

**THE CRITICAL ANALYSIS OF TAHA JABIR AL-ALWANI'S  
CONCEPT OF FİQH AL-AQALLIYYĀT**

**Taha Cabir Alwani'nin Fiqh al-Aqallıyyāt Konseptininin Kritik Analizi**

**EMİNE ENİSE YAKAR**

Dr. Öğr., Gör., Recep Tayyip Erdoğan  
Üniversitesi, İlahiyat Fakültesi, İslam Hukuku  
Anabilim Dalı, Rize Türkiye

Asst. Prof., University of Recep Tayyip Erdoğan,  
Faculty of Theology, Islamic Law Department,  
Rize, Turkey

**emineenise.yakar@erdogan.edu.tr**

orcid.org/0000-0002-4100-9234

Katkı oranı: %55

**SUMEYRA YAKAR**

Dr. Öğr., Gör., Iğdır Üniversitesi, İlahiyat  
Fakültesi, İslam Hukuku Anabilim Dalı, Iğdır,  
Türkiye

Asst. Prof., University of Iğdır, Faculty of  
Theology, Islamic Law Department, Iğdır,  
Turkey

**sumeyrayakar@hotmail.com**

orcid.org/0000-0001-8335-6819

Katkı oranı: %45

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## The Critical Analysis of Taha Jabir al-Alwani's Concept of Fiqh al-Aqalliyyāt

### Abstract

The issues concerning the legality of residing in non-Muslim territories have direct and indirect ramifications for many Muslims who live in non-Muslim countries including American Muslims. The term non-Muslim country refers to places where Islam is neither the dominant religion nor the determiner of the legal system or the political power. The applicability of Islamic law in non-Muslim countries, the territoriality of Islamic law, the obligations of Muslim residents in non-Muslim societies, and the obedience to non-Muslim territories' laws can be regarded as the dimensions related to the status of Muslim minorities. All of these are evaluated to provide detailed legal opinions and interpretations that govern the conduct of Muslim minorities.

From the twentieth century onward, the incremental appearance of Muslims in the non-Muslim environments, particularly in Europe and North America, reinvigorated the discussion and evaluation of issues related to Muslim minorities. Within the North American and European contexts, many Muslim scholars have intended to provide practicable and applicable Islamic legal opinions (*fatwās*) to exigencies and problems that Muslim residents encounter in these continents. In this regard, the primary religious question that American and European Muslims face is conceivable whether they can live their lives pursuant to relevant Islamic legal provisions in these continents. Potential answers to this question presumably result in Muslim scholars, notably American and European ones, in germinating the concept of Islamic jurisprudence of Muslim minorities (*fiqh al-aqalliyyāt*). It is therefore possible to assert that the concept of *fiqh al-aqalliyyāt* is a response of Muslim scholars to the immigration flow of Muslims to the West. The scholars have started to pay more attention to the problems of Muslim minorities and Taha Jabir al-Alwani obtained reputation among them regarding his *fiqh al-aqalliyyāt* concept.

Taha Alwani became well cognisant of the current divergence between the modern world and the traditional representation of Islamic law in the United States. Alwani's *fiqh al-aqalliyyāt* concept can be identified as to envisage an integrative method in which scientific discoveries, technological developments, economic systems, and social transformations are addressed through adopting an originative approach towards *fiqh*. He calls for a collective *ijtihad* in formulating new Islamic legal opinions and invites experts from various fields of social, physical, medical, and technological sciences to reach his purpose.

Alwani's method, therefore, takes into consideration present challenges, exigencies, and constraints that Muslim minorities encounter.

The article specifically focuses upon Alwani's life and his concept of *fiqh al-aqalliyāt* intending to provide insight into his contributions to Islamic law in the twentieth century. In the first instance, his biography is succinctly presented to demonstrate how the turning points in his life exerted influences upon his concept of *fiqh al-aqalliyāt*. In the second instance, attention turns to his theory and opinions regarding the concept of *fiqh al-aqalliyāt*. Some of his Islamic legal opinions that address controversial issues are engaged and analysed with the intention of evidencing how Alwani operated the concept of *fiqh al-aqalliyāt* in solving problems that arise from the minority status of Muslims. His opinions related to the depiction of the Prophet's picture on the United States Supreme Court's wall and the prescribed punishment for apostasy provide insight into the concept of *fiqh al-aqalliyāt*. By applying descriptive, analytical, and critical content analysis methods, the article sheds light on his evaluation of the sunna as a source of legislation and clarifies the place of sunna in his methodology. The article aims to examine the questionable status of sunna in Alwani's *fiqh al-aqalliyāt* concept with his own interpretations.

