al-Fatawa al-Islāmiyyah*, fatwa no. 625, given by mufti Muḥammad ‘Abdū in 1903.
65. *Al-Fatawa al-Islāmiyyah*, fatwa no. 3417, given by Sheikh Ḥasan Ma’mūn in 1936; *Al-Fatawa al-Islāmiyyah*, fatwa no. 949, given by Sheikh ‘Abdel-Raḥman Qura’ah in 1923; *Al-Fatawa al-Islāmiyyah*, fatwa no. 501, given by Sheikh ‘Abdel-Majīd Salīm in 1934.
66. *Al-Fatawa al-Islāmiyyah*, fatwa no. 988, given by Sheikh Aḥmad Harīdī in 1968.
67. *Al-Fatawa al-Islāmiyyah*, fatwa no. 853, given by Sheikh Muḥammad Khāṭir in 1978.
68. *Majallat al-Azhar*, vol. 4 (1933), 697; *Al-Fatawa al-Islāmiyyah*, fatwa no. 1045, given by Sheikh Aḥmad Harīdī in 1964.
69. The few questions asked in this regard had to do with keeping the money in bank accounts that give interests. See for example, *Al-Fatawa al-Islāmiyyah*, fatwa no. 744, given by Sheikh Aḥmad Harīdī in 1969.
70. *Al-Fatawa al-Islāmiyyah*, fatwa no. 744, given by Sheikh Aḥmad Harīdī in 1969.

71. *Al-Fatawa al-Islāmiyyah*, fatwa no. 988, given by Sheikh Aḥmad Harīdī in 1968.
72. *Al-Fatawa al-Islāmiyyah*, fatwa no. 3417, given by Sheikh Ḥasan Ma'mūn in 1936.
73. *Majallat al-Azhar*, vol. 68 (1995): 784–785.
74. Ibid., vol. 63 (1991): 617–619; Jād al-Ḥaqq, *Buḥūth*, vol. 4, 337–347.
75. Ibid., vol. 67 (1994): 8–10.
76. *Al-Fatawa al-Islāmiyyah*, fatwa no. 1126, given by Jād al-Ḥaqq in 1980.
77. Jād al-Ḥaqq, *Buḥūth*, vol. 4, 342.
78. Jād al-Ḥaqq 'Alī Jād al-Ḥaqq, "Dawr al-Ijtihād fi al-Gharb," *al-Azhar*, vol. 68 (November 1995): 784.
79. One may refer here to Jād al-Ḥaqq's detailed overview of the different positions of jurists in his fatwa on "praying" 'Id in a place that is designed for singing and dancing events (see *Fatawa Dār al-Ifā'*, vol. 8 [1993]: 2745, or his *fatwa* on rulings on fasting in Norway, *ibid.*, 2799).
80. Al-Shawārbī, *Al-Islām fi Amrikā*, 135.
81. Muḥammad Sayyid Ṭanṭāwī, *Ta'āmmulāt fi Khitāb al-Ra'is Barak Obama min Manẓūr Islāmī* (al-Azhar Magazine gift, August, 2009), 18.
82. Ibid., 46.
83. Yūsuf al-Dijwi, "Mas'lat Tajannus al-Muslimīn bi-al-Jinsiyyah al-Firinsiyyah," republished in *Al-Sunnah Magazine* (Birmingham: Islamic Studies Center, Muharram 1416 A.H./ 1995 A.D.), 90–96.
84. Rashīd Riḍā, *Al-Manar*, 25.1 (January 1924): 21–32.
85. Muḥammad al-Khidr Ḥusayn, "Muḥakāt al-Muslimīn li-al-Aḡānib" *Majallat al-Azhar*, 3 (1932): 375ff.
86. *Al-Fatawa al-Islāmiyyah*, fatwa no. 625, given by Sheikh Muḥammad 'Abdū in 1904. See also *Al-Fatawa al-Islāmiyyah*, fatwa no. 683, given by Sheikh 'Abdel-Majīd Salīm in 1928.
87. *Al-Fatawa al-Islāmiyyah*, fatwa no. 673, given by Muḥammad 'Abdū in 1904.
88. *Majallat al-Azhar*, vol. 41 (1969): 639. This page carries a piece of news that the Islamic Research Assembly sent delegations to Europe and America to teach Islamic studies and Arab culture and to provide books for al-Azhar centers overseas.
89. Ibid., vol. 50 (1978): 520.
90. Ibid., vol. 30 (August, 1958).
91. Ibid., vol. 8 (1937): 596.
92. Malika Zeghal, "The 'Recentering' of Religious Knowledge," 108.
93. See the introduction to *Al-Fatawa al-Islāmiyyah*. This statement implies that there are only a limited number of legal rulings that can be identified as categorically *ḥarām* based on a clear linguistic reference of a textual evidence, rather than the interpretation of a jurist.
94. Malika Zaghal, "The 'Recentering' of Religious Knowledge," 108.
95. See the fatwa of the mufti of Egypt, Sheikh 'Alī Jum'ah, on the permissibility of void transaction in the abode of non-Muslims. 'Alī Jum'ah, *Al-Kalim al-Ṭayyib*, *Fatawa 'Aṣriyyah*, vol. 2 (2007): 205–209.

3 YŪSUF AL-QARAḌĀWĪ: AN IDEOLOGUE FOR MUSLIM MINORITIES

1. He graduated from al-Azhar, Faculty of *Uṣūl al-Dīn* in 1952–53.
2. His affiliation with the Muslim Brothers put him in prison four times; in 1949, 1954 (twice), and 1963.
3. For a detailed publication list and biography, see qaradawi.net
4. Bettina Gräf and Jakob Skovgaard-Petersen, eds., *Global Mufti, The Phenomenon of Yusuf al-Qaradawi* (New York: Columbia University Press, 2009), 1–26.
5. Al-QaraḌāwī was then, in 1959, working at the *al-Maktab al-Fannī* (research desk) in the Department of Islamic Culture at al-Azhar. He was charged with responding to what the press and the media published about Islam. The Department of Islamic Culture at that time was under the directorship of Dr. Muḥammad al-Bahy, one of al-QaraḌāwī's teachers. See Akram Kassāb, *Al-Manhaj al-Da'awī 'ind al-QaraḌāwī, Mawāhibuh wa-Adawātuh, Wasā'iluh wa-Asālibuh, Simātuh wa-Athāruh* (Egypt: Maktabat Wahbah, 2007), 80.
6. *Al-Ḥalāl Wa-al-Ḥarām* has been published more than 30 times since its first inception.
7. Yūsuf al-QaraḌāwī, *Al-Ḥalāl Wa-al-Ḥarām* 8th ed. (Cairo: Dār al-I'tisām, 1974), 7.
8. Dār Ihīyā' al-Kutub al-'Arabiyyah, Cairo, 1960.
9. Yūsuf al-QaraḌāwī, *Liḡā'āt wa-Muḥawwarāt Hawl Qaḍayā al-Islām wa-al-'Aṣr* (Cairo: Al-Risālah, 2001), 68.
10. Alexandre Caeiro and Mahmoud al-Saify, "QaraḌāwī in Europe, Europe in QaraḌāwī," in *Global Mufti, The Phenomenon of Yusuf al-Qaradawi*, eds. Bettina Gräf and Jakob Skovgaard-Petersen (Columbia University Press, 2009), 112.
11. *Ibid.*, 112–113.
12. 'Iṣām Tilimah, *Yusuf al-QaraḌāwī, Faqīh al-Da'wah wa-Dā'yat al-Fuqāhā'*, a series on 'Ulamā' wa-Mufakkirūn Mu'āṣirūn (Damascus: Dār al-Qalam, 2001), 129.
13. *Ibid.*, 133.
14. Muṣṭafa Aḥmad Muḥammad al-Zarqā (1904–1999) was a Syrian jurist known for his merits as one of the *mujtahids* in the contemporary age. He taught in many Syrian, Jordanian, and Gulf countries and is one of the authors of the *Kuwaiti Encyclopedia for Islamic Jurisprudence*.
15. 'Abdel-Fattāh Muḥammad Bashīr Ḥasan Abū Ghuddah (1917–1997) was a Syrian scholar who graduated from Al-Azhar, Faculty of *Shari'ah* in 1948. He taught in a number of Islamic universities in Saudi Arabia, Sudan, and India. He was also the *murshid*, that is, the guide, of the Syrian Muslim Brothers for a while in Syria.
16. Mannā Khalīl Al-Qattān (1925–1999) was an Egyptian scholar who graduated from al-Azhar, Faculty of *Shari'ah*. He left Egypt for Saudi Arabia in the

