

Yohanan FRIEDMANN\*

## MUSLIM MINORITIES — A HISTORICAL SURVEY\*\*

When the issue of minorities is discussed in the context of Islam, one usually thinks of non-Muslims living under Muslim rule. This topic, including the “protected communities” (*dhimma*) problem, has been extensively studied since the beginning of modern scholarship. The study of Muslims living in non-Muslim majority countries has been given far less attention. This situation is now going through a process of change. The significant growth of Muslim population in Western Europe and in the US, the problems relative to their integration in local societies and last but not least the terrorist attacks by radical Muslim groups in the US, in England, in Spain and elsewhere, all these factors combined to heighten both public and scholarly interest in Muslim minorities.<sup>1</sup> The number of Muslims in non-Muslim majority countries is estimated at more than 300 million. This figure includes approximately 189 million Muslims in India who constitute the largest Muslim minority in the world.<sup>2</sup>

It is appropriate to start this historical survey of Muslim minorities by noting that Islam started its history when the first Muslims were a subjugated

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\* Israel Academy of Sciences and Humanities, Institute of Asian and African Studies; The Hebrew University of Jerusalem and Shalem College, Jerusalem.

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<sup>1</sup> *Yearbook of Muslims in Europe* was launched in 2009, under the general editorship of Jorgen S. Nielsen. So far ten volumes have been published. It was preceded by the *Journal of the Institute of Muslim Minority Affairs* which started publication in 1979.

<sup>2</sup> This approximate figure was computed on the basis of statistics provided by the Pew Research Center. See [https://en.wikipedia.org/wiki/Islam\\_by\\_country](https://en.wikipedia.org/wiki/Islam_by_country), accessed on February 19, 2019.

minority in the city of Mecca. They were subjected to pressure and some suffered even torture to force them to renege on their newly acquired monotheistic faith. This religious persecution resulted in two migrations (*hijras*) from Mecca: first a *hijra* of some Meccan Muslims to Abyssinia around 615 and later the more famous *hijra* of the Prophet Muḥammad and most of his supporters to Medina. The idea that Muslims should not live in a place ruled by non-Muslims who deny them religious freedom became a central idea in classical Muslim religious thought. The migrations to Abyssinia and Medina should be seen as an implementation of this principle: a group of early Muslims migrated from an area where they could not freely practice their faith. The period characterized by this lack of religious freedom for Muslims lasted for only 13 years — between the emergence of Islam in 610 and the *hijra* to Medina in 622 — though some Muslims remained in Mecca after the *hijra* and lived under non-Muslim rule until the Muslim conquest of the city in 630. This short period acquired only a limited importance in the Muslim ethos, though we shall see later that “Meccan” Islam has a place in modern discussions.<sup>3</sup> Nevertheless, the period of Mecca is important because it gave rise to a very significant idea in Muslim thought in the formative period: Muslims should not live under non-Muslim rule, because the freedom to perform the Islamic commandments is of crucial importance. The assumption underlying this idea is that, as a matter of principle, non-Muslim rulers do not accord religious freedom to Muslims. This is reflected in several Qur’ānic verses which create a necessary connection between belief and migration from non-Muslim territory.<sup>4</sup> It is also the background for the *ḥadīth* according to which the Prophet denounced Muslims who lived among polytheists, saying: “I am free from responsibility for any Muslim who lives among the polytheists” (*anā bar’ūn*

<sup>3</sup> See below at note 34.

<sup>4</sup> Those who believe, and have emigrated and struggled with their possessions and their selves in the way of God, and those who have given refuge and help -- those are friends one of another. And those who believe, but have not emigrated -- you have no duty of friendship towards them till they emigrate; yet if they ask you for help, for religion’s sake, it is your duty to help them, except against a people between whom and you there is a compact; and God sees the things you do. (Qur’ān 8: 72); “And those the angels take, while still they are wronging themselves -- the angels will say, ‘In what circumstances were you?’ They will say, ‘We were abased in the earth.’ The angels will say, ‘But was not God’s earth wide, so that you might have emigrated in it?’ Such men, their refuge shall be Gehenna -- an evil homecoming! --” (Qur’ān 4: 97)

*min kulli muslimin bayna azhur al-mushrikīn*).<sup>5</sup> In more colloquial English, one would say: “I have nothing to do with any Muslim who lives among the polytheists.” Or, in another formulation: “He who associates with a polytheist or lives with him is like him” (*man jāma’a al-mushrika wa sakana ma’ahu fa-innahu mithluhu*).<sup>6</sup>

It stands to reason that the original context of this *ḥadīth* was to encourage *hijra* from Mecca, or from tribal areas, to Medina, but its significance was later expanded to include the migration from any country under non-Muslim rule. The fact that in later periods some of the countries in which Muslims lived were ruled by non-Muslim monotheists rather than by polytheists has become immaterial.