**Keywords:** Islamic law, Muslim minority, Taha Cabir al-Alwani, *fiqh al-aqalliyāt*, Muslim minority law

## Taha Cabir Alwani'nin Fiqh al-Aqalliyât Konseptinin Kritik Analizi

### Öz

Gayrimüslim bölgelerde ikamet etmenin İslam hukuku açısından yasallığı ile ilgili konular Amerikalı Müslümanlar da dâhil olmak üzere bu bölgelerde yaşayan Müslümanlar için doğrudan veya dolaylı sonuçlar doğurmaktadır. Gayrimüslim ülke terimi, çoğunluğu Müslümanlardan oluşmayan, hukuk sisteminde ve politik gücün belirlenmesinde İslami hükümlerin etkili olmadığı yerleri tanımlamaktadır. Bu ülkelerde ikamet eden Müslüman azınlıklar ve âlimler, İslami hüküm ve prensipler çerçevesinde çözümlenmesi gereken güncel problemlerle karşılaşmaktadırlar. Gayrimüslim ülkelerde İslam hukukunun uygulanabilirliği ve mülkiliği, bu ülkelerde yaşayan Müslümanların yükümlülükleri ve kanunlara itaati gibi konular Müslüman azınlıkların statüsüyle ilgili temel faktörleri teşkil etmektedir. Bu değişkenlerin hepsi Müslüman azınlıkların yaşamını düzenleyen fikhî çözümler üretmek için değerlendirilmeye tabi tutulur.

Yirminci yüzyıldan itibaren, özellikle Avrupa ve Kuzey Amerika gibi Müslüman olmayan ülkelerdeki Müslümanların varlığının artması, Müslüman azınlıklarla ilgili konuların yeniden tartışılmasını gündeme getirmiştir. Avrupa ve Kuzey Amerika'da yaşayan çok sayıdaki âlim Müslüman azınlıkların bu bölgelerde yaşadıkları zorluklara karşı uygulanabilirlik özelliğine sahip fetvalar üretmeyi amaçlamıştır. Bu bağlamda Müslüman azınlıkların karşılaştığı temel sorunlar, onların gayrimüslim bölgelerde hayatlarını İslami hükümlerle uyumlu bir şekilde yaşayıp yaşayamayacağı ile ilgilidir. Özellikle Amerikalı ve Avrupalı Müslüman âlimler tarafından bu soruya verilen cevaplar 'Müslüman azınlıklar için İslam hukuku' olarak bilinen '*fiqh al-aqalliyât*' teriminin oluşmasına zemin hazırlamıştır. Bu nedenle *fiqh al-aqalliyât* kavramının, Müslümanların batıya göçünün bir ürünü olduğu ve Müslüman âlimlerin bu duruma ürettiği muhtemel çözümlerden oluştuğu kabul edilebilir. Müslüman azınlıkların sayısının artması ve sorunlarının çoğalmasıyla, özellikle gayrimüslim bölgelerde yaşayan âlimler azınlık hukuku alanındaki çalışmalara önem vermiş ve Taha Cabir al-Alwani *fiqh al-aqalliyât* alanındaki çalışmalarıyla ön plana çıkmıştır. Alwani, sistemini modern dünya ve klasik İslam hukuku arasındaki ayrışmanın Amerika'da yaşayan Müslümanlar üzerindeki yansımalarını gözlemleyerek, bu sorunlara çözüm üretmek üzerine temellendirmiştir. Alwani'nin temel yaklaşımı, bilimsel ve teknolojik gelişmeleri, ekonomik sistemleri ve sosyal değişimleri içine alan kapsayıcı ve

birleştirici bir fikhî yöntem geliştirmek olarak anlaşılabilir. Alwani yeni bir İslam hukuku konsepti geliştirirken bireysel fetvadan daha ziyade kolektif içtihat çağrısında bulunarak, sosyal, psikolojik, fiziksel, ekonomik, tıbbi ve teknolojik bilimlerin çeşitli alanlarındaki uzmanlarla birlikte çalışılması gerektiğine vurgu yapar. Bu sebeple, Alwani'nin geliştirdiği fıkıh metodu Müslüman azınlıkların karşılaştığı zorluklara, güncel gerekliliklere ve mevcut kısıtlamalara önem vermektedir.

Bu çalışma, önemli bir fıkıh âlimi olarak Alwani'nin hayatını ve fıkıhta geliştirdiği azınlıklar hukuku olarak terimleşen *fiqh al-aqalliyât* görüşünü analiz ederek açıklamayı amaçlamaktadır. İlk olarak, *fiqh al-aqalliyât* kavramının gelişiminin anlaşılması için, Alwani'nin hayatı, biyografik bir şekilde açıklanmıştır. Daha sonra, Alwani'nin geliştirdiği prensipler çerçevesinde *fiqh al-aqalliyât* terimi teorik olarak açıklanarak, onun Müslümanların azınlık statüsüne yaklaşımı netleştirilmiştir. Alwani'nin hadis kaynaklarına olan yaklaşımı ve onun *fiqh al-aqalliyât* prensibinde sünnetin konumu tanımlayıcı ve kritik kapsam analizi metotları kullanarak açıklanmıştır. *Fiqh al-aqalliyât* kavramının açıklanmasından sonra, bu teorinin uygulamadaki yansımalarını göstermek amacıyla fetvalardan örnekler verilmiştir. Alwani'nin Hz. Peygamber'in tasvirinin Amerika Birleşik Devletleri Yüksek Mahkemesinin duvarında sergilenmesi ve irtidad suçu için öngörülen ceza hakkındaki fetvaları metin içi analitik okuma metoduyla analiz edilmiştir. Makale, Alwani'nin *fiqh al-aqalliyât* prensibinin pratik alandaki uygulanmasını örneklerle açıklaması ve onun sünnet kaynaklarına yaklaşımındaki problemleri metodolojisini analiz etmesi bakımından, akademik alana katkı sağlamayı hedeflemektedir.

