

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-Qaradāwī: An Ideologue for Muslim Minorities

Yūsuf al-Qaradāwī (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 *fatwa* broadcast, not to mention the proliferation of his writings. These writings would include *Al-Halāl wa-al-Harām*, *Fiqh al-Zakāh*, and *Fatawa Mu'āshirah*. Al-Qaradāwī'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-Qaradāwī'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-Qaradāwī has become a subject of interest for researchers and a focus of attention for media people in both the Muslim and the non-Muslim world. In their 2009 edited monograph *Global Mufti: The Phenomenon of Yusuf al-Qaradawi*, Bettina Gräf and Jakob Skovgaard-Petersen briefly review the available literature on al-Qaradāwī, his activities, and his publications.⁴ They also introduce papers that examine various dimensions of

al-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-aqalliyāt* and the place of *Shari'ah* in Western liberal democracy, through an attempt to answer the following questions: How has the Egyptian-born Qatari-based Sheikh al-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 *ijtihād*? 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-aqalliyāt* 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-Halāl* (the lawful) and *al-Harām* (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-Halāl wa-al-Harām* 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-Qaradāwī, Mustafā al-Zarqā,¹⁴ 'Abd al-Fattāh Abū Ghuddah,¹⁵ Mannā' al-Qaṭṭān,¹⁶ 'Abdullah ibn Bayyah,¹⁷ Fayṣal Mawlawī,¹⁸ and others. It is interesting to note here that those scholars had strong connections with the Muslim Brothers, if not members of the movement. An observer may conclude that this gathering had deeper concerns than that of finding answers for minority questions. It informs that 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-Qaradāwī 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-Hayah*," the Abu Dhabi Satellite Channel program "*Al-Muntada*," Islamonline.net website, and his qaradawi.net. His *al-Shari'ah wa-al-Hayah* became so famous that many Muslims who live in minority conditions used to wait from week to week to watch it. When al-Jazeera wanted to change

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

With the growing interest of Western Muslims in debating their religious life and affiliations in the West, al-Qaradāwī has become an influential voice and a well-received guest speaker in their activities and conferences. For example, al-Qaradāwī visited the United States at least 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-Hayah*, 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-aqalliyāt*.

Al-Qaraḍāwī was the first to write an independent research paper on *fiqh al-aqalliyāt*. After presenting this paper in the first session of the ECFR, other scholars started to contribute to the subject matter. Gradually *fiqh al-aqalliyāt* 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 *shī'ite* attempts to spread *shī'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 *ijtihad*.³³ On the other hand, another Muslim group, who are mostly "*wahhābi-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-Qaraḍāwī's thought is approached. In the following pages, an attempt will be made to review some of al-Qaraḍāwī's major ideas with a view to having a better understanding of the man and his ideology, especially in the context of *fiqh al-aqalliyāt*. However before getting into this discussion, a reassessment of the claim of his authority needs to be discussed.

Al-Qaraḍāwī: The Popular Sheikh or the Authoritative 'Ālim

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

associates himself with the well-established Muslim *'ulamā* of his time. He is a student of Sheikh Maḥmūd Shaltūt, the ex-rector of al-Azhar, Sheikh al-Bahy al-Khūlī, 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-Sharī'ah wa-al-Hayāh* pioneered the airwaves by being among the first to cross national borders.

Moreover if one attempts to construct a typology of religious authority in present time, one can note that al-Qaraḍāwī's authority is firmly grounded. Authority is determined through several factors such as ability to deal with the text (*Mujtabi' al-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/mujtabi'*. 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 *Wahhābī* trend, and *Ḥizb al-Tahrīr*.

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. *Gräf*'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 Boubekku, 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 *Ḥizb al-Tahrīr*, 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-Islāmī*, 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-aqallīyyāt* 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 *tahqīq 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), *istihsān* (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 *tafaquh fi 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-Ḥarākī*," 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-Qarāḍāwī recalls a similar type of activism to encounter the corrupt political institutions and to embark on religious reform.

Al-Fiqh al-Haraki is a term that is used effectively and with subtlety in al-Qarāḍāwī'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-maqāsid*, etc.⁶¹ Al-Qarāḍāwī contributed to all these categories, though he was not the first to introduce and label them in contemporary time. *Al-Fiqh Al-Haraki*, however, is not left for personal individual choices. Its determinations lie in the hands of the 'ulama' who will provide a mature leadership to the movement members and a proper guidance for the Muslim community at large. The reference to 'ulama' in this context is significant. 'Ulama is the link between the tradition, the reality, and the change, or as Qasim Zaman describes, "Custodians of change" in a "discursive tradition". 'Ulama work as agents of 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-Haraki also represents another layer of debate in al-Qarāḍāwī's methodology. *Haraki* indicates moving, changing, and alive. This is against the common understanding of traditional *fiqh* and the question of *taqlid* of a certain imam or school of thought. Al-Qarāḍāwī considerably elaborates on this point, making clear the distinction between *fiqh al-nass*, jurisprudence of the text, and *fiqh al-waḳi'*, jurisprudence of real life. Al-Qarāḍāwī 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-Qarāḍāwī 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-Qarāḍāwī comments that Ibn Taymiyyah's position illustrates the difference between *al-faqih al-harfi*,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-Qarāḍāwī 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. *Ijtihad* 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 *waḳi'* 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-Qarāḍāwī 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 *hudud*, legal punishments. The third trend is the moderate trend that recognizes the *shawābit*, 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-Qarāḍāwī 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 Qarāḍāwī. For example, on the question of *jihād* in Islam, he distinguishes between three trends: the first group is those who deny the need for *jihād* 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 *jihād* in the modern world.

This exposition of al-Qarāḍāwī's position on the relationship between *fiqh* and *Shari'ah* reveals a number of issues. First it demonstrates the level of involvement of al-Qarāḍāwī 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-Qaraḏāwī 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-Qaraḏāwī 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 *ijtihad* 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' *ijtihad*. 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 *ijtihad inshā'i*, that is, *ijtihad* based on text and analogy, and *ijtihad ibdā'i*, that is, creative *ijtihad*? 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-Qaraḏāwī 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-Qaraḏāwī's discourse/farwas will be tested. How does al-Qaraḏāwī view the West? Has it become part of the self or is it still "the other" and "the enemy"? Can Muslims be integrated or shall they stay isolated? What does *jihad* mean for those Muslims living in the Western non-Muslim polity?

Al-Qaraḏāwī's position toward the West is complex. 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' *kufur*, al-Qaraḏāwī's argues, is a linguistic identification, that simply means that they do not believe in the prophet of Islam and his message. Such a

reason is not enough to wage war or declare *jihad* against them.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-ṭalab*, that is, War for *da'wah*, is no longer needed to convey the message of Islam.⁷⁴ So saying, al-Qaraḏāwī neutralizes the abode of the West: it is neither the abode of Islam nor that of war.

Al-Qaraḏāwī, however, to maintain the legal categorization of land in the Islamic tradition, called the West *dār al-'abd*, 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-Qaraḏāwī problematizes his previous argument. *Dār al-'abd* 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-Qaraḏāwī 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 *ijtihad* to find better descriptive terms.⁷⁵

Apart from this legal discussion, al-Qaraḏāwī 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-Qaraḏāwī, this position lacks the comprehension of the present reality, that is, the West has become the center of world. This reality requires "a reverse necessity," that Islam should not only immigrate to the land of the West, but also interact with it.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-Aqalliyāt*

At the outset of drafting his theory, al-Qaradāwī 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-Qaradāwī 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-Qaradāwī 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-Qaradāwī'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-Qaradāwī 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 *zina*, 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-Qaradāwī 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-aqalliyāt*. 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-aqalliyāt* 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-Qaradāwī 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-aqalliyāt*, which in most *usuli* 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 *Istiṣlāḥ*, that is, consideration of public interest, *Istiḥsān*, that is, a ruling based on jurists' discretion without a legal proof, *Sadd al-Dharā'ī'*, 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 *ijtihad*. Whatever the question posed in a minority context, it does not leave the circle of *ijtihad*. The question either exists in *fiqh* manuals or not. If it exists, then the mufti has to apply the "elective *ijtihad*," 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 *ijtihad*" is sought.⁹⁰ One should approach the process of *ijtihad* not as an innovation in religion but as a part of the renewal process of religion that the Prophet envisioned.⁹¹ If *ijtihad* 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 *Ijtihad* 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 *ijtihad* 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-aqalliyat* 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-Qaradāwī 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-Qaradāwī. 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-Qaradāwī 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 *taysir*, 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-Qaradāwī is not only adopted in minority questions. It is actually a basic principle in al-Qaradāwī's thought that he did stress in many of his publications. Al-Qaradāwī 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 *taysir* should take two parallel lines: *taysir* in understanding and *taysir* 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 *darurah*? 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-Qaradāwī 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-Qaradāwī'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 *faqih*."¹⁰¹ *Ijtihād* is never final, al-Qaradāwī 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-Qaradāwī 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-Qaradāwī 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-Qaradāwī's Fatwas

An overview of the minority fatwas that are included in al-Qaradāwī'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-aqalliyāt*" fits more than *fiqh* for Muslim-non-Muslim interaction.

Al-Qaradāwī's fatwas for Muslim minorities are available in various sources. His book *Fī Fiqh al-Aqalliyāt* has a collection of his detailed and controversial fatwas that, to a great extent, outline his position. The collection includes a fatwa of the permissibility of a Muslim female convert to stay with her non-Muslim husband, a fatwa on the permissibility of taking usurious loans to buy a house, a fatwa on the permissibility of congratulating non-Muslims on their religious festivities, and a fatwa on the permissibility of inheriting from a non-Muslim relative. His *Fatawā Mu'āshirah* has a special section for Muslim minorities' questions that include, in addition to the same questions in his *Fī Fiqh al-Aqalliyāt*, other questions that are mostly related to family issues. Al-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-Qaradāwī 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-Qaradāwī 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-Qaradāwī'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-Qaradāwī 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-Qaradāwī 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-Qaradāwī'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-Qaradāwī'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-Qaradāwī'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. In the second case, it was a real problem that will have further consequences. Therefore it was more context based.

