ARE SECULARISM AND NEUTRALITY ATTRACTIVE TO RELIGIOUS MINORITIES? ISLAMIC DISCUSSIONS OF WESTERN SECULARISM IN THE "JURISPRUDENCE OF MUSLIM MINORITIES" (*FIQH AL-AQALLIYYAT*)[*] DISCOURSE

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I.   RELIGIOUS MINORITIES IN LIBERAL JUSTIFICATIONS OF SECULARISM

It is a basic aspect of the liberal justification of secularism *qua* state religious neutrality as the most appropriate constitutional framework for a complex, morally diverse society that it gives especially firm guarantees to religious and other minorities.   In its (perhaps intellectually dominant) "justificatory" form, contemporary liberalism tends to hold that this form of public secularism is required by the ultimate political-moral obligation to justify coercive laws in terms which can be presented as acceptable or reasonable to all persons subject to them.   Those terms must not be derivations from the "comprehensive" rationality or moral reasoning of any single religious or secular doctrine that reasonable people might reject.   Rather, they must reflect values and standards of evidence which are accessible in principle to all reasonable members of a diverse society.

This conception of public reason reflects a certain range of social goals, including the goals of advancing justice, legitimacy and social unity.   What is implied by all of these goals is a particular concern with persistent minorities.   If the concern is to limit the democratic authority of religious or other moral majorities, then it stands to reason that the presumptive beneficiaries of such limitation will have special reasons to

endorse and be grateful for liberal, secular institutions.[1] Minorities are not forced to abandon most religious practices, to convert, to culturally assimilate, or to profess something that essentially requires the repudiation of basic theological beliefs. They benefit (at least from the perspective of the outside observer) from a system which does not see society primarily as uniting citizens in a single common purpose but rather as the just management of multiple private purposes, insofar as a public philosophy of shared ends and values would most likely be more antagonistic to their religion than a public philosophy of neutrality.

But what is a minority, and how do we draw the lines between social groups according to their respective "comprehensive doctrines"? A simple assumption, which would seem attractive to theorists of political liberalism, is that all groups (for present purposes we are only concerned with groups defined according to their religious or secular comprehensive conception of the good or truth) view themselves as more or less insular and equally closed vis-à-vis other groups. In a closed society consisting of only Catholics and Protestants, Catholics see Protestant reason as exclusive and thus potentially threatening. In a more complex society, Catholics see Protestant reason as *equally* exclusive as Jewish, Islamic, Mormon, or secular reason. In both of these societies, according to this simple assumption, where Catholics are a minority and their own reason cannot prevail they do not prefer the comprehensive reasoning of any of the other groups over any other, and thus have reasons to endorse some form of public reason.[2]

Of course this simple assumption is too simple—and I am not

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[1] *See, e.g.*, MARTHA C. NUSSBAUM, LIBERTY OF CONSCIENCE: IN DEFENSE OF AMERICA'S TRADITION OF RELIGIOUS EQUALITY 2 (2008) ("[I]f government announces a religious orthodoxy . . . . [e]ven if such an orthodoxy is not coercively imposed . . . . [i]t means, in effect, that that minorities have religious liberty at the sufferance of the majority and must acknowledge that their views are subordinate, in the public sphere, to majority views.") Further, "[r]eligious minorities know what the denial of that separation [of church and state] usually leads to: the imposition of the ways of the majority on all—or, at least, the public statement that the majority is orthodox, who 'we' are, and that the minority are outsiders." *Id.* at 15. Further statements to this effect can be found *id.* at 20, 24-25, 37, 116-19, 153.

[2] Clark Wolf offers this interpretation of Rawls's statement that the liberty of intolerant ("fundamentalist") religious minorities should be restricted "only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger," JOHN RAWLS, A THEORY OF JUSTICE 193 (rev. ed. 1999) (1971):

> Surely there are good reasons to think that political regimes that *deny* the fundamental liberal rights will be much harder on rational and conscientious dissenters and that illiberal minorities may still prefer to be minorities in a liberal state than in an authoritarian state built around values that are neither liberal nor their own. Thus, theocratic Christian fundamentalists may prefer living under liberal institutions rather living in a theocratic Muslim state. This provides at least some justification for the claim that liberal values are not "on all fours" with those of illiberal regimes.

Clark Wolf, *Fundamental Rights*, *Reasonable Pluralism, and the Moral Commitments of Liberalism*, *in* THE IDEA OF A POLITICAL LIBERALISM: ESSAYS ON RAWLS 102, 122 (Victoria Davion & Clark Wolf eds., 2000).

attributing it to any particular theorist of political liberalism or secularism.[3] (The obvious problems with basing justificatory arguments on conjectures or assumptions about how real-world actors would calculate their interests or preferences are, after all, why we need the veil of ignorance.) But it does focus our attention on just why groups that are in the minority when counted one way (as an insular group exclusive of all others) are not necessarily in a persistent minority status for the purposes of endorsing secular public reason. Groups who are anxious about one another's power may be all too eager to form coalitions against common antagonists.[4] What may be minority groups in theological matters may easily see themselves as belonging to a broader and more important majority of the faithful in political matters. And what may be crucial disputes in theology or hermeneutics may have no bearing on a broader political consensus. Put simply, there is no obvious reason why a religious minority should automatically sign on to Rawls's overlapping consensus rather than an overlapping consensus of the religiously devout. This latter possibility is all the more plausible given the psychology of political competition between groups. Who is my political friend and who my enemy is not always a function of the objective difference between us but of the relative difference given the alternatives. In a diverse, complex society where secularism is strong not only as a political doctrine of public reason but also as a comprehensive doctrine of how to live in the world, there is no necessary reason to assume that religious groups will see the differences between themselves as greater than, or even equally great as, the differences between their respective "comprehensive" reasoning and neutral, secular, "public" reasoning. This is not to say that political liberals (or other secularists) do not have strong arguments to present to religious minorities, but it is to say that those arguments are hardly the final word. Between liberal neutrality and an opposing religion's oppressive theocracy there are many alternative political possibilities.

In this essay, I want to focus on this question as it pertains to Muslim minorities of existing secular, liberal polities. Are secularism and religious neutrality attractive to Western Muslims for the reasons of fairness and equality liberals would claim? Do Western Muslims see and appreciate a distinction between a public reason that is non-Islamic and one that is anti-Islamic? Do they perceive secularism in the form of religious neutrality preferable in principle to a religious public language

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[3] Even the above interpretation of Wolf stresses that theocratic Christian fundamentalists *may* prefer living under liberal institutions.

[4] Indeed, we find evidence of this in no more central of a text in the canon of liberal tolerance than Locke's A LETTER CONCERNING TOLERATION (1689); his arguments for toleration and an exclusively secular ambit for the state do not prevent him from excluding atheists and Catholics from his list of tolerated subjects.

of justification which would allow for traditionally Christian societies to promote and advantage Christianity? Does secularism at all add to the legitimacy of the implicit social contract between believing Muslims and their wider non-Muslim state and society?[5]

II. *FIQH AL-AQALLIYYAT*: THE JURISPRUDENCE OF MUSLIM MINORITIES

In addressing these questions, I am interested in the views expressed within the framework of traditional Islamic legal and ethico-political doctrines.[6] Of course, the identification of the traditional, the "orthodox" and even the scholarly is never a matter of locating fixed and uncontroversial sources of authority. This is particularly the case for Muslim communities in the modern period after colonial and other ruptures with traditional institutions.[7] It is naturally even more so in the countries of the West where Muslim communities are still in the process of negotiating the balance of authority between local Muslim intellectuals and scholars from the Muslim majority heartland, all while being frequently called upon to publicly proclaim their endorsement of Western liberal, democratic institutions.

Bearing all of this in mind, I do not think it is impossible to track the discourses of certain Muslim scholars and intellectuals who display a particular concern with the integrity and continuity of Islam as a legal and theological tradition, or what Rawlsians might call a "comprehensive doctrine." In particular, I wish to focus on the discourse within contemporary Islamic juridical (*fiqhi*) and ethical thought on the "jurisprudence of Muslim minorities" (*fiqh al-aqalliyyat al-muslima*).[8] Over the past decade or so an increasing number of

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[5] On the idea of such a social contract, see Andrew F. March, *Islamic Foundations for a Social Contract in Non-Muslim Liberal Democracies*, 101 AM. POL. SCI. REV. 235 (2007).

[6] For a good introduction to this dilemma as Muslims confront it, see Khaled Abou El Fadl, *Muslim Minorities and Self-Restraint in Liberal Democracies*, 29 LOY. L.A. L. REV. 1525 (1996). Abou El Fadl presents some informal survey data on whether Muslims would feel more alienated by explicitly Christian justifications of legislation or adjudication or neutral-secular justifications. He also presents his own arguments as to why Muslims should prefer the latter to a coalition with other monotheists. His argument proceeds, however, on the basis of public reason arguments of fairness, reciprocity, and Muslim self-interest, so is itself not really an example of "Islamic reason" providing grounds for or against secularism and public reason. *Id.*

[7] *See* Wael B. Hallaq, *What is Shari'a?*, 12 Y.B. OF ISLAMIC & MIDDLE E. L. 151 (2005-06).

[8] *See* KHALID 'ABD AL-QADIR, FIQH AL-AQALLIYYAT AL-MUSLIMA (1998); YUSUF AL-QARADAWI, FI FIQH AL-AQALLIYYAT AL-MUSLIMA (2001); 'ABD ALLAH IBN BAYYA, SINA'AT AL-FATWA WA-FIQH AL-AQALLIYYAT (2007); SULAYMAN MUHAMMAD TUBULYAK, AL-AHKAM AL-SIYASIYYA LI'L-AQALLIYYAT AL-MUSLIMA FI'L-FIQH AL-ISLAMI (1997) (author's name has been transliterated from the Bosnian of "Sulejman Topoljak"); ISMA'IL AL-HASANI, AL-IKHTILAF WA'L-TAFKIR FI FIQH AL-AQALLIYYAT (2006); SALAH 'ABD AL-RAZZAQ, AL-AQALLIYYAT AL-MUSLIMA FI'L-GHARB (2007); SALIH IBN MUHAMMAD AL-SHITHRI, HUKM AL-LUJU' WA'L-IQAMA FI BILAD AL-KUFFAR (n.d.); TAHA JABIR AL-ALWANI, TOWARDS A FIQH FOR MINORITIES:

Muslim scholars both in the West and in Muslim majority countries have attempted to interrogate the Islamic ethical-juridical tradition in light of the myriad novel challenges faced by Muslims living as minorities, with particular concern, I believe, for the challenges faced by Muslims living in Western liberal democracies. It is largely these texts from which I will draw, although I will also refer to other texts addressing the Muslim minority condition not self-consciously part of the more recent *fiqh al-aqalliyyat* discourse.[9]

