

FIQH AL-AQALLIYYAT AS AN AMERICAN VERSION OF LOCAL WISDOM

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Abstrak: *Artikel ini membahas suatu bentuk kearifan lokal dalam kajian budaya hukum Islam yang berkembang di kalangan Muslim di Amerika Serikat, negara di mana mereka menjadi warga minoritas. Mengikuti Clifford Geertz dan ahli-ahli lain yang memahami hukum sebagai bagian dari kebudayaan, artikel ini berpendapat bahwa tradisi keagamaan sebuah komunitas pada akhirnya akan tumbuh dari konvergensi bermacam-macam tradisi yang dibawa oleh para individu Muslim dari kebudayaan asal mereka masing-masing. Melalui sebuah proses yang disebut dengan teritorialisasi, berbagai interaksi budaya dalam sebuah komunitas akan mengarah pada pengelompokan tiga macam tradisi: tradisi yang terus berlangsung, tradisi yang disesuaikan, dan tradisi yang disimpan. Praktek lokal sebagaimana yang disaksikan oleh penulis dalam penelitian lapangannya di kalangan Muslim kota Lansing, Michigan dapat dikategorikan sebagai tradisi kelompok kedua. Lebih jauh, kearifan lokal semacam ini telah ditemukan juga oleh para sarjana Muslim yang lain di Amerika. Di antara sarjana dimaksud, adalah Taha Jabir Al-Alwani yang mengajukan tawaran fiqh al-aqalliyat, yang berisi himpunan praktek-praktek ajaran Islam yang mengalami penyesuaian terkait dengan status warga Muslim yang merupakan minoritas di negara tersebut.*

Kata kunci: *kearifan lokal, fiqh al-aqalliyat, Muslim Amerika, dan budaya bersama*

Abstract: *This article discusses a type of local wisdom in the field of Islamic legal culture that is developing among Muslims of the United States as they are minority in the country. Using Clifford Geertz' and others' understanding of law as part of culture, this article is arguing that the eventual religious tradition of a local community will grow from the convergence of varied traditions brought by individual Muslims from their cultures of origin. Following a process called territorialization, cultural interactions*

*within a local community will result in the production of three religious traditions: the continuing, the improvised, and the suppressed traditions. Local practice as witnessed by the writer in his field research among Muslims of Lansing, Michigan is categorized as part of the second tradition. Further, this kind of local wisdom has been observed among American Muslim scholars. Among them is Taha Jabir Al-Alwani who has proposed the term *fiqh al-aqalliyat* for the collections of new practices of Islamic teachings that are related to the status of Muslims being minority in the country.*

Keywords: *Local wisdom, fiqh al-aqalliyat, American Muslims, shared culture*

Introduction

How far Islamic culture can adapt in a new land? This is one of the questions that possibly raise when one realizes the fact that Muslims have settled as residents in a country that used to be a foreign place like America. Coming from varied nationalities and cultures as migrant workers, refugees, asylum seekers, and students, today there are at least five million Muslims¹ who have established their life in America just like other citizens of the country and have had their own places of worships where they hold religious gatherings and public events smoothly complying with the rules of the land.

One thing to notice, however, is that the religious practice the Muslims in America are doing could develop something different or unique if compared with the mainstream Islamic practices in the Islam-dominated countries of origin. The reason for this proposition is because regular gatherings in a multi-cultural community will usually undergo some kinds of

¹Daniel Pipes, "How Many Muslims in the United States?," Daniel Pipes, accessed November 5, 2017, <http://www.danielpipes.org/blog/2003/04/how-many-muslims-in-the-united-states>. We take five million as a moderation of the differed estimates between 1% and 2% of American population who are counted as Muslims. There is no religion-based census in the US. The Pew Research Center in 2011 estimated that the Muslims of America numbered 3.3 million, whereas CAIR (Council on American-Islamic Relations) estimated the number was between seven and eight million. Daniel Pipes, a watchdog writer on American Muslim matters follows these figures in this blog.

routinization, which will eventually create convergence of practices and forms of local varieties of Islamic tradition. Many scholars have indicated that such convergence will lead to a culture that will "... represent both a continuity with the life and faith of the Prophet to his community and the emergence of a new entity with its own qualities and characteristics—a truly American Islam."²