**Anahtar Kelimeler:** İslam Hukuku, Müslüman Azınlıklar, Taha Cabir Alwani, Azınlık Fıkıhı, Azınlık Hukuku.

## Introduction

The legality of residing amongst unbelievers is likely the foremost issue with regard to Muslim minorities. The legal discussions related to the legality of residing in non-Muslim lands evidence that there exist a variety of legal opinions that range from affirmative to rejective. The majority of Mālikī jurists espoused an uncompromising position regarding the permissibility of residing in non-Muslim lands and stated that it was not acceptable for a Muslim to be subject to non-Muslim laws. El Fadl refers to the views of Mālik (d. 179/795), Saḥnūn (d. 240/854), Ibn Rushd (d. 520/1126), and al-Wansharisi (d.913/1508).<sup>1</sup> Nonetheless, some Muslim jurists claim that if Muslims are able to manifest and practice their religion in a non-Muslim society, it is permissible for them to stay in the non-Muslim lands. The most sophisticated and affirmative opinions regarding the issue of Muslim residence in the non-Muslim territory are generally presented by the Ḥanafī and Shāfi'ī scholars. These Ḥanafī and Shāfi'ī scholars link the issue to specific circumstances, and then they state that the Muslim residence in non-Muslim territories could be required, recommended, permitted, and prohibited depending on conditions in which Muslim minorities live.<sup>2</sup> Throughout the paper, the term Muslim minority will be used to refer to Muslims residing in non-Muslim lands.

The earlier Muslim scholars were cognizant of the social, legal, cultural, and environmental differences between Muslim and non-Muslim lands and they effectively formulated theological understandings and legal opinions related to the issues of Muslim minorities. They issued appropriate *fatwās* for Muslim minorities, but these *fatwās* could only be conveniently applied in their contemporary time and space, without infringing the main principles and objectivities of the Islamic law that were understood in that time. The context and era in which the earlier Muslim scholars lived and experienced, presumably influenced their juristic view that is almost inapplicable for the later periods or different contexts. Additionally, the *fatwās* cannot be regarded as universally

<sup>1</sup> Khalid Abou El Fadl, "Striking a Balance: Islamic Legal Discourse on Muslim Minorities", *Muslims on the Americanization Path?*, ed. Yvonne Yazbeck Haddad - John L. Esposito (Oxford: Oxford University Press, 2000), 49-51; Abu al-Walid ibn Rushd, *al-Bayān wal-Tahsīl*, ed. Ahmad al-Sharqawi Iqbal (Beirut: Dar al-Gharb al-Islami, 1988), 4/170-171; Ahmad al-Wansharisi, *Al-Mi'yār al-Mu'rib wa al-Jāmi' al-Mughrib: 'an Fatāwa Ahl al-Ifriqiya wa al-Maghrib*, ed. Muhammad Hajj (Beirut: Dar al-Gharb al-Islami, 1981), 2/121-124, 130-132, 140-141; Khalid Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eight Century to the Eleventh/Seventeenth Centuries", *Islamic Law and Society* 1/2 (1994), 146, 170-171.

<sup>2</sup> El Fadl, "Striking a Balance", 50, 52, 55-58; Abu Abd Allah al-Shāfi'ī, *al-Umm*, ed. Rif'at Fawzi (Egypt: Dar al-Wafa', 2001), 5/361-365; Shāfi'ī, *al-Umm*, 9/236-238, 257-261; El Fadl, "Islamic Law", 145-153, 171.

applicable rules upon the ground that they reflect their contemporaneous realities. Therefore, the issues of Muslim minorities have continued to be engaged by Muslim scholars in the twenty and the twenty-first centuries regarding the changing circumstances. To take one example, when answering an unidentified Bosnian official's question related to the legality of residing in Bosnia-Herzegovina after being ceded to Austro-Hungarian by the Ottoman Sultanate, the Egyptian jurist Rashīd Riḍā (d. 1935) states that nothing in Islam prevents a Muslim to live in a non-Muslim territory as a matter of fact that the Prophet himself allowed Muslim converts to live outside the Muslim city-state, Medina.<sup>3</sup> The crucial point of Riḍā's *fatwā* is the scope of freedom provided by the non-Muslim authority to Muslims in practicing their religion. It is stated that Muslims may reside in non-Muslim territories only if they have an opportunity to manifest and practice their religion safely therein.<sup>4</sup>

Each Muslim community configured and should configure, a legal system that encompasses its own cultural aspects, historical experiences, and social circumstances. In the last century, the number of Muslims started to increase in America which results in bringing socio-religious problems. Muslim American scholars have continuously tried to provide appropriate solutions to the problems of American Muslims and Alwani obtained a privileged position among these scholars regarding his concept of *fiqh al-aqalliyāt*. There are few valuable academic contributions on the general concept of *fiqh al-aqalliyāt*, but this article specifically focuses on Alwani's *fiqh al-aqalliyāt* concept and its critics.<sup>5</sup> Alwani constantly addresses the concept of *fiqh al-aqalliyāt* in his academic contributions and intents to solve the contemporary problems of minorities with a stable methodology. Therefore, Alwani's own explanations, articles, and books are used as main sources to scrutinise his *fiqh al-aqalliyāt* concept. Although Alwani's contribution to Islamic legal thought, particularly to the development of *fiqh al-aqalliyāt*, is crucial, there are few critical studies upon his views regarding the concept of *fiqh al-aqalliyāt*. One of them is

<sup>3</sup> Rashid Riḍā, *Fatāwā al-Imām Muḥammad Rashid Riḍā* (Beirut: Dar al-Kitab al-Jadid, 2005), 772-779.