As would be expected with a discourse emanating from a religious legal tradition, *fiqh al-aqalliyyat* works deal with a wide range of matters related to ritual and personal morality. In some cases, providing solutions to the day-to-day problems of living within a morally alien society, rather than theorizing and theologizing political attitudes towards non-Islamic systems of rule, appears to be the main task of "Islamic minority jurisprudence." Here one finds the whole spectrum of attitudes, from "Salafi" calls to remain as segregated from and as uncontaminated as possible by the wider infidel society[10] to the preference on the part of prominent Muslim Brotherhood-affiliated scholars such as Yusuf al-Qaradawi and others[11] for making the ethical

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SOME BASIC REFLECTIONS (2003); SHAYKH IBN BAZ & SHAYKH UTHAYMEEN, MUSLIM MINORITIES: FATAWA REGARDING MUSLIMS LIVING AS MINORITIES (1998); 'Abd al-Mun'im Mustafa Halima (Abu Basir al-Tartusi), Man dakhala diyar ghayr al-muslimin bi-'ahd wa aman ma lahu wa ma 'alayhi, http://www.abubaseer.bizland.com/. Also of note are the *fatwas* of the European Council for Fatwa and Research and the Islam Online website, http://www.islamonline.net, as well as RISALAT AL-MUSLIMIN FI BILAD AL-GHARB (Majdi 'Aqil Abu Shamala ed., 1999), which includes important essays by Qaradawi and Lebanese scholar Faysal Mawlawi, amongst numerous others. For a Shi'ite perspective, see MUHAMMAD HUSAYN FADL ALLAH, AL-HIJRA WA'L-IGHTIRAB: TA'SIS FIQHI LI-MUSHKILAT AL-LUJU' WA'L-HIJRA (1999), and 'ALI AL-HUSAYNI AL-SISTANI, AL-FIQH LI'L-MUGHTARIBIN (2002).

   [9] I believe that the writings of certain prominent Muslim intellectuals writing at least partially in European languages, such as Tariq Ramadan and Rashid al-Ghannushi, can be treated in the same context as *fiqh al-aqalliyyat* texts as long as the proper distinctions are drawn. This is because these writers have a basically positive attitude towards Islamic law as a framework for discussing ethical questions, and many of their main concepts (such as public interest (*maslaha*) or the "objectives of divine law" (*maqasid al-shari'a*)) are either drawn from or are shared with *fiqh al-aqalliyyat*. The less technical writings of Ramadan or Ghannushi are doubtlessly part of a broader conversation within Islamic circles about how traditional of a Muslim one may be while being integrated into a non-Muslim, secular, liberal society. Where these writers disavow the term "*fiqh al-aqalliyyat*," what they are disavowing, I believe, are (a) a piecemeal approach to life in the West, (b) the implication that life in the West is essentially an aberration, the exception to the rule, and (c) the "minority" mentality. *See* TARIQ RAMADAN, WESTERN MUSLIMS AND THE FUTURE OF ISLAM 6 (2004). The writings I have in mind as part of a wider conversation overlapping with *fiqh al-aqalliyyat* are TARIQ RAMADAN, RADICAL REFORM: ISLAMIC ETHICS AND LIBERATION (2009); RAMADAN, WESTERN MUSLIMS, *supra*; TARIQ RAMADAN, TO BE A EUROPEAN MUSLIM: A STUDY OF ISLAMIC SOURCES IN THE EUROPEAN CONTEXT (1999); and Rashid al-Ghannushi, *al-Islam fi'l-gharb wa 'alaqatuhu bi'l-anzima al-gharbiyya, in* RISALAT AL-MUSLIMIN, *supra* note 8, at 90.

   [10] *See, e.g.*, SHITHRI, *supra* note 8; Halima, *supra* note 8.

   [11] *See, e.g.*, 'ABD AL-QADIR, *supra* note 8; AL-ALWANI, *supra* note 8; IBN BAYYA, *supra* note 8; QARADAWI, *supra* note 8.

lives of Muslims easier rather than insisting on obligations that are exceedingly difficult to fulfill while living lives in non-Islamic environments.[12]

However, these texts also provide the occasion for more abstract reflection on the general nature of moral relations with non-Muslims[13] and on the proper attitudes towards non-Muslim forms of rule. They are thus a good source for tracking the development of views and doctrines on a variety of questions of interest to non-Muslims (such as attitudes towards secularism) from within the kinds of internal Islamic discourses where non-Islamic institutions, practices, and values are likely to be the subject of long-standing skepticism. These are the kinds of texts where both formal and substantive fidelity to traditional Islamic law is an important value, but also texts whose authors are actively seeking to remain engaged with, and relevant for, lived experience. *Fiqh al-aqalliyyat* tends to be a discourse where departures from traditional Islamic commitments are not seen as desirable, and certainly not goals in and of themselves,[14] but where creative rethinking often occurs in subtle and pragmatic guises.[15] It is thus an important object of study for those interested in the ideal moral encounter[16] between a public religion like Islam and modern/post-modern secularism.

The downside of focusing on this discourse is that it runs the risk of privileging and overemphasizing the contributions of scholars in the Arab world at the expense of the quotidian practices and attitudes of

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[12] This principle of facilitation (*taysir*) in matters of personal morality and ritual observance is one of the hallmarks of the *fiqh al-aqalliyyat* literature. The "*taysir* motif" is one of the magnets of criticism of the entire *fiqh al-aqalliyyat* on the part of more conservative scholars for its tendency to make the forbidden permissible, as well as on the part of more liberal scholars (such as Tariq Ramadan) for its tendency to make ethical life amongst non-Muslims appear exceptional and distasteful. To give two well-known controversial examples, Qaradawi has validated the use of interest-bearing mortgages and service in non-Muslim armies even when they are attacking Muslims on the grounds that the minority condition permits exceptions to normal rules on grounds of necessity (*darura*) or even mere expediency or public interest (*maslaha*). *See* Basheer M. Nafi, *Fatwa and War: On the Allegiance of the American Muslim Soldiers in the Aftermath of September 11*, 11 ISLAMIC L. & SOC'Y 78 (2004).

[13] *See* Andrew F. March, *Sources of Moral Obligation to Non-Muslims in the "Jurisprudence of Muslim Minorities" (*Fiqh al-aqalliyyat*) Discourse*, 16 ISLAMIC L. & SOC'Y 34 (2009).

[14] This discourse contrasts with some reformist discourses, which begin with the stated objective of ushering in new methodologies, values, and ways of doing things as a prerequisite for a comprehensive revamping of Islam for modern conditions.

[15] See March, *supra* note 13. Khaled Abou El Fadl suggests that this is very much in keeping with the traditional practice of Islamic law, which:

> creatively responds to the socio-political dynamics of society placed within a specific historical context. . . . [this] creative process is expressed primarily through the subtleties of language, and hence, unless one focuses on the details of the juridical linguistic practice, one would not be able to notice, much less appraise, the dynamics of the legal discourse.

KHALED ABOU EL FADL, REBELLION AND VIOLENCE IN ISLAMIC LAW 322-32 (2001).

[16] For my notion of an "ideal moral encounter," see ANDREW F. MARCH, ISLAM AND LIBERAL CITIZENSHIP: THE SEARCH FOR AN OVERLAPPING CONSENSUS 5-10 (2009).

Muslims actually living under Western secularism.[17]   Some might say that it runs the risk of "Orientalizing" Muslims by suggesting that only those discourses in a traditional Islamic garb and in Arabic are sufficiently authentic to warrant consideration as "Islamic" attitudes.[18] The benefit to studying this discourse, I believe, is that because these texts emerge from within the mainstream of traditionalist Islamic legal scholarship (itself a spectrum with fuzzy borders), one avoids treating the Islamic ethical tradition in a hasty or functionalist matter, either by downplaying[19] or by exaggerating the gravity of the moral encounter between Islamic political ethics and liberal secularism. This encounter is a complex one, even when specific political antagonisms are bracketed. To claim that all conflicts over public values are merely the shadows on the wall cast by a more fundamental conflict generated by capitalism and Western imperialism is facile and has the effect of depriving Islam of any autonomy as a source of value and motivation. To claim, on the other hand, that all conflicts over public values are the inevitable outcome of allowing "Islam" into a new political space is in turn both apolitical and also unscholarly in its understanding of how religious traditions operate in reality. Focusing on *specific* religious debates and conversations (of which *fiqh al-aqalliyyat* and its adjacent discourses are *one* set which we might study) is a way of taking the ideal moral encounter between Islam and liberalism seriously. Far from "Orientalizing" Muslims, one is merely being precise and disciplined about how one speaks about Islam and Muslims. One doesn't speak about *the* Islamic attitude towards secularism, but rather the Islamic attitude towards secularism *as manifested in particular discourses that are important to follow*.

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[17] Although I believe that caution applies here. Many Islamic religious authorities living in Europe and North America are very much part of the *fiqh al-aqalliyyat* project, and the boundaries between European Islam and Middle Eastern Islam are often hard to identify.

[18] For example, we might focus instead on survey results or anthropological accounts of the attitudes of Western Muslim communities, with "Muslim" here taken to mean nothing more than "culturally Muslim," *i.e.*, bearing a Muslim-sounding name. Or we might look at the views of outright reformers writing in the West, such as Abdullahi An-Na'im. *See* ABDULLAHI AHMED AN-NA'IM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A (2008).

[19] My claim is that the tendency to rush into a search for outright Muslim "moderates" or "reformers" runs the risk of downplaying the gravity of the moral encounter if it does not consider how widely held, central, or popular such views are. It risks suggesting that all we need to do is find certain voices claiming that Islam and X (modernity, secularism, human rights) are compatible in order to satisfy ourselves that only radicals or fundamentalists have deep moral objections to modern liberal institutions.

III.   SECULARISM AS AN ADDED OBJECTION TO CITIZENSHIP IN A NON-
MUSLIM STATE

It is, of course, well-known that amongst world religions, Islam has perhaps the most unequivocal claim to a public, political vision. This is expressed most simply and least controversially in the close identification between political legitimacy and the application of Islamic law. In the post-colonial setting, with the reassertion on the part of Islamists of the need for an Islamic foundation for the state, the rejection of secularism is explicit. Consider the reflections of Yusuf al-Qaradawi:

> For Muslim societies, as Islam is a comprehensive system of worship (*'ibada*) and legislation (*shari'a*), the acceptance of secularism means abandonment of *shari'a*, a denial of divine guidance and a rejection of God's injunctions. It is indeed a false claim that *shari'a* is not suitable to the requirements of the present age. The acceptance of a legislation formulated by humans means a preference for humans' limited knowledge and experiences over the divine guidance: "Say! Do you know better than God?" (Q. 2:140).