Before discussing further, one also needs to realize another fact about American Muslims: not only did the Muslims of this country come from ethnically and nationally diverse origins, they also are still a minority group of citizens as a whole. There are at least three major groups of American Muslims based on the way they exist in the continent. The first one is the immigrant Muslims who came here in the waves of migration from the downturn period of the Ottoman Empire in the end of the nineteenth century to the refugees related to wars following the 9/11 tragedy.³ These people are Muslims by origins and they would keep trying to maintain their religious traditions they brought from the countries of origin despite all challenges they face in the new land. The second group is the black African American Muslims who came to the continent together with the first European settlers since the periods of Columbus expeditions. They were caught mostly from West Africa, shipped to the East American coasts and enslaved to work in the plantations of the European colonizers. Being powerless, they were stripped from their religious identities and only after two centuries that they got introduced again with the religion of Islam. That's why many of them claim today that their embrace of Islam is a reversion—rather than conversion—to Islam as

²Jane I. Smith, *Islam in America* (Columbia University Press, 1999), 187; Sam Afridi, "Muslims in America: Identity, Diversity and the Challenge of Understanding. 2001 Carnegie Challenge.," 2001.

³Smith, *Islam in America*, 51. According to Smith, first Turkish refugees were mostly Christians who came between 1875 and 1912 from the areas of eastern Turkey that today include Syria, Jordan, Palestine and Lebanon.

they insist that this religion is the religion of their ancestors.⁴ The third group is the Muslim converts, most likely the whites and the Latinos who used to be Christian or not specifically religious. They take Islam as their new way of life after having been exposed to the religion in a variety of ways.⁵ Currently, each of these groups has reproduced at least a generation of offspring who are now active and begin taking over the leadership roles in a variety of Islamic activities, adding up to the complexity of religious life in the American Muslim society.

This article focuses the discussion on how such complexity has influenced the growth of local Islamic culture among American Muslim communities, which are conditioned by being multicultural and minority at the same time. The writer did his research through some periods of fieldworks among the Muslim community of Lansing, the capital city of the State of Michigan, USA between 2009 and 2017. As a sample, this study cannot be claimed to represent the complete phenomena of the development of Islamic culture in America. But the stark similarities among university cities and towns in America could give us an estimate on how Islamic practices at most mosques of America would look like. There are a couple reasons for this argument. First, the United States is a continental country that has been developed with the most modernized communication and transportation systems for more than two hundred years. Lengthy period of such modernization means the interactions among the citizens between cities have established intensively

⁴Edward E. Curtis, *Muslims in America: A Short History* (Oxford University Press, 2009). Researchers of the studies of Muslims among the African Americans have found strong evidences of the presence of Muslims among the black slaves transported from Africa to the American land in the early periods of the colonization of the New Land, or at least before the Civil War, a period so-called antebellum America.

⁵Umar F. Abd-Allah, *A Muslim in Victorian America: The Life of Alexander Russell Webb* (Oxford ; New York: Oxford University Press, 2006). A first white American convert is Alexander Russel Webb, who changed his religion while being American consul in the Philippines of 1887-1892. After conversion, Webb was active in Islamic propagation through world traveling and journalism activities. Although he didn't make successful preaching, he became an example for later converts.

and the cultural communities among the cities have been connected tightly. The exchanges of information among civil institutions flow smoothly and the influences of cultural event from one spot in the country can be spread instantly among the people nationwide thanks to the advancement of information technology. Secondly, the major leadership of American Muslims in the period of immigration after 1965 is held by the educated and the professionals who lived mostly around university campus, which numbered thousands all over the country. So, taking the community of Muslims of the city of Lansing as a research sample will shed light on the major percentage of the phenomenon of Islamic life in America.

Islamic law as a shared culture

The formation of Muslim community in a new place is a result of frequent encounters among individuals who happened to share the same interests in practicing the elements of Islamic teachings. In America, scholars have found out that Islam began to show up in public by the end of the nineteenth century and the first mosque was built in 1921 in Detroit.⁶ But the flourishing period of Islamic phenomena in the country was from 1970s onward thanks to the activism of students and professionals who came to the US following the government's immigration policy of 1965. Because these latter groups of educated immigrants are those who had the financial and intellectual resources to found and maintain social institutions, it is not surprising to see that most of the mosques and Islamic organizations in this period were built around university campuses. The Islamic Center of East Lansing (ICGL), which is located near the campus of Michigan State University (MSU) where the writer was studying, could be the first mosque built around university campus in the state of Michigan. This Islamic center was founded in 1979, following the influx of Muslim students and professional workers to the city around ten years before.