The situation of the Muslims was dramatically transformed by the phenomenal Islamic conquests of the 7<sup>th</sup> century. As the conversion of the conquered population to Islam was a slow process, the Muslims remained a minority in the occupied territories for an extended period of time. But since the Muslim minority was a ruling one, the Qur’ānic verse and the *ḥadīth* mentioned above were not applicable to the new situation. In the eyes of the Muslim traditionists and jurists, the crucial issue was not the composition of the population, but rather the identity of the ruler. We cannot go into detailed investigation of the question for how long the Muslims were a minority in the various regions conquered in the 7<sup>th</sup> century.

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<sup>5</sup> Abū Dāwūd, *Sunan*, vol. 3, p. 62 (no. 2645); Tirmidhī, *Ṣaḥīḥ*, vol. 7, pp. 104–107. This tradition was originally used in order to resolve the question whether the Muslim treasury needs to compensate the relatives of Muslims who had been killed while living among polytheists, but it is also used as a general denunciation of life among non-Muslims.

The tradition in which the Prophet encouraged Muslims in Mecca before the *hijra* to migrate to Abyssinia came up for discussion in the conference held by the Montenegrin Academy of Sciences and Arts and the Euro-Mediterranean Academic Network Conference, Bar, Montenegro, October 4–6, 2018. The tradition reads: “I wish you would set out for the land of Abyssinia, because there is a king in whose kingdom no one is wronged” (*law kharajtum ilā arḍ al-Ḥabasha fa-inna bihā malikan lā yuẓlamu ‘indahū aḥad*). It was argued that this tradition contradicts the injunction according to which Muslim should not live among non-Muslims. However, this is not a possible interpretation of this tradition. The *hijra* to Abyssinia took place when Mecca was still under polytheistic rule and leaving it cannot be construed as leaving an Islamic area or preferring to live among non-Muslims. The tradition explains that the Muslims should move to Abyssinia because they suffer from religious persecution in Mecca, while the Christian emperor of Abyssinia is known for his just rule, and, presumably, will allow the Muslim emigrants to practice their faith. For the tradition about the *hijra* to Abyssinia, see Ibn Hishām, *al-Sīra al-nabawiyya*, Beirut: Dār al-Khayr 1999, vol. 1, p. 255 (translation by A. Guillaume, *The Life of Muḥammad*. London: Oxford University Press 1955, p. 146).

<sup>6</sup> Abū Dāwūd, *Sunan*, vol. 3, p. 122.

The classical Muslim historians are interested in the conquests themselves, in the building of the Muslim empire and of its institutions. The demography of the territories and the changes in the religious affiliation of the vanquished populations are almost completely disregarded. In view of this predilection of the classical historians, questions of extreme importance to the modern historian are difficult to solve. By way of example, decades of research on the question when Egypt became a Muslim majority country is inconclusive. Misinterpreting a lone passage in a 15<sup>th</sup> century chronicle — which only says that a Coptic rebellion in 832 CE was suppressed and the Muslims took control of most the villages — several scholars expressed the opinion that in the wake of this suppression “the majority of the villages of Egypt became Muslim.”<sup>7</sup> This interpretation is based on a misunderstanding of the text and the conventional wisdom still maintains that approximately six centuries elapsed until Egypt became a Muslim majority country.

It stands to reason that during the first four centuries of Muslim history few Muslims lived under non-Muslim rule. However, this situation was not destined to last. Beginning with the 11<sup>th</sup> century, significant areas conquered in the past by the Arab Muslims reverted to non-Muslim rule. The island of Sicily, conquered by the Aghlabī rulers in a series of battles in the 9<sup>th</sup> century, was conquered by the Normans between 1072 and 1079.<sup>8</sup> The Muslims were given conditions which can be perceived as similar to what they themselves were used to offer to non-Muslims under their rule: autonomy, payment of tribute and freedom of religious observance.<sup>9</sup> It seems that much of the Muslim cultural elite migrated in the wake of the Norman conquest to Spain or North Africa while those who remained accepted their existence under non-Muslim rule as legitimate and one of their jurists asserted that the rulings of judges appointed by the Christian rulers should be seen as valid. The Muslim population of Sicily existed until the 1220s when it was deported to the city of Lucera on the Italian mainland.<sup>10</sup>

Simultaneously with the reconquest of Sicily started the long process of Christian *reconquista* in Spain. This process began with the conquest of

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<sup>7</sup> G. Wiet, *L'Égypte arabe*, p. 75; Lapidus, “The conversion of Egypt to Islam”, p. 257; Fattal, *Le statut légal*, p. 282. One needs to return to the work of C. H. Becker who translated the crucial passage (*wa ghalabahum al-muslimūn ‘alā ‘āmmat al-qurā*) correctly: “Auch bemächtigten sich die Muslime der Ortschaften.” See his *Beiträge zur Geschichte Ägyptens unter dem Islam*, p. 121. For a full discussion of this issue, see Friedmann, “A note on the conversion of Egypt to Islam.”