> For this reason, the call for secularism among Muslims is atheism and a rejection of Islam. Its acceptance as a basis for rule in place of *shari'a* is clear apostasy. The silence of the masses in the Muslim world about this deviation has been a major transgression and a clear-cut instance of disobedience which have produced a sense of guilt, remorse, and inward resentment, all of which have generated discontent, insecurity, and hatred among committed Muslims because such deviation lacks legality. . . . We Muslims believe that God is the sole Creator and Sustainer of the Worlds. One Who ". . . takes account of every single thing" (Q. 72:28); that He is omnipotent and omniscient; that His mercy and bounties encompasses everyone and suffice for all. In that capacity, God revealed His divine guidance to humanity, made certain things permissible and others prohibited, commanded people observe His injunctions and to judge according to them. If they do not do so, then they commit disbelief, aggression, and transgression.[20]

However, the context for the present paper is that of Muslims living as minorities in existing secular liberal democracies. While one possible Muslim response to life as a minority is the demand that internal Muslim affairs (especially family law and education) be managed along *shari'a* lines, or that the wider society accommodate legally the sensibilities and sensitivities of Muslims by limiting the

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[20] YUSUF AL-QARADAWI, AL-HULUL AL-MUSTAWRADA WA-KAYFA JANAT 'ALA UMMATINA 113-14 (1971).

freedom to offend through speech and art, the assumption that Muslims are living in a society where Islamic law cannot be generally applied requires Muslim legal and political theorists to think about political life outside of the normal assumptions, categories, and debates of Islamic political and legal traditions.

This, of course, does not mean that the terms of life in those conditions are unproblematic or beyond the concern of religious legal reflection. For Islamic legal doctrine, there are two broad problems with citizenship in non-Muslim liberal states: one, in those states being *non-Muslim* in character, both socially and politically; two, in those states being *liberal and secular* in character. As to the distinct ethical problems raised by the former, one can readily find within classical and modern legal discourses prohibitions on submitting to the authority of non-Muslim states, serving in their armies, contributing to their strength or welfare, participating in their political systems and, indeed, even residing within them. These prohibitions are not mere medieval legalisms, but rather reflections of a range of more general Islamic beliefs, including those that Muslims must always strive to live under Islamic law and political authority, that Muslims have obligations of loyalty (perhaps exclusively) to Muslims and Muslim polities, and that non-Muslims are not eligible for relationships of social and political solidarity.[21]

Thus, membership and belonging in *any* non-Muslim polity is often treated as problematic by Muslim scholars. The question, then, is whether the particular form of liberal secularism found within contemporary European and North American states (*mutatis mutandis*) figures as a mitigating or an aggravating feature of the minority condition. The answer, of course, is "both."[22]

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[21] On these topics in classical jurisprudence, 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*, 1 ISLAMIC L. & SOC'Y 141 (1994). On the question of participation in a non-Muslim political system, see MARCH, *supra* note 16, at 242-58; Wasif Shadid & Sjoerd van Koningsveld, *Religious Authorities of Muslims in the West: Their Views on Political Participation*, *in* INTERCULTURAL RELATIONS AND RELIGIOUS AUTHORITIES: MUSLIMS IN THE EUROPEAN UNION 149 (W.A.R. Shadid & P.S. van Koningsveld eds., 2002); and Dilwar Hussain, *Muslim Political Participation in Britain and the 'Europeanisation' of Fiqh*, 44 DIE WELT DES ISLAMS 376 (2004).

[22] For the sake of comprehensiveness, it must also be noted that the answer is sometimes "neither." For those scholars and thinkers who side with the tradition in Islamic thought that Muslims may not live in infidel lands, or that if they do live therein they may not integrate into them, neither secularism-as-neutrality nor shared monotheism and Abrahamic fraternity with Jews and Christians point to any possibility for a mitigation of the eternal non-Muslim hostility towards Islam. As an illustration of this view, consider the position of Sayyid Qutb advanced to explain why Muslims must not live in infidel lands if they can avoid it:

> A Muslim is required to show tolerance in dealing with the people of earlier revelations, but he is forbidden to have a relationship of alliance or patronage with them. His path to establish his religion and implement his unique system cannot join with theirs. No matter how kind he is to them, they will never be happy to implement

Some contemporary scholars do not regard the modern freedoms guaranteed by liberal regimes, and especially the aspiration to neutrality of some liberal states, as a mitigating factor on non-Muslim hostility to Islam. In fact, it is coherently argued that liberal states may in fact be worse for Muslims than avowedly Christian or Jewish states because they relegate religion to the private sphere, banish God from public morality, and give protection to immoral acts, or because of the special regard for "the People of the Book" accorded Christians and Jews in the Qur'an. These views point towards an interest in an overlapping consensus with other conservative, religious doctrines in modern secular societies on either general inclinations (more religion in public) or specific points of doctrine and policy (resistance to legal protection for homosexuality, opposition to abortion, securing funding for religious schools, etc.), given the belief that secularism poses a greater threat to Islam than other faiths.

The obvious flashpoints for evoking (perhaps unavoidable) Islamic scholarly reprobation for the consequences of Western secularism are homosexuality and blasphemy or other offensive speech. Here Qaradawi addresses an online *fatwa* request (*istifta'*) on the subject of whether "it permissible for Muslims to align themselves with other faith groups to fight against the homosexual movements":

> Together we can stand to confront the enemies of religious faith and those who call for atheism, promiscuity, materialism, abortion, homosexuality, unisex marriages, bloodshed, misappropriation of others' property, and enhancing materialistic trends in man at the expense of his spiritual elevation. . . . All of us need to stand together as one forum against those who want to ruin humankind by their calls and action and to reduce it from humanity to animalistic levels. Allah Almighty says: (Hast thou seen him who chooseth for his god his own lust? Wouldst thou then be guardian over him? Or deemest thou that most of them hear or understand? They are but as the cattle, nay, but they are farther astray!) (Al-Furqan 25: 43-33) . . . [W]e witnessed Al-Azhar and the World Muslim League come together with the Vatican to stand as one front during the conference on Population, held in Cairo, in 1994 and in the Women's Conference in Beijing 1995 to oppose the non-religious sentiments, and the attempt of breaking the family ties, destabilizing the natural instincts that Allah Almighty has created to guide human beings to

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> his faith and establish his system. Nor will it stop them from entering other alliances to scheme against and fight the Muslims. It is too naïve to think that we and they can ever join forces to support religion in general against unbelievers and atheists. For whenever the fight is against Muslims, they join forces with the unbelievers and atheists.

4 SAYYID QUTB, IN THE SHADE OF THE QUR'AN 144 (2001). Khalid 'Abd al-Qadir also insists that the tolerance and decent treatment required towards Jews and Christians does not imply the possibility of a "single front to resist atheism." 'ABD AL-QADIR, *supra* note 8, at 646.

the straight path.[23]

Similar questions are often treated with more abstract reflections on secularism as the root cause of the West's problems:

> If I were asked for a solution [to the problem of secular tolerance for homosexuality]—a solution that deals with this root problem and can at least create a mode helpful to cure all others—, I would believe in my heart as a convinced Muslim that the answer must stem from the totality of metaphysical, legal, mystical, intellectual, and ethical parameters and ethos of Islam. I am sure a convinced Christian or Jew would definitely feel the same about their faith.

> . . . I genuinely believe that the moral predicament that our world undergoes is but one manifestation of our acute spiritual crisis. This spiritual crisis, I would argue, is related to two main causes: either the complete disbelief or disregard of the spiritual and metaphysical order of our being, or the alternation of it with another one of lower reality.

> Across all three monotheistic faiths—theological, legal, and scriptural particularities set aside, of course—, the key theme is the belief in the centrality of the divine and the consequential surveying of the relations between humankind, God, and the universe.

> As a consequence of dismissing God and metaphysical reality, it is but natural for all non-religious worldviews to place humankind in the center of the universe, with all its dispositions, desires, needs, and limitations. That step in itself necessitated either reduction of our reality, and hence morality, to an empirical one—hence the materialist and pragmatic positions coming from atheist or agnostic beliefs; or secular mysticism and spirituality, like all new-age spirituality . . . .

> . . . It is also here where I believe the collective efforts of all three traditional monotheistic faiths should come to help humanity's condition in general. All three religions have far more valid answers and guidance that are wisely designed by God with His incomparable knowledge.

> Absolutely yes; in the face of secularism, mundane morality, consumerism, crime, and hedonism, the three monotheistic faiths have great influence in relieving our moral dilemma.[24]

Similarly, liberal secularism is often not viewed as making it "possible for two million Muslims to live in Britain and for Islam to thrive[, for] if British society was a religious society as Christianity, in

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[23] IslamOnline.net, Cooperating with Non-Muslims in Fighting Evil—Ask the Scholar, http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=8514 (last visited June 20, 2009).

[24] Reading Islam, Ask About Islam, Should World Religions Unite Against Immorality?, http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-AAbout_Islam/Ask AboutIslamE/AskAboutIslamE&cid=1173695384292 (last visited June 20, 2009).

particular Protestantism, would be given preferential treatment and special privileges."[25] Rather,

> [i]n constantly trumpeting the idea that all religions are equal, while at the same time showing religion to be irrelevant, the effect is that all religions are made to seem equally unimportant.

> The secularists have done their job well. The voice of faith has been made to seem a private matter, a matter of conscience, a matter for the individual alone. In this sense, it has become a generally accepted view in the UK that anyone can believe whatever he wants, as long as he doesn't harm anyone else. It wouldn't really matter if you worshipped a monkey, because religious beliefs, according to this agenda, are all irrelevant.

> This has happened very subtly over many years in the UK, but it has been achieved because the secularists have worked very hard at achieving it. . . .

> There is much more at stake here than supporting this or that religion. I believe that what is at stake is the very role of faith itself. . . .

> It is true that Islam and Muslims are under the spotlight at the moment in the UK. But this is more symptomatic of a general trend.

> At the moment it is Islam. But when the media train moves on, it will be another group. As I have said, the secularists have done their job well and all but silenced the Christian voice in Britain. They are now at work on Islam, but there will always be a faith group being targeted. Faith is under attack, not any particular religion.[26]

At times, the argument is not only that social mores and cultural practices will be more permissive than in Muslim societies, but that the problem lies precisely in the liberal legal protections for those *Muslims* who would revise their conception of the good:

> But even more dangerous than [exposure to sin] is that the children of many of these Muslims living amongst the unbelievers have deviated and the parents look at this and find that they are unable to do anything about it because the system of these unbelieving states permits sons and daughters to do as they please. Indeed it is the norm that the third generation of Muslims in these countries apostatize from Islam."[27]

Here the implication is that given the choice between different terms of life within a non-Muslim polity, Muslim scholars might prefer

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[25] This is the positive interpretation of liberal secularism suggested by the lay Muslim requesting a fatwa (*mustafti*). Islamonline.net, Live Dialogue, Is Britain a Secular Society?, http://www.islamonline.net/livedialogue/english/Browse.asp?hGuestID=ZYwaK5 (last visited Jan. 16, 2009).