⁶Sally Howell, *Old Islam in Detroit: Rediscovering the Muslim American Past* (Oxford University Press, 2014).

The immigrant Muslims came from different countries of origin and different level of Islamic understandings. As a way of life for many nations, Islam has adopted a lot of local cultures, albeit accessorial or supplementary, on the grass root level after having been practiced in a variety of cultural contexts for many centuries in different continents. Consequently, the Muslim newcomers from the Middle Eastern, South Asian, and African countries, who dominated the number of Muslims in the city, would have different stories regarding Islamic practices as their minds still had the memories originated from the religious practices in their lands of origin. In their new mosque here, however, it would be difficult to accommodate the differences if the variety of Islamic traditions were to be preserved together in the only worship place they just built. So, they needed to practice only the shared parts of Islam if they wanted to keep all of Muslims together in the new community. As a result, the Islamic center became a filtering place that would take the common traditions for the common practices and set aside the specifics to be preserved by concerned groups in their own forums.

Now the Islamic center has been established, this building becomes a site of Islamic authority, which constitutes a human-made institution that holds the control to select and decide which practices that will be continued for common gatherings and which ones that will not. The center's organization, the Islamic Society of Greater Lansing (ISGL), issues rules either in the written form like the constitution or the unwritten ones that are implied from the common routines. Whether it can lead to a stable production of normative traditions or not, this process has made the Muslim community centers as a place of a new culture. So, instead of losing its authority in the face of globalization as indicated by some scholars,⁷ the

⁷See for example Olivier Roy, *Globalized Islam: The Search for a New Ummah* (Columbia University Press, 2004); Peter Mandaville, "Globalization and the Politics of Religious Knowledge: Pluralizing Authority in the Muslim World," *Theory, Culture & Society* 24, no. 2 (2007): 101–15.

phenomenon that we can call here a *territorialization*⁸ of Islam in America has signaled an opposing trend. Further, whereas those scholars described the symptoms of “deculturation”⁹ for Muslim immigrants who have been detached from the context of their original culture, we can call the production of rules and norms within the American Islamic centers a *reculturation*.

It has some truth to say that globalization can cause Muslims to undergo what so-called the “functionalization”, “respatialization”, and “mediatization” of Islamic authority, because the displaced Muslims no longer follow the “conventional understandings of religious knowledge, its location, and mode of articulation.”¹⁰ But such descriptions give more chaotic impression than the settling process of religious culture. With its ability to *recontextualize* the prescriptions of Islam on a piece of American land, the development of normative culture in an Islamic center would be more suitable to be described as the emergence of “law” as defined by Geertz as local knowledge.¹¹ Geertz said,

Law, ..., is local knowledge; local not just as to place, time, class, and variety of issue, but as to accent—vernacular characterizations of what happens connected to vernacular imaginings of what can. It is this complex of characterizations and imaginings, stories about events cast in imagery about principles, that I have been calling a legal sensibility.

Implying from its general meaning, Geertz defines that law is the characterizations of what exists and can imaginably exist based on local knowledge. Bringing it to the context of the Islamic center, the law of the community is derived from the compilation of its members’ understandings of their experiences since the time of initial efforts of Islamic practices to the establishment of the Islamic society, then the community will

⁸The concept of *territorialization* is originated from Deleuze and Guattari “Anti-Oedipus: Capitalism and Psychoanalysis,” *Critical Theory Since 1965*, 1977, 283–307.

⁹Roy, *Globalized Islam*, 259.

¹⁰Peter Mandaville, *Global Political Islam* (Routledge, 2010), 1.