Al-Qaradāwī's fatwa structure is complex. Although the language used is simple and clear, al-Qaradāwī 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-Qaraḏāwī 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-Qaraḏāwī 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-Qaraḏāwī's fatwas for minorities should be seen as an outcome of al-Qaraḏāwī's long involvement with minority communities. One can easily notice a transformation in his style, arguments, approach, and even fatwas from his earlier works. Comparing for example his famous book *Al-Halāl wa-al-Harām*, 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-Qaraḏāwī himself had not established contacts with them yet. In his later fatwas, al-Qaraḏāwī 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-Qaraḏāwī introduced his project of *fiqh al-aqalliyāt*, he became more aware of the minority contexts, well known for his "global" authority and fatwa expertise. Al-Qaraḏāwī'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-Qaraḏāwī'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-Qaraḏāwī. It is not surprising that many of the fatwas in the ECFR fatwas collections are identical with, even verbatim to, al-Qaraḏāwī's published fatwas.¹⁰⁸

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

Conclusion

Undoubtedly, al-Qaraḏāwī is a pioneering figure in the discourse on the role of *Shari'ah* in modern life. For Muslim minorities, he is more than a mufti or an authority. His 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-Qaraḏāwī'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*, *ijtihad*, and reality, al-Qaraḏāwī 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-aqalliyat and to what extent it differs from current and earlier trends. A review of some of al-'Alwānī'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-'Alwānī was born in Iraq in 1935, his career as an intellectual and Muslim jurist flourished in Egypt, where he studied in al-Azhar for almost 20 years (1953–1973). His main field of specialization was *Shari'ah* 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-'Alwānī moved to Saudi Arabia, where he became a professor of Islamic jurisprudence and its principles in the Faculty of *Shari'ah*, Muhammad bin Saud University. In addition to his position at the university, al-'Alwānī also served as a legal counselor in the Saudi Ministry of Interior in 1975–76 and as a teacher of Islamic Culture at the Police Institute in Riyadh (1977–1983). At this stage in al-'Alwānī'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 *Ijtihad*,⁴ and a verification of Muṣṭafā al-Wirdānī's *Al-Nabiy 'an al-Istī'ānah wa-al-Istīnṣār 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 *da'wah* 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-'Alwānī became involved in the process of the establishment of the International Institute of Islamic Thought (IIIT) in Virginia, USA, and its main project of the Islamization of Knowledge. In 1983, he immigrated to the United States and assumed the position of the director of the research unit at the institute between 1984 and 1986. 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-'Alwānī 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-'Alwānī. One of the few available writings on al-'Alwānī's thought is Shammai Fishman's article "Ideological Islam in the United States: *Ijtihād* in the Thought of Dr. Ṭaha Jābir al-'Alwānī."¹⁵ Shammai concludes that al-'Alwānī is a mainstream orthodox Muslim cleric, and his program is no more than a reconstruction of Muhammad's days.¹⁶ According to Shammai, the proper way to solve the *ummah's* current problems, in the eyes of al-'Alwānī, is through Islamic methodologies, that is, the Islamization of knowledge.¹⁷ Although Shammai tried to present a balanced overview of al-'Alwānī's position on *ijtihād*, his data were limited. He relied mostly on a number of online news articles, a few articles of al-'Alwānī in the *American Journal of Islamic Social Sciences* (AJISS) in 1992 and 1999, and al-'Alwānī's book *Usul al-Fiqh al-Islami: Source Methodology in Islamic Jurisprudence*. With such limited sources, Shammai's conclusions reveal another form of generalization that does not withstand critical analysis. As will become clear in the following section, al-'Alwānī's version of the Islamization of knowledge does not simply mean limiting oneself to Islamic methodologies. Rather, it transforms the current scientific methodological apparatus in various fields of knowledge to be divine conscious, 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-'Alwānī'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-'Alwānī became the head of the research unit of the institute in 1983. In the following years, he became the vice president and then the president of the institute.

"The Islamization of Knowledge" has become al-'Alwānī's mission in life. Most of his writings, lectures, and interviews revolve around this subject.¹⁸ He argues that contemporary scientists and intellectuals, especially in the West, rely heavily—if not exclusively—on experimental tools to determine their knowledge of concepts and paradigms, where the man or the intellect is the center of the universe and relativism is the bottom line of scientific findings. Al-'Alwānī believes that this approach produces an ideology of positivism 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 *wasatiyyah* 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 Rashid 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'iliyyāt*, 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 *Shari'ah*, and the finality of the Islamic message, with new meanings that are inclusive to humanity, regardless of religion or ideology.

The role of the *Sunnah* in relation to the Qur'an must be thoroughly understood. The Qur'an is the source of legislation, while the *Sunnah* presents a model of its application in a real-life situation.²⁹ Without the *Sunnah*, it would be impossible to elaborate on how to apply Qur'anic values to real existential circumstances.³⁰ It should be understood that the *Sunnah* responds to the reality that the Prophet had to deal with. This reality differs considerably from what Muslims confront today. This means that Muslims need to construct a methodology to understand how to relate the teachings of the revelation to real life. In other words, when reading the *Sunnah*, the focus has to be not on its legal rulings but on its reasoning. The *Sunnah* is to be utilized for *ta'assiy*, 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-'Alwānī encounters the question of the role of the *turāth*, Islamic intellectual heritage, in reading the *Wahy* and in the formation of legal precedents. According to al-'Alwānī, the Islamic intellectual heritage is a rich source, but it must be understood critically, analytically, and in a way that delivers Muslims from subjective positions of total rejection, total acceptance, or piecemeal grafting.³³ In this context, al-'Alwānī divides the scholars in their treatment of the *turāth* 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 Qur'an, the *Sunnah* and the *turāth*, the ultimate higher values and objectives of the Message of Allah reveal themselves to us as *Tawhīd* (unity and oneness of God), *Tazkiyah* (purification of the soul), and *Umrān* (applying the values and objectives

of the message into the existential world).³⁷ This categorization is a new understanding of the objectives of *Shari'ah*, which was entertained by the jurists for centuries. Jurists used to categorize these objectives into five, *al-Kulliyat al-Khams* that is, protecting oneself, religion, lineage, honor, and property. Some *'usuli* scholars attempted to expand these objectives and recategorize them into *daruriyyat* (necessities), *hajiyyat* (needs), and *tahsiniiyyat* (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 *Sinah*.

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

Apart from these and similar methodological problems, al-'Alwānī's thesis raised controversy in traditional and conservative circles. He was described as one of the sheikhs of the rationalization trend of *fiqh al-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-'Alwānī, the jurist needs to recognize and apply this methodology to become a comprehensive jurist.

The critics of this trend argue that such a methodology leads to the denial of certain rules, for example, apostasy, that enjoyed consensus in the ranks of legal schools. Al-'Alwānī's argument, especially that the *Sunnah* is a source of illustration of *Shari'ah* and not a source of legislation, subjected him to severe criticism to the extent that he was accused of apostasy.⁴³ The basis of such a criticism is the generalization in al-'Alwānī'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-'Alwānī prefers not to delve into such critical issues of text and jurisprudence to avoid raising controversy among the masses, further than what is already in existence. It seems he follows the tradition of earlier scholars who 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-'Alwānī 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-'Alwānī presented his position in concise research as early as 1990. Since then, the same research was republished a couple of times with minor modifications, without taking the next step of elaborating on his methodology or testing it on a wider scale.

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

In his capacity as the director of the research unit at IIIT and the president of the American *Fiqh* Council in the mid-1980s, al-'Alwānī used to encounter legal questions that were posed by American Muslim communities. Having observed the conflicting answers given by various muftis to these questions, al-'Alwānī compiled 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-'Alwānī sent these questions to the Islamic *Fiqh* Academy in Jeddah, Saudi Arabia, attached to a letter that explained the dire need for minorities to 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-'Alwānī. He became more convinced of the need for developing “indigenous *fiqh*” that combines legal tradition with the living context. Al-'Alwānī introduced his call to establish a *fiqh* for minorities.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 *Shari'ah* based. Muslim travelers, traders, Sufis, diplomatic envoys, political dissidents, or indigenous converts were few in number and were scattered in various lands. They did not occupy a prominent place in the legal thought. Jurists dealt with them as people in transition who had to resettle at the nearest occasion in a Muslim land. Given the nature of traditional societal structure, Muslim jurists developed a distinct Islamic culture that at times facilitated *da'wah* while at others caused friction with their non-Muslim host society that forced them into assimilation or otherwise persecuted and enslaved them. Encountering new conditions, those Muslims who live in a non-Muslim space would seek fatwas, especially during *hajj* season, from '*ulama*' and jurists. The jurists were aware of the legal, cultural, and psychological conditions of those Muslims, and consequently they issued them appropriate fatwas that can be easily and conveniently applied to this time and space without infringing the main principles and aims of *Shari'ah*, 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-'Alwānī 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-'Alwānī argues for a new *Ijtihad* 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-'Alwānī's thesis on *fiqh al-aqalliyāt*. 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 *Shari'ah*.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-aqalliyāt* 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 *amir* 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-harb*," that is, *fiqh* of war, and developed a culture of conflict, while what is needed in our present time is a *fiqh al-ta'ayush*, that is, *fiqh* of existence.⁵²

With such a complex analysis of the non-applicability of Islamic legal rulings in modern times, al-'Alwānī becomes a difficult target for analysis. He is not a 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 Rashid Riḍā's or al-Qaraḍāwī's approach, because unlike al-'Alwānī, both view the classical Islamic legal history as an integral part of their discourse. Renewal may actually mean, in the context of al-'Alwānī, renewal of faith values: as

illustrated in the Qur'an. This is reflected at the end of his research when he stresses the place of mercy, equity, and justice in Islamic jurisprudence. This connection between values and *fiqh* redefines the meaning of *fiqh*, something that he acknowledges when he argues for the revival of *al-fiqh al-akbar*, 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-aqalliyāt*, al-'Alwānī de/reconstructs what is meant by *fiqh*. *Fiqh*, as defined in jurisprudential manuals, was not known among early Muslims. *Fiqh* originally, al-'Alwānī argues, means *fahm*, that is, "comprehension" of the wisdom of God, or as described by Abū Ḥanifa "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-aqalliyāt* 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 *tauhid*, Monotheism, *tazkiyah*, Purification, and *'umrān*, Civilization:

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

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

Qur'an and Minorities

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

is "the golden 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 *Al-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-'Alwānī. 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-da'wah*, a land ready for missionary activities. Al-'Alwānī 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-'Alwānī concentrates on the task of Muslims as all the land is Allah's, and it is the Muslim who gives it its designation by conveying the message of his faith.

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

Acquiescence by Muslims to humiliation, resignation to inferior positions, adoption of negative attitudes toward others, or withdrawal from proactive interaction with the environment they live in, would be in contradiction to this Qur'anic 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-'Alwānī has in mind the question of Muslim's political participation in the American or the Western democratic governance system. This was very clear in the conclusion when he 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-'Alwānī: The Mufti

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

Al-'Alwānī's claim is right to a certain extent, at least from his own perspective. There is no single fatwa clearly issued in his name. Neither his website nor the IIIT has a fatwa section or a fatwa link. The only fatwas that are published under his name 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-'Alwānī, 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-'Alwānī 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-'Alwānī's main contributions are in academia and revolve around his "Islamization" project and on the "collective" concerns of Muslim minorities. In academia, his writings are confined to a limited circle of readers who may engage his writings critically without being judgmental. Al-'Alwānī, as 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 *halāl* and the *hīlāl*," 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 county, 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-aqalliyāt*.