[26] *Id.* The *mufti* in this passage is a former Catholic priest turned Muslim scholar, Idris Tawfiq.

[27] AL-SHITHRI, *supra* note 8, at 5.

some forms of "corporatism" (à la the former Dutch pillar system or the Ottoman millet system), even if this means an advantage for the local religious majority, over a system of universal citizenship where neither a particular religion nor religion in general is advantaged.

In the preceding we have a simple case of Islamic echoes of the familiar conflict between secularism-as-neutrality and the goals which conservative religious citizens might wish to pursue even in a diverse society. That such views exist (and myriad more examples could be offered) should not be surprising, and the above presentation is only meant to reiterate the point that, in the conditions of religious and moral pluralism, it is far from obvious that even religious minorities will prefer the protections of liberal secularism over some form of coalition with other believers.

IV.   SECULARISM AS A REDEEMING FEATURE OF LIBERAL CITIZENSHIP

In what follows, I will present some alternative, more positive, attitudes towards Western secularism from within the juridical discourse on Muslim minorities. What becomes clear from these examples is that, for those scholars earnestly seeking to find a way for the life of Muslim minorities to be regarded as Islamically just,[28] liberal secularism (secularism as religious neutrality) solves a certain set of problems posed by the Islamic sources.

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[28] As noted above, this reflects the pragmatic nature of *fiqh al-aqalliyyat*, perhaps consistent more broadly with the Muslim Brotherhood approach to politics. By contrast, the purpose of certain "Salafi" pronouncements is to insist on the fundamental illegitimacy of non-Muslim rule and its irresolvable incompatibility with Islamic commitments. For example, in a 6,000 word *fatwa* on the US pledge of allegiance, the Assembly of Muslim Jurists of America (AMJA) makes clear that their objections to the pledge are not to any formal iconography or to wording but to the fundamental political commitments at stake:

> Islamic objections to the Pledge of Allegiance pertain to the following concepts:
>
> Absolutely and entirely renouncing and abjuring any allegiance and fidelity to any foreign prince, potentate, state, or sovereignty; Support and defense of the Constitution and laws of the United States of America against all enemies, foreign and domestic; Bearing arms on behalf of the United States when required by the law; Performing noncombatant service in the Armed Forces of the United States when required by the law; Performing work of national importance under civilian direction when required by the law; Declaring on oath, all of the above, taking this obligation freely, without any mental reservation or purpose of evasion; so help me God.
>
> These objections are raised because there is a basic conflict between a Muslim pledging allegiance to Allah and Allah's Messenger Muhammad ibn Abdullah—peace and blessings of Allah be upon him—as the final prophet of Allah to mankind, and between pledging allegiance to any entity, secular or religious, that does not recognize the supreme authority of Allah and Allah's Messenger—peace and blessings of Allah be upon him—in all affairs that guide and govern man's existence: religious, political, economic and social.

Assembly of Muslim Jurists of Am., Islamic Considerations on the USA Pledge of Allegiance, http://www.amjaonline.com/en_d_details.php?id=140 (last visited June 20, 2009).

A. *"A Secularism for Them, but Not for Us"*

The first recurring theme on the question of secularism is that, while secularism is a rejection of God's guidance *for Muslims*, for Christians (and to a lesser extent, for Jews) it is a natural and logical consequence of both their religion and their experience with clerical rule.

In the above-quoted passage by Qaradawi on why secularism is tantamount to apostasy for Muslims, he elaborates on the distinction.

> Secularism may be accepted in a Christian society but it can never enjoy a general acceptance in an Islamic society. Christianity is devoid of a *shari'a* or a comprehensive system of life to which its adherents should be committed. The New Testament itself divides life into two parts, one for God, or religion, the other for Caesar, or the state: "Render unto Caesar things which belong to Caesar, and render unto God things which belong to God" (Matthew 22:21). As such, a Christian could accept secularism without any qualms of conscience. Furthermore, Westerners, especially Christians, have good reasons to prefer a secular regime to a religious one. Their experience with "religious regimes"—as they knew them—meant the rule of the clergy, the despotic authority of the Church, and the resulting decrees of excommunication and the deeds of forgiveness, i.e. letters of indulgence.[29]

This is an important point to address for some Muslim scholars. In traditional Islamic public law, Jews and Christians, as "People of the Book," were given special rights to live legally under Islamic law while adhering to their ancestral religions. Alongside the arguments that liberal states may in fact be worse for Muslims than avowedly Christian or Jewish states because they relegate religion to the private sphere, banish God from public morality, and give protection to immoral acts, it is sometimes suggested that the reason Muslims may enter into relationships of civil solidarity with non-Muslims in the West is because of the special regard for the "People of the Book" accorded Christians and Jews in the Qur'an, and because the shared foundation of monotheism and Abrahamic fraternity. This, thus, raises the question of whether modern secularism means that Western "post-Christians," having rejected their Book, are no longer People of the Book. This question goes right to the heart of the nature of modern citizenship and has at least two dimensions. First, what kind of moral consensus and commonality is required for civic solidarity? Of course, for modern Muslim scholars and publicists writing on Muslim majority societies,

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[29] AL-QARADAWI, *supra* note 20, at 113.

the level of consensus sought is absolute.[30]   As seen above, it is perfectly logical for Muslim scholars to conjecture that they may only establish deep bonds of solidarity with non-Muslims who share a sufficient amount of religious commonality, just as liberals conjecture that without a shared conception of justice social unity will be impossible. Second, if it is the case according to Islamic doctrine that Jews and Christians have the obligation to uphold their own covenants and that Muslims must then respect them so long as they are doing so,[31]

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[30] By way of one example, consider Syed Abu'l-Ala al-Mawdudi's famous defense of the traditional Islamic punishment of death for the apostate:

> An organized society which has chosen the form of a state can hardly provide a place within its sphere of activity for people who differ from it in fundamental matters. Differences of lesser significance can more or less be tolerated. But it is very difficult to give people a place in society and make them a part of the state if they completely oppose the foundations on which the order of society and the state are established. In this matter Islam has practiced a degree of tolerance which no other order in the history of the world has ever practiced . . . . But the sole treatment for the person whose hard heart, once transformed, has again hardened [i.e., the apostate] and who demonstrates no capacity whatever to assimilate into society's order is to cast him out. In any case, the value of the individual, however great it be, cannot be great enough to allow the whole order of society to be corrupted because of it . . . . The true position of an apostate is that he by his apostasy provides proof that he not only rejects the foundation for the order of society and state but offers no hope that he will ever accept it in the future. When such a person finds this foundation on which society and the state are constructed to be unacceptable to himself, it will be appropriate for him to move outside its borders. But when he fails to do this, only two ways of dealing with him are possible. Either he should be stripped of all his rights of citizenship and allowed to remain alive or else his life should be terminated. In fact the first form of punishment is worse than the second since in this terrible state "he will neither die nor live" (Qur'an 20:74). Moreover, alive, he becomes a greater danger for society, since his existence will be a permanent plague spreading among the people and a source of fear lest also the other whole and healthy members of society be permeated with his poison. It is therefore better to punish him by death and thereby at one and the same time to put an end to his own and society's misery . . . . Islam, in contrast to purely secular states, cannot tolerate [the propagation of other faiths] because to allow some creedal or ethical error to emerge under Islamic supervision and protection is to undermine decisively the purpose for which Islam grasps the reins of the nation to direct it. In this matter, purely secular governments certainly function differently than an Islamic government because the purposes of both governments differ. Secular governments allow within their borders the spread of every kind of lie, every creedal deviation and every type of evil act and immorality, as well as every religious perversity also. They offer the purveyors of these various wares a long leash as long as they remain faithful to them, keep on paying taxes to them and avoid any activity which might harm their political authority. Nevertheless, if they detect even the slightest indication of harm to their political authority from these movements, they do not hesitate in the least in declaring them illegal and in crushing them. They function this way because they are not interested in the ethical and spiritual prosperity of God's servants. For them their political authority and their material purposes are everything. But Islam has genuine interest in the spiritual and ethical prosperity of God's servants and for the sake of this prosperity takes the management of the nation into its hands. Hence, as Islam cannot tolerate movements which instigate political dissension or revolution, likewise it cannot tolerate movements which spread moral dissension and creedal deviation.

Syed Abu'l-Ala al-Mawdudi, Murtadd ki Saza Islami Qanun men (1953).

[31] Perhaps per Q. 5:48, which reads in full: "For every one of you We have prescribed a path

then Western secularism is not only something offensive to the Muslim sensibility, but also a sign of *injustice* on the part of post-Christians that Muslims would have no choice but to oppose.

Thus, it is significant that even very conservative scholars (*i.e.*, those who reject secularism for Muslim societies) go out of their way to privilege an interpretation of Christianity which would avoid those implications. Similar to Qaradawi's remarks, in addressing the question of whether secular, post-Christian societies are no longer subject to the regard doctrinally due them as "Scripturary" (*kitabi*) societies, Lebanese Sunni scholar 'Abd al-Qadir argues that the secular nature of the political system is irrelevant because Moses and Jesus were only sent with temporary and partial messages anyway, so the abandoning of them is not something to worry about from an Islamic perspective: "Jesus was not sent to fix relations between rulers and the ruled, or to bring a law or identify the lawful and the prohibited." Thus, present-day secularism is not a departure from Christianity but a consequence of it.[32] These themes and arguments can be found repeated in various discussions.[33]

B.   *The Secular Within the Religious*

A more common approach to secularism is to note the great value that Islamic law places on the pursuit of worldly goods and, thus, the possibilities of substantive overlap between what secular politics seeks

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and a way. If God had willed He would have made you all one community, but [He has not done so] that He may test you in what has come to you. So compete with each other in good works." Classical exegetes read the final phrase, which some contemporary thinkers cite in the context of cross-communal solidarity, as merely exhorting each community to implement their own laws and forms of worship, not to extend charity or welfare to one another. *See* 3 ISMA'IL IBN 'UMAR IBN KATHIR (d. 1373), TAFSIR AL-QUR'AN AL-'AZIM 118 (1998); 6 MUHAMMAD IBN AHMAD AL-QURTUBI (d. 1273), AL-JAMI' LI-AHKAM AL-QUR'AN 137 (1996).

[32] 'ABD AL-QADIR, *supra* note 8, at 23-25.