- 1950s to work in its universities. He was also appointed as a judge in the Saudi courts. He had a strong affiliation with the Muslim Brothers.
17. 'Abdullah ibn al-Maḥfūz ibn Bayyah (1935–) is a Mauritanian jurist who currently works in King 'Abdel-'Azīz University in Saudi Arabia and is the vice president of the International Union of Muslim Scholars. He was the first minister of Islamic Affairs in Mauritania and served also as a minister of Education and Religious Affairs. His fatwas are quite famous among certain groups of Muslims in the West.
 18. Fayṣal Mawlawī (1941–) is a Lebanese judge and jurist. He graduated from Faculty of *Shari'ah* in Damascus and received a diploma from La Sorbonne. He is quite known for his efforts in the field of Islamic *da'wah* in the West. He is the founder of the European College for Islamic Studies in France and is the vice president of the European Council of Fatwa and Research. He served also as the secretary general of the Lebanese Islamic Group, the Lebanese Branch of the Muslim Brothers.
 19. Al-Qaraḍāwī, *Fi Fiqh al-Aqallīyyāt al-Muslimah* (Egypt: Dār al-Shurūq, 2001), 6.
 20. See the ECFR website, http://www.e-cfr.org/ar/index.php?cat_id=005 (accessed 12/27/2012).
 21. Kassāb, *Al-Manhaj*, 229–30, 441.
 22. Bettina Gräf, "Sheikh Yusuf Al-Qaraḍāwī in Cyberspace," *Die Welt des Islams*, vol. 47, no 3–4 (2007): 403.
 23. Since 1999, al-Qaraḍāwī was not allowed entry to the United States because of his political views on the Palestinian-Israeli conflict.
 24. Andrew C. Gould, "Muslim Elites and Ideologies in Portugal and Spain," *West European Politics*, vol. 32, no. 1 (January 2009): 66ff.
 25. *falahonline.net*. Falah changed its name around 2007 to New Vision for Translation and Culture.
 26. Abdo Jamil Al-Mikhlaḥfay, *Al-Jazeera: Ein regionaler Spieler auf globaler Bühne* (Marburg: Schüren Verlag, 2006), 112ff; Cf. Bettina Gräf and Jakob Skovgaard-Petersen, eds., *Global Mufti: The Phenomenon of Yusuf al-Qaradawi* (Columbia University Press, 2009), 157.
 27. *Al-Shari'ah wa-al-Hayāh*, Al-Jazeera, October 13, 1999. It should be noted that Islamonline.net went through a restructured stage in 2010, which resulted in the withdrawal of al-Qaradawi from the website board.
 28. *Foreign Policy*, "The World's Top 20 Public Intellectuals" (July-August 2008): 55. Available online at http://www.foreignpolicy.com/story/cms.php?story_id=4349 (accessed 12/27/2012).
 29. "Virtual Caliphate" refers to an ideal of pan-Islamic ecumenism instead of the old sovereign political institution. Peter Mandaville, "Toward a Virtual Caliphate," *Yale Global Online*, Yale Center for the Study of Globalization, <http://yaleglobal.yale.edu/content/toward-virtual-caliphate> (accessed 12/27/2012).
 30. <http://www.aawsat.com/english/news.asp?section=3&id=14235>; http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1221720332665&pagename=Zone-English-Living_Shariah%2FLSELayout; http://www.metimes.com/International/2008/09/26/cleric_reignites_age-old_sunni-shiite_disputes/1578/ (accessed 6/4/2009).

31. See for example, <http://www.investigativeproject.org/profile/167> (accessed 12/27/2012).
32. http://news.bbc.co.uk/2/hi/middle_east/7342425.stm (accessed 12/27/2012); <http://www.gulfnews.com/News/Gulf/qatar/10205203.html> (accessed 12/27/2012).
33. Kassāb, *Al-Manhaj*, 16–17; 347ff.
34. See <http://www.amislam.com/qaradawi.htm> (accessed 8/11/2011); <http://www.islamicweb.com/beliefs/misguided/qaradawi.htm> (accessed 12/27/2012).
35. See: <http://www.arabnews.com/?page=4§ion=0&article=53683&cd=30&m=10&y=2004> (accessed 8/11/2011); for a review of the Western campaign against him, one may check the literature of the following groups: Jihad Watch, Middle East Media Research Institute (MEMRI), and Middle East Forum.
36. Charlez Kurzman, ed., *Liberal Islam: A Source Book* (Oxford: Oxford University Press, 1998).
37. Peter Tatchel, “Does Ken Believe in Killing Gays,” *Newstatesmen* (July 19, 2004): 22.
38. Henry Newman, “Al-Qaradawi, Yusuf,” *Encyclopedia of Islam in the United States*, ed. Jocelyne Cesari, vol. 1 (London: Greenwood Press, 2007), 43.
39. Jytte Klausen, *The Islamic Challenge: Politics and Religion in Western Europe* (Oxford: Oxford University Press, 2005), 210.
40. Gould, “Muslim Elites and Ideologies in Portugal and Spain,” 73.
41. Gräf and Skovgaard-Petersen, *Global Mufti*, 165.
42. Newman, “Al-Qaradawi, Yusuf,” 41.
43. Bettina Gräf, “Sheikh Yusuf Al-Qaradāwī in Cyberspace,” 403.
44. Muḥammad al-Ghazālī (1917–1996) is one of the most prominent figures in contemporary Islamic thought. He is a graduate of the Faculty of *Uṣūl al-Dīn* at al-Azhar. He has various publications that mostly respond to the challenges that encounter Muslims in modern times and the urgent need of Muslims to revive the religion. He was a member of the Muslim Brotherhood from the 1950s to the 1970s.
45. Kassāb, *Al-Manhaj*, 53.
46. Ibid., 36ff.
47. Yūsuf al-Qaradāwī, *Naḥnu wa-al-Gharb, As'ilah Shā'ikah wa-Ajwibah Ḥasimah* (Egypt: Dār al-Tawzī' wa-al-Nashr al-Islāmiyyah, 2006), 117.
48. Maṣ'ūd Ṣabrī, “Al-Iftā' 'Ind al-Shaykh al-Qaradāwī: al-Manhaj wa-al-Taṭbīq,” in *Multaqā al-Imam al-Qaradāwī: Ma'a al-Aṣ-ḥāb wa-al-Talāmīdh*, a conference held in Doha, Qatar (2007): 14, 15, 19.
49. A special conference was held in Doha, Qatar, 2007, by his students to study his works and contribution to the Muslim world. The title of the conference was *Multaqā al-Imam al-Qaradāwī: Ma'a al-Aṣ-ḥāb wa-al-Talāmīdh*.
50. Gräf and Skovgaard-Petersen, *Global Mufti*, 41.
51. Alexandre Caeiro and Mahmoud al-Saify, “Qaradāwī in Europe,” 120.
52. Ibid.
53. Yūsuf al-Qaradāwī, *Madkhal li-Dirāsāt Maqāṣid al-Sharī'ah al-Islāmiyyah* (Beirut: Al-Risālah, 1993), 25–26.
54. Al-Qaradāwī, *Liqa'āt*, 101.

55. Al-Qaraḍāwī, *Madkhal*, 22.
56. Ibid., 67–70; See also, al-Qaraḍāwī, *Dirāsah fi fiqh Maqāṣid al-Sharī'ah Bayna Al-Maqāṣid al-Kullīyyah wa-al-Nuṣūṣ al-Juz'īyyah* (Egypt: Dar al-Shurūq, 2006), 28.
57. Al-Qaraḍāwī, *Madkhal*, 140ff.
58. al-Qaraḍāwī, *Dirāsah*, 19–20.
59. Akram Kassāb, *Al-Qaraḍāwī: Murtakazāt Da'watihī wa-Jabahātih al-Da'awīyyah* (Egypt: Wahbah, 2007); Iṣām Tilimah, *Yūsuf Al-Qaraḍāwī, Faqīh al-Da'wah*, 111.
60. *Tafaqquh* is a verb form derived from *fiqh*, meaning that one should exert one's maximum effort to understand and comprehend something. Al-Qaraḍāwī refers here to the Qur'anic verse, "Of every group of them [Muslim], a party only should go forth and gain some knowledge of faith" (Qur'an, 9:122).
61. Al-Qaraḍāwī, *Dirāsah*, 14–15.
62. See: Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton University Press, 2007); Muhammad Qasim Zaman, "Consensus and Religious Authority in Modern Islam: The Discourses of the 'Ulama," in *Speaking for Islam: Religious Authorities in Muslim Societies*, eds. Gudrun Kramer and Sabine Schmidtke (Leiden: Brill, 2006).
63. Muḥammad ibn 'Alī ibn Muḥammad ibn 'Abdullah al-Shawkānī (1759–1834 CE) was a Muslim jurist and reformer. He was known for his authority in Ḥadīth and for his severe criticism for *taqlīd* and his call for *ijtihād*. For a critical study of his life and his works, see Bernard Haykal, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkani* (Cambridge University Press, 2003).
64. Kassāb, *Al-Manhaj*, 56.
65. On other occasions, Al-Qaraḍāwī uses Sayyid Qutb's label "*fiqh al-awrāq*," that is, jurisprudence of papers. See Kassāb, *Al-Qaraḍāwī*, 98; Cf. 'Ubayd Ḥasanah, *Fiqh al-Da'wah Malāmīh wa-Afāq*, vol. 2. Kitāb al-Ummah series (Qatar: Legal Court and Religious Affair Department). Available online at <http://www.sheikhali-waqfia.org.qa/SF/AR/BookShow/BookShowTree.aspx?BookId=216> (accessed 27/12/2012).
66. Kassāb, *Al-Qaraḍāwī*, 73.
67. Al-Qaraḍāwī, *Liqā'āt*, 116–117.
68. Al-Qaraḍāwī, *Madkhal*, 242ff.
69. Yūsuf Al-Qaraḍāwī, *Fiqh al-Jihad, Dirāsah Muqāranah li-Ah-kāmīh wa-Falsafatīh fi Daw' al-Qur'an wa-al-Sunnah* (Cairo: Wahba Bookstore, 2009), 12.
70. To study the concept of the Middle-Way for al-Qaraḍāwī, see Bettina Gräf, "The Concept of Wasatiyyah in the Work of Yūsuf Al-Qaraḍāwī," in *Global Mufti: The Phenomenon of Yusuf al-Qaradawi*, ed. Bettina Gräf and Skovgaard-Petersen (New York: Columbia University Press, 2009), 213–238.
71. Al-Qaraḍāwī, *Dirāsah*, 64ff; Al-Qaraḍāwī, *Madkhal*, 90ff.
72. Yūsuf Al-Qaraḍāwī, *Fiqh al-Jihad*, 239.
73. Ibid., 402.
74. Ibid., 1195.
75. Ibid., 908–909.