After the premises section, al-'Alwānī discusses the question of the frieze portrayal of the Prophet's image from an Islamic perspective. In this section, al-'Alwānī introduces a typical fatwa structure: providing arguments in order of their authoritative considerations: first the Qur'an, then *Sunnah*, and thirdly the opinions of different schools of thought. Qur'anically, "There is no single text that directly addresses the question of whether making or possessing 'pictures' and 'images' is prohibited." Rather the Qur'an provides examples of prophets who praised images.⁷⁸ It was the second source of Islamic Law, 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.⁸⁵

If one attempts to relate this legal analysis to al-'Alwānī's theory on *fiqh* of minorities and his overall project of Islamization of Knowledge, one may argue that it is an honest reflection of both. First of all, he redefines the question, that is, reproducing the question with a positive tone. Al-'Alwānī'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-'Alwānī's recognition of the sociological setting in defining the legal ruling brings into the discussion the new-old historical legal debate of the role of custom in legal determinations. Although al-'Alwānī did not refer to this debate, the link is clear. 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-'Alwānī's research/fatwa on this issue represents a step-by-step application of his theory on *fiqh al-aqalliyāt*. 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-'Alwānī, such as the unity of the human family, the universality of the message, the positivity of the

Muslim *ummah*, and the application of the principle of justice regardless of belief or territory. The second group of premises is contextual. They include the borderlessness of the contemporary world, the presence of international human rights agreements, the role of citizens in modern states, and the 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-'Alwānī indicated in his paper on *fiqh* of minorities.

Based on these premises, al-'Alwānī 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-'Alwānī 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-'Alwānī refers to the first immigration history of Muslims to Abyssinia. Al-'Alwānī'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-'Alwānī would still likely argue for the positive participation of Muslim in politics in a non-Muslim majority society.

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

of political participation, al-'Alwānī finds it necessary to respond to these claims. 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-'Alwānī 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-'Alwānī 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-'Alwānī 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-'Alwānī 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-'Alwānī 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-'Alwānī 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-aqalliyāt*.

Conclusion

Al-'Alwānī belongs to the twentieth and twenty-first centuries' reform movement. His reform ideology, however, has taken a complex path. He argues that the *ummah* needs to press ahead with an agenda of reform that is based on the revival of *Ijtihād*. This *Ijtihād*, however, not only provides innovative answers for contemporary legal questions but also establishes a new research methodology and new *usūli* 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-aqalliyāt*. Al-'Alwānī's vision is still unique in its arguments and aspirations. His attempt to take *fiqh al-aqalliyāt* 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-aqalliyāt* 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-aqalliyāt*-related publications, however, are descriptive in nature. They review the classical legal position on minorities, and either maintain such a position or argue for al-'Alwānī's and al-Qaraḍāwī's main thesis of the need to have a *fiqh* for minorities.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-Qaraḍāwī or provide new arguments that were not part of earlier contributions.⁸⁶ Reference can be made to Dr. Ismā'il al-Ḥasanī's *Al-Ikhtilāf wa-al-Tafkīr fi Fiqh al-Aqalliyāt*, 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-aqalliyāt* through the gate of fatwas. Ibn Bayyah presents an approach that builds *fiqh al-aqalliyāt* as a fatwas genre that is based on *qawā'id kulliyah*, legal comprehensive rule. Dr. Ṣalāḥ Sulṭān's study presents a challenge to conventional jurists as he considers *fiqh al-aqalliyāt* a bridge to *fiqh al-muwāṭanah*, that is, jurisprudence of citizenship.⁸⁹ Dr. Jamāl 'Atiyyah's work, on the other hand, introduces a comprehensive vision of *fiqh aqalliyāt* 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-aqalliyāt* 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-aqalliyāt* to prove its validity and strength, it has to address the question of residency.

This chapter examines how *fiqh al-aqalliyāt* 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 *tafsir* books and *hadith* 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 Saḥnūn (d. 804), for example, argues that converts may not migrate to the land of Islam after conversion because the Prophet allowed the Bedouins who converted to Islam to stay in their lands and not 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 Ḥanafīs, 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 Zāhiri 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 *ijtihad*.

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-'abd* (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'i⁸ jurists divides the world into Muslim/peace and non-Muslim/war. Thus they proposed a third division, *dār al-'abd*, 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-Wansharī 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-Adawī (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 Ja'fari²¹ schools argue that if Muslims can manifest and practice their religion, migration is not obligatory but recommended, because by their stay Muslims would contribute to the material wealth and strength of unbelievers.²² The Shāfi'i²³ 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-'abd* 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-aqalliyat*, 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-aqalliyat* 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-aqalliyat* 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-'abd* 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-'abd*, 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-'abd* 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'āshirah*, Dr. Muḥammad Sa'īd al-Būṭī,³⁵ an anti-*fiqh al-aqalliyat* jurist, presents a different perspective. He argues that the *asīl*, 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'ī*, 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 *asīl* from the merely permissible to either obligatory, or forbidden or despicable. Sheikh Muḥammad al-Ghazālī³⁷ follows a similar line

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

The famous fatwa of the Moroccan 'Abdel-'Azīz al-Ṣiddīq al-Ghamārī³⁹ entitled *Hukm al-Iqāmah 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-'Azīz al-Ṣiddīq on the position of some Algerian scholars who issued a fatwa prohibiting emigration to Europe and other non-Muslim lands. Al-Ṣiddīq argues that those who argue for the illegality of emigration are ignorant of the rules of *fiqh* and 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-Ṣiddīq 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-Ṣiddīq 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-Ṣiddīq, 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-aqalliyat* 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-aqalliyat* 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-Aqalliyāt, Division of the World, and Jihad

The debate over world division used to be studied within the framework of larger issues such as *jihad* or immigration. It was not a focus of independent research until the rise of *fiqh al-aqalliyāt*, which made it central to its theoretical construction. Some jurists and intellectuals dedicated whole treatises to the question of world division and its relation to the Muslim *ummah* in general and to Muslim minorities in particular.⁴³ Others responded with a detailed discussion or a section in one of their publications.⁴⁴ A third group wrote articles or issued fatwas or statements in response to questions 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-aqalliyāt* to challenge the *hijrah* doctrine and to establish a doctrine of citizenship of Muslims in non-Muslim states.

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

The origin and meanings of these terms (abode of Islam and abode of War) is a common factor in the jurists' debate on *fiqh al-aqalliyāt*. Jurists acknowledge that these 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-Muslim 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 kufī* 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 *Taqsim al-Ma'munah*, 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's avoidance of getting into the polemics of the jurists that the abode of Islam is the land that is meant for emigration because there the Muslim not only practices his religion but also reigns superior over others through the political authority and the power of jurisdiction.

This approach of evading polemics with different schools becomes more evident when al-Juday' poses the second question: What is the ruling pertaining to *hijrah* for those who converted to Islam while living in the abode of disbelief? Here al-Juday', instead of presenting the various legal schools' positions, compiles textual references, mostly Prophetic traditions, stressing two points. First is that these traditions were in the context of new Muslims living in a land in a state of war with Muslims. Second is that their emigration is meant for their safety.⁶⁰ To resolve the complexity of the issue, al-Juday' presents the juristic debate as different positions on one continuum. The *hijrah* is 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-Mawardi's⁶² position on another continuum, but this time argues for non-immigration to a Muslim land. Al-Mawardi argues that if the resident in a non-Muslim land is known for his religion and able to practice his faith and to make *da'wah*, then he should stay there and his place will become his own *dār al-Islām*. If he can manifest his religion but is unable to practice *da'wah*, then it depends on if he is convinced that his stay will make Islam known; if so, then it is preferable for him to stay. If Muslims in the abode of Islam request for support, then he should migrate. If the Muslim fears losing his religion and is able to undertake *hijrah*, then he has to emigrate. If he is unable to make *hijrah*, then he is relieved from this obligation.⁶³ Al-Juday' then concludes this section by adopting a more positive tone toward the permissibility of staying in 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-harb*, the jurists of *fiqh al-aqalliyat* 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-aqalliyāt* 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 *kufrah* 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 (*izhār 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-aqalliyāt* 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 Charter (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-aqalliyat* 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-nihal* (communities of religions and sects),⁷⁶ in a clear indication that people were seen and dealt with from the perspective of their religious convictions. This usually meant that those groups were deprived of certain rights that the rest of the people may enjoy. But once the modern state came into existence, the positions of other groups within the boundaries of the nation-state were looked at differently. Terms like "minority" "group" or "community" are utilized not to single them out but to legally guarantee them certain rights (not to deprive or exclude them).

In the last couple of years, one can observe a further change. Terms such as "minority" or "group" became less used in the debate, in favor of terms 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-Juday' argues that the current international context "became a reality that cancelled all distinctive markers of the Muslim state(s) that were based on religion, at a time when it was known as *dār al-Islām* versus all other countries which were known as *dār al-ḥarb*." He states that Muslims had to deal with this new context either with absolute denial or to interact with it and accept what agrees with the principles of Islam and do the best to create an impact in the making of world decisions to come in line with the *Shari'ah*. For example, the UN declaration

stipulates that its members have to be 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 *kufr*, while in reality it is not. The West represents a civilization that cannot be described as *kufr*, 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 *kufr* as two different components that may be disconnected limit the description of *kufr* 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 *kufr*, 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* (viceroys), 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-Aqalliyāt: A New Vision of the World?