[33] Such as in the internet *fatwa*s of Islam Online. *See, e.g.*, Reading Islam, Islam vs. Secularism, http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-AAbou t_Islam/AskAboutIslamE/AskAboutIslamE&cid=1203758347855.   Here it is repeated that "secularism originated in Europe as a reaction to the Christian theology, which had forged shackles for the freely enquiring minds of thinking humans. As science and technology developed, the opposition to religion grew and took on several philosophical forms which were secularist in spirit," and that:

> [T]he Christian interpretation [of "Give unto Caesar what is Caesar's] is that Jesus through this statement was preaching secularism—that is, a separation of religion and politics—as the right policy for his followers. If this was what Jesus meant, Christians who follow religion cannot have any share in the governance or administration of a country.
>
> Rather they should leave the affairs of the state to the whims and fancies of any brutal dictator or unscrupulous politician who assumes power.

Id.

to secure and what Muslims want anyway. The key concepts here are those of "*maslaha*" (public interest), "*maqasid al-shari'a*" (the ultimate objectives of the religious law) and the "*qawa'id fiqhiyya*" (juristic maxims or rules for adjudicating ambiguous or indeterminate cases). These views tend to appear when scholars are confronted with the problem of political participation or contribution to a non-Muslim polity.[34]

The first such argument in favor of participating in non-Muslim governments is articulated by Rashid al-Ghannushi, a Tunisian Islamist opposition leader in exile in Great Britain, based on his reading of the jurisprudence of 14th century Andalusian jurist Abu Ishaq al-Shatibi. The argument advanced is that the Muslim's duty is "to work towards preserving whatever can be preserved of the aims of *shari'a*," understood broadly as the five basic human interests (*al-daruriyyat*, or *al-kulliyyat*, *al-khamsa*) of life, faith, property, intellect, and lineage. This emphasis on the ultimate purposes of Divine law (*maqasid al-shari'a*) serves to deflect attention from both particular, technical rulings of Islamic law and the un-Islamic forms of behavior permitted in non-Muslim states. Instead, non-Islamic governments can been seen as *sufficiently* just because of the general human interests that they protect (for Ghannushi, such interests include both in Muslim majority and minority political contexts, "independence, development, social solidarity, civil liberties, human rights, political pluralism, independence of the judiciary, freedom of the press, or liberty for mosques and Islamic activities"), possibly realizing a legitimate form of governance that he calls "the government of rationale" as opposed to "the government of *shari'a*."

The crucial measure of Ghannushi's doctrine of how to share political space with non-Muslims is how he addresses the question of social coalitions with non-Muslims. Here, he sides firmly with liberal secular groups:

> Can any Muslim community afford to hesitate in participating in the establishment of a secular democratic system if it is unable to establish an Islamic democratic one? The answer is no. It is the religious duty of Muslims, as individuals and as communities, to contribute to the efforts to establish such a system.[35]

This goes for Muslim minorities in particular, who have no hope of establishing Islamic rule.

> The best option for such minorities is to enter into alliances with secular democratic groups. They can then work towards the establishment of a secular democratic government which will respect

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[34] What follows is also discussed in MARCH, *supra* note 16.

[35] Rachid Ghannouchi, *Participation in Non-Islamic Government*, *in* LIBERAL ISLAM: A SOURCEBOOK 89, 92 (Charles Kurzman ed., 1998).

human rights, ensuring security and freedom of expression and belief—essential requirements of mankind that Islam has come to fulfill.[36]

Like Tariq Ramadan, Ghannushi is articulating a self-consciously liberal doctrine of citizenship, and it is not clear what in his above views represent attempts to formulate Islamic doctrine on the basis of a methodology and what are his judgments about what is prudent. The more conservative juridical tradition, however, also contains powerful resources for similar forms of pragmatism. Speaking about Muslim-majority societies, Yusuf al-Qaradawi argues that the basic principle (*al-asl*) is that it is forbidden to participate in a non-Islamic government, but that there are certain grounds for exception: (a) reducing evil and injustice to the extent one can, (b) committing the lesser of two harms (*akhaff al-dararayn*), and (c) descending from the higher example to the lower reality.[37] These three grounds for participating are linked to certain general maxims of Islamic jurisprudence (principles which jurists refer to when arriving at a ruling that is not resolved by the authoritative sources[38]), including: "necessity makes the forbidden permissible" (*al-darura tubih al-mahzurat*); "toil brings about relief" (*al-mashaqqa tajlib al-taysir*); "no harm should be sustained or reciprocated" (*la darar wa la dirar*); and "relieve difficulties" (*raf' al-haraj*). The conditions that Qaradawi imposes on such participation are illuminating. They include: (a) that there be some responsibility, independence and authority, rather than merely being the executor of another's will; (b) that the regime not be characterized by injustice and tyranny, and known for its antagonism to human rights. This means that a Muslim may not participate in dictatorial regimes that tyrannize their populations, but "only in a regime based on democracy which respects human faculties"; and (c) that there be the right to oppose everything that contradicts Islam in a clear way, or at least to refrain from it.[39]

This pragmatic position has deep roots in Islamic legal thinking. While those (such as Ghannushi or Ramadan) seeking to argue for the justness of non-Islamic regimes generally quote Shatibi, those (such as Qaradawi or 'Abd al-Qadir) arguing for a more modest pragmatism refer to the authority of Ibn Taymiyya, namely his view that "the *shari'a* came to bring about and perfect welfare, and to reduce and

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[36] *Id.* at 94. Ghannushi also frequently makes the point that it is secularism and liberalism that have made the West hospitable to Muslims and not Abrahamic fraternity. *See* al-Ghannushi, *supra* note 9, at 90, 115.

[37] YUSUF AL-QARADAWI, MIN FIQH AL-DAWLA FI'L-ISLAM 180 (1997).

[38] For an introduction to the place of legal maxims in Islamic law, see Mohammad Hashim Kamali, *Legal Maxims and Other Genres of Literature in Islamic Jurisprudence*, 20 ARAB L.Q. 77 (2006).

[39] QARADAWI, *supra* note 37, at 184-85.

negate corruption."[40]   Qaradawi refers to this basic consequentialist form of thinking as "*fiqh al-muwazanat*," or "the jurisprudence of balancing [costs and benefits]."[41] The application of this methodology to our present question results in the fairly anodyne recommendation to Muslim minorities to develop a "disciplined openness and flexibility so that they do not become cramped, isolated and withdrawn from their societies, but rather contribute to them positively, give them the best they have to offer and take from them the best they have to offer. Thus the Islamic community achieves that most difficult balance: preservation without obscurity and participation without assimilation."[42]

This form of justifying political participation in non-Muslim states emphasizes two main themes: The duty to command the right and forbid the wrong, and the possibility of securing benefits (*masalih*, singular: *maslaha*) for Muslims. As for the first, there is little more to add to our previous treatment.   While there are purely secular wrongs and injustices to be stamped out and some scholars are apt to emphasize them over questions of religious morality, there is no avoiding the fact that most conservative or traditionalist Muslim scholars (and many pious lay believers) would regard illiberal legislation passed by a non-Muslim legislature which bans certain behavior noxious to a Muslim sensibility (such as offensive or blasphemous speech) as a clear-cut political victory. 'Abd al-Qadir writes that a Muslim can be elected to a non-Muslim legislature, but may not agree to anything that contradicts the law of his Lord and must demand that which that law requires.[43] Yet, within this broad consensus, there are important differences of priority and emphasis; that one can justify participating for *other* reasons and that one can justify participating even when a regime fails to suppress certain moral "evils" are the reasons for not regarding a scholar's interest in "forbidding wrong" as definitively incompatible with liberal citizenship.

'Abd al-Qadir also gives a particularly succinct summary of the second theme, the argument from *maslaha*:

> [W]orking within the institutions of unbelief is permissible if it is in defense of basic needs and necessities, or if it is to advance the interests of Islam and Muslims, for example, to combat injustice or to bring about some advantage to the Muslim community within a given country. But if it is to advance a private interest or individual ambitions then it is impermissible."[44]

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[40] 20 AHMAD IBN 'ABD AL-HALIM IBN TAYMIYYA (d. 1283), MAJMU' AL-FATAWA 55 (1980).

[41] *See* YUSUF AL-QARADAWI, PRIORITIES OF THE ISLAMIC MOVEMENT IN THE COMING PHASE 47-55, 243-52 (2000).

[42] QARADAWI, *supra* note 8, at 35.

[43] 'ABD AL-QADIR, *supra* note 8, at 618.

[44] *Id.* at 609.

He invokes another principle of jurisprudence, citing Ibn Taymiyya: "That without which something required (or recommended) cannot be realized, is itself required (or recommended)." (*Ma la yatimm al-wajib (al-mustahabb) ila bihi huwa wajib (mustahabb).*) The obvious question raised by this statement is what sorts of interests or benefits these scholars are imagining being advanced by political participation. There is strong reason to believe that the reference to *maslaha* generally signifies an interest in secular, public goods. Abu Hamid al-Ghazali (d. 1111) introduced the concept in its mature form, defining its substance as everything which helps mankind preserve the five necessary interests of life, religion, intellect, property, and lineage.[45] Shatibi in turn writes: "I mean by *maslaha* that which concerns the subsistence of human life, the completion of man's livelihood, and the acquisition of what his emotional and intellectual qualities require of him."[46] The use of *maslaha* as an ethico-legal concept obviously requires much more rigorous and technical treatment than there is space for here.[47] However, what is important to establish at this point is that the largely secular implications of the concept of *maslaha*[48] help answer one of our two main concerns about its use as a justification for political participation in a secular state. That concern is that the conception of welfare advanced by Muslim scholars might involve aims that are themselves incompatible with a secular political order. As opposed to the use of concepts such as "commanding right and forbidding wrong" or "reducing evil in society," the reliance on *maslaha* generally signifies a pragmatic approach to the public sphere and an emphasis on goods compatible with a liberal political order.

American Muslim scholar Muzammil Siddiqi claims, for example, that "it is in the best *maslahah* (welfare) of Muslims to participate in the system" because, as minorities,

> they must protect their lives, their properties and their rights to live in peace. In order to protect their own rights and to promote the good things in the society, if it is necessary for them to participate in the political system of non-Islamic states, then it is their duty to do

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[45] *See* Felicitas Opwis, Maslaha *in Contemporary Islamic Legal Theory*, 12 ISLAMIC L. & SOC'Y 188 (2005).

[46] 2 ABU ISHAQ AL-SHATIBI, AL-MUWAFAQAT 20 (1997).

[47] In addition to Opwis, *supra* note 45, see WAEL B. HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES (1997), and MUHAMMED KHALID MASUD, SHATIBI'S PHILOSOPHY OF ISLAMIC LAW (1995).