¹¹Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (Basic books, 2008), 215.

keep recording its memories up to the undetermined future. It is from the communal memories that the rules are produced through the employment of what Geertz called legal sensibility. The communal rules will become a social tool that will contribute to the way the communal life will evolve. As other scholars said, law is a constitutive part of culture.¹²

Regarding shared practices, we can see that in a country with long records of religious freedom people are free to preserve their traditions, either revived or improvised. Considering this situation, we can find the development of legal culture in this Islamic center consists of at least three streams of traditions that run in parallel, in which different traditions share a place for the convenience of all in a non-intervening coexistence. The first category is the continuous, the old, great mainstream traditions that have been consistently committed by Muslims from the Prophet Muhammad PBUH himself and his companions, which are basically kept the same despite multiple transmissions through different places and generations and still the same as they were carried on by the immigrants who attend the Islamic centers of American cities.¹³ In Lansing context, the traditions of this category are not many, since they are parts of the core traditions so-called the pillars of Islam and their implementations are depended on the mosque's capacity. Out of the five ancient traditions, the Islamic center of East Lansing as an institution has provided various services for all except for the facilitation of those who want to do the fifth ritual: *hajj* or the pilgrimage to the city of Mecca in Saudi Arabia. Despite its important record as a connecting factor in the spreads of Islamic authority in the past this annual ritual today mostly began from personal initiatives and has been fulfilled through personal efforts. Only a few imams in America this time serve also as guides or companions

¹²Naomi Mezey, "Law as Culture," *Yale JL & Human.* 13 (2001): 35; Lawrence Rosen, *Law as Culture: An Invitation* (Princeton University Press, 2006).

¹³The term *great tradition* was proposed by Robert Redfield to describe parts of orthodox practices that were present in local context, in comparison to *little tradition*, which was made only in a particular location. Robert Redfield, "The Social Organization of Tradition," *The Journal of Asian Studies* 15, no. 1 (1955): 13–21.

for *hajj* and *umrah* (lesser *hajj*) all the way to Saudi Arabia, and if they do, they are mostly doing these services as personal business outside their mosque affairs.

The second category of the traditions are the local improvisations which could be aimed as either complementary or supplementary to the first category of traditions.¹⁴ Inspired by the meaning of complementary and supplementary in geometry,¹⁵ what I mean by complementary traditions are the ones that are needed to improve or to ease the implementation of the main traditions, without whom the implementation of the main traditions would be felt uncomfortable or difficult. For example, building a mosque is itself complementary since it is not compulsory. But a worthy mosque will guarantee the validity of prayers because it fulfills the cleanliness, and the congregants' safety from the natural hazards. Meanwhile, what I mean by the supplementary traditions are those that will add up to the congregants' social life after the fulfilments of the main traditions. Unlike the complementary traditions that will give direct effects to the main traditions, the supplementary traditions will give indirect benefits to the spiritual life of the congregants. An example of such supplementary activities are the learning circles and social gatherings between the prayers sessions. Learning circles won't affect the validity or comfortability of prayer activities, but the transfers of knowledge, especially the Islamic ones, will improve the congregants' religious experiences, and can lead them to be more affluent believers.

The third traditions are those that are suppressed or set aside from the common congregation as they are not fully shared among all attendants. These exclusive traditions are remaining among groups of Muslims who still want to keep their inherited traditions in private forums. These traditions could be ethnical such as those surrounding the ceremony of birth so-called

¹⁴This is very close to the *little tradition* proposed by Redfield above.

¹⁵"Measurement and Geometry | Angles: Complementary and Supplementary," PBS LearningMedia, accessed September 19, 2018, <https://www.pbslearningmedia.org/resource/gedgeo.geo.angles.ancomsup/angles-complementary-and-supplementary/>.

'aqeeqah, or of marriage so-called *walimat al-'arush*, which are usually set up in the way the host of the events has wanted in accordance to the prescriptions of the original countries. They could also be sectarian such as the traditions of the Shi'i school of Islamic law, which will become minority inside a Sunni-controlled mosque. Another example is the traditions of the all-traveling Tablighi Jama'at people Muhammad Khalid Masud, *Travellers in Faith: Studies of the Tablighi Jama'at as a Transnational Islamic Movement for Faith Renewal*, vol. 69 (Brill, 2000)., who always hold their circles in other community's mosques and often use the main pulpit if allowed by the host congregations. Despite being Sunni group, the Tablighi Jama'a people have behavioral routines that are normative for their own members. So, ordinary attendants need to adjust their attitude if they still want to be comfortably joining a Tablighi circle.

Local practice of Islam among the minority

What I mean by local practices here are the second tradition according to the division as proposed above. They are the consensual improvisation of core traditions that are practiced in the common forums of the Islamic center or contextualized into the existing environment of the city. Due to the limited space, this article will take the example of Friday prayer (*salat al-jumu'a*) among many improvisations that have become law in the community.