<sup>4</sup> Riḍā, *Fatāwā*, 777-778.

<sup>5</sup> Sarah Albrecht, *Dār al-Islam Revisited: Territoriality in Contemporary Islamic Legal Discourse on Muslims in the West* (Leiden, Boston: Brill, 2018), 2-14; *Fatāwā Al-Aqalliyāt Al-Muslima* (Riyadh: Futurebook, 2001), 13-20; Tanya Walker, *Shari'a Councils and Muslim Women in Britain; Rethinking the Role of Power and Authority* (Leiden: Brill, 2017), 6-13; Uriya Shavit, *Shari'a and Muslim Minorities: The Wasafī and Salafī Approaches to Fiqh al-Aqalliyat al-Muslima* (Oxford: Oxford University Press, 2015), 3-7; Halil Şimşek, *Osmanlı Son Dönemi Gayrimüslim Cemaatler 1908-1922* (Ankara: Siyasal Kitapevi, 2016), 17-36; Yusuf Fidan, *İslam'da Yabancılar ve Azınlıklar Hukuku* (Konya: Ensar Yayıncılık, 2005), 1-53; Mehmet Hicabi Seçkiner, "Müslüman Azınlıklar Fikihinin Kavramsal Analizi", *Şırnak Üniversitesi İlahiyat Fakültesi Dergisi* 11/25 (2020), 682-713.

Fishman's contribution which presents a balanced view of Alwani's position on the concept of *fiqh al-aqalliyāt*.<sup>6</sup> He concludes that Alwani can be placed amongst orthodox Muslim scholars who call for a holistic methodology to apply Islamic legal jurisprudence to the exigencies of Muslim minorities. Nonetheless, he does not address Alwani's comprehensive methodology that combines two sources of knowledge (revelation and universe). Like Fishman, Hassan also analyses Alwani's *fiqh al-aqalliyāt* concept in his book, and he presents a comprehensive analysis of Alwani's methodology which aims to reconstruct a jurisprudence for Muslim minorities that is grounded upon the wisdom and methodology of the Prophet, his Companions and early Muslims jurists.<sup>7</sup> Alwani's daughter Zainab al-Alwani also wrote an article and presented an elaborative study that clarifies her father's methodology that combines the Qur'an, sunna, and the Islamic legacy.<sup>8</sup> She introduces Alwani's *fiqh al-aqalliyāt* concept, which arises from a need for developing an integrative jurisprudence and specifically considers the exigencies of Muslim minorities in American society. These works are the main academic contributions that focus on Alwani's approach towards the concept of *fiqh al-aqalliyāt*.

### 1. The Life of Taha Jabir Alwani

Alwani is one of the pioneers who realises the urgent necessity of developing a model Islamic jurisprudence that rethinks the classical Islamic legal opinions in the light of changing realities and that renews itself to adapt to modern life. Alwani was born in Iraq in 1935, but his intellectual career as a Muslim scholar started to flourish in Egypt. He studied at al-Azhar University from which he received his B.A., M.A., and Ph.D. in 1959, 1968, and 1973, respectively.<sup>9</sup> In 1975, he moved to Saudi Arabia, where he served as a lecturer at the Faculty of Shari'a, Muhammad bin Saud University and as a legal counselor at the Saudi Ministry of Interior.<sup>10</sup> His stay in Saudi Arabia provided him with an opportunity to attend international conferences, particularly those organised

<sup>6</sup> Shammai Fishman, *Fiqh al-Aqalliyat: A Legal Theory for Muslim Minorities* (Washington: Hudson Institute, 2006), 1-18.

<sup>7</sup> Salih Fares Hassan, *Fiqh al-Aqalliyāt: History, Development and Progress* (New York: Palgrave Macmillan, 2013), 88.

<sup>8</sup> Zainab al-Alwani, "Maqāsid Qur'āniyya: A Methodology on Evaluating Modern Challenges and *Fiqh al-Aqalliyat*", *The Muslim World* 104/4 (2014), 465-487.

<sup>9</sup> Hassan, *Fiqh al-Aqalliyāt*, 88; Fishman, *Fiqh al-Aqalliyat*, 2; Haida Mubarak, "A Man of His Times: A Pioneer of Islamic Reform", *Islamic Horizons* 45/3 (2016), 9-11.