76. Med-hat Māhir, "Jadid Fiqh al-Aqalliyyāt fī Mawḍū' al-Mar'ah," in *Murāja'ah Fī Khīṭabāt Mu'āṣirah Ḥawl al-Mar'ah*, ed. Amani Ṣalīḥ (Cairo: Dialogue of Civilization Program, Faculty of Economics and Political Science, Cairo University, 2007), 55.
77. Yūsuf al-Qaraḍāwī, *Fī Fiqh al-Aqalliyyāt*, 12–13.
78. Ibid., 15.
79. Ibid., 16–20.
80. Ibid., 23.
81. Ibid., 23.
82. Ibid., 28.
83. Ibid., 29.
84. Ibid., 31.
85. Ibid., 32.
86. Ibid., 35.
87. For a review of early history of Muslim minorities in Europe, see Bernard Lewis, "Legal and Historical Reflections on the Positions of Muslim Populations under non-Muslim Rule," in *Muslims in Europe*, ed. Bernard Lewis and Dominique Schnapper (New York: Pinter Publishers, 1994).
88. Yūsuf al-Qaraḍāwī, *Fī Fiqh al-Aqalliyyāt*, 33.
89. Ibid., 37–39.
90. Ibid., 40–41.
91. Ibid., 41.
92. Ibid., 42–44.
93. Ibid., 44–46.
94. Ibid., 46–47.
95. Kassāb, *Al-Manhaj*, 240ff.
96. Tilima, *Yūsuf Al-Qaraḍāwī*, 118–119.
97. Kassāb, *Al-Manhaj*, 238; see also Yūsuf Al-Qaraḍāwī, *Al-Fatwa Bayna Al-Indībāt wa-al-Tasayyub* (Egypt: Dār al-Ṣaḥwah li-al-Nashr, 1994), 111ff.
98. Al-Qaraḍāwī in Al-Ahram newspapers, Egypt, 1986; Cf. Al-Qaraḍāwī, *Liqā'āt*, 60.
99. Kassāb. *Al-Manhaj*, 46–47.
100. Yūsuf Al-Qaraḍāwī, *Min Hady al-Islām, Fatawa Mu'āṣirah*, vol. 3 (Kuwait and Egypt: Dār al-Qalam), 650–651.
101. Al-Qaraḍāwī, *Al-Halāl wa-al-Harām*, 12.
102. For example, there are a total of 23 questions on family issues out of 51 questions in his section on *Fatwa al-aqalliyyāt* in Al-Qaraḍāwī's *Fatawa Mu'āṣirah*.
103. Al-Qaraḍāwī, *Fatawa Mu'āṣirah*, 639.
104. Al-Qaraḍāwī, *Fatawa*, 646.
105. Ibid., 648.
106. Ibid., 642.
107. Ibid., 603–604.
108. Compare *Qarārāt wa-Fatāwā al-Majlis al-'Urūbī lil-Iftā' wa-al-Buḥūth* (Cairo: Dār al-Tawzī' wa-al-Nashr al-Islāmiyyah, 2002) (especially *fatwa* numbers:— from the first collection—5, 6, 13, 19, 21, 23, and *fatwa* numbers, from the second collection: 21, 25, 33), with Al-Qaraḍāwī, *Fatawa*.

109. Pre-Qaraḍāwī writings, publications, and fatwas were mostly a reassertion to what was already available in *fiqh* manuals. The author's work was limited to data collection and their reorganization. See, for example, Khālīd 'Abdel-Qādir, *Fiqh al-Aqalliyyāt al-Muslimah* (Lebanon: Dār al-Imān, 1998).
110. Gräf and Skovgaard-Petersen, *Global Mufti*, 128.
111. Ibid., 133.

4 ṬAḤA JĀBIR AL-'ALWĀNĪ: FĪQH AL-AQALLIYYĀT, A MODEL OF ISLAMIZATION OF KNOWLEDGE

1. Muhammad Khalid Masud considered him the first to use this term in his fatwa about Muslim participation in American secular politics in 1994. Masud, "Islamic Law and Muslim Minorities" *ISIM Newsletter* vol. 11 (December, 2002).
2. Ṭaḥa Jābir Al-'Alwānī, *Towards a Fiqh for Muslim Minorities* (London, Washington: The International Institute of Islamic Thought, 2003). This same study first appeared in various journals and publications since the late 1990s. See, for example, Ṭaḥa Jābir Al-'Alwānī, "Madkhal Ilā Fiqh al-Aqalliyyāt," *Islāmiyyat al-Ma'rifah* vol. 19 (1999): 1–29; Ṭaḥa Jābir Al-'Alwānī, "Madkhal Ilā Fiqh al-Aqalliyyāt," *Al-Rashād* vol. 12 (2001): 9–28.
3. Fakhr al-Dīn Al-Rāzī, *Al-Maḥṣūl fī 'Ilm Uṣūl al-Fiqh*, ed. Ṭaḥa Jābir al-'Alwānī (Imam Muhammad bin Saud University, 1980).
4. Ṭaḥa Jābir Al-'Alwānī, *Al-Ijtihād wa al-Fiqh fī al-Islām* (Cairo: Dār al-Anṣār, 1980).
5. Muṣṭafā Al-Wirdānī, *Al-Nahy 'an al-Isti'ānah wa-al-Istinṣār fī Umūr al-Muslimīn be-Ahl al-Dhimma wa-al-Kuffār*, ed. Ṭaḥa Jābir al-'Alwānī (Riyadh: Al-Ubaykan, 1983).
6. For a complete list of his works and publications, see Al-'Alwānī's webpage: <http://www.Alwani.net/cv.php> (accessed 12/30/2012).
7. Ṭaḥa Jābir Al-'Alwānī, *Ibn Taymiyyah wa-Islāmiyyat al-Ma'rifah: Silsilat Islāmiyyat al-Ma'rifah* (Virginia: International Institute of Islamic Thought, 1994), 15.
8. Algomhariah.net, "Qīṣat Fatwa Fiqhiyyah Itabarāt al-Junūd al-Amrikiyīn Mujahidīn fī Sabil Allāh," March 7, 2007, http://www.algomhariah.net/news_details.php?lng=arabic&sid=981 (accessed 12/30/2012).
9. After extensive research, only few fatwas were found for Al-'Alwānī on the Islamonline.net website (some to be discussed later in this chapter). These fatwas as such cannot be considered as contributions to fatwa literature.
10. We can see this on various occasions. In the mid-1980s, al-'Alwānī compiled around 30 questions and sent them to the *Fiqh* Academy in Jeddah requesting responses from the Academy members. (More details about these questions will be elaborated later in this chapter.) On another occasion, he referred the question of the Muslim chaplain concerning American Muslim soldiers

- joining the American army in their fight in Afghanistan, to a group of Muslim scholars such as al-Qaraḍāwī and the well-known Egyptian lawyer Muḥammad Salīm al-ʿAwwā. See Imām Muḥammad Imām, “*Fatwa min al-Qaraḍāwī wa-al-ʿAwwā wa-Akharīn Tujīz li-al-ʿAskariyyīn al-Amrikiyyīn al-Muslimīn al-Mushārkah fi al-Gharāt ‘alā Afghanistan*,” *Al-Sharq al-Awsat*, October 14, 2001. On a third occasion, when some Muslims argued against the presence of the Prophet Muḥammad frieze in the Court of Justice, al-ʿAlwānī announced his position through a research paper that was published as a fatwa. See Ṭaha Jābir al-ʿAlwānī, ““Fatwa” Concerning the United States Supreme Courtroom Frieze,” *Journal of Law and Religion* vol. 15, no. 1 (2000–2001): 1–28.
11. Al-ʿAlwānī aided the establishment of a number of higher education institutions. He was a founding member in the establishment of the Graduate School of Islamic Social Sciences. He also established the first accredited program of Muslim chaplains in the United States.
 12. See, for example, his series entitled Qurʾānic Studies: Ṭaha Jābir Al-ʿAlwānī, *Naḥwa Mauqif Qurʾānī min al-Naskh*, 1st ed. Vol. 5, *Dirāsāt Qurʾāniyyah* (Cairo: Shorouk International, 2007). Ṭaha Jābir Al-ʿAlwānī, *Al-Jamʿ Bayna al-Qirʾatayn: Qirʾat al-Wahy wa-Qirʾat al-Kawn*, 2nd ed., vol. 2, *Dirāsāt Qurʾāniyyah* (Cairo: Shorouk International, 2008). Ṭaha Jābir Al-ʿAlwānī, *Al-Wihdah al-Bināʾiyyah li-al-Qurʾan al-Karīm*, 2nd ed., vol. 3, *Dirāsāt Qurʾāniyyah* (Cairo: Shorouk International, 2008).
 13. He was the main guest of a program called “*Madārik*” in the short-lived Satellite Channel “*Anā*.” For some of his episodes, see <http://www.youtube.com/watch?v=cIg9AXrzOEM> (accessed 12/30/2012).
 14. Almost all available research where the name or the thought of al-ʿAlwānī is mentioned focuses on his position toward the question of the Islamization of Knowledge. There are a few examples in which his fatwas on political participation or against terrorism were referred to but more in a descriptive way and not as a question of analysis. His fatwa on the Prophet Muḥammad’s portrayal on the Supreme Court frieze was used in the context of the analysis of Muslims’ reaction to the Danish cartoon. See for example, Birgit Schabler and Leif Stenberg, *Globalization and the Muslim World: Culture, Religion and Modernity* (New York: Syracuse University Press, 2004), 96ff; Amaney Jamal and Sunaina Maira, “Review: Muslim Americans, Islam and the ‘War on Terror’ at Home and Abroad,” *Middle East Journal* vol. 59, no. 2 (Spring 2005): 303–309; Jytte Klausen, “The Danish Cartoon and Modern Iconoclasm in the Cosmopolitan Muslim Diaspora,” *Harvard Middle Eastern and Islamic Review* vol. 8 (2009): 86–118; Yvonne Yazbeck Haddad, Jane I. Smith, and John L. Esposito, eds., *Religion and Immigration: Christian, Jewish and Muslim Experience in the United States* (Walnut Creek: Rowman Altamira, 2003), 212.
 15. Shammai Fishman, “Ideological Islam in the United States: ‘Itjihad’ In the Thought of Dr. Ṭaha Jābir Al-ʿAlwānī,” *Jamaa* vol. 11 (2003). Available online at <http://www.e-prism.org/images/IdeologicalIslam.pdf> (accessed 1/1/2013). See also Shammai Fishman, “Some Notes on Arabic Terminology as a Link between Tariq Ramadan and Sheikh Dr. Ṭaha Jābir al-ʿAlwānī, Founder of