<sup>8</sup> Metcalfe, *The Muslims of Medieval Italy*, p. 88.

<sup>9</sup> Metcalfe, *The Muslims of medieval Italy*, p. 106.

<sup>10</sup> Metcalfe, *The Muslims of medieval Italy*, pp. 122–123, 142.

Toledo in 1085<sup>11</sup> and gave rise to the emergence of Muslim communities under Christian rule, known as the *Mudejars*, *al-mudajjanūn*, Muslims “who were left behind.” These communities existed in Spain under changing circumstances until the completion of this process at the end of the 15<sup>th</sup> century. The subjugated Muslims of the Frankish Levant during the Crusaders’ period should also be taken into account.<sup>12</sup>

During the era of the three great Muslim empires — the Ottoman, the Safawid and the Mughul — there were barely any Muslim minorities living under non-Muslim rule. In the Ottoman empire this situation began to change when the Ottomans were forced to surrender Crimea and its Muslim population to Russia in the treaty of Küçük Kaynarça in 1774. Another Muslim minority came into being when the Ottomans ceded Bosnia-Herzegovina to the Habsburg empire in 1878. Major developments in this field took place with the beginning of European incursions into South Asia and the Middle East when large Muslim communities came under foreign rule.

I would like to devote the main part of this article to the development of Muslim legal thinking on the permissibility or otherwise of living among non-Muslims. In mediaeval Muslim thought various views have been expressed on the question whether Muslims can live a fully Islamic life under infidel rule. We have already seen the tradition in which the Prophet is reported to have frowned on those who live among the polytheists. The assumption of classical Muslim jurists is that infidel governments will as a rule deny freedom of religious belief and observance to the Muslims and the Muslims should therefore emigrate (*hijra*) from areas ruled by non-Muslims. It stands to reason that the prevalent perception of infidel rulers as denying religious freedom to Muslims is based on the traditional description of the persecution which the nascent Muslim community suffered in Mecca before it was taken over by the Muslims in 630 CE.

As Patricia Crone has shown<sup>13</sup>, the Qur’ānic concept of “emigrants” (*muhājirūn*) is related to *jihād*. In the prophetic tradition, there are two concepts of *hijra*. The “classical” or “closed” concept, as Crone calls it, is based on prophetic traditions according to which “*hijra* ceased after the conquest (of Mecca), but *jihād* and intention (remain); when you are called up, go forth.”<sup>14</sup>

The other concept is “open-ended”, best epitomized by the tradition saying that

<sup>11</sup> Wasserstein, *The rise and fall of the Party-Kings*, pp. 249ff.

<sup>12</sup> Kedar, “The subjugated Muslims of the Frankish Levant.”

<sup>13</sup> Crone, “The first-century concept of *hijra*.”

<sup>14</sup> Ṣan‘ānī, *Muṣannaf*, vol. 5, p. 309 (no. 9711); cf. Crone, loc. cit., p. 371.

“there will be a *hijra* after the *hijra*. The best people (will go) to the place where Abraham moved... The worst people will remain in the land. Their land will seize them ... and they will be resurrected with the apes and pigs.”<sup>15</sup>

and by abundant material advocating migration to the garrison cities long after the Prophet’s death. It is clear that the “open-ended” concept of *hijra* gained the upper hand. Traditions such as “there is no *hijra* after the conquest (of Mecca) (*lā hijrata ba’ da al-fath*)”<sup>16</sup> never stood in the way of Muslims who intended to make the *hijra* an element of their religious thought and practice or of Muslim leaders who saw in *hijra* a strategy for mobilizing support for their endeavors. Two leaders of messianic movements, Sayyid Muḥammad Jawnpūrī in 15<sup>th</sup> century India and the Sudanese *mahdī* Muḥammad Aḥmad in the 19<sup>th</sup> century, demanded that their followers abandon their families and professions and perform *hijra* to their camps as a condition of full membership in their movements. And as we shall see later, the issue was still alive at the beginning of the 20<sup>th</sup> century.