[48] Opwis argues that the post-Ghazali legal theorists, most importantly Fakhr al-Din al-Razi, Shihab al-Din al-Qarafi, Najm al-Din al-Tufi, and of course al-Shatibi, all made important methodological and epistemological contributions to clarifying the place of *maslaha* in Islamic legal theory, but "the constituent elements of the concept did not actually change after al-Ghazali defined them at the end of the 5th/11th century." Similarly, modern polemics have focused on questions of epistemology and juristic methodology rather than the basic substantive meaning of *maslaha*. Opwis, *supra* note 45, at 197.

so.[49]

It is also common for scholars to speak about the possibility of using political participation to change specific policies of non-Muslim states. The foreign policy of Western states towards the Islamic world is obviously a common theme.[50] It also cannot be said that most of the scholars we are quoting would in any way object to some domestic political outcomes which are incompatible with dominant understands of a liberal-secular political order, such as the forms of "internal restrictions" which set limitations on exit from or criticism of one's community. Getting non-Muslim states to recognize Muslim personal law or ban offensive, scandalous or blasphemous speech would without a doubt be regarded as enormous victories by *fiqh al-aqalliyyat* scholars. However, there are two countervailing considerations: that these scholars do not limit the benefits they seek to secure through participation to such incompatible aims, and they do not speak of these incompatible aims as conditions on residence or political participation. For the most part, they have in mind either general conceptions of human welfare (as evidenced above by the emphasis on the secular as the appropriate domain for cooperation with non-Muslims) or Muslim-specific aims that are nonetheless compatible with competitive democracy. For example, there is nothing about using democratic means to direct social spending towards eligible Muslim communities, to secure recognition for religious schools, or even to support foreign policies beneficial to the welfare of Muslims in Muslim-majority countries, which suggests an illegitimately tactical attitude to democracy. Furthermore, in addition to specific policies or outcomes, there is a more interesting tendency to speak of the *inherent* benefit of being a community that participates politically. 'Abd al-Qadir endorses Qaradawi's sentiments quoted above ("that Muslims do not become cramped, isolated and withdrawn from their societies"), and argues that not participating leads to "marginalization and remaining in darkness."[51] Thus, the focus on Muslim welfare as a justification for participation in secular politics goes beyond mere checklists of desired policies or reforms.

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[49] IslamOnline.net, Muslims Participating in the US Local Councils, www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=62236 (last visited June 20, 2009).

[50] This is obviously a theme of countless texts, but Monzer Kahf's *fatwa* is interesting because it uses the question of US foreign policy to emphasize the necessity of civic involvement. IslamOnline.net, Refusing to Pay Taxes to the US Due to its Anti-Muslim Policy, www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=70581 (last visited June 20, 2009).

[51] 'ABD AL-QADIR, *supra* note 8, at 614.

C. *Public Speech and Demands of "Profession" Matter: Secularism as a Welcome Relaxation of the Embrace of Civic Friendship*

The previous two sections have shown a certain willingness to accept post-Christian secularism and to pursue secular goods though non-Muslim political systems. There is a strong tendency, however, to go well beyond this and to argue that the metaphysical and comprehensive restraints non-Muslims impose on themselves make it easier for Muslims to commit to the right level of solidarity and community with unbelievers.

The problem being solved in these arguments is the oft-cited obligation to avoid relationships of loyalty, friendship or clientage (*muwalah/wala'*) with non-Muslims personally and with non-Islamic forms of legal and political authority. A series of Qur'anic verses seem to prohibit this, including 3:28,[52] 3:118,[53] 4:139,[54] 4:144,[55] 5:51,[56] 5:80-81,[57] and 60:1,[58] and Qur'anic exegetes in the classical and modern period have interpreted these verses to cover a range of relationships, from legal clientage to personal friendship to political loyalty.[59] The claim is that loyalty and affiliation (*wala'*) are exclusively between believers, while the attitude towards unbelievers is one of disassociation

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[52] "Let not the believers take the infidels for their allies in preference to the believers—for who does this has nothing to do with God—unless it be to protect yourselves from them in this way. God warns you about Himself and the final goal is to God."

[53] "O you who have believed! Do not take for your intimates other than your own kind. They will continually cause you turmoil and love anything that will distress you. Loathing has already come forth from their mouths and what is concealed in their breasts is even greater. We have made the signs clear to you if you will use your reason."

[54] "Those who take unbelievers as friends rather than believers: Are they looking for honor amongst them? All honor is with God."

[55] "O you who have believed! Do not take as friends unbelievers rather than believers. Do you want to give God a clear proof against you?"

[56] "O you who have believed, do not take Jews and Christians as friends for they are friends to each other. And who becomes friends with them becomes one of them. Verily God does not guide a wrong-doing people."

[57]

> Can you see many of them allying with those who disbelieve? So vile indeed is what their passions make them do that God has condemned them and in suffering shall they remain. For if they truly believed in God and the Prophet and all that was bestowed on them from on high they would not take unbelievers for their allies, but many of them are iniquitous.

[58]

> O you who have believed! Do not take My enemies and your enemies as friends, offering them affection while they have denied what Truth has come unto you, driving away the Messenger of God and yourselves because you believe in God your Lord. If you have gone forth to struggle in my cause and longing for my blessing do you secretly hold affection for them? For I know all that you may conceal as well as what you do openly. And who does so has erred from the path.

[59] *See* 'ABD AL-QADIR, *supra* note 8, at 626; 2 IBN KATHIR, *supra* note 31, at 390.

or moral non-obligation (*bara'*). Salafi and other traditionalist views that are opposed to affirming citizenship in non-Muslim polities, or even residing within them, will ultimately refer to this basic moral principle, and addressing it is crucial for any scholar seeking to theorize and theologize a permanent and principled Muslim presence in non-Muslim political space.

A tradition of contextualizing the wariness over excessive *muwalah* with non-Muslims extends back to the beginning of the 20th century. In his exegesis of the Q. 3:28, the early Syrian-born scholar Rashid Rida (d. 1935) says that only

> those who are without knowledge and interpret the Qur'an whimsically claim that the verse does not permit Muslims to ally themselves or come to agreement with others, even if this is in their interest and despite the fact that the Prophet himself made alliances with certain polytheists. In fact, some religious zealots claim ignorantly that this verse forbids any cooperation or association with them, or trusting them in any matter at all."[60]

In opposition to this view, Rida argues that there are three elements to a proper interpretation of the ban on *muwalah*. The first is that, as with the verses on war and fighting, they refer strictly to those non-Muslims who aggress against and fight Muslims, emphasizing that the circumstances of revelation (*asbab al-nuzul*) of this and the other *muwalah* verses are the betrayal of the Muslim community by Muslims to Meccan pagans who were engaged in active combat with Muslims.[61] Decisive for him in this judgment are verses 60:7-8 ("God does not forbid you from dealing justly and equitably with those who do not fight you for your religion nor expel you from your homes, for God loves the equitable") and the fact that the Prophet himself established bonds of friendship, trust, and alliance with various non-Muslim individuals and states both before and after his migration from Mecca.[62] The second, related point that Rida emphasizes is that Q. 3:28, 4:139 and 4:144 all refer to taking non-Muslim allies *rather than* or *in preference to* believers: *min dun al-mu'minin*. Thus, what becomes forbidden is allying with them at the expense of Muslims and Muslim interests.[63]

Finally, Rida understands the reference to *muwalah* as approving of non-Muslims' unbelief and allying with them in pursuit of these false religious aims.[64] Encapsulating these latter two points, he quotes his mentor Muhammad 'Abduh, who argued that what is forbidden is anything that results in abandonment (*khidhlan*) of religion, harm

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[60] 3 MUHAMMAD RASHID RIDA, TAFSIR AL-MANAR 277 (1973).

[61] *Cf.* WAHBA AL-ZUHAYLI, AL-TAFSIR AL-WASIT (2001), v. 1, p. 186.

[62] This argument is repeated almost verbatim in YUSUF AL-QARADAWI, FATAWA MU'ASIRA 193 (2003).

[63] This argument is also noted in IBN BAYYA, *supra* note 8, at 307.

[64] Again, this exact point is advanced in QARADAWI, *supra* note 62, at 194.

(*idha'*) to its people, or damage (*ida'a*) to their interests. "But what opposes this, such as trade or *other social interactions of a secular* [*dunyawi*: this-worldly] *nature*, is not included amongst that which is forbidden because it does not involve any opposition to God and His Apostle or any opposition or resistance to their religion."[65]

Contemporary Mauritanian scholar (and, along with Qaradawi, a leading scholar of the European Council for *Fatwa* and Research) 'Abd Allah Ibn Bayya notes that "*wala'* is any firm bond which ties people together in a special, close and intimate relationship which give rise to obligations, rights and duties." Note first that there is a certain reversal of the traditional order of causality. Whereas the traditional question is whether certain relationships are eligible for *wala'* (and the obligations it implies) in the first place, Ibn Bayya's point of departure is that certain such relationships of *wala'* already exist and that certain moral obligations are thus unavoidable. He then makes the distinction between various types of such relationships, the first being based on shared creed, the second on familial ties, and the third on contract.

> The highest and most exalted of these loyalties is that based on creed which includes faith in basic pillars of religion, the shared practice of rituals and adherence to moral virtue. This relationship of loyalty is not incompatible with loyalty to a homeland which binds people together into a contract of citizenship and defends its territory against aggression.[66]

Further on, he suggests that loyalties be seen as concentric circles, or as steps in a pyramid, with religious loyalty at the summit, "but which does not exclude loyalty to a nation or homeland."[67]

Ibn Bayya clearly finds modern, liberal conceptions of citizenship and political community conducive to Islamic modes of justification of the minority condition. If anything, Ibn Bayya is more explicit in his endorsement of contemporary European norms for European Muslims than other scholars contributing to *fiqh al-aqalliyyat*. He begins a lengthy discussion entitled "On Citizenship" by describing the various components of the modern understanding of national citizenship and how it differs from pre-modern ones: It expresses a reciprocal, mutual (*mutabadil*) relationship between individuals living on a territory not necessarily bound by descent, religion or common memory; its framework is a constitution and system of laws; it is similar to a voluntary association of cooperation based on contractual belonging; and those belonging to it today have the same rights as the longest-

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[65] 3 RIDA, *supra* note 60, at 288 (emphasis added).

[66] IBN BAYYA, *supra* note 8, at 292-93. Significantly, this scholar is known to be particularly close spiritually and intellectually with an important group of scholars operating in California at the Zaytuna Institute, namely Hamza Yusuf and Zaid Shakir.