the Doctrine Of “Muslim Minority Jurisprudence” (Fiqh Al-Aqalliyyat Al-Muslimah),” *PRISM* (n.d.).

16. Fishman, “Ideological Islam in the United States,” 25.
17. Ibid.
18. For a collection of al-‘Alwānī’s writings on the issue of Islamization of Knowledge, see Taha Jābir al-‘Alwānī, *Naḥwa Manhajīyyah Ma’rifīyyah Qur’āniyyah, Muhawālāt fi Bayān Qawā’id al-Manhaj al-Tawhīdī li-al-Ma’rifah* (Beirut, Dār al-Hādī, 2004). Taha Jabir Al-Alwani, *Issues in Contemporary Islamic Thought* (Virginia: International Institute of Islamic Thought, 2005).
19. Al-‘Alwānī, *Naḥwa Manhajīyyah*, 14ff.
20. Al-Alwani, *Issues in Contemporary Islamic Thought*, 5.
21. Ṭaha Jābir Al-‘Alwānī, *Al-Jam‘ Bayna al-Qirā’ atayn, Qirā’ at al-Wahy wa-Qirā’ at al-Kawn*, 2nd ed., vol. 2, *Dirāsāt Qur’āniyyah* (Cairo: Shorouk International, 2008). Al-‘Alwānī, “Madkhal Ila Fiqh al-Aqalliyyāt,” *Islāmiyyat al-Ma’rifah* vol. 19 (1999): 55; Al-‘Alwānī, *Naḥwa Manhajīyyah*, 144ff.
22. Al-Alwani, *Issues in Contemporary Islamic Thought*, 33–34.
23. Ibid., 38.
24. Ibid.
25. Al-‘Alwānī, *Naḥwa Manhajīyyah*, 10.
26. Al-‘Alwānī, *Madkhal*, 89; Al-‘Alwānī, *Naḥwa Manhajīyyah*, 155; Al-‘Alwānī, *Issues in Contemporary Islamic Thought*, 38.
27. Ibid.
28. Ṭaha Jābir al-‘Alwānī, *Al-Wiḥdah al-Binā’ iyyah li-al-Qur’an al-Karīm*. 2nd ed., vol. 3, *Dirāsāt Qur’āniyyah* (Cairo: Shorouk International, 2008). Al-‘Alwānī calls his methodology of reading the text of the Qur’an “The Conceptual Reading.” This methodology is based on compiling all the different references of the same work and its different meanings and contexts in order to understand its full meaning and indications. See Al-‘Alwānī, *Madkhal*, 87.
29. Ṭaha Jābir al-‘Alwānī, “Mafhūm al-Wahy fi al-Qur’an,” *Al-Masār* vol. 6 (2005): 183.
30. Al-Alwani, *Issues in Contemporary Islamic Thought*, 39.
31. Ibid., 40.
32. Ibid.
33. Ibid., 41.
34. Habbān Niyuf, “Taqrīr al-‘Arabiyyah nit li-al-Kitāb, Dr. ‘Alwānī: Al-Islām lā Yu’āqib al-Murtadd wa-Hadith al-Rasūl Wuzzifa Siyāsiyyan,” *alarabiya.net*, January 12, 2007.
35. Al-‘Alwānī, *Issues in Contemporary Islamic Thought*, 42.
36. Ibid.
37. For al-‘Alwānī’s understanding of *maqāṣid*, see ‘Abd al-Jabbār al-Rifā’ī, *Maqāṣid al-Sharī’ah* 2nd ed. (Damascus: Dār al-Fikr, 2005). For other scholars see: Al-Maqasid Research Centre, *Maqāṣid al-Sharī’ah wa-Qaḍayā al-‘Aṣr* (London: Al-Furqan Islamic Heritage Foundation, 2007); ‘Abdel-Majīd Al-Najjār, *Maqāṣid al-Sharī’ah bi-Ab’ād Jadīdah* (Beirut: Dār al-Gharb al-Islāmī, 2006).
38. Such as, “*Fatwas* change in accordance with the change of place and time.”
39. Called in Arabic “*al-Ḥiyāl al-Shar‘iyyah*.”

40. For a comparison between the traditional and contemporary debate on the relationship between text and time and place, see Sa'īd Muḥammad Bu Harāwah, *Al-Bu'd al-Zamānī wa-al-Makānī wa-Āthāruhū mā fī al-Tāāmūl ma'a al-Naṣ al-Shar'ī* (Jordan: Dār al-Nafā'is, 1999).
41. <http://www.aslein.net/showthread.php?t=11062> (accessed 12/31/2012).
42. See Ṭaha Jābir Al-'Alwānī and Munā Abū al-Faḍl, *Mafāhīm Miḥwariyyah fī al-Manhaj wa-al-Manhajiyyah* (Cairo: Dār al-Salām, 2009), 11–14.
43. <http://www.aslein.net/showthread.php?t=11062> (accessed 12/31/2012).
44. Al-'Alwānī, *Madkhal*, 123.
45. A copy of the letter and the fatwas on the questions were available on the Fiqh Academy website until recently. Now the website had published instead a resolution referring the questions to expert jurists, as the current responses, as argued by the website, do not provide clear answers and does not help solving the problem of Muslim minorities. Check <http://www.fiqhacademy.org.sa/> (under the section on resolutions, session 2).
46. His first direct article on the issue was published in *Majallat Islāmiyyat al-M'arifah*, vol. 19, 1999. After that, the same article was republished a couple of times with some modification in the introduction and the conclusion. See, for example, Ṭaha Jābir al-'Alwānī, *Fi Fiqh al-Aqalliyyāt al-Muslimah*, series of Tanwīr al-Islāmī, no. 52 (Cairo: Nahḍat Misr, 2000). Ṭaha Jābir al-'Alwānī, "Madkhal Ilā Fiqh al-Aqalliyyāt," *Al-Rashād*, vol. 12 (August 2001): 8–28; Ṭaha Jābir Al-'Alwānī, *Towards a Fiqh for Minorities: Some Basic Reflections*, ed. Anas al-Shaikh-Ali and Shiraz Khan, Occasional Paper Series, vol. 10 (London, Washington: The International Institute of Islamic Thought, 2003). Ṭaha Jābir al-'Alwānī, "Madkhal Ilā Fiqh al-Aqalliyyāt," *Scientific Review of the European Council for Fatwa and Research*, no. 4–5 (2004): 17–92. The main reference used in this chapter is the IIIT English translation of the paper. However, other references were occasionally used when the translation is not accurate or when there are additions that al-'Alwānī introduced to the introductions or the conclusions of the other versions of the article.
47. Al-'Alwānī, *Towards a Fiqh for Minorities, Some Basic Reflections*, xi–xiii.
48. *Ibid.*, xiv–xv.
49. *Ibid.*
50. *Ibid.*, 9–10.
51. Al-Qaraḍāwī, *Fi Fiqh al-Aqalliyyāt*, 46–48.
52. Al-'Alwānī, *Towards a Fiqh for Minorities: Some Basic Reflections*, 10–11.
53. Dr. 'Ujayl Jāsim al-Nashamī criticized al-'Alwānī's claim to revive *al-fiqh al-akbar* in a minority context, arguing that *fiqh al-aqalliyyāt* entails *ahkām* while *al-fiqh al-akbar* produces principles. This is one of the common criticisms directed to al-'Alwānī that he always mixes the *ḥukm* and the principle without defining the space and rule of each. See 'Ugayl Jāsim al-Nashamī, "Al-Ta'liqāt 'alā Baḥth: Madkhal Ilā Uṣūl wa-Fiqh al-Aqalliyyāt," *Scientific Review of the European Council for Fatwa and Research*, vol. 7 (July 2005): 17–63. For other critical remarks on al-'Alwānī's research, see Nadyah Maḥmūd Muṣṭafa, "Fiqh al-Aqalliyyāt al-Muslimah Bayna Fiqh al-Indimāḥ (al-Muwaṭānah) wa-Fiqh