The first reason why a Muslim does need to attend Friday prayer is of course the textual prescription. The Islamic signs regarding this ritual indicate that the obligation of Friday prayers is exceptional. The 62nd chapter (*Sura*) of the Qur'an, where the instruction is found, is named *al-Jumu'a*, meaning the gathering. The same word is also used for the name of the day in Arabic, *yawm al-jumu'a*, the day of congregational prayer. And the mosque where the prayer is regularly held is called *masjid al-jami'*, mosque for *jumu'a* prayer. It is practically a weekly reunion, and more importantly, Friday prayers must be held in public congregation. If the congregation is too difficult to gather due to such things like safety reasons or natural disasters, then it can be

cancelled, and the people just need to observe the regular noon prayers individually at home.

Being instructed as a public event, this prayer also is not avoidable from political situation. Historically speaking, the Prophet Muhammad PBUH didn't hold this prayer when the Muslims were minority in the city of Mecca. But once he received a firm endorsement from the people of Yathrib (earlier name of the Medina city), he sent an advance ambassador to make the people prepared to welcome his *hijra* (emigration from Mecca to Medina in 622 AD), with an important activity to introduce: the Friday prayer. When the Prophet finally arrived at Medina, Friday prayers began to become weekly routine. Still, the Friday prayers were obligated only for males, which signifies the patriarchal character of Islamic social system, while the females were not obligated to join.

This time in the mosque of East Lansing, like most other cities in America, Muslim women are no less enthusiastic in attending the weekly prayers. In this mosque, the number of female congregants during Friday prayers are at least half the number of the males. The community's female members have been as active as the males from the beginning that those who stay in home during the Friday prayers were not actually uninterested to attend. They just have to take care domestic matters, or don't have the transportation means, that they cannot attend the Friday prayers.

Global politics sometimes caused tensions during the Friday prayers that were created when some of the audience couldn't sit still anymore as they didn't agree with what was being spoken in the sermons. The most respected elder of this Islamic center, Shaikh Omar Soubani, told the writer his story following the American military operation in Iraq. In 1991, he decided to come back early from an activity in Jordan after receiving a call from the center's president of the particular period, who said that the mosque community of Lansing was breaking up following disagreements about the American presence in Saudi Arabia while attacking Iraq. Arrived back in East Lansing, Shaikh Omar delivered sermons in some Fridays prayers to cool down the tension. His main message to the congregation at that time was

that the quarrels gave no benefit to anybody; that the people in the Middle East didn't care about what they were disagreeing in Lansing. Regarding Friday sermons, Shaikh Omar explained again the neutrality principle as he often noted in public. He told me about his advice to the *imams* (leaders) of Friday prayers not to get trapped in something unnecessary for the rituals. He suggested the sermon speakers to stay away from any controversial issues. Controversial topics could be discussed in lectures and classes. Giving some examples, he didn't recommend the topic of moonsighting for a sermon to avoid someone in the audience stands up to protest, consequently losing the spiritual value of his prayers. He suggested instead the talk about education, social service, or other general teaching of Islam.

In the turn of 2008 to 2009 during the Israeli-Palestinian war in Gaza Strip, a special supplication called *qunut nazila*¹⁶ was added to the regular processions of Friday prayers and some other daily prayers. This addition was made to resonate their deep sorrow undergone by the community that was mourning over the calamity being happened in the other part of the world. Sometimes the supplication was dramatized with some sounds of those trying to suppress the cry, and a few-minute lengthened improvisation of mourning words that made it felt painful even for non-Arab congregants, including me. It reminded me to the same depth of sadness and anger created in the congregants' hearts by similar supplications some fifteen years before, during the Bosnian War of 1992-1995, all the way back in Indonesia. This additional supplication is actually restricted, which won't be allowed by most congregants if there is no reason. As known widely among Muslims, an illegitimate

¹⁶ Having the same core wordings as the regular *qunut*, *qunut nazila* also allows longer supplication depending on the imam's knowledge. Zamzam Academy, "Qunūt-AlNazila.Pdf" (Zamzam Academy, July 2014), <http://www.zamzamacademy.com/wp-content/uploads/2014/07/Qun%C5%ABt-alNazila.pdf>.

addition in ritual matters is called *bid'ah*, a negative label of heresy that can lead to violent conflicts among Muslims.¹⁷