Fiqh al-aqalliyāt jurists had to address the question of the abode at a certain moment of their discourse because it is the base that their position will be built on. As mentioned earlier, some examined the question of the abode in detail and made it an 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-Aqalliyāt al-Muslimah*, al-Qaradāwī did not examine questions of *dār*, *hijrah*, or citizenship. This may be surprising since these issues represent the basics for any discussion on *fiqh al-aqalliyāt*. On his list of the legal questions that are frequently asked by Muslim minorities, the questions on *hijrah* and world division come at the top of the list, but are totally ignored in the fatwa section.⁹⁰ One wonders why? Is it because they are controversial and the mere discussion of them will distract attention from his main fatwa framework, 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-Qaradāwī 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-Qaradāwī 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-Qaradāwī's *fiqh al-aqalliyāt* 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-Qaradāwī 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-aqalliyāt* 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-Qaradāwī 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-Qaradāwī 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-harb*. 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-'ahd* as an alternative to *dār al-harb*, al-Juday' it seems, has not come to a decision yet. As a traditional jurist, he wanted to stay within its legal options, that is, *dār 'adl* (abode of justice), or *dār Murakkabah* (composite abode), or *dār Islām* (abode of Islam) that were produced by earlier jurists. On one occasion, he argues that modern liberal countries cannot be described as *dār Islām* since they follow a non-religious governance system. It can be described as *dār 'adl*, an abode of justice, because it guarantees the dignity of man, and 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 citizenship.¹⁰¹ On a third occasion, al-Juday' 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-aqalliyāt* vary in their methodology of how to label the world of non-Muslims. In the previous section, al-Qaraḍāwī, Ibn Bayyah, and al-Juday' 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 Qur'anic principles, al-'Alwānī argues that recognizing the Qur'anic understanding of geography as "the earth belongs to Allah and Islam is his religion" would lead to a conclusion that every and each country is either an abode of peace as a matter of fact or will be, eventually, in the future. All humanity is the community of Islam,

ummatu al-Islam, either by adopting the faith "*ummat millah*" or as a prospective follower of it, "*ummat da'wah*." Al-'Alwānī supports his position by going back to the legal tradition by referring to al-Mawārdī and al-Rāzī. He quotes al-Mawārdī's position, referred to earlier, that *dār al-Islām* is the land where Muslims can practice their religion therein. He furthermore adopts the 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

Ṣalāh Sulṭān comes close to al-'Alwānī's conclusion when he states that it is a methodological error to apply certain juridical positions that might have been valid in another time to modern times. One of these positions is the division of the world into *dār al-Islām* and *dār al-ḥarb*. However, it is better to consider in our context *dār al-'abd* 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-Muslimin wa-Ghayr al-Muslimin*, 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 'abd* or *dār da'wah*. If one accepts the classical legal division, then Muslims are in *dār al-'abd* but if one argues that this division is not applicable in our current world, then we are in *dār da'wah* similar to the situation of Muslims in Mecca before their *hijrah* to Medina. At that time, Mecca was not *dār ḥarb*. It was *dār da'wah*, along

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

This redefinition of the non-Muslim territories as *dār al-'abd*, *dār al-'adl*, *dār al-Islām*, or *dār al-da'wah* 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-aqalliyat* 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-aqalliyat*. 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-aqalliyat* 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 *muwālah*, 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 *muwālah* 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

Ṣalāḥ al-Ṣawī¹¹¹ 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 *haram*. 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-Šawī argues, are still loyal to their religion. They gained strength out of their citizenship that they utilized in their *da'wah* activities. They built Islamic centers and institutions in these lands and made Islam part of the land, instead of being an immigrant religion. Through the work of those people, many came to Islam. In addition to this, positive law has become the norm in many Muslim countries to the extent that there is not much difference between the laws applied in these lands and the laws applied in the lands of Muslims. Therefore al-Šawī concludes that, "if the process of citizenship is stripped off from the requirements of absolute acceptance of the laws and systems of the country granting citizenship and does not fully subscribe to its binding laws or express absolute belonging to its community so that one is obliged to show peace to its allies and involve in war against its enemies; and if such a citizenship is necessary to organize the affairs of residents of these societies and to establish their residency, along with keeping one's commitment to the contracts and agreements one has with the host country, and such a citizenship is needed for urgent necessities and the citizenship-seeker to maintain his *walā'* and *barā'* and commitment to Allah and His messenger, then the ruling on citizenship is open for *ijtihad* and one should not preclude an opinion to its permissibility with the framework highlighted above."¹¹²

Šalāh al-Šawī'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-Šawī's position of nonsettlement/nonemigration to a non-Muslim land. This position does not contribute much to the discourse of *fiqh al-aqalliyāt*.

Understanding the problematic nature of the question, Ismā'il al-Hasanī 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-Hasanī 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 *muwālā'*, i.e. loyalty, of Muslims to the *kuffār*."¹¹³ If this *muwālā'* 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 *haram*, 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 *muwālā'* but it is the least level of *muwālā'* 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-Hasanī deals with the same concern of al-Būṭī, that is, identity and *muwālā'*. He acknowledges that there is loyalty and admiration involved in taking the citizenship of a non-Muslim country. However, he introduces the levels of *muwālā'* (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 *muwālā'*. 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-Hasanī's argument reflects the hesitation that some minority jurists may have when they deal with complex minority questions. Al-Hasanī 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 *ansār*, 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-aqalliyât challenges the division of the world into *dâr al-Islâm* and *dâr al-ḥarb*, creating an alternative *dâr*. It does not matter how you call this *dâr*, because the *dâr* 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-aqalliyât*, 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 *dâr al-Islâm* and *dâr al-ḥarb* is no longer part of the expectation of Muslim minorities where "the word" *dâr* 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-aqalliyât* 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-aqalliyât*, the jurists have challenged various traditional concepts and reopened for discussion notions of world division that divide the world into *dâr al-Islâm* and *dâr al-ḥarb*, notions of Muslim's ethical obligations toward non-Muslims (who used to be seen as *dhimmis*, that is, non-Muslims living in Muslim lands, or *musta'man*, that is, non-Muslim receiving protection during their travel in Muslim lands, or *ḥarbiyyin*, 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-aqalliyât* 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 *dâr of shabâdah*, the abode where faith is declared, and *dâr 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 *dhimmis* or *aman* 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 *rubḥṣah*, 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-aqalliyāt* as promoted by its early advocates Sheikh Yūsuf al-Qaraḍāwī and Dr. Ṭaha Jābir al-'Alwānī. Chapter 3 focuses on the discourse of al-Qaraḍāwī while chapter 4 examines the discourse of Al-'Alwānī. 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 *Shari'ah*, *fiqh*, and *ijtihad* and, most importantly, how these two scholars relate their Islamic reform projects to the discourse of *fiqh al-aqalliyāt*?

The objective of *fiqh al-aqalliyāt*, according to al-Qaraḍāwī, is to apply the wisdom and spirit of *Shari'ah* 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, *Shari'ah* does not; if some jurists demand Muslims to be loyal to only one entity, the Muslim *ummah*, *Shari'ah* allows dual loyalty: to the *ummah* and to one's residential community. Also, if *fiqh* calls upon Muslims to do *hijrah* (immigration), *Shari'ah* 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 *da'wah*. 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-'Alwānī is the second pioneering figure in the field of *fiqh al-aqalliyāt*. Al-'Alwānī's work on *fiqh al-aqalliyāt* 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-Ma'rifah* (Islamization of Knowledge). In *fiqh al-aqalliyāt* his analysis resonates with his calls for a rereading of the Qur'an to identify the general message of Islam and the role of man on earth: *tawḥid* (monotheism), *tazkiyah* (purification), and *'umrān* (civilization). This message can only be realized through "the dual reading" of *'al-wahy* and *'al-kawn* (the revelation and the universe). According to al-'Alwānī, such a reading will reshape Muslims' understanding of the objective of jurisprudence. This revised understanding may include the Qur'anic 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 *da'wah*, that is, potential Muslims. The dual reading would also stress the universality of the Qur'anic discourse and its values of dignity, equity, and justice that make all people equal. Al-'Alwānī argues that if early Muslims represent *abnā' al-'aālamīyyah al-'ūlā*, the first generation of universal Islam, the present Muslim generation living in the West represents *abnā' al-'aālamīyyah al-thānīyah*, the second generation of universal Islam. So arguing, al-'Alwānī 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 *furū' 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 (*da'wah* 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 *Shari'ah*, 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-'abd*, 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-aqallīyyāt* relies greatly on the mechanism of *ijtihad*, 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 *ijtihad*, which is the kernel of the progress in the structure of Islam.²

Shari'ah, *fiqh*, and *ijtihad* are greatly interconnected. As one scholar explains, "*Fiqh* develops *Shari'ah* in light of the changing conditions of society through the modality of *ijtihad*."³ In another instance, it is argued that *fiqh* is the embodiment of largely speculative thought and *ijtihad*, and as such it is the unfinished chapter of *Shari'ah* that is amenable to further development and growth.⁴ *Fiqh al-aqallīyyāt* serves this purpose, that is, the growth of the *Shari'ah*. In other words *fiqh al-aqallīyyāt* 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-Qaradāwī, 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 *ijtihad* / revival of the science of the principles of jurisprudence. As a product

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

At this conjecture, it is important to argue that these reform projects, including that of *fiqh al-aqalliyat*, 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 Muṣṭafā '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 *ijtihad* 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-aqalliyat* 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-aqalliyat* 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-aqalliyat* 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-aqalliyat* 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-aqalliyat* 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-aqalliyat* creates an Islamic public sphere where the Muslim community, as a group, works together to maintain its identity. In other words, *fiqh al-aqalliyat* 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-aqalliyat* need not only to perform *ijtihad* 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 *uṣūl 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-aqalliyāt*, the focus is on common shared values. We see al-Qaraḍāwī, al-'Alwānī, Ibn Bayyah, and others focus on values of justice, freedom, and human rights. It is noteworthy here to note the shift in the value discourse. Not long 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-aqalliyāt* 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-aqalliyāt* 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-aqalliyāt* is a basic component in the intellectual growth of Muslim minorities and in their integration in their new homes. Although *fiqh al-aqalliyāt* 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-aqalliyāt* 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-aqalliyāt* definitely helps Muslims to rethink the role of Islam in their life, and to redefine their spiritual and social objectives. For researchers, this study fills a void in the present state of research by presenting the voice of jurists 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-aqalliyāt*, to be based not only on their final determinations, their repercussions, and applications, but also on content analysis that dissects the fatwa and relates it to tradition, reform, rules of *uṣūl*, *fiqh al-aqalliyāt*, and 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-aqalliyāt* and practical solutions as those presented by fatwas. It also reveals to what extent the discourse of *fiqh al-aqalliyāt* can be extended beyond 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-Qaraḏāwī, *Fī Fiqh al-Aqalliyāt al-Muslimah* (Cairo: Dār Al-Shurūq, 2001).
3. 'Abd al-Hādī al-Sayyid M. Taqī al-Dīn, *Al-Fiqh lil-Mughtaribin* (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-Baṣal, "al-Mad-khal ilā Fiqh al-Nawāzil," *Dirāsāt Fiqhiyyah fī Qaḏāyā 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-aqalliyyât* 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 Zwartzjes, 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-Qantarrah*, 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 Dāwūd*, 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-Aqalliyyât*) 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.