- al-'Uzlah," *Scientific Review of the European Council for Fatwa and Research* vol. 10–11 (2007). Med-hat Māhir, "Jadid Fiqh al-Aqalliyyāt fī Mawdu' al-Mar'ah," in *Murāja'ah fī Khatibāt Mu'aṣirah Hawl al-Mar'ah*, Manzur Ḥaḍarī, ed. Amānī Ṣāliḥ (Cairo University, 2007), 37–100.
54. Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, 3–4.
 55. Ibid., 13.
 56. Ibid., 16.
 57. Ibid., 17.
 58. Ibid., 20; Al-'Alwānī, *Fī Fiqh al-Aqalliyyāt al-Muslimah*, 30.
 59. For a comprehensive study of the hadith and the degree of its authenticity, see Ḥākīm al-Muṭīrī, "Al-'ilām bi-Dirāsāt Hadith 'lā Tabda'ū al-Mushrikīn bi-al-Ṣalām," in <http://www.dr-hakem.com/Portals/Content/?info=TmpJMUpsTjFZbEJoWjJVbU1RPT0rdQ==.jsp> (accessed 31/12/2012).
 60. To review a complete list of al-'Alwānī's principles for the study of the Qur'an, see Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, 20–23.
 61. Ibid., 26–27.
 62. Qur'an, 16:120.
 63. Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, 27–29.
 64. Khaled Abou El Fadl, "Legal Debates and Muslim Minorities," 142.
 65. Al-Alwani, *Towards a Fiqh for Minorities, Some Basic Reflections*, 30.
 66. Al-'Alwānī, *Fī Fiqh al-Aqalliyyāt*, 50.
 67. Ibid.
 68. <http://www.alarabiya.net/articles/2007/03/06/32330.html> (accessed 1/1/2013).
 69. Muslims in the United States have debated at length whether it is possible to confirm the birth of the new moon of *hijrī* months through astronomical calculations or through the naked eye. They also have debated whether a Muslim living in the West should only eat *ḥalāl* meat, that is, slaughtered according to Islamic Law.
 70. Al-'Alwānī, *Madkhal Ilā Fiqh al-Aqalliyyāt*, 9.
 71. http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503543738 (07/20/2010).
 72. For example, in al-'Alwānī's *fatwa* dated November 2010, the editor referred to al-'Alwānī as the president of GSISS and the president of the *Fiqh* Council of North America, two positions that he had left long ago. If you compare this *fatwa* with another *fatwa* from 2008, you can note that al-'Alwānī was referred to as former president of FCNA and the current president of Cordova University. This may lead to different interpretations. One of them is that this *fatwa* is regenerated from the old bank and the editor copied and pasted it again as if it is a new one.
 73. For a brief description of the frieze, see Hongxia Liu, "'Court Gazing' Features of Diversity in the U.S. Supreme Court Building," *Court Review* (Winter 2004); Joan Biskupic, "Great Figures Gaze upon the Court," *Washington Post*, March 11, 1998 (http://www.dailypress.com/sup_crt_frieze.html) (accessed 1/1/2013).
 74. http://www.karamah.org/news_supreme_court.htm (accessed 07/20/2010).

75. Al-'Alwānī, ““Fatwa” Concerning the United States Supreme Courtroom Frieze,” 4.
76. Ibid.
77. Ibid., 6.
78. Ibid.
79. Ibid., 7–8.
80. Ibid., 14.
81. Ibid., 19.
82. Ibid., 25.
83. Ibid., 27–28.
84. For example: The AMSS (UK) 2004 annual conference entitled, *Fiqh Today: Muslim as Minorities* (“<http://www.amssuk.com/events.html>” \ “events2004” (accessed 1/4/2013)).
85. Ṣalāh ‘Abdel-Razzāq, *Al-Aqalliyyāt al-Muslimah fi al-Gharb: Qaḍāyā Fiqhiyyah wa-Humūm Thaqāfiyyah*, ed. A. J. al-Rifā’i, Qaḍāyā Islāmiyyah Mu’āṣirah (Beirut: Dār al-Hādī, 2007); Muḥammad al-Shahḥāt Al-Jindī, *Qaḍāyā al-Jāliyyāt al-Muslimah fi al-Mujtama’āt al-Gharbiyyah*, Qaḍāyā Islāmiyyah 16 (Cairo: Supreme Council of Islamic Affairs, Ministry of Endowments, 2008); Wahbah Al-Zuhaylī, *Qaḍāyā al-Fiqh wa-al-Fikr al-Mu’āṣir* (Damascus: Dār al-Fikr, 2006); ‘Imad Eddin Ibn Abi-Hijlah, *Al-Nujūm al-Lami’ah fi Thaqāfat al-Muslim al-Jāmi’ah* (Amman: Dār al-Faṭḥ li al-Dirāsāt wa al-Nashr, 2009).
86. The last study represents the conservative position in this trend as Dr. Ṣalāh al-Ṣāwī warns of a jurisprudence that ignores the Islamic legal tradition and produces *bid’ah*, that is, innovation in religion. He instead suggests the development of *fiqh al-nawāzil*, jurisprudence of new cases that is based on necessity, such as the concept of citizenship or international minority rights. These issues will be elaborated upon throughout this chapter.
87. Ismā’il al-Ḥasanī, *Al-Ikhtilāf wa al-Tafkīr fi Fiqh al-Aqalliyyāt* (Marakesh, Al-Maṭba’ah wa al-Warawah al-Waṭaniyyah, 2006). See also Ismā’il al-Ḥasanī, “Qirā’ah fi Binyat al-Aqalliyyāt,” *Islāmiyyat al-Ma’rifah* vol. 30 (2002).
88. ‘Abdullah Ibn Bayyah, *Ṣina’at al-Fatwa wa-Fiqh al-Aqalliyyāt* (Jeddah: Dār al-Minhāj li-al-Nashr wa-al-Tawzī’, 2007).
89. Dr. Ṣalāh Sultān is the ex-head of the Higher Council of Islamic Affairs. I feel indebted to Dr. Ṣalāh Sultān for providing me with electronic copies of his publications on the question of Muslim minorities. They include: Ṣalāh Sultān, *Al-Ḍawābiḥ al-Manhajīyya li-al-Ijtihād fi Fiqh al-Aqalliyyāt al-Muslimah*, 2nd ed. (2007); Ṣalāh Sultān, *Al-Muwāṭanah bayna al-Ta’ṣīl al-Shar’i wa-Ta’addud al-Walā’āt al-Dīniyyah wa-al-Tā’iffiyyah*; and Ṣalāh Sultān, *Fatawa Fiqhiyyah li-al-Muslimin fi al-Gharb*. The last publications did not have dates or publishing houses.
90. Jamāl al-Dīn ‘Atīyyah, “Naḥwa fiqh Jadīd,” *Ummatī fi al-‘ālam: Hawliyyat Qaḍāyā al-‘ālam al-Islāmi*, 4th ed., Civilization Center for Political Studies (Cairo: Shorouk International, 2004), 7–105. The same study was republished as a book by Dār al-Salām, Cairo. The edition used in this study is the Dār al-Salām second edition, 2003.

5 FĪQH AL-AQALLIYYĀT: A DEBATE ON WORLD DIVISION, CITIZENSHIP, AND LOYALTY

1. Muhammad Khalid Masud, "The Obligation to Migrate: the Doctrine of *Hijrah* in Islamic Law," in *Muslim Travellers: Pilgrimage, Migration and the Religious Imagination*, ed. D. F. Eickelman and J. Piscatori (California: University of California Press, 1990), 29–49.
2. It should be noted here that this approach to the development of the question of *hijrah* has been examined by a number of established scholars. Khaled Abou El Fadl undertook the formidable task of presenting a masterly comparative survey of the juristic discourse on the legal and ethical positions of Muslim minorities living in non-Muslim lands. See Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Journal of Islamic Law and Society* vol. 1, no. 2 (1994): 141–186. In his study on the jurisprudence of an immigrant Muslim family, Dr. Muḥammad al-Kaddī Al-'Amrānī, of Morocco, presented a thematic overview of the juristic discourse on *hijrah* focusing on the qualitative difference between the historical legal debate and contemporary discourse. See Muḥammad al-Kaddī Al-'Amrānī, *Fiqh al-Uṣrah al-Muslimah fī al-Mahājir* (Lebanon: Dār al-Kutub al-'ilmiyyah, 2001), 11–127. Khalid Masud reviewed textual evidence of how the doctrine of emigration was created out of theological and political conflicts. See Khalid Masud, "The Obligation to Migrate."
3. See Abou El Fadl for a detailed review of various positions of legal schools. Abou El Fadl, "Islamic Law and Muslim Minorities: the Juristic Discourse."
4. Ibid., 148. To give an example of the treatment of early jurists to the issue of residence of Muslims in non-Muslim territories, Abu El Fadl referred to the *sunni* jurist Abū Maṣṣūr al-Tamīmī al-Baghdādī (d. 1072 CE) who counts in *Kitāb uṣṣal al-Dīn* (Beirut: Dār al-Hilāl, 1980, 154–55) the opinions that a land that espouses heretical stands against Muslims is *dār kufr*.
5. Abou El Fadl, "Islamic Law and Muslim Minorities: the Juristic Discourse," 143.
6. Ibid., 149.
7. Imam Abū Ḥanīfah Nu'mān ibn Thābit (699–767 CE) is the founder of the *sunni* Ḥanafī School of *fiqh*.
8. Shāfi'ī jurists refer to the followers of Imam al-Shāfi'ī (Abū 'Abdullah Muḥammad ibn Idrīs, 767–820 CE), a founder of the *Sunni* Shāfi'ī school of *fiqh*.
9. Ahmed Mohsen Al-Dawoody, "War in Islamic Law: Justifications and Regulations," PhD Dissertation, Department of Theology and Religion, the University of Birmingham (2009), 167; Yāsir Luṭfī al-'Alīy, *Ard Allah: Al-Taqsīm al-Islāmī li-al-Ma'mūrah, Dirāsah Fiqhiyyah Muqāranah* (Beirut: Resalah Publishers, 2004), 43.
10. In the fifth/eleventh century, the Normans returned Sicily for Christendom, and shortly afterward, the Crusaders established four Christian principalities

in the Levant, which had been a Muslim land since the first/seventh century. The Iberian Peninsula was also completely rendered into the hands of the Christian power by the end of the ninth/fifteenth century. In the Eastern part of the Muslim Empire, there was the Mongol army sweeping and usurping the Muslim part in Central Asia, Iran, and Iraq.