<sup>10</sup> Hassan, *Fiqh al-Aqalliyāt*, 88.

by Saudi-based institutions<sup>11</sup> to develop international religious activities and *da'wa* (invitation to Islam or proselytising of Islam). Through the medium of these conferences, he began to engage in a dialogue with Muslim minorities and to realise their different needs and concerns. In 1977, he actively took part in the establishment of the International Institute of Islamic Thought (hereafter: IIIT), in Virginia USA. He then immigrated to the United States to assume the director position of the research unit of that institute in 1983.<sup>12</sup> Hassan defines the IIIT as an intellectual platform in which Alwani obtained an opportunity to articulate liberally his opinions and views.<sup>13</sup>

After his arrival to the USA in 1983, he realised that Muslim minorities need a special legal discipline that engages with their Islamic legal problems because some aspects of their issues differ from those that confront Muslims residing in Muslim countries. The inadequacy of *fatwās* issued elsewhere is perhaps the foremost reason that induces Alwani to devise an Islamic legal thought that gravitates specifically to Muslim minorities' conditions and situations.<sup>14</sup> During his stay in the USA, Alwani engaged with the apprehensions and exigencies of American Muslims regarding Islamic law. For the problems of Muslim minorities, Alwani sought satisfactory *fatwās* from well-known Muslim scholars including Yusuf al-Qaradawi, and religious institutions including the Islamic Fiqh Council in Mecca.<sup>15</sup> After receiving *fatwās* issued by these scholars and institutions, he could not immediately make them public. Alwani instead put them to an evaluation of whether they correspond to the circumstances of the American context or whether they are practicable by American Muslims. If not, he sought to provide his own opinion in a research paper that references the social, legal, and circumstantial dimensions and extensions of the issues.<sup>16</sup> Alwani states that before the permanent residence of Muslims in non-Muslim lands, their questions were generally related to simple or personal issues that include the permissibility of food (*ḥalāl* and *ḥarām*) or marriage with non-Muslim

<sup>11</sup> Some of these institutions are the Islamic Youth Camp, the World Assembly for Youth, and the Islamic Federation for Islamic Organization. See Hassan, *Fiqh al-Aqalliyāt*, 88.

<sup>12</sup> Mubarak, "A Man", 10; Hassan, *Fiqh al-Aqalliyāt*, 88, 91.

<sup>13</sup> Hassan, *Fiqh al-Aqalliyāt*, 89.

<sup>14</sup> Taha Jabir Al-Alwani, *Towards a Fiqh for Muslim Minorities Some Basic Reflections*, trans. Ashur A. Shamis (London: The International Institute of Islamic Thought, 2003), XIV-XXIII; Haida Mubarak, "A Man", 10.

<sup>15</sup> Hassan, *Fiqh al-Aqalliyāt*, 89.

<sup>16</sup> Taha Jabir Al-Alwani, *Islamic Thought an Approach to Reform an Introduction to the Structures of Discourse in Islamic Thought*, trans. Nancy Roberts (London: The International Institute of Islamic Thought, 2006), XV-XIX; Hassan, *Fiqh al-Aqalliyāt*, 89.

women.<sup>17</sup> However, when the permanent residence of Muslims outside the Muslim geographic spheres became common, the nature of questions began to be complicated.<sup>18</sup> New questions directly or indirectly focused on the Muslim identity, the legal requirements of Muslims in their homeland, the future of Islam outside the Muslim land, and the universality of Islam. The changing nature of questions, therefore, emerges as an incentive that directs Alwani towards formulating his concept of *fiqh al-aqalliyāt*. Issued fatwās concerning problems of Muslim minorities sometimes forced them to isolate themselves from their new environment and resulted in Islamic law portraying itself as incapable of resolving the important issues of the age. Alwani reiterates:

“The problems of Muslim minorities can only be tackled with a fresh juristic vision, based on the principles, objectives, and higher values of the Qur’an in conjunction with the aims of the Shari’ah. A new methodology for replication [of] the Prophet’s example is needed in order to make his way clearer and more accessible to everyone at all times.”<sup>19</sup>

Therefore, the requirements and conditions of Muslim minorities emerge as the main factors of developing a model Islamic jurisprudence that transforms their minority status into an engaging community in which the citizenship of their new homelands is recognized as their substantive right.

## 2. Three Prerequisites for Alwani’s *Fiqh al-Aqalliyāt* Concept

Alwani’s *fiqh al-aqalliyāt* concept is a part of his *fiqh* understanding. The term ‘*fiqh*’ in the phrase of *fiqh al-aqalliyāt* refers to what Abū Ḥanīfa (d. 150/767) termed the greater jurisprudence (*fiqh al-akbar*) which encompasses the theological and practical branches of Islamic law.<sup>20</sup> In Alwani’s understanding, *fiqh* emerges as a comprehensive term that originally means comprehension (*fahm*) of the wisdom and purpose behind God’s orders, prescriptions, and prohibitions. *Fiqh al-aqalliyāt* is designed to revitalise this original meaning that refers to identifying the purpose of God’s commands in its minority context. Alwani, therefore, envisages a *fiqh* model for minorities that establishes a robust

<sup>17</sup> Alwani, *Towards*, 6, 34-35.

<sup>18</sup> Hassan, *Fiqh al-Aqalliyāt*, 88; Fishman, *Fiqh al-Aqalliyat*, 2; Haida Mubarak, “A Man of His Times: A Pioneer of Islamic Reform”, *Islamic Horizons* 45/3 (2016), 9-11.