1 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 *ijtihad* tools. See Muḥammad Salīm al-'Awwā, *Dawr al-Maqāsid fi al-Tashri' at al-Mu'āshirah* (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. *Wahhābi* 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 'Abd al-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, *Du'wah*, and Guidance, 2003). For another review of Wahhābi 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-Madānī, *Dawr al-Mamlakah al-'Arabiyah fi 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 *Wahhābi*-oriented literature, see Center for Religious Freedom, *Saudi Publications on Hate Ideology Invade American Mosques* (Freedom House, 2005).
7. 'Abdel-Hakīm al-Madānī, *Dawr al-Mamlakah*, 284.
8. *Ibid.*, 295ff.
9. Aḥmad ibn 'Abdel-Razzāq al-Dawish, ed., *Fatawa al-Lajnah al-Dā'imah li-Buḥūth al-'Ilmiyyah wa-al-Iftā'*, vol. 9 (the Kingdom of Saudi Arabia: Dār al-'Āshimāh, 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 *Wahhābi* thought dislike the *Wahhābi* 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-Mughtarab* (Kingdom of Saudi Arabia: Cultural Attaché, Washington DC, n.d.); Najd Scholars, *Majmū'at Rasā'il wa-Fatawa fi Masā'il Tamās ilayhā Hajat al-'Asr* (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); Muḥammad 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-Sad-ḥan, *Al-Imām in Bāz, Durūs wa-Mawāqif wa-Ibar* (Cairo: Dār al-Bashā'ir al-Islāmiyyah, 2009), 150. Ibn Bāz was also described as the *jurist of Aal Sa'ūd*. See Šālīḥ al-Wirdānī, *Ibn Bāz: Faqīh 'al Sa'ūd*, (Egypt: Dār al-Husām, 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 Walid ibn Aḥmad al-Husayn, *Al-Jāmi' li-Hayāt al-'Allāmah Muḥammad ibn Šālīḥ al-'Uthaymīn* (Leeds: al-Ḥikmah Magazine, 2002). See also <http://www.ibnothaimen.com/index.shtml> (accessed 25/12/2012).
32. 'Abdel-'Azīz Ibn Bāz, *Min Fatawa wa-Rasā'il Samāhat al-Sheikh 'Abdel-'Azīz Ibn Bāz* (Cairo: Al-Farūq al-Ḥadīthah li-al-Ṭibā'ah wa-al-Nashr, 1988); 'Abdel-'Azīz Ibn Bāz, *Fatawa Islamiyyah*, 3 vols. (Beirut: Dār al-Qalam, 1988);

- Muhammad ibn Šalih Al-Uthaymin, *Fatawa al-Mar'ah al-Mu'minah fi Fiqh al-Din Wa-al-Hayah*, ed. Nabil Muhammad Mahmud (Alexandria: Al-Dar al-Alamiyyah li-al-Nashr, 2006); Ibn al-Uthaymin, *Fatawa Arkân al-Ilâm*, ed. Fahd ibn Nasir al-Sulayman (Riyadh: Dar al-Thurayyah li-al-Nashr 2000/2001).
33. <http://www.binbaz.org.sa>; <http://www.ibnothaimen.com> (accessed 12/25/2012).
 34. Ibn Bâz, Ibn al-Uthaymin, et al., *Fatawa al-Aqalliyât al-Muslimah* (Dar al-Mustaqbal li-al-Nashr, 2001).
 35. Sheikh Ibn Bâz and Sheikh Ibn al-Uthaymin, *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 Bâz featured as the main authoritative mufti.
 37. Ibn Bâz, *Muslim Minorities*, 15.
 38. 'Abdel-Razzâq, *Fatawa al-Lajnah*, vol. 2, 69.
 39. *Ibid.*
 40. 'Abdel-Razzâq, *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. *Muwalah* 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. 'Abdel-Razzâq, *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 strands, 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 Bâz, *Muslim Minorities*, 9.
73. *Ibid.*, 18.
74. Ibn Bâz et al., *Fatawa al-Aqalliyât al-Muslimah*, 48.
75. *Ibid.*, 40.
76. *Ibid.*, 59.
77. 'Abdel-Razzâq, *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: Yusuf Al-Qarađawi, *Fiqh al-Jihad*, 239ff.
80. Al-'Awwa'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-Razzâq, *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 Bâz et al., *Fatawa al-Aqalliyât al-Muslimah*, 37; 'Abdel-Razzâq, *Fatawa al-Lajnah*, vol. 2, 66, 68, 96.
93. 'Abdel-Razzâq, *Fatawa al-Lajnah*, vol. 12, 260–261.
94. Ibn Bâz et al., *Fatawa al-Aqalliyât al-Muslimah*, 52.
95. Muhammad 'Imarah, *Tayyârât al-Fikr al-Ilâmî*, 2nd ed. (Cairo: Dar al-Shurûq, 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 Ahmad 2:50, 92 and Musnad Abû Dawûd no. 4013), "I *bariy*", do not bear the responsibility, of any one residing among

the polytheists" (reported in Abū Dawūd's *Musnad* no. 2645 and Tirmidhī's *Jāmi'* no. 1605 and Al-Nasā'ī'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-Aqalliyāt 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 fi-mā Bayna Al-Hikmah wa-al-Sharī'ah min al-Itisāl* 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-Ifi'ā' wa-al-Buhūth* (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 *Hanafites*, three *Shāfi'ites*, three *Mālikis*, and two *Hanbalis*).

4. For a review of al-Azhar's history, see Bayard Dodge, *Al-Azhar: A Millennium of Muslim Learning* (Washington: the Middle East Institute, 1974); Chris Eccel, *Egypt, Islam and Social Change: al-Azhar in Conflict and Accommodations* (Berlin: Klaus Schwarz Verlag, 1984); 'Abdel-'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 'Awaḍ, *al-Azhar: Ayy Mustaqbal Yantaḥirub* (Cairo: Wakālat al-Ṣaḥāfah al-'Arabiyyah, 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 'Awaḍ, *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 fi Suḥūr* (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 fi Amrikā* (Cairo: Lajnat al-Bayān Al-'Arabi, 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-'Arabiyyah al-Hadithah*, 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 'Ali Ṣubḥ, *Al-Harakah al-'Imiyyah 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 Yusūf 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 Yusūf al-Shawārbī, *Al-Islam 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-Islam fi Amrikā*.
33. 'Abdel-Ḥalim 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 Naḍar Bahḥāthi Urūbbā," vol. 3, 1932, 362ff; "Tarikh 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 'Ali 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 Haridī 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-Majid Salīm in 1935. Interestingly, here at the end of the fatwa, the mufti referred the question to the *Shafi'i* mufti, at that time the sheikh of al-Azhar, for elaborating on the *Shafi'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-Islamiyyah*, no. 9, given by Sheikh Muhammad Bakhr 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-Islamiyyah*, fatwa no. 760, given by Sheikh Ahmad Haridi in 1963; *Al-Fatawa al-Islamiyyah*, fatwa no. 3315, given by Sheikh Jād al-Haqq in 1979.
55. *Al-Fatawa al-Islamiyyah*, fatwa no. 3312, given by Sheikh Hasanin Makhluf in 1952.
56. *Al-Fatawa al-Islamiyyah*, fatwa no. 15, given by Sheikh 'Abdel-Majid Salim in 1935.
57. *Majallat al-Azhar*, vol. 33 (1961/2): 84, 192, 354; vol. 26 (1954), 18; *Al-Fatawa al-Islamiyyah*, fatwa no. 52, given by Sheikh Muhammad 'Abdu in 1900; Fatwa no. 826, given by Sheikh Ahmad Haridi in 1962.
58. *Al-Fatawa al-Islamiyyah*, fatwa no. 3431, given by Sheikh Ahmed Haridi in 1966.
59. *Majallat al-Azhar* (October 1986): 206.
60. *Al-Fatawa al-Islamiyyah*, fatwa no. 3410, given by Sheikh 'Abdel-Latif Hamzah in 1982.
61. *Al-Fatawa al-Islamiyyah*, fatwa no. 73, given by Sheikh 'Abdel-Rahman Qura'ah in 1925; Fatwa no. 905, given by Sheikh Ahmed Haridi in 1965.
62. *Majallat al-Azhar*, vol. 26 (1954): 247.
63. *Al-Fatawa al-Islamiyyah*, fatwa no. 1221, given by Sheikh Jād al-Haqq in 1979.
64. *Majallat al-Azhar*, vol. 21, 1949; vol. 46, 1974, 895–896; *Al-Fatawa al-Islamiyyah*, fatwa no. 1109, given by Sheikh Ahmad Haridi in 1962; *Al-Fatawa al-Islamiyyah*, fatwa no. 1108, given by mufti Hasan Ma'mun in 1955; *Al-Fatawa al-Islamiyyah*, fatwa no. 1290, given by mufti Jād al-Haqq 'Ali Jād al-Haqq in 1978; *Al-Fatawa al-Islamiyyah*, fatwa no. 625, given by mufti Muhammad 'Abdu in 1903.
65. *Al-Fatawa al-Islamiyyah*, fatwa no. 3417, given by Sheikh Hasan Ma'mun in 1936; *Al-Fatawa al-Islamiyyah*, fatwa no. 949, given by Sheikh 'Abdel-Rahman Qura'ah in 1923; *Al-Fatawa al-Islamiyyah*, fatwa no. 501, given by Sheikh 'Abdel-Majid Salim in 1934.
66. *Al-Fatawa al-Islamiyyah*, fatwa no. 988, given by Sheikh Ahmad Haridi in 1968.
67. *Al-Fatawa al-Islamiyyah*, fatwa no. 853, given by Sheikh Muhammad Khajir in 1978.
68. *Majallat al-Azhar*, vol. 4 (1933), 697; *Al-Fatawa al-Islamiyyah*, fatwa no. 1045, given by Sheikh Ahmad Haridi 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-Islamiyyah*, fatwa no. 744, given by Sheikh Ahmad Haridi in 1969.
70. *Al-Fatawa al-Islamiyyah*, fatwa no. 744, given by Sheikh Ahmad Haridi in 1969.

71. *Al-Fatawa al-Islamiyyah*, fatwa no. 988, given by Sheikh Ahmad Haridi in 1968.
72. *Al-Fatawa al-Islamiyyah*, fatwa no. 3417, given by Sheikh Hasan Ma'mun in 1936.
73. *Majallat al-Azhar*, vol. 68 (1995): 784–785.
74. *Ibid.*, vol. 63 (1991): 617–619; Jād al-Haqq, *Buhūth*, vol. 4, 337–347.
75. *Ibid.*, vol. 67 (1994): 8–10.
76. *Al-Fatawa al-Islamiyyah*, fatwa no. 1126, given by Jād al-Haqq in 1980.
77. Jād al-Haqq, *Buhūth*, vol. 4, 342.
78. Jād al-Haqq 'Ali Jād al-Haqq, "Dawr al-Ijtihād fi al-Gharb," *al-Azhar*, vol. 68 (November 1995): 784.
79. One may refer here to Jād al-Haqq'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-Ifiā'*, vol. 8 [1993]: 2745, or his fatwa on rulings on fasting in Norway, *ibid.*, 2799).
80. Al-Shawārbī, *Al-Islām fi Amrikā*, 135.
81. Muhammad Sayyid Tantāwi, *Ta'ammulāt fi Khitāb al-Ra'īs Barack Obama min Manẓūr Islāmī* (al-Azhar Magazine gift, August, 2009), 18.
82. *Ibid.*, 46.
83. Yūsuf al-Dijwi, "Mas'lat Tajannus al-Muslimin bi-al-Jinsiyyah al-Firinsiyyah," republished in *Al-Sunnah Magazine* (Birmingham: Islamic Studies Center, Muharram 1416 A.H./1995 A.D.), 90–96.
84. Rashid Ridā, *Al-Manār*, 25.1 (January 1924): 21–32.
85. Muhammad al-Khidr Husayn, "Muḥakāt al-Muslimin li-al-Aḡānīb" *Majallat al-Azhar*, 3 (1932): 375ff.
86. *Al-Fatawa al-Islamiyyah*, fatwa no. 625, given by Sheikh Muhammad 'Abdu in 1904. See also *Al-Fatawa al-Islamiyyah*, fatwa no. 683, given by Sheikh 'Abdel-Majid Salim in 1928.
87. *Al-Fatawa al-Islamiyyah*, fatwa no. 673, given by Muhammad 'Abdu 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-Islamiyyah*. This statement implies that there are only a limited number of legal rulings that can be identified as categorically *harām* based on a clear linguistic reference of a textual evidence, rather than the interpretation of a jurist.
94. Malika Zeghal, "The 'Recentering' of Religious Knowledge," 108.
95. See the fatwa of the mufti of Egypt, Sheikh 'Ali Jum'ah, on the permissibility of void transaction in the abode of non-Muslims. 'Ali Jum'ah, *Al-Kalim al-Ṭayyib*, *Fatawa 'Asriyyah*, vol. 2 (2007): 205–209.