Fiqh al-Aqalliyyat as a Local Wisdom

In this article, the writer is arguing that scholars need to take the efforts on how to move forward from the undeniable existence of Muslim citizens and their Islamic traditional law within the American legal system. With this framework, the improvisation of Islamic traditions in the mosques of Lansing can be understood as a local wisdom, a result of cultural process that adjusts Muslims with the society they live in. Scholars of social sciences have observed the cultural processes with different perspectives to explain how a variety of factors had been synthesized to survive an inherited religion in a new social environment. Andrew March, one of the scholars of political liberalism, scrutinizes the cultural developments among Muslims with three questions whose answers have to be revealed from the Muslim side: whether the new traditions indicate that their residency in a non-Muslim country has been legitimated by the Islamic texts, whether they prove a religiously sanctioned Muslims' loyalty to their new nation, and whether they show Muslims' recognition to non-Muslims around them as fellow citizens, not merely potential converts.¹⁸ To respond to these questions, we can see the relevance of Mujahit Bilici's work which explains the Muslims' efforts to make their religion part of American culture. Those efforts, according to Bilici, consist of at least three ways: active participations in the campaigns of legal justice for American Muslim citizens, nurturing friendship networks and cooperation with other religious faiths, and vernacular familiarization of Muslims' presence as a natural part of American society through comedy shows in the public media.¹⁹

¹⁷"Innovation - Oxford Islamic Studies Online," accessed April 20, 2018, <http://www.oxfordislamicstudies.com/article/opr/t125/e1037>.

¹⁸Andrew F. March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford University Press, 2011).

¹⁹Mucahit Bilici, *Finding Mecca in America: How Islam Is Becoming an American Religion* (University of Chicago Press, 2012).

Bilici's works describe more on the externalization, or the outward embodiment of Muslims' presence in America, whereas March's questions demand more on the transformation in the interpretation of Islamic texts. In that domain, numerous works have been produced by Muslim scholars who were trying to reconcile the Islamic legal prescriptions with the challenges of modern civilizations, especially in the West. Muslim legists who have seen or experienced the challenges of living as religious minority in the West have come up with several proposals.

The most famous proposal has emerged under the term of *fiqh al-aqalliyat* (jurisprudence for minorities).²⁰ It was launched by Taha Jabir al-Alwani when he was the chairman of FCNA (Fiqh Council of North America), and Shaikh Yûsuf al-Qaradâwî, the president of ECFR (European Council for Fatwa and Research).²¹ Fiqh al-Aqalliyat is a coinage of a new category in Islamic law which legitimizes the presence of Muslims in non-Muslim dominated countries provided they are still able to preserve their religious practices according to the *maqasid* (maxims) of the *Shari'a*. While the classical texts advise Muslims to move from non-Muslim lands to the places ruled by Islamic law,²² the proponents of *fiqh al-aqalliyat* argue that the current conditions of Muslims living in the West warrant them to stay. To justify this reversal suggestion, Al-Alwani reveals an attempt of authoritative right by saying in his book that the current Muslim scholars were just following the examples the early generations of Muslims had done. In *Towards a Fiqh for Minorities* he said,

The Prophet's companions adopted the same approach and never flinched from amending or changing their views and

²⁰Shammai Fishman, *Fiqh Al-Aqalliyat: A Legal Theory for Muslim Minorities* (Hudson Institute, 2006).

²¹FCNA was founded in 1988 as part of ISNA, while ECFR was founded in 1997 by a number of European and Middle Eastern *Ulamas*. A brief history of FCNA can be seen in its website: "History of the Fiqh Council," 2011, <http://www.fiqhcouncil.org/node/13>.

²²Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Islamic Law and Society* 1, no. 2 (1994): 141–187.

rulings whenever they found reason or justification for so doing, due to changes of time or space. Many of the rulings advanced by the four successors of the Prophet included minor as well as major amendments to rulings applied during the lifetime, while some were totally new... Muslims of the second generation followed a similar practice, deviating in their rulings over certain issues from the views of their predecessors.²³

Al-Alwani follows this statement with two endnotes with long list of cases to prove the deviance of the earliest generations. From the perspective of this article, those lists have proved only the authority of the Muslim generations, whose *fatwas* have gained uncountable number of followers and given birth the current schools (*madhabib*) of Islamic law. The religious authority of Al-Alwani himself can only be recognized first with the fact that he was appointed the first chairman of FCNA in 1986, then holding the same position until 2001. He also writes around a dozen other books in Islamic law, both in Arabic and English. To dub a demise of his popularity, some media have tried to draw an image about him lacking authority. But numerous works of other Muslim scholars who respond and resonate to his idea indicate that his idea of the new category of Islamic law had been recognized.