<sup>19</sup> Alwani, *Towards*, 7.

<sup>20</sup> Şerafettin Gölcük - Adil Bebek, “El-Fıkhü’l-Ekber”, *TDV İslam Ansiklopedisi* (Ankara: TDV Yayınları, 1995), 12/544-547; Alwani, “*Maqāşid Qur’āniyya*”, 468, 483.

connection between the Qur'anic values and Islamic jurisprudence in revivifying the scope of *fiqh al-akbar*. After redefining the term *fiqh*, Alwani clarifies the area in which the concept of *fiqh al-aqalliyāt* might function. His model of *fiqh al-aqalliyāt* intends to designate Muslim minorities as representatives of their own Islamic legal jurisprudence in non-Muslim countries.<sup>21</sup> It may be seen as a *fiqh* mechanism that incorporates the social, cultural, and legal values of non-Muslim societies into its scope with the intention of providing applicable solutions to issues. Rather than a comprehensive model of *fiqh*, *fiqh al-aqalliyāt* is perhaps a narrower envisagement of *fiqh*, because it exclusively concentrates upon providing *fatwās* for particular problems of minorities.

Before developing the model of *fiqh al-aqalliyāt*, Alwani emphasizes the necessity of three prerequisites: the determination of the role of inherited Islamic jurisprudence (*turāth*), the establishment of the comprehensive methodology in understanding Islamic sources, especially the Qur'an, and the detection of the relationship between the Qur'an and sunna.<sup>22</sup> These prerequisites provide further insights to Muslim scholars in the process of evaluating the problems of Muslim minorities. In the first instance, he examines the Islamic legacy with a critical eye, and then he observes that certain *fatwās* have a changeable potential in accordance with changing times and places. Alwani justifies his argument by presenting the examples of the Prophet, his Companions, and the early Muslim scholars.<sup>23</sup> He adduces the evidence from the Prophet's life, and he refers to *ḥadīth*:

"I used to forbid you from visiting graves, but now visit them; and I used to forbid you to keep sacrificial meat for more than three days, but now keep whatever you see fit; and I used to forbid you to drink nabīdh except from waterskins, but now drink it from all kinds of vessels, but do not drink any intoxicant."<sup>24</sup>

Alwani initially seeks to identify the factors that led to a change in the rulings of the Prophet, his Companions, and their followers. In his thought, the factor behind this practice is explicitly to adapt Islamic legal ruling to changing times or places and to serve the ultimate objectives of Islamic law (*maqāsid*

<sup>21</sup> Alwani, *Towards*, 3.

<sup>22</sup> Alwani, *Islamic Thought*, 7-8.

<sup>23</sup> Alwani, *Towards*, 8-9, 40.

<sup>24</sup> Abul Hussain Muslim bin al-Hajjaj, *Sahih Muslim*, trans. Nasiruddin al-Khattab (Riyadh: Darussalam, 2007), "The Book of Prayer", 11 (No. 977).

*al-sharī'a*).<sup>25</sup> In his thought, Islamic legal legacy –the *fatwās* identified by the early Muslim scholars– perceptibly emerges as methodological and theoretical building blocks in understanding the specific purpose, wisdom, and reason that underlie the instructions, prescriptions, and prohibitions ordered by the Lawgiver. The inherited *fatwās* concerning the relationship between Muslims and non-Muslims are the production of their own time and space, so these *fatwās* cannot be applied to other contexts that are substantially divergent from the earlier historical contexts.<sup>26</sup> Contemporary Muslim minorities, therefore, need new *fiqh* that includes appropriate *fatwās* for their conditions rather than a new *usūl*.

The ‘combined reading’ is the second prerequisite that Alwani underlines as a necessary constituent in formulating a functional *fiqh al-aqalliyāt* mechanism. This is a methodology regarding how to read Islamic sources, specifically the Qur’an. From an epistemological perspective, Alwani combines the two sources of knowledge (revelation and universe) with the intention of enabling a holistic approach in understanding these two sources. Alwani states that revelation is the first essential source of knowledge, but this does not mean a rejection of the other intellectual and experimental knowledge. It instead implies that knowledge should be a product of the two sources since the Qur’an guides and helps human beings in identifying practical, general, and functional methodologies in the process of producing knowledge.<sup>27</sup>

The concurrent reading of the two sources, the revelation, and the universe enables scholars to comprehend his/her role in this world as God’s vicegerent and helps people to achieve their duties and responsibilities. The first reading provides the comprehension, appreciation, and recognition of the value and wisdom of the Qur’an whereas the second reading ensures an understanding of the physical world, its laws, and principles.<sup>28</sup> Alwani’s combined reading, therefore, introduces an epistemological framework in which the role of intellect is reaffirmed and reactivated in understanding revelation. This methodology also establishes an interaction between three elements (revelation, universe, and human being (reason)) each of that assumes its own role in the construction of knowledge. It may be plausibly asserted that the main pivot of Alwani’s

<sup>25</sup> Taha Jabir Al-Alwani, *Issues in Contemporary Islamic Thought* (London: The International Institute of Islamic Thought, 2005), 259; Alwani, *Towards*, 8, 16-17.