3 YUSUF AL-QARADĀWĪ: 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-Qaradāwī was then, in 1959, working at the *al-Maktab al-Fanni* (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-Qaradāwī's teachers. See Akram Kassāb, *Al-Manhaj al-Da'awi 'ind al-Qaradāwī, Mawāhibub wa-Adawātub, Wasā'iluh wa-Asālibuh, Simātuh wa-Athāruh* (Egypt: Maktabat Wahbah, 2007), 80.
6. *Al-Halal Wa-al-Haram* has been published more than 30 times since its first inception.
7. Yusuf al-Qaradāwī, *Al-Halal Wa-al-Haram* 8th ed. (Cairo: Dār al-I'tisām, 1974), 7.
8. Dār Iḥiyā' al-Kutub al-'Arabiyyah, Cairo, 1960.
9. Yusuf al-Qaradāwī, *Liqā'āt wa-Muhawarāt Hawl Qadāyā al-Islām wa-al-'Asr* (Cairo: Al-Risālah, 2001), 68.
10. Alexandre Caeiro and Mahmoud al-Saify, "Qaradāwī in Europe, Europe in Qaradāwī," 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-Qaradāwī, Faqih al-Da'wah wa-Da'yat al-Fuqahā'*, a series on 'Ulamā' wa-Mufakkirūn Mu'āṣirūn (Damascus: Dār al-Qalam, 2001), 129.
13. *Ibid.*, 133.
14. Mustafa Aḥmad Muḥammad al-Zarqā (1904–1999) was a Syrian jurist known for his merits as one of the *mujtabids* 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-Mahfūz 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 Mawlāwī (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-Qaradāwī, *Fi Fiqh al-Aqalliyāt 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-Qaradāwī in Cyberspace," *Die Welt des Islams*, vol. 47, no 3–4 (2007): 403.
23. Since 1999, al-Qaradāwī 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&cid=14235>; http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1221720332665&pagename=Zone-English-Living_Shariah%2FELSELayout; 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&d=30&m=10&y=2004> (accessed 8/11/2011); for a review of the Western campaign against him, one may check the literature of the following groups: Jihad Watch, Middle East Media Research Institute (MEMRI), and Middle East Forum.
36. Charlez Kurzman, ed., *Liberal Islam: A Source Book* (Oxford: Oxford University Press, 1998).
37. Peter Tatchel, "Does Ken Believe in Killing Gays," *Neustatesmen* (July 19, 2004): 22.
38. Henry Newman, "Al-Qaradawi, Yusuf," *Encyclopedia of Islam in the United States*, ed. Jocelyne Cesari, vol. 1 (London: Greenwood Press, 2007), 43.
39. Jyette Klausen, *The Islamic Challenge: Politics and Religion in Western Europe* (Oxford: Oxford University Press, 2005), 210.
40. Gould, "Muslim Elites and Ideologies in Portugal and Spain," 73.
41. Gräf 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, *Nahnu wa-al-Gharb, As'ilah Shā'ikah wa-Ajwibah Ḥasimah* (Egypt: Dār al-Tawzī' wa-al-Nashr al-Islāmiyyah, 2006), 117.
48. Ma'sūd Šabīrī, "Al-Iftā' 'Ind al-Shaykh al-Qaradāwī: al-Manhaj wa-al-Taṭbiq," in *Multaqā al-Imam al-Qaradāwī: Ma'a al-Aṣ-ḥāb wa-al-Talāmidh*, 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-Talāmidh*.
50. Gräf and Skovgaard-Petersen, *Global Mufti*, 41.
51. Alexandre Cacirot 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, *Liqā'āt*, 101.

55. Al-Qaradāwī, *Madkhal*, 22.
56. *Ibid.*, 67–70; See also, al-Qaradāwī, *Dirāsah fi fiqh Maqāṣid al-Sharī'ah Bayna Al-Maqāṣid al-Kulliyah wa-al-Nuṣūṣ al-Juz'iyah* (Egypt: Dar al-Shurūq, 2006), 28.
57. Al-Qaradāwī, *Madkhal*, 140ff.
58. al-Qaradāwī, *Dirāsah*, 19–20.
59. Akram Kassāb, *Al-Qaradāwī: Murtakazāt Da'watih wa-Jabāhātih al-Da'awiyyah* (Egypt: Wahbah, 2007); 'Isām Tilimah, *Yūsuf Al-Qaradāwī, Faqih 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-Qaradāwī 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-Qaradāwī, *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 *taqlid* and his call for *ijtihad*. 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-Qaradāwī uses Sayyid Qutb's label "*fiqh al-awraq*," that is, jurisprudence of papers. See Kassāb, *Al-Qaradāwī*, 98; Cf. 'Ubayd Hasanah, *Fiqh al-Da'wah Malāmiḥ wa-Afāq*, vol. 2. Kitāb al-Ummah series (Qatar: Legal Court and Religious Affairs Department). Available online at <http://www.sheikhali-waqfia.org.qa/SF/AR/BookShow/BookShowTree.aspx?BookId=216> (accessed 27/12/2012).
66. Kassāb, *Al-Qaradāwī*, 73.
67. Al-Qaradāwī, *Liqā'āt*, 116–117.
68. Al-Qaradāwī, *Madkhal*, 242ff.
69. Yūsuf Al-Qaradāwī, *Fiqh al-Jihad, Dirāsah Muqāranah li-Ab-kāmiḥ wa-Falsafatih fi Daw' al-Qur'an wa-al-Sunnah* (Cairo: Wahba Bookstore, 2009), 12.
70. To study the concept of the Middle-Way for al-Qaradāwī, see Bettina Gräf, "The Concept of Wasatiyyah in the Work of Yūsuf Al-Qaradāwī," in *Global Mufti: The Phenomenon of Yūsuf al-Qaradāwī*, ed. Bettina Gräf and Skovgaard-Petersen (New York: Columbia University Press, 2009), 213–238.
71. Al-Qaradāwī, *Dirāsah*, 64ff; Al-Qaradāwī, *Madkhal*, 90ff.
72. Yūsuf Al-Qaradāwī, *Fiqh al-Jihad*, 239.
73. *Ibid.*, 402.
74. *Ibid.*, 1195.
75. *Ibid.*, 908–909.

76. Med-hat Māhir, "Jadid Fiqh al-Aqalliyāt fi Mawdū' al-Mar'ah," in *Murāja'ah Fi Khibāt Mu'āṣirah Hawl al-Mar'ah*, ed. Amani Ṣalīḥ (Cairo: Dialogue of Civilization Program, Faculty of Economics and Political Science, Cairo University, 2007), 55.
77. Yūsuf al-Qaradāwī, *Fi Fiqh al-Aqalliyāt*, 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-Qaradāwī, *Fi Fiqh al-Aqalliyāt*, 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-Qaradāwī*, 118–119.
97. Kassāb, *Al-Manhaj*, 238; see also Yūsuf Al-Qaradāwī, *Al-Fatwa Bayna Al-Indībāt wa-al-Tasayyub* (Egypt: Dār al-Ṣaḥwah li-al-Nashr, 1994), 111ff.
98. Al-Qaradāwī in Al-Ahram newspapers, Egypt, 1986; Cf. Al-Qaradāwī, *Liqa'āt*, 60.
99. Kassāb, *Al-Manhaj*, 46–47.
100. Yūsuf Al-Qaradāwī, *Min Hady al-Islām, Fatawa Mu'āṣirah*, vol. 3 (Kuwait and Egypt: Dār al-Qalam), 650–651.
101. Al-Qaradāwī, *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-aqalliyāt* in Al-Qaradāwī's *Fatawa Mu'āṣirah*.
103. Al-Qaradāwī, *Fatawa Mu'āṣirah*, 639.
104. Al-Qaradāwī, *Fatawa*, 646.
105. *Ibid.*, 648.
106. *Ibid.*, 642.
107. *Ibid.*, 603–604.
108. Compare *Qarārāt wa-Fatāwā al-Majlis al-'Urūbī lil-Ifiā' 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-Qaradāwī, *Fatawa*.