11. Aḥmad ibn Yaḥyā ibn Muḥammad al-Wansharīsī (1430–1510 CE) was the Imam of the Mālikī school in North Africa in his time. He is the author of the well-known fatwas compendium *Al-Mi'yār al-Mu'rib wa-al-Jāmi' al-Mughrib fī Fatāwā Afriqya wa-al-Maghrib*.
12. In Arabic, it is “*muwālāh shirkīyyah*.” Although the question is about residence, al-Wansharīsī argues that such a residency will lead eventually to *muwālāh*. He went further arguing that merely being content to stay under their rule is a forbidden *muwālāh*. Al-'Amrānī, *Fiqh al-Uṣrah*, 95.
13. This text appeared first in Abū Al-'Abbās Aḥmad ibn Yaḥyā ibn Muḥammad al-Tilmisānī al-Wansharīsī, *Asma al-Matājir fī Bayān man Ghalaba 'alā Baladīhi al-Nasārā wa-lam Yuhājir wa-mā Yatrattab 'Alayhi min al-'Uqūbāt wa-al-Zawājir*, ed. M. Ḥusayn. (Egypt: Maktabat al-Thaqāfah al-Dīniyyah, 1986). Then later on it was used verbatim by the judge Abū 'Āmir ibn Rabī' (d. 1320 CE) in his fatwa for some students about residing in non-Muslim lands. I would like to express my thanks to Prof. Van Koningsveld, of Leiden University, and my colleague Maḥmūd al-Ṣayfī for giving me a copy of the fatwa manuscript.
14. The jurists acknowledged this. Al-Wansharīsī argued that the new form of the question on *hijrah* (for those whose lands were taken over by non-Muslims) does not change the rule. The difference in the subject of the question is superficial, and therefore the ruling remain unchanged, that is, the obligation to emigrate. See: Al-Wansharīsī, *Asmā*.
15. For further reading on the establishment of this dogma, see Masud, “The Obligation to Migrate.”
16. The Mālikī school is one of the four *sunni* schools of *fiqh*. It is named after the famous jurist Mālik ibn Anas (711–795 CE). The Mālikī school currently dominates in North and West Africa, and some Gulf countries. In the past, it was the dominant law school in Islamic Spain and Sicily.
17. Affirming the consensus of the Mālikīs on the issue, Ibn Rushd, the grandfather (Abu Al-Walid Muhammad (d. 1126), chief judge of Córdoba under the Almoravids), argues that “the obligation to migrate was never negated. It is a permanent obligation until the day of Resurrection according to the consensus of jurists upon those who converted to Islam in the abode of Kufr.” Abū al-Walid Muḥammad ibn Aḥmad ibn Rushd, *al-Muqaddimāt al-Mumabhidāt*, ed. Sa'īd Aḥmad A'rāb, vol. 2 (Beirut: Dār al-Gharb al-Islāmi, 1988), 151.
18. Abū Yaḥyā Aḥmad al-Wansharīsī. *Kitāb al-Mi'yār al-Mu'rib wa al-Jāmi' al-Mughrib 'an fatāwā Ifriqiyyā wa al-Maghrib*, vol. 2 (Rabat: Ministry of Culture and Religious Affairs, 1981–83), 124. For an analysis of al-Wansharīsī's fatwā, see Mu'nīs Husayn, “Asmā al-Matājir fī Bayān man Ghalaba 'alā Baladīhi al-Nasārā wa lam Yuhājir,” *Revista Del Instituto de Estudios Islamicus en*

- Madrid* vol. 7, no. 1–2 (1975): 129ff; Van Koningsveld and Gerard Wiegers, “The Islamic Status of Mudajars,” *AQ* (xvii) (1996), 52–55.
19. Abou El Fadl, “Islamic Law and Muslim Minorities, the Juristic Discourse,” 156–157. Other Mālikī jurists can be also cited in this context. See for example the paper of Van Koningsveld and Gerard Wiegers that reviewed four fatwas issued by four Egyptian judges, including a Mālikī one. See Van Koningsveld, and Gerard Wiegers, “Islam in Spain during the Early Sixteenth Century: The View of the Four Chief Judges in Cairo,” in *Poetry, Politics, and Polemics: Cultural Transfer between the Iberian Peninsula and North Africa*, ed. O. Zwarjes, G. van Gelder, and G. Moor (Amsterdam: Rodopi, 1997), 133–52; Kathryn Miller, “Muslim Minorities and the Obligation to Emigrate to Islamic Territory: Two *Fatwās* from Fifteenth Century Granada,” *Islamic Law and Society* vol. 7, no. 2 (2000): 256–288.
 20. The Ḥanbalī school is one of the four *sunni* schools that goes back to *Imam* Aḥmad ibn Ḥanbal (ca. 762–839 CE)
 21. The Jaʿfarī school is a prominent Shīʿī school of *fiqh*, named after Imam Jaʿfar al-Sādiq, the sixth Shīʿī Imam (702–765 CE).
 22. Abou El Fadl, “Islamic Law and Muslim minorities, the Juristic Discourse,” 157; Al-Khamlishi, *Al-Jannah*, 473.
 23. Imam al-Shafīʿī argues that “the *Sunnah* of the Prophet made evident that the obligation of *hijrah* for those who have the means is upon those who were subject to *fitnah* in their religion after their conversion to Islam because the Prophet permitted some Muslims to stay in Mecca after their conversion to Islam, such as al-Abbās ibn ʿabdel-Muṭṭalib and others if they did not fear the *fitnah* in their religion.” See al-Shafīʿī, *Al-Umm*, vol. 2:4, 169.
 24. Abou El Fadl, “Islamic Law and Muslim Minority,” 159; Al-Amrānī, *Fiqh al-Ushrah*, 99
 25. Rudolph Peters, *Islam and Colonialism: The Doctrine of Jihad in Modern History* (Groenhege: Mouton, 1979), 39–89.
 26. The *fatwā* on its permissibility was issued by a certain Tunisian al-Ḥarairi. The Egyptian Muḥammad ʿIlish holds an opposite view, Wasif Shadid and Sjoerd van Koningsveld, “Loyalty to a Non-Muslim Government: An Analysis of Islamic Normative Discussions and of the Views of Some Contemporary Islamicists,” in *Political Participation and Identities of Muslims in non-Muslim States*, ed. W.A.R. Shadid and P. S. van Koningsveld (Kampen: Kok Pharos Publishing House, 1996), 91–93.
 27. Rashid Ridā, *Fatawā*, ed. Ṣalāḥ al-Dīn al-Munjid and Yūsuf al-Khūrī, vol. 5 (1971), 1748–1761.
 28. *Ibid.*, 1917–1919.
 29. *Ibid.*, 2139.
 30. The position of some radical groups to designate Muslim secular states as *dār kufr* is studied extensively in various sources. See for example: Shadid and Koningsveld, “Loyalty to a non-Muslim Government,” 84–95. Al-Qaraḍāwī, *Fiqh al-Jihad*, vol. 2.
 31. This statement is taken from the Prophetic tradition, “*Hijrah* is prescribed upon Muslims until the Day of Resurrection.”