<sup>26</sup> Alwani, *Issues*, 132-135; Alwani, *Towards*, 7.

<sup>27</sup> Alwani, *Towards*, 15.

<sup>28</sup> Alwani, *Towards*, 12-13, 15, 19-23; Alwani, “*Maqāṣid Qur’āniyya*”, 475-476; Hassan, *Fiqh al-Aqalliyāt*, 92, 93-96.

Islamic legal thought is his combined reading methodology whereby reason is accorded its due role in the process of understanding Islamic legal sources (the Qur'an, sunna, and *turāth*).<sup>29</sup> The interconnection between revelation, universe, and *turāth*, and their relationship with the present world can be co-ordinately established through applying this methodology. At this point, the conceptual framework of Alwani's combined methodology is considered defective by some scholars including Hassan. To a certain extent, Hassan's criticism plausibly unfolds an existing methodological omission in Alwani's combined reading when the issue is related to the cumulative and experimental character of knowledge regarding the universe.<sup>30</sup> However, it needs to be noted that his combined reading approach is not considered as an unrestricted methodology regarding his theory.

The 'combined reading' should lead to the three higher values that are grounded upon the Qur'an: believing God's oneness (*tawhīd*), purification of humanity and society from evil (*tazkiya*), and building a value-based civilisation (*'umrān*).<sup>31</sup> It is quite possible to assert that if the combined reading does not lead to the three values, it should be categorically rejected. Alwani seeks to surmount the methodological flaw by stipulating that the combined reading ought to direct to the three values. However, there still exists a methodological lacuna and deficiency in his methodology, especially when considering that the realities and knowledge of the universe are subjective and depend on human understanding and time.

The last prerequisite of Alwani's *fiqh al-aqalliyāt* concept is the detection of the relationship between the Qur'an and sunna which emphasises that the role of the sunna in accordance with the Qur'an should be detected with a clear understanding. The Qur'an is the source of legislation while the sunna is the manifestation of the Qur'an-based legislation within a real-life situation.<sup>32</sup> To put it differently, Alwani defines the sunna as a kind of role model that explains and elaborates how to implement the Qur'anic values and principles within real circumstances.<sup>33</sup> After animadverting the earlier Muslim jurists upon account of their tendency towards equating the Qur'an and sunna, he makes a different version of the same mistake – it can be termed 'tendency towards equating the

<sup>29</sup> Hassan, *Fiqh al-Aqalliyāt*, 94.

<sup>30</sup> Hassan, *Fiqh al-Aqalliyāt*, 96.

<sup>31</sup> Alwani, *Issues*, 131, 134, 139; Alwani, "Maqāṣid Qur'āniyya", 472.

<sup>32</sup> Alwani, *Towards*, 18, 20.

<sup>33</sup> Alwani, "Maqāṣid Qur'āniyya", 475.

sunna with *turāth*.<sup>34</sup> In Alwani's view, the Qur'an is the first unchangeable and authoritative source, but he is not clear and decisive with regard to the place of the sunna. Like the Islamic legal legacy, the sunna emerges as a value-based model in the application process of the Qur'anic values and principles to the real-life, so due consideration should be given to its Islamic legal reasoning and methodologies, not its legal rulings.

It should be noted that Alwani's approach towards the sunna in his *fiqh al-aqalliyāt* concept implicitly overlooks historical and legal analyses that categorise the different functions and roles of the sunna in Islamic law. Certain *ḥadīths* might function as Islamic legal sources while others may serve as historical narratives.<sup>35</sup> However, he does not explicitly present a certain clarification regarding which of these *ḥadīth* categories relate to a mere historical occurrence or serve as a source of Islamic legislation. For this reason, Alwani's approach associated with the sunna raises various methodological problems upon account of involving the lack of the determinative criteria regarding which category of the sunna can be contextual (historical) or general. This emerges as one of the flaws of Alwani's *fiqh al-aqalliyāt* concept.<sup>36</sup> Therefore, in his *fiqh al-aqalliyāt* concept, the position of the sunna as a source of legislation is demoted into a sort of methodological model that exemplifies how to apply the Qur'anic principles and rulings in a certain place and time.<sup>37</sup>

### 3. Alwani's Concept of Fiqh al-Aqalliyāt

After underscoring the urgent necessity of the three prerequisites (*tawḥīd*, *tazkiya*, and *'umrān*), Alwani presents his *fiqh al-aqalliyāt* concept as an Islamic jurisprudence model within the scope of Islamic law.<sup>38</sup> The influence of time and space is his main rationale in formulating a new Islamic legal jurisprudence for Muslim minorities into which incorporates philosophical assumptions, scientific realities, and sociological perspectives.<sup>39</sup> The influence of time and space upon Islamic rulings usually becomes a controversial issue that ignites debates between traditionalist and modernist Muslim scholars. While the traditionalists generally engage with this issue within the Islamic legal

<sup>34</sup> Alwani, *Towards*, 18.

<sup>35</sup> Hassan, *Fiqh al-Aqalliyāt*, 96-97.

<sup>36</sup> Alwani, *Towards*, 18-20; Taha Jabir al-Alwani, *Apostasy in Islam: A Historical and Scriptural Analysis*, trans. Nancy Roberts (London: The International Institute of Islamic Thought, 2011), 72, 95-96; Hassan, *Fiqh al-Aqalliyāt*, 104.