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

4 ṬAHA JĀBIR AL-'ALWĀNĪ: FIQH AL-AQALLIYYĀT, A MODEL OF ISLAMIZATION OF KNOWLEDGE

- 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).
- Taha 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, Taha Jābir Al-'Alwānī, "Madkhal Ilā Fiqh al-Aqalliyāt," *Islāmiyyat al-Ma'rifa* vol. 19 (1999): 1–29; Taha Jābir Al-'Alwānī, "Madkhal Ilā Fiqh al-Aqalliyāt," *Al-Rashād* vol. 12 (2001): 9–28.
- Fakhr al-Dīn Al-Rāzī, *Al-Mabṣūl fi 'Ilm Uṣūl al-Fiqh*, ed. Taha Jābir al-'Alwānī (Imam Muhammad bin Saud University, 1980).
- Taha Jābir Al-'Alwānī, *Al-Ijtihād wa al-Fiqh fi al-Islām* (Cairo: Dār al-Anṣār, 1980).
- Muṣṭafā Al-Wirdānī, *Al-Nabī 'an al-Iti'ānah wa-al-Istinqār fi Umūr al-Muslimīn be-Ahl al-Dbimmah wa-al-Kuffār*, ed. Taha Jābir al-'Alwānī (Riyadh: Al-'Ubaykan, 1983).
- For a complete list of his works and publications, see Al-'Alwānī's webpage: <http://www.Alwani.net/cv.php> (accessed 12/30/2012).
- Taha Jābir Al-'Alwānī, *Ibn Taymiyyah wa-Islāmiyyat al-Ma'rifa: Siblat Islāmiyyat al-Ma'rifa* (Virginia: International Institute of Islamic Thought, 1994), 15.
- Algomhariah.net, "Qisat Fatwa Fiqhiyyah Itabarāt al-Junūd al-Amrikiyin Mujahidin fi Sabil Allah," March 7, 2007, http://www.algomhariah.net/news_details.php?lng=arabic&sid=981 (accessed 12/30/2012).
- 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.
- 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-Awwā. See Imām Muḥammad Imām, "Fatwa min al-Qaraḍāwī wa-al-Awwā wa-Akharīn Tujiz li-al-Askariyyīn al-Amrikiyyīn al-Muslimīn al-Mushārkah fi al-Gharāt 'alā Afghanistan," *Al-Sharḥ al-Ausat*, October 14, 2001. On a third occasion, when some Muslims argued against the presence of the Prophet Muḥammad frieze in the Court of Justice, al-'Alwānī announced his position through a research paper that was published as a fatwa. See Ṭaha Jābir al-'Alwānī, "Fatwa" Concerning the United States Supreme Courtroom Frieze," *Journal of Law and Religion* vol. 15, no. 1 (2000–2001): 1–28.
11. Al-'Alwānī aided the establishment of a number of higher education institutions. He was a founding member in the establishment of the Graduate School of Islamic Social Sciences. He also established the first accredited program of Muslim chaplains in the United States.
 12. See, for example, his series entitled Qur'anic Studies: Ṭaha Jābir Al-'Alwānī, *Nahwa Mauqif Qur'ānī min al-Naskh*, 1st ed. Vol. 5, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2007). Ṭaha Jābir Al-'Alwānī, *Al-Jam' Bayna al-Qirā'atayn: Qirā'at al-Wahy wa-Qirā'at al-Kawm*, 2nd ed., vol. 2, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2008). Ṭaha Jābir Al-'Alwānī, *Al-Wiḍāh al-Binā'iyyah li-al-Qur'an al-Karīm*, 2nd ed., vol. 3, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2008).
 13. He was the main guest of a program called "Madārik" in the short-lived Satellite Channel "Anā." For some of his episodes, see <http://www.youtube.com/watch?v=clg9AXrzOEM> (accessed 12/30/2012).
 14. Almost all available research where the name or the thought of al-'Alwānī 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; Jyette 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: 'Ijtihad' In the Thought of Dr. Ṭaha Jābir Al-'Alwānī," *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-'Alwānī, 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 Ṭaha Jābir al-'Alwānī, *Nahwa Manhajīyyah Ma'rifiyyah Qur'āniyyah, Muḥawalāt fi Bayān Qawā'id al-Manhaj al-Tawhīdī li-al-Ma'rifah* (Beirut, Dār al-Hādī, 2004). Ṭaha Jābir Al-'Alwānī, *Issues in Contemporary Islamic Thought* (Virginia: International Institute of Islamic Thought, 2005).
 19. Al-'Alwānī, *Nahwa Manhajīyyah*, 14ff.
 20. Al-'Alwānī, *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-Kawm*, 2nd ed., vol. 2, *Dirāsāt Qur'āniyyah* (Cairo: Shorouk International, 2008). Al-'Alwānī, "Madkhal Ila Fiqh al-Aqalliyyāt," *Islamiyyat al-Ma'rifah* vol. 19 (1999): 55; Al-'Alwānī, *Nahwa Manhajīyyah*, 144ff.
 22. Al-'Alwānī, *Issues in Contemporary Islamic Thought*, 33–34.
 23. Ibid., 38.
 24. Ibid.
 25. Al-'Alwānī, *Nahwa Manhajīyyah*, 10.
 26. Al-'Alwānī, *Madkhal*, 89; Al-'Alwānī, *Nahwa Manhajīyyah*, 155; Al-'Alwānī, *Issues in Contemporary Islamic Thought*, 38.
 27. Ibid.
 28. Ṭaha Jābir al-'Alwānī, *Al-Wiḍāh 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, "Maḥūm al-Wahy fi al-Qur'an," *Al-Masār* vol. 6 (2005): 183.
 30. Al-'Alwānī, *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 Wuzūfā Siyāsīyyan," *alarabiya.net*, January 12, 2007.
 35. Al-'Alwānī, *Issues in Contemporary Islamic Thought*, 42.
 36. Ibid.
 37. For al-'Alwānī's understanding of *maqāsid*, see 'Abd al-Jabbār al-Rifā'i, *Maqāsid al-Sharī'ah* 2nd ed. (Damascus: Dār al-Fikr, 2005). For other scholars see: Al-Maqasid Research Centre, *Maqāsid al-Sharī'ah wa-Qaḍayā al-'Asr* (London: Al-Furqan Islamic Heritage Foundation, 2007); 'Abdel-Majīd Al-Najjār, *Maqāsid 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-ḥiyal al-Shar'īyyah."

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-Aḥbārubumā fi al-Tāmmul 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 fi al-Manhaj wa-al-Manhajīyyah* (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-Marifah*, 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-Aqallīyyāt al-Muslimah*, series of Tanwīr al-Islāmī, no. 52 (Cairo: Nahḍat Misr, 2000). Ṭaha Jābir al-'Alwānī, "Madkhal Ilā Fiqh al-Aqallīyyāt," *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-Aqallīyyāt," *Scientific Review of the European Council for Fatwa and Research*, no. 4–5 (2004): 17–92. The main reference used in this chapter is the IIT English translation of the paper. However, other references were occasionally used when the translation is not accurate or when there are additions that al-'Alwānī introduced to the introductions or the conclusions of the other versions of the article.
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-Qarāḍāwī, *Fi Fiqh al-Aqallīyyāt*, 46–48.
52. Al-'Alwānī, *Towards a Fiqh for Minorities: Some Basic Reflections*, 10–11.
53. Dr. 'Ujayl Jāsīm al-Nashamī criticized al-'Alwānī's claim to revive *al-fiqh al-akbar* in a minority context, arguing that *fiqh al-aqallīyyāt* 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 *hukm* and the principle without defining the space and rule of each. See 'Ugayl Jāsīm al-Nashamī, "Al-Taliqāt 'alā Baḥṭh: Madkhal Ilā Uṣūl wa-Fiqh al-Aqallīyyāt" *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-Aqallīyyāt al-Muslimah Bayna Fiqh al-Indimāj (al-Muwaṭānah) wa-Fiqh

- al-'Uzlah," *Scientific Review of the European Council for Fatwa and Research* vol. 10–11 (2007). Med-ḥat Māhir, "Jadīd Fiqh al-Aqallīyyāt fi Mawḍū' al-Mar'ah," in *Murāja'ah fi Khibāt Mu'asirah Hawl al-Mar'ah, Manẓur Ḥaḍari*, ed. Amānī Ṣāliḥ (Cairo University, 2007), 37–100.
54. Al-'Alwānī, *Towards a Fiqh for Minorities, Some Basic Reflections*, 3–4.
55. *Ibid.*, 13.
56. *Ibid.*, 16.
57. *Ibid.*, 17.
58. *Ibid.*, 20; Al-'Alwānī, *Fi Fiqh al-Aqallīyyāt 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 Ḥadīth 'lā Tabḍā' al-Mushrikīn bi-al-Salām," in <http://www.dr-hakem.com/Portals/Content/?info=TempJMUpTjFZbEJoWjJVbU1RPT0rdQ==.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-'Alwānī, *Towards a Fiqh for Minorities, Some Basic Reflections*, 20–23.
61. *Ibid.*, 26–27.
62. Qur'an, 16:120.
63. Al-'Alwānī, *Towards a Fiqh for Minorities, Some Basic Reflections*, 27–29.
64. Khaled Abou El Fadl, "Legal Debates and Muslim Minorities," 142.
65. Al-'Alwānī, *Towards a Fiqh for Minorities, Some Basic Reflections*, 30.
66. Al-'Alwānī, *Fi Fiqh al-Aqallīyyāt*, 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 *hijri* months through astronomical calculations or through the naked eye. They also have debated whether a Muslim living in the West should only eat *halal* meat, that is, slaughtered according to Islamic Law.
70. Al-'Alwānī, *Madkhal Ilā Fiqh al-Aqallīyyāt*, 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.dailyrepublican.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-Aqalliyāt al-Muslimah fī al-Gharb: Qaḍāyā Fiqhiyyah wa-Humūm Thaqāfiyyah*, ed. A. J. al-Rifā'i, Qaḍāyā Islāmiyyah Mu'āshirah (Beirut: Dār al-Hādī, 2007); Muḥammad al-Shahhāt Al-Jindī, *Qaḍāyā al-Jaliyāt al-Muslimah fī al-Mujtama' at al-Gharbiyyah*, Qaḍāyā Islāmiyyah 16 (Cairo: Supreme Council of Islamic Affairs, Ministry of Endowments, 2008); Wahbah Al-Zuhayli, *Qaḍāyā al-Fiqh wa-al-Fikr al-Mu'āsir* (Damascus: Dār al-Fikr, 2006); 'Imad Eddin Ibn Abi-Hijlah, *Al-Nujūm al-Lami'ah fī Thaqāfat al-Muslim al-Jāmi'ah* (Amman: Dār al-Fatḥ li al-Dirāsāt wa al-Nashr, 2009).
86. The last study represents the conservative position in this trend as Dr. Ṣalāh al-Ṣawī 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-Taḥkīm fī Fiqh al-Aqalliyāt* (Marrakesh, Al-Maḥba'ah wa al-Warawah al-Waṭaniyyah, 2006). See also Ismā'il al-Ḥasanī, "Qirā'ah fī Binyat al-Aqalliyāt," *Islāmiyyat al-Ma'rifah* vol. 30 (2002).
88. 'Abdullah Ibn Bayyah, *Ṣina'at al-Fatwa wa-Fiqh al-Aqalliyāt* (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-Dawābiḥ al-Manhajīyya li-al-Ijtihād fī Fiqh al-Aqalliyāt al-Muslimah*, 2nd ed. (2007); Ṣalāh Sultān, *Al-Muwāṭanah bayna al-Tā'īl al-Shar'i wa-Tā'addud al-Walā'at al-Diniyyah wa-al-Tā'iffiyyah*; and Ṣalāh Sultān, *Fatawa Fiqhiyyah li-al-Muslimin fī al-Gharb*. The last publications did not have dates or publishing houses.
90. Jamāl al-Dīn 'Atīyyah, "Naḥwa fiqh Jadid," *Ummatī fī 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 FIQH 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-Urah al-Muslimah fī al-Mahājir* (Lebanon: Dār al-Kurub al-ilmīyyah, 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, Abou El Fadl referred to the *sunni* jurist Abū Maṣ'ūr al-Tamīmī al-Baghdādī (d. 1072 CE) who counts in *Kitāb uṣl 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 Luṭfi al-'Alīyy, *Anṣ Allah: Al-Taqsīm al-Islāmi 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. Ahmad ibn Yahya ibn Muhammad al-Wansharisi (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 fi Fatāwā Afriqya wa-al-Maghrib*.
 12. In Arabic, it is "muwālāh shirkīyah." Although the question is about residence, al-Wansharisi 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-Ushrah*, 95.
 13. This text appeared first in Abū Al-Abbās Ahmad ibn Yahya ibn Muhammad al-Tilmisānī al-Wansharisi, *Asmā al-Matājir fi Bayān man Ghalaba 'alā Baladīhi al-Nasārā wa-lam Yuhājir wa-mā Yatratṭab 'Alayhi min al-Uqūbat wa-al-Zawājir*, ed. M. Husayn. (Egypt: Maktabat al-Thaqāfah al-Diniyyah, 1986). Then later on it was used verbatim by the judge Abū 'Amir 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-Wansharisi 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-Wansharisi, *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 Ahmad ibn Rushd, *al-Muqaddimāt al-Mumabhidāt*, ed. Sa'īd Ahmad Arāb, vol. 2 (Beirut: Dār al-Gharb al-Islāmi, 1988), 151.
 18. Abū Yahyā Ahmad Al-Wansharisi. *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-Wansharisi's fatwā, see Mu'nis Husayn, "Asmā al-Matājir fi Bayān man Ghalaba 'alā Baladīhi al-Nasārā wa lam Yuhājir," *Revista Del Instituto de Estudios Islamicos en*