The second issue to be discussed here are the twin concepts of “the abode of Islam” (*dār al-islām*) and “the abode of war” (*dār al-ḥarb*). In modern scholarship there is a tendency to define *dār al-ḥarb* as an area which needs eventually to be incorporated into *dār al-islām* by means of war.<sup>17</sup> I have not come across this definition in the works of the classical jurists. This does not mean that these Muslim scholars opposed it; it seems, rather, that the concept of *dār al-ḥarb* and its interpretation was so well known, that they did not deem it necessary to elaborate on its meaning. However, the absence of a clear definition in classical jurisprudence is significant for the modern debates on the issue: it enabled some scholars to argue that the concept of *dār al-ḥarb* applies only to areas which are actually at war with Muslims, or to areas which do not have an agreement with them. *Dār al-islām* is easier to define: it is an area in which a Muslim is the sovereign, Islamic law is enforced, and Muslims and *dhimmīs* enjoy security.

As we have seen, the classical jurists assume that non-Muslim rulers do not accord religious freedom to Muslims. Yet this was not always so and Muslim scholars had sometimes to grapple with a different situation. The first such case emerged in the 12<sup>th</sup> century when Transoxania came under

<sup>15</sup> Cf. Ibn Ḥanbal, *Musnad*, vol. 2, p. 84 and elsewhere (see Wensinck, *Concordance...*, s. v. *hijra*); cf. Crone, loc. cit, p. 356.

<sup>16</sup> See Ṣan’ānī, *Muṣannaf*, vol. 5, p. 309 (no. 9712) and Wensinck, *Concordance...*, s. v. *hijra*.

<sup>17</sup> For a detailed analysis of this concept, see the various articles in Calasso and Lantini, eds, *Dār al-islām / dār al-ḥarb*.

the rule of the Qara Khitai dynasty which did not embrace Islam, but allowed unrestricted freedom of worship to the predominantly Muslim population. Local Muslim rulers were retained under the overall authority of their non-Muslim overlords.<sup>18</sup> Michal Biran asserted that “the Qara Khitai policies created a situation in which at least Transoxania ... considered itself part of *dār al-islām* despite its infidel overlords.”<sup>19</sup> Her assertion can be substantiated by a significant passage found in *Fatāwā fuṣūl al-iḥkām fi uṣūl al-aḥkām* by al-Marghinānī, a Ḥanafī scholar who flourished in Central Asia during the Qara Khitai takeover.<sup>20</sup> In a clear reference to the events of his time and place, he says at the beginning of the first chapter of his book:

I have begun (the book) with (the question in what way) an Abode of Islam becomes an Abode of War since we need to know it in our time because of the infidel takeover of these parts. May God give them what will make them fortunate in this world and in the next (*bada'tu awwalan bimā taṣīru bihi dāru 'l-islām dāra 'l-ḥarb li-ḥarb li-ḥarb ilayhi fi zamāninā bi-sabab istilā' i al-kuffār 'alā hādhihi al-diyār. atāhum Allāh mā yus' iduhum bihi fi al-dārayn*).<sup>21</sup>

The idea that *dār al-islām* which was taken over by infidels remains *dār al-islām* exists elsewhere in the mediaeval Muslim political and legal thinking especially in the Ḥanafī school.<sup>22</sup> It is not a common matter for a mediaeval Muslim scholar to felicitate in this manner infidels who took over a part of *dār al-islām*. It is also not common to start a book on jurisprudence with this question and there seems to be a clear intent to accord the passage quoted above as much prominence and visibility as possible. Al-Marghinānī then goes on to marshal arguments supporting the proposition that Central Asia under the Qara Khitai remained *dār al-islām*. Quoting several Ḥanafī scholars, he asserts that *dār al-islām* does not become *dār al-ḥarb* if any Islamic law remains in effect “even if the dominance of the Muslims ceased to exist” (*wa in zāla* (sic) *ghalabat ahl al-islām*).<sup>23</sup> The lands which are in the

<sup>18</sup> This is somewhat similar to the situation of India under British rule and the similarity was not lost on the Indian Muslim scholars who argued in the 19<sup>th</sup> century that India continues to be *dār al-islām* despite the British takeover. See Karāmat 'Alī, *Lecture*, p. 3, where the *Fatāwā* by al-Marghinānī, also known as *al-Fuṣūl al-'imādiyya* (or *Fuṣūl-i 'Imādī*), is quoted in support of the idea that India under the British is *dār al-islām*.

<sup>19</sup> Biran, *The empire of the Qara Khitai*, pp. 171–201. The quotation is on p. 191.

<sup>20</sup> This is not the famous author of the *Hidāya*, but his son (or grandson), Abū al-Faḥ b. Abī Bakr b. 'Abd al-Jalīl who died in 1271. W. Heffening, “al-Marghinānī”, in *EI2*, s. v.; Brockelmann, *GAS*, G I, p. 382; Lakhnawī, *al-Fawā'id al-bahīyya*, pp. 146–147.