[67] *Id.* at 304.

standing members.[68]   His interpretive understanding of liberal conceptions of citizenship is thus nearly identical to the liberal self-description. Ibn Bayya even cites Jürgen Habermas's conception of constitutional patriotism, or "the feelings of an individual towards his own membership in a civil society established on the basis of participation in certain basic values," as the ideal expression of the modern conception of "citizenship as a voluntary bond joined within national horizons and ruled by a constitution" and suggests that this conception "is the most important bridge to the respect and acceptance of religious values in all human societies which is compatible with Islam's conception of human coexistence. A Muslim doesn't find an objection to it but rather cooperates with it."[69]

Thus, Ibn Bayya's point about the compatibility of multiple loyalties is quite specific and interesting for this study, for his statement (quoted above) that religious loyalty does not exclude national loyalty continues by adding the qualification "*according to the conception of citizenship to which we have pointed*," *i.e.*, the modern liberal conception, "for it is not incompatible with religious loyalty insofar as the contract of citizenship does not imply leaving one's religion, abandoning rituals or limitations on the freedom for a Muslim to live his faith." Ibn Bayya's endorsement of this conception of citizenship is not only negative, however. He argues that the "circle" that comprises the compact of citizenship provides much good that is "demanded by religion and desired by nature," including:

> The right to life, justice, equality, freedoms, protection of property, protection against arbitrary imprisonment and torture, the right to social security for the poor, elderly and ill, cooperation between individuals in society for the general welfare, as well as all of the duties and obligations which follow, such as paying taxes, defending the homeland against aggression, obeying the law and upholding the contract of citizenship all of which falls under the religious obligation to be loyal to contracts and their requirements which itself falls under loyalty to religion: "O you who believe! Fulfill all contracts."[70]

Of course, these goods which are "demanded by religion" and are thus encompassed by (the broader circle of) Islamic religious commitments are clearly not only secular ("political" in the Rawlsian sense) but also meant to evoke liberal self-descriptions. He is even more explicit than this, though. He takes pains to enumerate the

> great values of secularism ['*almaniyya*] and neutrality [*al-muhayida*] which are regarded positively, including: (1) respect for convictions;

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[68] *Id.* at 302.
[69] *Id.* at 303.
[70] *Id.* at 304.

(2) neutrality between religions; (3) the recognition of both individual and collective human rights and the state's protection of them; (4) the right of disagreement, diversity and transformation of the characteristics of individuals and groups; (5) and the right of access to courts to realize and enforce one's rights, the setting of obligations on individuals with respect for law, paying taxes by way of participation in national efforts to construct institutions, and defense against aggression.[71]

Finally, he defends secularism against some of its Muslim critics, who put forward an interpretation of secularism as a system which "departs from neutrality and interferes in the particular characteristics of peoples and nations, and functions as a tool of control over convictions." This, he submits, is a "distortion of the basic meaning of secularism which [does not require] submission to a single comprehensive ideological trend which might wish to impose its particular concepts constructed on its own prejudices."[72]

So here we have a quite unmistakable endorsement of secularism and citizenship on liberal terms as a system which is beneficial for Muslim minorities and which is asserted to be compatible with Islamic commitments. It is also noteworthy that this endorsement comes not from a savvy media figure living in a Western country like Tariq Ramadan but a senior, traditionalist Maliki religious scholar from Mauritania writing in Arabic; these passages cannot be dismissed as rhetoric for consumption within some "cross-cultural" or "ecumenical" dialogue.

However, it is appropriate to ask just what is "Islamic" about these arguments. As I suggested in the introduction to this article, an "Islamic argument" is not just the judgment or opinion of someone with a Muslim name or writing about Islamic themes. Of course, in the banal sense, "Islam" is just what its adherents believe it to be; however, this does not exclude a search for more concrete Islamic doctrinal demonstrations or efforts to fit these kinds of statements of judgment into broader theories of Islamic moral commitment. This search does not imply the assumption that the only authentic Islamic beliefs or values are those which can be shown to have direct textual derivation, but rather the assumption that Islamic law and ethics (like certain Western ethical discourses) are not just assertions of opinion or authority but rather "justificatory projects" which involve standards of argumentation and demonstration that establish how a moral claim can be evaluated, justified and carried from one discursive situation to another.

Ibn Bayya does not fail to draw on Qur'anic verses, although it is

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[71] *Id.* at 305.
[72] *Id.* at 306.

not obvious that they are causing the full extent of the beliefs presented above. The first verse used to ground his robust affirmation of the virtues of secularism is, as quoted above, Q. 5:1: "O you who believe! Fulfill all contracts." However, although the obligation to uphold contracts can give strong reasons for *honoring* secular systems, it is not clear where it gives any particular reasons to *value* all of the goods provided for by secular systems or, more precisely, to *choose* a system which limits coercive social action to these goods. A second verse introduced seems more apropos: "And never let your hatred of people who would bar you from the Inviolable House of Worship lead you into the sin of aggression: but rather help one another in furthering kindness [*al-birr*, which can imply religious devoutness as well as charity] and God-consciousness [*al-taqwa*], and do not help one another in furthering evil and enmity."[73] As Ibn Bayya notes, this verse clearly refers to the relationship with the Meccan polytheists with whom the Muslims were at war, "so how could it not permit [cooperation] with peaceful citizens?"[74] It is clear how verses such as these could give warrant to the civic principle of cooperation in worldly matters, possibly on grounds of solidarity (this verses resurfaces often in discussions of political participation in non-Islamic systems), but this still seems quite remote from the enthusiasm displayed by Ibn Bayya for secularism, neutrality and modern citizenship. Why, for example, would this verse not also ground cooperation with Jewish and Christian fellow monotheists *against* strict secularism and all of the equal liberties it has been shown to protect (". . . help one another in furthering kindness [*al-birr*] and *God-consciousness* [*al-taqwa*] . . . .")?

Thus, another approach for Ibn Bayya is to step back from the texts and simply note the substantive overlap in broader values and aims. After enumerating the "great values of secularism and neutrality" (the five points quoted above), he observes that "all of this does not contradict the great values to which the revealed religions called, especially Islam, which calls to kindness, affection and human brotherhood [*al-birr wa'l-mahabba wa'l-ukhuwa al-insaniyya*]" and that devotion to one's homeland and fellow citizens is validated by both reason and revelation.[75] Here it is hard not to recall Rawls's claim that, even without explicit metaphysical grounding, the values of fair social cooperation are simply "very great values" that will have intuitive appeal for persons who enjoy them.[76] Although it does not resolve the concern expressed above about concrete Islamic metaphysical grounding for such principles, it is noteworthy to hear an echo of these

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[73] Q. 5:2.
[74] *Id.* at 305.
[75] *Id.*
[76] JOHN RAWLS, POLITICAL LIBERALISM 139, 157, 169, 218 (1993).

claims in an otherwise fairly technical work of modern Islamic jurisprudence. While Ibn Bayya does not elaborate on this here, we can recall from above the efforts to fit the pursuit of purely secular, worldly goods into a larger and longer-standing Islamic conception of the good and the legitimate purposes of law and social cooperation (to wit, the tradition of speculating on the "purposes of *shari'a*" (*maqasid al-shari'a*)).

The final perspective on the question of loyalty and belonging within a secular context that Ibn Bayya introduces by way of response to (unnamed) Islamic skeptics is what we might call the "no prohibition" (*'adam al-tahrim*) argument, although he chooses to frame it in terms of the obligation on Muslims to avoid evil. He begins by noting that evil has its degrees and ranks, with the evil of losing religion entirely at the top, closely followed by the evil of participating in sins and prohibited acts. The acts of forming bonds of loyalty and affection with non-Muslims only rise to the rank of an evil to be avoided when they come at the expense of such bonds with Muslims—*min dun al-mu'minin*.[77] Once again, he repeats his basic point that the very extensive and incontrovertible obligations that Muslims have to one another are not:

> a suspended wall keeping out all secular [*dunyawi*: this-worldly, mundane] relationships with other people which do not impinge upon or attack the foundations of belief; nay, cooperation with people to advance common interests [*masalih*] and repel harm, the mutual exchange with them of affection and cooperation with them in accordance with the law of morality is all in keeping with the words of the Exalted "speak goodness unto people."[78]

This debate finds a slightly more precise and doctrinally systematic elaboration in 'Abd al-Qadir's treatise on *fiqh al-aqalliyyat*. He concurs with Rida that the *muwalah* verses are not absolute in the sense of applying to both peaceful and warring unbelievers, but that "God has prescribed hostility and antagonism only to those who fight God, His Apostle and the believers. There is no prohibition on friendship with unbelievers who do not harm believers."[79] He arrives at this position for reasons identical to Rida's (and Ibn Bayya's[80]): the verses all emphasize non-Muslim aggression and the idea of befriending them "in

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[77] IBN BAYYA, *supra* note 8, at 307. He cites the exegesis of Q.3:28 of 20th century Tunisian scholar Muhammad al-Tahir ibn 'Ashur (d. 1973) as his authority for these views. Ibn 'Ashur is interesting as a modern exponent and theorist of the doctrine of "the purposes of *shari'a*" (*maqasid al-shari'a*) developed in the medieval period by al-Ghazali, al-Shatibi and others.

[78] *Id.* at 308.

[79] 'ABD AL-QADIR, *supra* note 8, at 630.

[80] "The disassociation [*bara'a*] discussed [in *surat al-Tawba* of the Qur'an] is directed at the polytheists in a limited, restricted context connected to treaties, war and peace." IBN BAYYA, *supra* note 8, at 301.

exclusion of the believers" (*min dun al-mu'minin*); the Prophet himself turned to non-Muslims for help; and other generally held rulings, such as the permissibility of marrying Christian and Jewish women, show that the ban on befriending non-Muslims cannot be general in application.

'Abd al-Qadir's remarks are interesting, however, because he makes more of an effort to consider what forms of alliance are permitted and to apply these views to a contemporary political context. Therein, we encounter what are by now rather familiar views. In terms of alliance between political entities, he writes that there must be an overwhelming need for this and the "word of unbelief" may not be dominant, but that alliance is "not *muwalah* unless it is to the benefit of the unbelievers and their word is ascendant. Such a situation is humiliation for religion and its adherents." Non-Muslim lands are permissible as refuges if Muslims are in danger and no other Muslims are in a position to help, as with the case of those whom Muhammad sent to Abyssinia during the first Meccan period. Within this context it is permissible to co-operate with them in the spheres of economics, science/knowledge, and even military "co-ordination" (*tansiq*) under the supervision of Muslim authorities. This covers also treating unbelievers with kindness (*al-ihsan, bi'l-lutf*), tolerating them, being charitable, hospitable and equitable towards them, exchanging gifts, loaning and borrowing, visiting them, etc.[81]

Possibly drawing from 'Abduh's and Rida's treatment, he reserves the term *muwalah* for situations in which there is a form of setback, subjugation, disappointment (*khidhlan*) for religion, harm to its people and a neglect of their interests, as well as an aggrandizement of unbelievers and a strengthening of them over Muslims, without regard to whether the unbelievers in question are peaceful or warring. This can happen in two ways: (a) being pleased with their unbelief or having affection for them because of it; or (b) "relying" on them.