- Madrid* vol. 7, no. 1–2 (1975): 129ff; Van Koningsveld and Gerard Wieggers, "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 Wieggers that reviewed four fatwas issued by four Egyptian judges, including a Mālikī one. See Van Koningsveld, and Gerard Wieggers, "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 Ahmad ibn Ḥanbal (ca. 762–839 CE)
 21. The Jafarī school is a prominent Shī'i school of *fiqh*, named after Imam Ja'far al-Sādiq, the sixth Shī'i Imam (702–765 CE).
 22. Abou El Fadl, "Islamic Law and Muslim minorities, the Juristic Discourse," 157; Al-Khamlishi, *Al-Jannah*, 473.
 23. Imam al-Shafī'i argues that "the *Sunnah* of the Prophet made evident that the obligation of *hijrah* for those who have the means is upon those who were subject to *fitnah* in their religion after their conversion to Islam because the Prophet permitted some Muslims to stay in Mecca after their conversion to Islam, such as al-Abbās ibn 'abdel-Muṭṭalib and others if they did not fear the *fitnah* in their religion." See al-Shafī'i, *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* (Grovenhage: Mouton, 1979), 39–89.
 26. The *fatwā* on its permissibility was issued by a certain Tunisian al-Harairi. The Egyptian Muḥammad 'Ilish holds an opposite view. Wasif Shadid and Sjoerd van Koningsveld, "Loyalty to a Non-Muslim Government: An Analysis of Islamic Normative Discussions and of the Views of Some Contemporary Islamicists," in *Political Participation and Identities of Muslims in non-Muslim States*, ed. W.A.R. Shadid and P. S. van Koningsveld (Kampen: Kok Pharos Publishing House, 1996), 91–93.
 27. Rashīd Ridā, *Fatawā*, ed. Ṣalāh 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 Ahmad ibn Muhammad al-Khalili, Judge Muhammad Taqiyy al-Din al-Uthmani, Sheikh Muhammad Mukhtar al-Salami, and Sheikh Muhyi al-Din Fadi. These scholars are all members of the academy.
33. Mannā al-Qattān (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 Mannā's fatwā, see Al-'Amrāni, *Fiqh al-Ushab*, 116–117.
35. Dr. Muhammad Sa'īd Ramaḍān al-Būṭī (b. 1929) is one of well-known scholars in the *sunni* world. He is of Turkish origin but lived in Syria since age four.
36. Sa'īd Ramaḍān al-Būṭī: *Qaḍayā Fiqhiyyah Mu'asirah*, 189, cf. al-'Amrāni, *Fiqh al-Ushab*, 118. Here one should pay attention to the legal maxims he used because this is a selective process. The advocate of *fiqh al-aqalliyāt* used the same legal maxims or other similar ones to prove the opposite. They argued, for example, that *hijrah* and residence is more fruitful and productive to the Muslim individual and to the Muslim *ummah* and to the religion of Islam than not to emigrate.
37. Muḥammad al-Ghazālī al-Saqqā (1971–1996) authored more than 35 books and is considered one of the revivalists of Islamic faith in contemporary times.
38. Muḥammad al-Ghazālī, *Mustaqbal al-Islām Khārij Arḍih*, 2nd ed. (Cairo: Dar al-Shorouk, 2003), 78.
39. 'Abdel-'Azīz ibn Muḥammad ibn al-Ṣiddīq al-Ghamārī (1910–1993 CE) is a well-known Moroccan mufti and scholar of *ḥadīth*.
40. Al-'Amrāni, *Fiqh al-Ushab*, 119.
41. 'Abdel-'Azīz ibn Muḥammad al-Ṣiddīq, *Ḥukm al-Iqāmah fi Bilād al-Kuffār wa Bayān Wiḡūbiha Ba'ḍ al-Aḥwāl* (Tangiers: Maṭbat al-Būghaz, 1985), 62, quoted from Shadid and Koningsveld, "Loyalty to a Non-Muslim Government," 99–100.
42. Al-'Amrāni, *Fiqh al-Ushab*, 120.
43. See, for example, Muhyi al-Dīn Muḥammad Qāsim, *Al-Taqsīm al-Islāmī li-al-Ma' mūrah: Dirāsah fi Nash' t wa-Tiṭwūr al-Jamā' ah al-Dawliyyah fi al-Tānīm al-Dawli al-Ḥadīth* (Cairo: International Institute of Islamic Thought, 1996); 'Alī Yāsir Lūjī, *Arḍ Allah: Al-Taqsīm al-Islāmī li al-Ma' mūrah, Dirāsah Fiqhiyyah Muqāranah* (Beirut: Al-Risālah, 2004); 'Abdullah ibn Yūsuf Al-Juday', *Taqsim al-Ma' mūrah fi al-Fiqh al-Islāmī wa Atharuh fi al-Waqi'* (Dublin: European Council for Fatwa and Research, 2007).
44. See Yūsuf al-Qaraḍāwī, *Fiqh al-Jihad, Dirāsah Muqāranah li-Abkāmih wa-Falsafatih fi Daw' al-Qur'an 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, *Mawsū'at al-Muḡtaribin* (Cairo: Al-Fārūq al-Ḥadīthah li-al-Ṭibā'ah wa-al-Nashr, 2009); 'Abdel-Raḥmān al-Ḥāj, "Taqsim al-Ma' mūrah fi al-Khitāb al-Fiqhī: al-Ḥajah ilā 'Adat al-Ijtihād," *Al-Ghadd*, March 5, 2011.
46. Ṣalāh Sulṭān, *Al-Dawābiḡ al-Manḥajīyyah li-al-Ijtihād fi Fiqh al-Aqalliyāt 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-'adl*,

- the abode of justice; *arḍ al-'aduww*, the land of the enemy; *arḍ al-shirk*, the land of polytheism, and *ahl al-'abd*, 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-Raḥmān ibn 'Awf to 'Umar Ibn al-Khaṭṭāb, "Wait until you come to Medina because it is the abode of *hijrah*, *Sunnah* and safety," and Ibn 'Abbās', "the unbelievers had two places with the Prophet, peace be upon him: those whom he fights them and they fight him, these are the people of war, and those who do not fight him nor he fights them, these are the people of contract." For a review of these reports and their degrees of authenticity, see al-Juday', *Taqsim*, 10–14.
48. Al-Juday', *Taqsim*, 48; Khālid 'Abdel-Qādir, *Fiqh al-Aqalliyāt al-Muslimah*, 114–115.
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-harb* for various reasons such as that they did not want rulers or theological sects using their definitions as a justification to crack down on other Muslims on the claim that their land is *dār kufr*, and therefore *jihad* is to be invoked to restore the Islamicity of the land. Leaving the terms ambiguous helped maintain the unity of Muslims. See Masud, "The Obligation to Migrate," 36.
50. Although the literal meaning of *jihad* is literally to strive for or to exert one's utmost, the *jihad* 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-'Ilāqāt 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'i 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 Qadāyā 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*; Ṣalāh al-Ṣāwī, *Mawṣū'at Fatawa al-Mughtaribin*.
 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 Muṣṭafa, "Al-Aqalliyyāt al-Muslimah: Iṭār 'ām Muqāran," in *Qadāyā Islamiyyah Mu'āṣirah*, 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-Sharī'ah wa-al-Hayah*, "Taṭbiqāt al-Fiqh al-Islāmī fi al-Waqi' al-Mu'āṣir," 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'āṣirah 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 Ḥāshim 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-Rahmān al-Ḥāj, "Introduction," in al-'Aliy, *Arḍ Allah*, 12–3.
83. Al-Juday', *Taqsim*, 153.
84. Ṭaha Jābir Al-'Alwānī, "Madkhal Ila Fiqh al-Aqalliyyāt," *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-Qaradāwī, *Fi Fiqh al-Aqalliyyāt 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-aqalliyyāt* is indicative.
92. Al-Qaradāwī, *Fiqh al-Jihad*, vol. 2, 882–900.
93. *Ibid.*, 886.
94. *Ibid.*, 900.
95. *Ibid.*, 900–901.
96. *Ibid.*, 906.
97. Al-Qaradāwī, *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-'abd*.
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. Sulṭān, *Mawsū'ah*, 21.
107. Fayṣal Mawlawī, *Al-Usul al-Shar'iyyah li-al-'ilāqāt bayna al-Muslimin wa-Ghayr al-Muslimin*, 2nd ed. (Beirut: Dār al-Rashād al-Islāmiyyah, 1990), 78–79.
108. Rashid Ridā, *Al-Manār*, vol. 25, part 1, 1924, 21.
109. Al-Hasanī, *Al-Ikhtilāf*, 78; Al-Buṭī, *Qadāyā Fiqhiyyah Mu'āṣirah*, 254.
110. Al-Hasanī, *Al-Ikhtilāf*, 73.
111. Ṣalāh al-Ṣāwī 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-Ṣāwī'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-Ṣāwī, *Mawsū'at Fatawa al-Mughharibin* (Cairo: Al-Fārūq al-Hadithah li-al-Ṭibā'ah wa-al-Nashr, 2009).
112. Ṣalāh al-Ṣāwī, *Mawsū'ah*, vol. 2, 37–41.
113. Al-Hasanī, *Al-Ikhtilāf*, 80, 82.
114. Qur'an, Al-Imrān 2:28.
115. Al-Hasanī, *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," *Ummati fi al-'Aḍlam: Hawliyyat Qadāyā al-aḍlam al-Islāmi*, 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, *Taqīm*, 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 Iqbal calls *ijtihad* the principle of movement in the structure of Islam. See Muḥammad Iqbal, *The Reconstruction of Islamic Thought in Islam* (New Delhi: Kitab Bhaven, 2000).
3. Mohammd 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 'Atiyyah is a good example here. In his book *Naḥwa fiqh Jadīd li al-Aqalliyyāt*, 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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