<sup>21</sup> Marghinānī, *Fuṣūl al-iḥkām fi uṣūl al-aḥkām*, p. 18 supra.

<sup>22</sup> See Abou El Fadl, “Islamic law and Muslim minorities”, p. 156.

<sup>23</sup> Marghinānī, *Fuṣūl al-iḥkām fi uṣūl al-aḥkām*, pp. 17–18. The quotation is on p. 18, line 2.

hands of the infidels — presumable he means Transoxania — are undoubtedly Lands of Islam, not Lands of War — because they are not contiguous with the Lands of War and because the infidels did not publicly introduce in them the laws of infidelity; rather, the judges are Muslims and the governors who obey them (i. e. the infidels) under duress are Muslims; (the situation would be the same) even if they did not act under duress. Similarly, in every city in which there is a governor (who rules) on the infidels' behalf, it is permissible for the Muslims to perform the congregational prayers on Fridays and the festival days (i. e. on *'Īd al-Fitr* and *'Īd al-Adhā*), to levy the land tax (*kharāj*), to appoint judges, and to marry off widows — because a Muslim is in charge of these matters. Even in areas which are under (direct?) rule of infidel governors, the Muslims are permitted to perform congregational prayers, and the juridical functions are exercised by the consent of the Muslims, (even if the judge was not appointed by a Muslim *amīr*). If such situations develop, the Muslims should request to appoint a Muslim governor;<sup>24</sup> in other words, if sovereignty is out of reach, Muslims should strive for autonomy. The thrust of the argument is that *dār al-ḥarb* is transformed into *dār al-islām* by the application of Muslim laws in it, and *dār al-islām* will retain its status as long as even one Muslim law is in effect — even under non-Muslim sovereignty. Al-Marghinānī has clearly no problem with Muslims living under the non-Muslim, but tolerant, rule of the Qara Khitai. We may assume that the fact that the majority of the population in Transoxania at the time of the Qara Khitai conquest was Muslim and it continued its life routine without disruption enabled al-Marghinānī to make his very unusual ruling.

I would like to contrast al-Marghinānī's ruling to a *fatwā* issued in the early 1490s by the North African Mālikī scholar al-Wansharīsī (d. 1508). Al-Wansharīsī does not deal with the policies of the Christian kingdoms of Spain towards the Muslims and does not dwell on any specific persecutions of Muslims. He argues on the level of principle and says that “the accursed Christians — may God destroy them — took hold of the island of Sicily and of some provinces of al-Andalus (*istilā' malā' in al-naṣārā dammaramhum Allah 'alā jazīrat Ṣiḡilliya wa ba'd kuwar al-Andalus*)<sup>25</sup> and asserts, on

<sup>24</sup> Marghinānī, *Fuṣūl al-ihkām fī uṣūl al-ahkām*, p. 18. A similar idea was suggested by Shāh 'Abd al-'Azīz in the 19<sup>th</sup> century. He says that if there is a governor appointed by the infidels, Friday prayer is legal by his consent; if there is none, the Muslims should appoint a pious person who will organize it and perform other essential services, such as marrying off girls who have no guardian, dividing inheritance according to the portions specified in the Qur'ān, etc. See his *Fatāwā-yi 'Azīzī*, vol. 1, p. 34, *supra*.

<sup>25</sup> Wansharīsī, *al-Mi'yār al-mughrib*, vol. 2, p. 125.



the level of principle again, that “migration from the land of infidelity to the land of Islam is a commandment (valid) until the Day of Judgment. So also is the migration from the land of forbidden (practices), falsehood, oppression and religious persecution (*inna al-hijra min arḍ al-kufr ilā arḍ al-islām farīda ilā yawm al-qiyāma wa ka-dhālika al-hijra min arḍ al-ḥarām wa al-bāṭil bi-zulmin aw fitna*). Living with the infidels is tantamount to increasing their strength. It is a prohibition imposed by religion, like the prohibition to consume carrion, blood, pork or killing a soul without right (*fa-huwa taḥrīm maqtū’ bihi min al-dīn ka-taḥrīm al-mayta wa al-dam wa laḥm al-khinzīr wa qatl al-nafs bi-ghayri ḥaqq*). He who does it deviates from religion and leaves the community of the Muslims (*māriq min al-dīn wa muḥāriq li-jamā’at al-muslimīn*).<sup>26</sup> In other words, he becomes an apostate. The demand to emigrate from the areas conquered by the Christians is absolute. Though Wansharīsī mentions once that (the new rulers) have banned the public manifestation of Islamic rituals,<sup>27</sup> the demand to emigrate is not contingent on this. The difference between the Ḥanafī ruling in Transoxania and the Mālikī ruling in Spain is a significant example of the interpretive possibilities available to medieval Muslim jurists.