32. They include Sheikh Aḥmad ibn Muḥammad al-Khalilī, Judge Muḥammad Taqīyy al-Dīn al-ʿUthmānī, Sheikh Muḥammad Mukhtār al-Salāmī, and Sheikh Muḥyī al-Dīn Fādī. These scholars are all members of the academy.
33. Mannāʾ al-Qaṭṭān (1925–1999) is an Egyptian mufti who lived in Saudi Arabia since 1953. He taught in the Saudi Academic institution and resided over the High Institute of Judiciary.
34. For a review of Mannāʾʾs fatwā, see Al-ʿAmrānī, *Fiqh al-Ushrāh*, 116–117.
35. Dr. Muḥammad Saʿīd Ramaḍān al-Būṭī (b. 1929) is one of well-known scholars in the *sunni* world. He is of Turkish origin but lived in Syria since age four.
36. Saʿīd Ramaḍān al-Būṭī: *Qaḍayā Fiqhiyyah Muʾaṣirah*, 189, cf. al-ʿAmrānī, *Fiqh al-Ushrāh*, 118. Here one should pay attention to the legal maxims he used because this is a selective process. The advocate of *fiqh al-aqallīyyāt* used the same legal maxims or other similar ones to prove the opposite. They argued, for example, that *hijrah* and residence is more fruitful and productive to the Muslim individual and to the Muslim *ummah* and to the religion of Islam than not to emigrate.
37. Muḥammad al-Ghazālī al-Saqqā (1971–1996) authored more than 35 books and is considered one of the revivalists of Islamic faith in contemporary times.
38. Muḥammad al-Ghazālī, *Mustaqbal al-Islām Khārij Arḍih*, 2nd ed. (Cairo: Dar al-Shorouk, 2003), 78.
39. ʿAbdel-ʿAzīz ibn Muḥammad ibn al-Ṣiddīq al-Ghamārī (1910–1993 CE) is a well-known Moroccan mufti and scholar of *ḥadīth*.
40. Al-ʿAmrānī, *Fiqh al-Ushrāh*, 119.
41. ʿAbdel-ʿAzīz ibn Muḥammad al-Ṣiddīq, *Ḥukm al-Iqāmah fī Bilād al-Kuffar wa Bayān Wujūbiha Baʿḍ al-Aḥwāl* (Tangiers: Maṭbʿat al-Būghaz, 1985), 62, quoted from Shadid and Koningsveld, “Loyalty to a Non-Muslim Government,” 99–100.
42. Al-ʿAmrānī, *Fiqh al-Ushrāh*, 120.
43. See, for example, Muḥyī al-Dīn Muḥammad Qāsim, *Al-Taqsīm al-Islāmī li-al-Maʾmūrah: Dirāsah fī Nashʾt wa-Taṭwīr al-Jamāʾah al-Dawliyyah fī al-Tanzīm al-Dawli al-Ḥadīth* (Cairo: International Institute of Islamic Thought, 1996); ʿAlī Yāsir Lūṭī, *Arḍ Allah: Al-Taqsīm al-Islāmī li al-Maʾmūrah, Dirāsah Fiqhiyyah Muqāranah* (Beirut: Al-Risālah, 2004); ʿAbdullah ibn Yūsuf Al-Judayʾ, *Taqīm al-Maʾmūrah fī al-Fiqh al-Islāmī wa Atharuh fī al-Wāqīʾ* (Dublin: European Council for Fatwā and Research, 2007).
44. See Yūsuf al-Qaraḍāwī, *Fiqh al-Jihad, Dirāsah Muqāranah li-Aḥkāmih wa-Falsafatih fī Dawʾ al-Qurʾan wa-al-Sunnah* (Cairo: Wahba Bookstore, 2009).
45. See for example Mardin Declaration, http://www.mardin-fatwa.com/attach/mardin_2010_arabic.pdf (accessed 1/6/2013), Ṣalāh al-Ṣāwī, *Mawsūʾat al-Mughṭaribīn* (Cairo: Al-Fārūq al-Ḥadīthah li-al-Ṭibāʾah wa-al-Nashr, 2009); ʿAbdel-Raḥmān al-Ḥāj, “Taqīm al-Maʾmūrah fī al-Khitāb al-Fiqhī: al-Ḥajah ilā lʾadat al-Ijtihād,” *Al-Ghadd*, March 5, 2011.
46. Ṣalāh Sulṭān, *Al-Dawābiḥ al-Manhajīyyah li-al-Ijtihād fī Fiqh al-Aqallīyyāt al-Muslimah* (No publishing house, 2nd ed., 2007) (Acknowledgment to Dr. Ṣalāh for providing me with a copy of his manuscript).
47. The Prophetic traditions and Companions’ statements have terms like *dār al-hijrah*, the abode of migration; *dār al-imān*, the abode of faith; *dār al-ʿadl*,

the abode of justice; *arḍ al-ʿaduww*, the land of the enemy; *arḍ al-shirk*, the land of polytheism, and *ahl al-ʿabd*, the people of contract. Examples of the Prophet's statements that referred to these terms include “‘*Uqr*, the heartland, of the abode of Islam is *al-Shām*, the Levant,” and “If the slave escaped to the land of enemy, we have no obligations towards him [in terms of protection and support].” Examples of the Companions' statements would include the advice of ‘Abdel-Rahmān ibn ‘Awf to ‘Umar Ibn al-Khaṭṭāb, “Wait until you come to Medina because it is the abode of *hijrah*, *Sunnah* and safety,” and Ibn ‘Abbās’, “the unbelievers had two places with the Prophet, peace be upon him: those whom he fights them and they fight him, these are the people of war, and those who do not fight him nor he fights them, these are the people of contract.” For a review of these reports and their degrees of authenticity, see al-Juday’, *Taqsim*, 10–14.

48. Al-Juday’, *Taqsim*, 48; Khālid ‘Abdel-Qādir, *Fiqh al-Aqalliyyāt al-Muslimah*, 114–115.
49. By way of example to prove the impact of social and political settings on the foundation and formulation of these terms, Khalid Masud argues that jurists did not intentionally work out a clear definition of *dār al-Islām* or *dār al-ḥarb* for various reasons such as that they did not want rulers or theological sects using their definitions as a justification to crack down on other Muslims on the claim that their land is *dār kufi*, and therefore *jihad* is to be invoked to restore the Islamicity of the land. Leaving the terms ambiguous helped maintain the unity of Muslims. See Masud, “The Obligation to Migrate,” 36.
50. Although the literal meaning of *jihad* is literally to strive for or to exert one's utmost, the *jihad* meaning “to fight to spread the message of Islam” has become the common usage of the interpretive community of that era in view of the continuous confrontation between Islam and the neighboring political powers.
51. ‘Abdullah ibn Yūsuf al-Juday’ (b. 1959) is a well-known Iraqi Muslim scholar who settled in England after the Second Gulf War. He is a member in the ECFR and resided over its *fatwa* committee.
52. Al-Juday’, *Taqsim*, 44; See al-Qaraḍāwī for different types of *jihad*, *Fiqh al-Jihad*, vol. 1, 127ff.
53. Al-Qaraḍāwī, *Fiqh al-Jihad*, vol. 1, 237–407; Al-Juday’, *Taqsim*, 42–48.
54. Al-Juday’, *Taqsim*, 50.
55. “Permission to fight (against disbelievers) is given to those (believers), who are fought against, because they (believers) have been wronged, and surely, Allah is able to give them victory (39). Those who have been expelled from their homes unjustly only because they said: “Our Lord is Allah.”—For had it not been that Allah checks one set of people by means of another, monasteries, churches, synagogues, and mosques, wherein the Name of Allah is mentioned much would surely have been pulled down. Verily, Allah will help those who help His (Cause). Truly, Allah is All-Strong, All-Mighty (40)” (Hajj: 39–40).
56. Al-Juday’, *Taqsim*, 52.
57. Sheikh Muḥammad Abū Zahrah (1898–1974 CE / 1315–1394 AH) is an Egyptian scholar of Islamic Law. He was a professor of Islamic Law at both

- al-Azhar and Cairo universities. He served as a member of al-Azhar's Academy of Research. He has more than 30 published books.
58. Al-Juday', *Taqsim*, 61; Abū Zahrah, *Al-'Iqāt al-Dawliyyah fi al-Islām* (Cairo: Dār al-Fikr al-'Arabī, 1995), 55.
 59. Al-Juday', *Taqsim*, 21.
 60. Ibid., 25–34.
 61. Ibid., 35.
 62. Abū al-Ḥasan 'Alī ibn Muḥammad ibn Ḥabīb al-Mawārdī (in Latin, Alboacen) (1058 CE) was a Shāfi'ī jurist and a judge during the Abbasid time. He is remembered in Islamic legal history for his works on religion, government, and the Caliphate. He is the author of the well-known *Al-Aḥkām al-Sulṭāniyyah*, that is, the Ordinances of Government.
 63. Al-Juday', *Taqsim*, 36
 64. Ibid., 37
 65. Al-'Amrānī, *Fiqh al-Uṣrah*, 54ff; 'Abdullah ibn Bayyah, *Ṣinā'at al-Fatwa wa-Fiqh al-Aqalliyyāt* (Jeddah: Dār al-Minhāj li al-Nashr wa al-Tawzī', 2007), 86.
 66. Ismā'īl al-Ḥasanī, *Al-Ikhtilāf*, 27ff.
 67. Ibid., 34.
 68. Ibid., 28–29.
 69. Ibid., 67–68.
 70. Ibid., 68.
 71. Jamāl 'Aṭīyyah, for example, reviewed the historical practices of Muslims against non-Muslims to prove that they were human contextual praxis and not divinely revealed Sharī'ah. See Jamāl al-Dīn 'Aṭīyyah, "Naḥwa fiqh Jadīd," *Ummatī fi al-'Ālam: Hawliyyat Qaḍāyā al-'Ālam al-Islāmī*, 4th ed. Civilization Center for Political Studies (Cairo: Shorouk International, 2004), 7–105. The same study was republished as a book by *Dār al-Salām*, Cairo. The edition used in this study is the *Dār al-Salām* 2nd ed. 2003, 62–65 and 70–85.
 72. Questions on *hijrah* and world division in our modern times are always discussed in fatwas related to 'aqidah and tenets of faith. See, for example, *Fatawa al-Lajnah al-Dā'imah*; Ṣalāḥ al-Ṣāwī, *Mawsū'at Fatawa al-Mughtaribīn*.
 73. Al-'Amrānī, *Fiqh al-Uṣrah*, 106–107.
 74. See Al-Ḥasanī, *Al-Ikhtilāf*, 10; al-Juday', *Taqsim*, 126–127; Ibn Bayyah, *Ṣinā'at*; al-Qaradāwī, *Fiqh al-Jihad*.
 75. Al-Ḥasanī, *Al-Ikhtilāf*, 35–36.
 76. Nadyah Muṣṭafā, "Al-Aqalliyyāt al-Muslimah: Itār 'ām Muqāran," in *Qaḍāyā Islamiyyah Mu'āshirah*, ed. Ḥasna Ḥamdān (Cairo: Asian Studies Center of Cairo University, 1997), 227.
 77. Al-Juday', *Taqsim*, 126–127.
 78. Al-Ḥasanī, *Al-Ikhtilāf*, 39–43.
 79. *Al-Shari'ah wa-al-Hayah*, "Taṭbiqāt al-Fiqh al-Islāmī fi al-Waqi' al-Mu'āshir," program broadcast on July 4, 2010. The guests were Ibn Bayyah, 'Abdel-Majīd al-Najjār, and Salmān al-'Udah. The scholar quoted here is Salmān al-'Udah, a Saudi scholar and the general secretary of the International Union of Muslim Scholars.