The remaining question is now whether his idea has been recognized by ordinary American Muslims, the people whom his idea is supposed to serve. Recognitions on the authority of Muslim scholars like him are in the hands of those who regularly attend the mosques because they have the most genuine perception about the merit of an Islamic teaching in the field. Unfortunately, Al-Alwani's works seem to be just a beginning. After pointing that the earlier generations' works were "innovative" and "deviating"²⁴ to their predecessors, Al-Alwani

²³Taha Jabir Al-Alwani, *Towards a Fiqh for Minorities: Some Basic Reflections*, vol. 10 (International Institute of Islamic Thought (IIIT), 2003), 8.

²⁴ Al-Alwani, 10:8. By being innovative, al-Alwani mentioned further explanation from the jurists that their differences with their own teachers over issues were simply due to "the changing of times and situations, rather than to new evidence or reasoning".

presented four reasons for a new methodology, another seven reasons for a clear objective, twelve methodological principles, and eighteen key questions to be answered by what so-called *fiqh for minorities*. All of these are just arranged to be the foundation, whereas the task to build the compendium, the collection of local cases and rules that would be the corpus of Islamic law for Muslim minority in the US has yet to be done. If completed, it will constitute the real reference of behaviors that can gain its merits if its prescriptions are accepted by American Muslim citizens, and more importantly, compatible with the US constitution and recognized by local governments. Only after the jurisprudences are published that an authority of Islamic law in America could be regarded exist, whatever the ingredients it consists of.²⁵ We cannot expect much from this small booklet, except in its laying down of the foundational formulations.

If there is any case-ruling Al-Alwani made at all in this book, it is about the validity of Islamic existence in a non-Islamic place. Regarding the classical debate about *dar al-islam* (the abode of Islam) and *dar al-kufr* (the abode of heathen), Al-Alwani took the opinion of Al-Mawardi, a jurist from the Shafi'i school, who said that:

If [a Muslim] is able to manifest [his] religion in one of the unbelievers' countries, this country becomes a part of *dar al-Islam*. Hence, residing in it is better than migrating because it is hoped that others will convert to Islam [through him].²⁶

Further, Al-Alwani also cited the opinion of another Shafi'i jurist, *Imam Fakh al-Din al-Razī* (Razes) who didn't agree on the rigid division of the two abodes.

Instead of *dar al-harb* [the abode of war], He describes the whole world as *dar al-da'wah*, the land for the propagation of Islam, and *dar al-Islam* as *dar al-ijabah*, or the land of

²⁵ Because the main source of Islamic law, the Qur'an, instructs the believers to follow the rules of the land they voluntarily agree to live in, it is highly possible that one main content of what to be called Islamic law in America is the US Constitution.

²⁶ Al-Alwani, *Towards a Fiqh for Minorities*, 10:29; Abu al-Hasan al-Mawardi, *Al-Ahkam Al-Sultaniyya* (Beirut: Dar al-Kutub al-'Ilmiyya, 1985), 163–64; El Fadl, "Islamic Law and Muslim Minorities," 150.

compliance. He also classifies people into *ummat al-da'wah*, the non-Muslims, and *ummat al-ijabah*, the Muslims.²⁷

With these responses, Al-Alwani has answered March's questions with positive affirmations. Islamic texts indeed have the rational justifications for the believers who stay in the countries of non-Muslim hosts provided they found living with them beneficial and peaceful; the holy texts also legitimize the loyalty of Muslim as citizens to the government of the land; although for the third question, Al-Alwani does agree to the opinions of those who see non-Muslim host citizens as the audience of the Islamic propagation so-called *ummat al-da'wah*. And it seems nothing wrong with that as long as there is no compulsion.