The most significant developments in Muslim legal thinking on the related issues of *dār al-islām*, *dār al-ḥarb* and *hijra* took place in India. Muslim incursions into the subcontinent began in the seventh century, and by the 13<sup>th</sup> century most of the subcontinent was under at least nominal Muslim rule. In contradistinction to the Arab areas of the Middle East which eventually became Muslim majority areas, in India the Muslims never constituted more than one quarter of the population. Yet they were for centuries a *ruling* minority and their minority status had therefore little impact on their political standing or economic opportunities. The democratic idea of majority rule was not yet an issue. This situation was substantially transformed in the mid-nineteenth century when the gradual British takeover was formalized and India was incorporated into the British empire. Even before that, probably after the British took hold of Delhi in 1803, Shāh ‘Abd al-‘Azīz (1746–1824) issued a *fatwā* in which he did not explicitly say that India was *dār al-ḥarb*, but described it in a way which makes this conclusion close to inevitable.

In most modern scholarship the conclusion was drawn that ‘Abd al-‘Azīz implied that the Muslims must strive for the restoration of Islamic authority

<sup>26</sup> Wansharīsī, *al-Mi‘yār al-mu‘rib*, vol. 2, pp. 123–124.

<sup>27</sup> Wansharīsī, *al-Mi‘yār al-mu‘rib*, vol. 2, p. 132, line 5.

in India or migrate to a Muslim area.<sup>28</sup> This interpretation was prevalent until the seminal work of the late Professor Mushīr al-Ḥaqq who convincingly argued that this conclusion was wrong, that the real intention of Shāh ‘Abd al-‘Azīz was completely different and was related to economic problems which the Indian Muslims encountered as a result of the British takeover. In more specific terms, and according to the view of some Ḥanafī scholars, the declaration of India as *dār al-ḥarb* was intended to allow the Muslims to widen their economic activities by engaging in interest transactions with the Hindus and the British.<sup>29</sup> This is based on the Hanafī ruling according to which Muslims who live outside the area under Muslim rule may take interest from non-Muslims. In other words, the recommendation of Shāh ‘Abd al-‘Azīz was that the Muslim of India acquiesce to their new status as a subjugated minority and make most of it by getting involved in the new economy which included interest transactions.

Vibrant intellectual debate about the possibility to live an Islamic life under the British continued in India throughout the 19<sup>th</sup> century, but time will not allow us to go into all the details. There is the Farā’īzī movement in Bengal which declared that Muslims may not perform the Friday prayers which are conditioned on functionaries appointed by a Muslim ruler to organize them. At the other end of the spectrum, we have Karāmat ‘Alī Jawnpūrī who formulated a well reasoned statement justifying fully Islamic life in British India. The thrust of his analysis is to give much less weight to the religion of the sovereign than to his policies: since the British allow religious freedom to the Muslims, India remains *dār al-islām*, the Muslims are under no obligation to migrate from it and they certainly have no reason to wage *jihād* against the British government.

The question whether India is *dār al-islām* or *dār al-ḥarb* came to the fore again in 1920, in the context of the Khilāfat and non-cooperation movement. The leaders of the movement were not unanimous on this theoretical question nor on the question whether it is advisable to leave the country because of the conditions in which the Muslims find themselves there, but some of the most prominent of them, such as Abū al-Kalām Āzād and

<sup>28</sup> See Qureshi, *The Muslim community*, pp. 194–195; Ahmad, *Studies in Islamic culture*, p. 215. For a list of Urdu authors who hold the same opinion, see Masud, “The world of Shāh ‘Abd al-‘Azīz,” p. 298, note 4. The same view is maintained by Muḥammad Mushtāq Aḥmad who is apparently unaware of Mushīr al-Ḥaqq’s work; see his “Notions of *dār al-ḥarb* and *dār al-islām*...”, p. 15, note 31.

<sup>29</sup> Mushīr al-Ḥaqq, *Indian Muslims’ attitude to the British*, p. 45; Jalal, *Partisans of Allah*, p. 68. Mushīr al-Ḥaqq was preceded in this interpretation by Sir Sayyid Aḥmad Khān, in his *Review on Dr. Hunter’s Indian Musalmans...*, Appendices, p. XI.

the Ali brothers, recommended migration (*hijra*) from India. In a speech delivered in February 1920, Amanullah Khan, the *amīr* of Afghanistan, undertook to welcome all those who wanted to migrate from India to his country. The sincerity of this undertaking has been doubted, but by August 1920 about 40,000 Indian Muslims migrated to Afghanistan. This strained the resources of Afghanistan to such an extent that on August 9 the *amīr* stopped further migration until the migrants who had already come are absorbed. The movement collapsed. Many migrants died of privation and disease, while others returned to India in destitution. The *hijra* movement of 1920 is an example in which concrete conclusions were drawn from relevant legal discussions — and with disastrous consequences.<sup>30</sup>

The debate on the ways to live an Islamic life under the British continued throughout the 1930, but I would like to move now to independent India and discuss the thought of Sa'īd Aḥmad Akbarābādī, a prolific Deobandi 'ālim who published in 1968 a book entitled "The shar'ī status of India (*Hindūstān kī shar'ī ḥaythiyyat*).