The first, (a), involves associating too intimately with them on a *religious* basis, ascribing truth to their doctrine or seeing no difference between it and Islam in regards to their respective truth-claims. "This includes approving of their doctrines or religious rituals, or ascribing truth to them, as well as aiding them in ways which strengthen and affirm them in their unbelief. This results in a defeat for religion and belief." He refers to this, quoting Ibn Taymiyya, as "*muwalah bi'l-qalb*"—"allying one's heart [to them]"—and emphasizes that the only hatred a Muslim feels is towards what the unbeliever holds by way of error and idolatry, not towards him personally.[82] However, various forms of special consideration, approval and recognition of unbelievers

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[81] For this paragraph, see 'ABD AL-QADIR, *supra* note 8, at 634–35.
[82] *Id.* at 637.

with good characters/morals, or personal relations with unbelieving children, wives, or other relatives, do not constitute *muwalah*.

The second, (b), involves not merely forming bonds of trust with unbelievers, but being pliable or submissive to them, flattering them, being obsequious, etc., as well as asking them for help or allying with them against Muslims, imitating them, or aggrandizing them and spreading their doctrines and ideas.[83] The crucial element for him and others is clearly how intimately linked the political and the religious are in a given alliance or friendship. For 'Abd al-Qadir,

> tolerance consists in inter-personal treatment, not in the doctrinal concept or in the social system. Good treatment does not mean loyalty or assistance in religion, or recognition that the religions revealed before Muhammad's prophecy are accepted by God and that Islam can stand with them in a single front against atheism.[84]

Others have also recently interpreted the ban to refer to adopting unbelievers' characteristics related to their religion, doctrines, beliefs or rituals, not as neighbors or citizens.[85]

There are at least two very strong reasons for arguing that secularism, as understood by political liberalism, comes as close as possible to avoiding the dilemmas of excessive loyalty and public "profession" which Islamic theorists find unacceptable.

The first main condition which was seen to constitute the unacceptable form of *muwalah* was the forming of political alliances to the exclusion of (*min dun*) and in opposition to fellow Muslims. Mustafa al-Tahhan, for example, was cited above as having no objection to living with non-Muslims as neighbors and citizens, but (citing Qaradawi's authority) "it is necessary that a Muslim's loyalty not be to another community at the expense of his own." The second condition was if Muslims were required to ally with non-Muslims in expressly religious or doctrinal matters, advancing the aims or prominence of another creed.

Political liberalism can advance a case that requires neither of these from Muslim citizens. Even in cases where a Muslim entity or force is clearly the aggressor against a Muslim's state of citizenship, one can argue that the liberal state can in good conscience accommodate the Muslim citizen's desire not to kill fellow Muslims.[86] As to the

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[83] *Id.* at 638-39.

[84] *Id.* at 646.

[85] Mustafa al-Tahhan, *al-Muslim al-da'iya yuhsan al-ta'amul ma' al-muslim wa-ghayr al-muslim*, *in* RISALAT AL-MUSLIMIN, *supra* note 8, at 283 (citing Qaradawi).

[86] I have argued for what I regard as the "equilibrium" between the concerns of political liberalism and Islamic law on these matters in MARCH, *supra* note 16, ch. 4, at 135 (chapter entitled "Identifying Equilibrium: An Ideal-Typical Islamic Doctrine of Citizenship"); and Andrew F. March, *Liberal Citizenship and the Search for an Overlapping Consensus: The Case of Muslim Minorities*, 34 PHIL. & PUB. AFF. 373 (2006).

second condition, we again have reason to point to the advantage of political liberalism's commitment to neutrality and "epistemic abstinence." In disavowing any claim to metaphysical truth as the basis for justice, in requiring of citizens no such affirmations in order to participate politically, and in establishing no collective goals that require adherence to a controversial metaphysical doctrine, political liberalism can retort that it requires of Muslim citizens no statement whatsoever about the truth or superiority of any one religion, doctrine or way of life. Given that Muslim jurists are prepared to allow residence even in states that exhibit no such restraint, their very discourse on *muwalah* reveals Islam-specific reasons why Muslims should be more willing to take a step beyond resident alienage towards citizenship in a politically liberal state than in any other non-Muslim regime.[87]

With this theoretical perspective, we can now return to the question of political participation. The discussions surrounding this question are particularly supportive of the view that a politically liberal regime is best placed to gain the support of non-liberal communities. While we have encountered the view that the secularism of liberal states poses a challenge for Muslim loyalty to those states, an equally common view—introduced above in the discussion of the "*muwalah* verses"—is that the religious neutrality of liberal political institutions alleviates Muslim concerns about offering loyalty to non-Islamic comprehensive, metaphysical doctrines.

In a *fatwa* by Texas-based American Muslim scholar Mohamed El-Moctar al-Shinqiti, he writes:

> Taking part in the US elections . . . . is not a sign of affiliation [*muwalah*] to the polytheists, nor is it a kind of support for the oppressors. . . . [J]udging parliaments to be gatherings of disbelief and polytheism is inappropriate, as this does not take into account the complicated nature of such parliaments. The US Congress, for instance, is not a religious organization, as the American constitution neither supports a certain religion nor restricts another. The US Congress is not, thus, a gathering of disbelief, even though its members are disbelievers. Also, it is not a gathering of belief, even if there are Muslim members in it. It is a neutral political body in relation to matters of religion, according to the American constitution.
>
> The US Congress can only tackle issues related to public welfare, which a Muslim is enjoined to participate in achieving, whether for the favor of Muslims inside or outside America, or even in relation to non-Muslims.[88]

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[87] This interpretation of how the Islamic conception of loyalty bears on the question of citizenship is, in fact, quite commonplace amongst the better-known neo-classical scholars active in the West.

[88] Sheikh Mohamed El-Moctar al-Shinqiti, IslamOnline.net, Muslims' Participation in US

Sheikh Muhammad Al-Hanooti, a member of the North American Fiqh Council, echoes these views:

> In the US, religion is not a priority in politics. On the contrary, politicians are secular in demonstrating what they are targeting. Of that secularism, we have perhaps more than 60% of our welfare and interests to be run through a polling system. Schooling, sanitation, zoning, social services, police, court, medication, finance, business, sports, recreation, etc. are run by people that are elected to office. . . . Are you going to tell me that I am loyal or giving allegiance [*muwalah*] to the *kuffar* [infidels] because I want to lead myself in the way that can get a school for my children, good sanitation for my neighborhood or good cooperation with the police to protect me?[89]

This is also the official position of the European Council for *Fatwa* and Research, which uses the example of the Prophet's behavior in cooperating with non-Muslims, to argue that:

> [i]t is permissible for Muslims to engage with non-Muslims in commercial transactions, peace treaties and covenants according to the rules and conditions prevalent in those countries. . . .
>
> Mutual cooperation in worldly affairs goes far to encompass all citizens who share a common destiny, neighborhood and sometimes kinship. This may be extended to include economic and commercial fields.[90]

Furthermore, as to the application of this principle to democratic elections,

> elections in the modern world systems have become a means through which people choose candidates and judge the programs they adopt. Muslims living in such societies enjoy rights and are bound to do some duties. If they fail to meet the duties obligated on them, they are no more entitled to receive the rights, for the rights meet the duties.
>
> Thus, Muslims' participation in elections is a national duty; in addition it falls under cooperation on that which is good and righteous for society and warding off harms from it.[91]

This awkwardly articulated position in fact probably goes well beyond the most common liberal conceptions of civic duty in the direction of positive participation.

Elections, http://www.islam-online.net/fatwaapplication/english/display.asp?hFatwaID=106769 (last viewed June 20, 2009).

[89] Muhammad Al-Hanooti, IslamOnline.net, Voting in a Majority non-Muslim Country, www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=14795 (last visited June 20, 2009).

[90] IslamOnline.net, Elections in non-Muslim Countries: Role of Muslims, http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/Fatwa E/FatwaE&cid=1119503545732 (last visited June 20, 2009).

[91] *Id.*

V.   CONCLUSION

It is not surprising that there should be both favorable and unfavorable views towards Western secularism in a discourse like *fiqh al-aqalliyyat*. This is, after all, a fundamentally pragmatic discourse, rather than a systematic-philosophical one.   Internal consistency and overall coherence may be valued, but they are valued alongside many other things, including the struggle for the adherence and support of lay Muslims.   While mainstream scholars who consume and contribute to *fiqh al-aqalliyyat* take great care to play by the rules of post-9/11 (and post-3/11 and post-7/7) European and American religious politics, the fact is that the costs for publicly—yet non-violently—opposing homosexuality and blasphemous speech are relatively low (isn't this what we expect of religious figures?), and the costs with the laity of supporting them in the name of some higher commitment to secularism and neutrality possibly very high.

Indeed, the costs of opposing "secularism" at large in the name of natural law or higher spirituality are also not that high, certainly not the United States.   Why, then, the elaborate theoretical apparatus that emerges in *fiqh al-aqalliyyat* to show that religious neutrality is something which Muslims should endorse?   The fact is that public religious neutrality solves a great problem for Muslim scholars, namely that of the *appearance* of excessive loyalty and subjugation to none other than an alien religious or comprehensive doctrine.   A frequent critical remark on Rawls's "political-not-metaphysical" turn was that merely altering the public language of justification will do nothing to assuage religious citizens, since it leaves in place the same set of institutions, laws, and fundamental secular bias in the public language of justification.[92]   Indeed, as seen in the cases of homosexuality and speech, there is nothing stopping religious citizens from opposing policies they detest, and even mobilizing anti-secular language to do so.

However, it does not follow that the concern with the symbolic, with the "demands of profession" we place on fellow citizens, is shallow or mere hiding of the comprehensive liberal ball.   What we have seen is that often religious scholars are as much concerned with

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[92] Will Kymlicka, for example, writes that, because adopting autonomy as a purely political value has effects on the private pursuit of the good that liberalism is supposed to endorse,

> Rawls's strategy of endorsing autonomy only in political contexts, rather than as a general value, does not succeed. Accepting the value of autonomy for political purposes enables its exercise in private life, an implication that will only be favored by those who endorse autonomy as a general value. Rawls has not explained why people who are communitarians in private life should be liberals in political life.

WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS 162 (1995).

the *language* employed by a state—are Muslims being asked to *profess* something contrary to Islam or even to endure quietly the glorification of a contrary truth?—as they are with the actual policies enforced. Religious jurists are experts at redescribing reality so as to avoid violations of the law (see the above discussion on Qaradawi's infamous *fatwa* permitting service in the U.S.-Afghanistan war); secularism removes humiliating realities which are exceedingly hard to redescribe. At the same time, it is undeniable that some of these scholars perceive in liberal neutrality many of the same virtues that its theorists insist on: its desire to accommodate the consciences of as many citizens as possible, the desire to include minorities, and accountability for the secular welfare of those subject to it.