Based on an article by Uriya Shavit, Al-Alwani's standing with the opinions of Al-Mawardi and Al-Razi is regarded moderate (*wasati*) approach, because such standing would recommend the Muslims living in the West take a positive action: integrating themselves to the citizenship of the land on which they are living. Meanwhile, the majority of *ulamas* took the conservative (*salafi*) approach, which would let Muslims to live in non-Muslims' land but suggest them to take a negative action: non-integrative relation to the host' legal system.²⁸ Surely, Al-Alwani's ruling is an improvisational advice to the American Muslim audience who would choose to stay under the conviction that they would enjoy the American protection of religious freedom, and because they have come to the country under legitimate intentions for the sake of everybody.

While the positive approach will lead American Muslims to invent improvisational traditions for the sake of social integration, the negative approach will offer them leniency in the effort to maintain their religious piety. Khaled Abou El Fadl, a distinguished UCLA professor of law who was trained as an Islamic jurist in the Middle East, revealed a consequence of

²⁷ Al-Alwani, *Towards a Fiqh for Minorities*, 10:29.

²⁸ Uriya Shavit, *Shari'a and Muslim Minorities: The Wasati and Salafi Approaches to Fiqh Al-Aqalliyat Al-Muslima* (Oxford University Press, 2015).

choosing the rigid classical division of the world. El Fadl cited Rashid Rida as following:

Early in this century, Rashid Rida was asked if a Muslim in Lebanon may rent a room in a hotel that sells alcohol. Rida first argued that Lebanon and Syria were not then a part of *Dar al-Islam*. Building on the pre-modern discourse, Rida argued that the Islamic civil law does not apply to Muslims residing in non-Muslim territory. Muslim minorities are bound only by the laws pertaining to acts of worship (*'ibadat*). Consequently, a Muslim in such a situation may rent the room and deal in usury or other questionable financial transactions ... The traditional criteria worked out by earlier generations of Muslim jurists pose difficult questions for the modern age, when the application of Muslim personal or family law in a secular state has become a difficult matter. Seemingly private acts such as wearing Islamic attire have proven to be problematic in a secular democracy. More intricate legal problems may arise from discreet discrimination against those dressed as Muslims, and practicing polygamy may result in a criminal conviction or deportation.²⁹

So, without necessarily supporting it, El Fadl revealed that the classical choice had resulted in a religious leniency in which Muslims didn't have to maintain any more than their ritual obligations like prayers and fasting in the private areas or religious places like the mosque. That is because insisting on maintaining the classical religious prescriptions would give bad impacts right on the Muslims' existence. But these self-restrictions also can affect toward the integrational problem because such Muslims, instead of adjusting their religious traditions into the secular environments, would forget parts of their identities at all. What will happen is acculturation or assimilation, which is not the best situation, either.

Finally, we should mention here that some scholars didn't like the term *aqalliyyat* (minority) because the term could create an impression of inferiority complex. The term according to them was also confusing because there were many kinds minority in the world of Muslims. A Syrian Sheikh Saeed

²⁹ El Fadl, "Islamic Law and Muslim Minorities," 185–86.

Ramadan al-Buti was also afraid that this new jurisprudence would create a calamity, “a plot to divide Islam”. Another critic rejected it entirely because Muslims didn’t need a separate system of *fiqh*, he said. Those who could understand Al-Alwani’s call also condemned the considerable leniency given to the believers. Toward these criticisms, Al-Alwani said that “... this is the *fiqh* of a group confined to special conditions that is permitted to do what others are not permitted.”³⁰ We will see if this term will prevail in the history.

Concluding remarks

Back to the question whether Islamic culture can adapt in a new land, apparently the answer will be reflected in the ability of Muslims themselves to persevere as normal citizens in the country. That Muslims have settled as residents in America is the fact of today. But how long this fact will still be a fact depends on how successful the Muslims can adjust their way of life with the surrounding conditions, a process which will deliver the so-called local wisdom. By this point, Taha Jabir Al-Alwani has presented his effort by the idea of *fiqh al-aqalliyat*. Such contributions will determine how extent the Muslims can enrich their local wisdom. The availability of the Islamic leaders, imams and legal advisors serving the Muslim communities are important here. They would perform *ijtihad* in order to offer solutions to the problems faced by Muslims in their real life. Their service will prove that the door of *ijtihad* is still open, and the Muslim communities in America are the people who still in need of it.

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³⁰ Tauseef Ahmad Parray, “The Legal Methodology of ‘Fiqh Al-Aqalliyat’ and Its Critics: An Analytical Study,” *Journal of Muslim Minority Affairs* 32, no. 1 (2012): 88–107.

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