His book is an attempt to define the *shar'ī* status of India since the British takeover and, most importantly, after the establishment of independent India. In order to understand his position, we must remember that Akbarābādī was a member of the *Jam' iyyat al-'ulamā'-i Hind*, a representative organization of Indian Muslim 'ulamā', who opposed partition, maintained that all Indians belong to the same nation despite their religious differences and supported the Indian National Congress in the independence struggle. In view of this background, we can easily understand that when Akbarābādī analyses the legal status of independent India from the point of view of its Muslim minority, he uses the most restrictive conditions for the definition of a country as *dār al-ḥarb*. Discussing the definition of "domination" (*istilā'*) used by Muslim jurists for a non-Muslim takeover of a Muslim area, he says that this domination takes effect only when the Muslims have no say in the government of the country and enjoy no religious freedom. If they are debarred from government but do enjoy religious freedom, the country still does not become *dār al-ḥarb*. India cannot be considered *dār al-ḥarb* according to these criteria. It is a secular, democratic (*secular jumbūri*) state, the government is not in the hands of any one religious group and one cannot claim that it is dominated by infidels. The equality of civil rights guaranteed by the constitution means that Muslims have a share in the government. They enjoy full religious freedom. Neither

<sup>30</sup> The *hijra* movement has been extensively treated by Qureshi, *Pan-Islam in British Indian politics*, pp. 174–231. This richly documented work allows us to be very brief on this topic. See also Masud, "The obligation to migrate", pp. 40–41.

India nor any other democratic country can today be considered *dār al-ḥarb*.<sup>31</sup> India is also not *dār al-islām* because it declared itself secular and non-religious (*secular awr lā dīnī*). It is not *dār al-'ahd* or *dār al-amān* either, because the relationships of *mu'āhid* (a person who has a treaty with the ruler), *āmin* (a person who received a guarantee of safety) or *musta'min* (a person who asked for a guarantee of safety) do not exist in modern times.<sup>32</sup>

In this way, Akbarābādī reaches the conclusion that the *shar'ī* classification of countries is not applicable to the circumstances which prevail in modern India; moreover, it is not suitable in modern times at all. It is therefore essential to define the Indian situation in a new way. India has to be considered by its Muslim inhabitants as their national home (*Hindūstān kī shar'ī ḥaythiyyat yabān kē musalmānōn kē li'ē yih hay kih yih unkā al-waṭan al-qawmī /national home/ hay*).<sup>33</sup> This is a definition which is totally removed from traditional *shar'ī* thought, but Akbarābādī does not hesitate to describe the concept of “national home” as a *shar'ī* category.

Another Indian Muslim scholar (Hāmid al-Anṣārī Ghāzī) analyzed the situation in a different way, but reached the same conclusion. In a speech delivered at a convention of the *Jam' iyyat al-'ulamā'-i Hind* in February 1950, he said that Muslims know two ways of life which can be described as belonging to Mecca and to Medina. The Medina way which is that of sovereignty and self-rule must now be abandoned for the Mecca way which is one of suffering and in which the most conspicuous qualities are endurance, reliance on Allah, truth and moral integrity. This is the way which will lead the Indian Muslims to a life of peace and self respect. This scholar also suggested that during the following 2–5 years the Muslims should stop pressing for political rights and make instead a significant contribution to the reconstruction of the country.<sup>34</sup>

The decades which followed the Second World War saw a development which was not envisaged by traditional Muslim thinking. I would call it a “reverse *hijra*”, this is to say migration from the Muslim world into areas outside it. This phenomenon and the subsequent emergence of new and significant Muslim minorities in non-Muslim countries provided the impetus for the development of a new branch in Islamic thinking, entitled “Legal

<sup>31</sup> Akbarābādī, *Hindūstān kī shar'ī ḥaythiyyat*, p. 72; Friedmann, “The *Jam' iyyat al-'ulamā'-i Hind* in the wake of partition”, p. 196.

<sup>32</sup> Akbarābādī, *Hindūstān kī shar'ī ḥaythiyyat*, pp. 96–97; Friedmann, “The *Jam' iyyat al-'ulamā'-i Hind* in the wake of partition”, p. 196.