80. This can lead to two related conclusions. The first is that Islam, as a religion, can also be limited to the private sphere, a reiteration of the secular perception of religion. The second is that Muslims can interact positively with, live within, and share Western civilization.
81. Ja'far 'Abdel-Salām, "Naḥwa Balwarah Mu'aṣirah li al-'Ilāqāt bayna al-Islām wa al-Akhar," *Tolerance in the Islamic Civilization, Researches and Facts*, the Sixteenth General Conference of the Supreme Council for Islamic Affairs, Cairo (Cairo: Supreme Council of Islamic Affairs, 2004), 475; Muḥammad Hāshim Kamālī, "Methodological Issues in Islamic Jurisprudence," *Arab Law Quarterly* vol. 11, no. 1 (1996): 11; Sohail H. Hashmi, "Is There an Islamic Ethic of Humanitarian Intervention?" *Ethics and International Affairs* vol. 7 (1993): 58.
82. 'Abdel-Raḥmān al-Ḥāj, "Introduction," in al-'Aliy, *Ard Allah*, 12–3.
83. Al-Juday', *Taqsim*, 153.
84. Ṭaha Jābir Al-'Alwānī, "Madkhal Ila *Fiqh al-Aqalliyāt*," *Al-Rashād* vol. 12 (2001): 25.
85. Ṭaha Jābir Al-'Alwānī, *Towards a Fiqh*, 28.
86. The conference was convened in the Turkish city of Mardin at the Artuklu University campus on Saturday and Sunday (March 27–28, 2010) under the auspices of the Global Center for Renewal and Guidance (GCRG, based in London) in cooperation with Canopus Consulting (based in Bristol) and sponsored by Artuklu University.
87. The statement is available online: for English pdf version, see http://www.mardin-fatwa.com/attach/Mardin_Declaration_English.pdf; for Arabic see <http://www.youtube.com/watch?v=wbqo79j1zd8> (accessed 1/6/2013).
88. Ibid.
89. Ibid.
90. Al-Qaraḍāwī, *Fi Fiqh al-Aqalliyāt al-Muslimah*, 25.
91. Although this inclination to study the question of *dār* in the context of *jihad* may be due to his traditional training as jurists used to examine this question as part of their treatment of the issue of *jihad*, still the complete absence of the question of *dār* from his discourse of *fiqh al-aqalliyāt* is indicative.
92. Al-Qaraḍāwī, *Fiqh al-Jihad*, vol. 2, 882–900.
93. Ibid., 886.
94. Ibid., 900.
95. Ibid., 900–901.
96. Ibid., 906.
97. Al-Qaraḍāwī, *Fiqh al-Jihad*, vol. 2, 908–910.
98. This does not mean at all that Ibn Bayyah does not subscribe to the notion of the dignity of the human being and his rights to protecting his self, property, honor, etc. Ibn Bayyah argues for all these elements but on any basis other than *dār al-'ahd*.
99. Ibn Bayyah, "Muslims living in Non-Muslim Lands," trans. Hamza Yusuf, talk in Santa Clara Convention Center, California, July, 1999 (available at <http://www.binbayyah.net/portal/en/books/980>, accessed 1/6/2013).
100. Al-Juday', *Taqsim*, 157.

101. Ibid., 68.
102. Ibid., 69.
103. Al-'Alwānī, *Towards a Fiqh*, 28–29.
104. Al-'Alwānī, “Madkhal,” 22.
105. Al-'Alwānī, *Towards a Fiqh*, 29.
106. Sultān, *Mawsū'ah*, 21.
107. Fayṣal Mawlawī, *Al-Usus al-Shar' iyyah li-al-' ilāqāt bayna al-Muslimīn wa-Ghayr al-Muslimīn*, 2nd ed. (Beirut: Dār al-Rashād al-Islāmiyyah, 1990), 78–79.
108. Rashīd Ridā, *Al-Manār*, vol. 25, part 1, 1924, 21.
109. Al-Ḥasanī, *Al-Ikhtilāf*, 78; Al-Buṭī, *Qaḍayā Fiqhiyyah Mu' āṣirah*, 254.
110. Al-Ḥasanī, *Al-Ikhtilāf*, 73.
111. Ṣalāh al-Ṣawī pursued his education in al-Azhar, Faculty of *Shari'ah* and Law. He got his BA in 1976 and his PhD in 1985. He also worked as instructor in the Faculty of *Shari'ah* for a while before he moved to work in the Umm al-Qura University, Saudi Arabia, from 1981 to 1986. After that, he joined the World Muslim League as the director of Scientific Miracles office, 1985–1987, and then as a director of the Shari'ah Research Center at Islam Abad, 1987–1992. As early as the 1990s, Dr. al-Ṣawī's activities focused on American Muslims. He worked as a visiting professor in the Arabic-Islamic Institute in Washington DC, a vice president of the Open American University, the president of the International University of Latin America, and currently the secretary general of the AMJA. For a complete CV, see, Ṣalāh al-Ṣawī, *Mawsū'at Fatawa al-Mughtaribīn* (Cairo: Al-Fārūq al-Ḥadithah li-al-Ṭibā'ah wa-al-Nashr, 2009).
112. Ṣalāh al-Ṣawī, *Mawsū'ah*, vol. 2, 37–41.
113. Al-Ḥasanī, *Al-Ikhtilāf*, 80, 82.
114. Qur'an, Al 'Imrān 2:28.
115. Al-Ḥasanī, *Al-Ikhtilāf*, 84–85.
116. Ibn Bayyah originally argues that terms like *walā'* and *barā'* have no legal weight. According to their usage in the Qur'an and *Sunnah*, these terms do not establish any legal determinations. For him *walā'* is an Arabic word that refers to belonging to a certain religion, or to a certain type of family relationship or to a slavery bond. The term “*barā'ah*” used in the Qur'an is context specific. It was used to refer to nonbelievers who breached their contract with Muslims. The use by certain sects or schools of this term to indicate an ideological or legal stand to exclude others is not based on sound evidence. (<http://www.binbayyah.net/portal/research/621>, accessed 8/11/2011).
117. Qur'an, al-Anfāl 8: 72.
118. Jamāl al-Dīn 'Atiyyah, “Naḥwa fiqh Jadīd,” *Ummatī fī al-'Aālam: Hawliyyat Qaḍāyā al-'aālam al-Islāmī*, 4th ed. Civilization Center for Political Studies (Cairo: Shorouk International, 2004). The same study was republished as a book by Dār al-Salām, Cairo. The edition used in this study is the Dār al-Salām 2nd ed., 2003, 80–81.
119. 'Atiyyah, *Ibid.*, 82.
120. Al-Juday', *Taqsim*, 148.
121. Masud, “The Obligation to Migrate,” 45.

CONCLUSION

1. Mathias Rohe, *Muslim Minority and the Law in Europe: Chances and Challenges*, 1st ed. (India: Global Media Publication, 2007), 49.
2. Muḥammad Iqbāl calls *ijtihād* the principle of movement in the structure of Islam. See Muhammad Iqbal, *The Reconstruction of Islamic Thought in Islam* (New Delhi: Kitab Bhaven, 2000).
3. Mohammad Hashim Kamali, “*Fiqh* and Adaptation to Social Reality” *The Muslim World*, vol. 86, no. 1 (January 1996): 64.
4. Ibid.
5. C. G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (Hampshire: MacMillan Press, 1988), 123.
6. Wilfred Cantwell Smith, *Islam in Modern History* (New York: the New American Library, 1957), 11.
7. Frank Peter, “Individualization and Religious Authority in Western Europe,” *Islam and Christian Muslim Relations* vol. 17, no. 1 (January 2006): 106.
8. Ibid.
9. See, for example, Raḍwan Ziyādah and Kevin J OToole, *Ṣirā’ al-Qiyam bayan al-Islām wa al-Gharb* (Damascus: Dār al-Fikr, 2010).
10. Jamāl Aṭiyyah is a good example here. In his book *Naḥwa fiqh Jadīd li al-Aqalliyāt*, he presented the Islamic proof that values such as freedom, human dignity, equity, and equality are part of the Islamic tradition.

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