<sup>33</sup> Akbarābādī, *Hindūstān kī hay'at-i shar'ī*, p. 103; Friedmann, “The *Jam' iyyat al-'ulamā'-i Hind* in the wake of partition”, pp. 196–197.

<sup>34</sup> Friedmann, “The *Jam' iyyat al-'ulamā'-i Hind* in the wake of partition”, p. 186.

theory for Muslim minorities” (*fiqh al-aqalliyyāt*). I would like to make only some preliminary remarks on it. *Fiqh al-aqalliyyāt* addresses the problems encountered by Muslims who want to live according to Islamic precepts in a non-Muslim environment. A prominent figure in the development of this branch of Muslim thought is Yūsuf Qaraḍāwī. He is a prominent public figure in contemporary Muslim thought, was born in Egypt, studied at al-Azhar and has been resident of the Emirate of Qaṭar since 1961. Among the matters discussed in the framework of his legal theory are economic questions such as the permissibility of trading in stocks and bonds (does doing so violate the Muslim law that prohibits paying or receiving interest?), and, in general, the permissibility of deriving new rulings from the sacred sources of the *sharīʿa* (*ijtihād*). Qaraḍāwī maintains that since Muslims are a community with a global mission, they must have a presence in the West since the West is a leading force in the world and they must influence its policies.

From the point of view of traditional Islam, this needs an explanation: it is opposed to the idea that Muslims should not live among infidels. Qaraḍāwī is fully aware of this difficulty and mentions in his main work on *fiqh al-aqalliyyāt* traditions which need to be explained away in order to give legitimacy to his assertion that the existence of Muslim minorities in the West is Islamically acceptable and even necessary. He achieves this goal by using the traditional methods of *ḥadīth* criticism, known in the Muslim tradition as *al-jarḥ wa al-taʿdīl*. The tradition “I am free from responsibility for any Muslim who lives among the polytheists” (*anā barīʿun min kulli muslimin bayna azhur al-mushrikīn*) which we have mentioned, has a somewhat weak chain of transmission (*isnād*), and, in addition, it could mean only that if a Muslim who lives among polytheists is killed by error, the Muslims are not responsible for paying blood money to his survivors. As for the *ḥadīth* “He who associates with a polytheist or lives with him is like him” (*man jāmaʿa al-mushrika wa sakana maʿahu fa-innahu mithlubu*), it refers to idol worshipers and the scriptuaries are not included in this category. How could it mean a scriptuary, when Muslims are allowed to wed scriptuary women?<sup>35</sup> In this way, methods of traditional *ḥadīth* criticism enable Qaraḍāwī to explain away traditions which stand in the way of giving legitimacy to Islamically acceptable living in the West. At the same time, he does not hesitate to reformulate important *sharʿī laws* in view of the peculiar circumstances faced by the Muslims living in the West. He devotes considerable attention to the question of marriages between Muslim men and non-Muslim women. As is well known, classical Muslim law allowed Muslim men to wed Jewish

<sup>35</sup> Qaraḍāwī, *Fī fiqh al-aqalliyyāt al-muslima*, pp. 37–38.

or Christian women, though many jurists expressed various reservations concerning this practice. Qaraḏāwī accepts this rule, but considerably restricts its applicability: the Christian woman must be a real believer (being born of Christian parents is not sufficient proof of this): she must not be an atheist, an apostate, a communist or a Bahā'ī. And it is forbidden to marry a Jewess as long as there is war between the Muslims and Israel.<sup>36</sup> Another interesting ruling by Qaraḏāwī concerns the situation which ensues when a non-Muslim woman married to a non-Muslim man embraces Islam while her husband retains his original religion. After surveying the views of classical jurists — most of whom were of the view that in such a case the woman must leave her matrimonial home — Qaraḏāwī rules that in the West such a woman should stay with her husband. The purpose of this ruling is to encourage married women to embrace Islam, to spare them the hardships facing women without husbands, and to give the husband an incentive to follow his wife into Islam.<sup>37</sup> After much hesitation, Qaraḏāwī also ruled that a Muslim living in a non-Muslim country is allowed to take a mortgage and pay interest on it because no other way is open for him to purchase a house.

In conclusion, we may observe that in Qaraḏāwī's work contemporary conditions and economic pressures prevailed over one of the most hallowed principles of Islamic tradition and allowed a reverse *hijra* from the Muslim world to the West. It is also a significant example of the interpretive possibilities available to Muslim thinkers who want to move away from traditional rulings which are, in their view, inappropriate for contemporary conditions.

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<sup>36</sup> Qaraḏāwī, *Fī fiqh al-aqalliyyāt al-muslima*, pp. 99–100.

<sup>37</sup> Qaraḏāwī, *Fī fiqh al-aqalliyyāt al-muslima*, pp. 124–125.

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