<sup>37</sup> Alwani, *Towards*, 20; Hassan, *Fiqh al-Aqalliyāt*, 96-97.

<sup>38</sup> Alwani, *Towards*, 19.

<sup>39</sup> Alwani, "Maqāsid Qur'āniyya", 473-476.

tradition, the reformists or modernists frequently accentuate the necessity of developing a new Islamic jurisprudence that has a capacity in addressing the problems of the modern era.<sup>40</sup> Hassan qualifies Alwani as a reformist scholar by referring to his reformist and modernist disposition. He observes: "Al-'Alwānī belongs to the twentieth and twenty-first centuries' reform movement."<sup>41</sup> Like some contemporary reformist scholars, Alwani departed from the Islamic legal tradition by developing a new Islamic jurisprudence for Muslim minorities.<sup>42</sup> It is, therefore, possible to state that the impact of time and space encourages Alwani to develop his concept of *fiqh al-aqalliyāt* that basically possesses three main trivets: the universality of Islam (*'ālamīyyat al-Islam*), the contextualisation of circumstances (*siyāq al-durūf*) and the objectives of Islamic law (*maqāṣid al-sharī'a*).

One of the trivets of *fiqh al-aqalliyāt* is the principle of the universality of Islam.<sup>43</sup> Alwani refers to the reality that the present Muslim minorities experience diverges, to a substantial extent, from earlier ones. In the past, the lives of Muslims were centered in the Muslim world where the dominant power pertained to Muslims and whose legal system was based upon Islamic law. Therefore, Alwani states that the presence of Muslim minorities in the past did not draw attention as much as it does today.<sup>44</sup> Their questions that were directed to Muslim scholars, especially during the *hajj* season, were normally responded to within the scope of Islamic jurisprudence of 'crisis and emergency,' and the existence of Muslims outside the land of Islam perceived as a transient situation.<sup>45</sup> Alwani asserts that the context and era, in which the earlier Muslim scholars lived and experienced, presumably influenced their juristic view and formed the '*fiqh of conflict*' that is almost inapplicable at present.

The urgent exigency, Alwani asserts, is a '*fiqh of coexistence*' which is more suitable to the present world in both spirit and form.<sup>46</sup> The earlier Muslims did not experience the 'global village' where cultures mix and people positively interact on various political, social, economic, technological, and legal levels.

<sup>40</sup> Wael B. Hallaq, *Shari'a: Theory, Practice, Transformation* (Cambridge: Cambridge University Press, 2009), 500-542; Fishman, *Fiqh al-Aqalliyat*, 2; Alwani, *Islamic Thought*, 51-53.

<sup>41</sup> Hassan, *Fiqh al-Aqalliyāt*, 117.

<sup>42</sup> Hassan, *Fiqh al-Aqalliyāt*, 96.

<sup>43</sup> Alwani, *Issues*, 260-262.

<sup>44</sup> Albrecht, *Dār al-Islam*, 243-244.

<sup>45</sup> Emine Enise Yakar, "The Interaction Between Islamic Legal Methodologies and Social Context in The Light of The Contemporary Practice of *Iftā'* A Case Study of Two Institutions", *Ullum* 3/2 (2020), 481-486.

<sup>46</sup> Alwani, *Towards*, 9-10; Alwani, "*Maqāṣid Qur'āniyya*", 484.

Alwani alludes explicitly to the interconnection between the contextual factors of Muslim scholars and their legal thinking. The legal thinking of earlier Muslim scholars related to the geopolitical world map led likely to a division of the world into the two in which the presence of Muslim minorities was not thought of as an independent category.<sup>47</sup> In Alwani's thought, the earlier Muslim scholars, therefore, bypassed to reflect the universality of Islam upon account of their cultural, political, social, and traditional environment. This approach leads to not only the stagnation in providing applicable *fatwās* to Muslim minorities but also the omission of the Qur'anic concept related to the world and human geography (the principle of *'ālamīyyat al-Islam*).<sup>48</sup>

The earlier Muslim scholars developed various parameters in dividing the world into the two; *dār al-Islām* and *dār al-ḥarb*.<sup>49</sup> For example, Māwardī (d. 450/1058) associated the Islamicity of the land to the potentiality of practicing religion by Muslims whereas Abū Yūsuf (d. 182/798) and Shaybanī (d. 189/805) linked it to the implementation of Islamic law in the land. In light of the historical realities, the concept of *dār al-Islām* was reformulated and renegotiated by Muslim scholars, so it is possible to assert that its parameters were never categorically defined and identified.<sup>50</sup> Unlike the earlier Muslim scholars who divided the world into the two in accordance with the authority and law of the land or the number of Muslims in a certain area, Alwani divides the world into two parts by time: the lands which have been already *dār al-Islām* and those which will eventually receive the Islamic *da'wa* and in turn become *dār al-Islām* in the future.<sup>51</sup>

When formulating the principle of *'ālamīyyat al-Islam*, Alwani draws upon Fakhr al-Dīn al-Rāzī's (d. 606/1210) legal thought that divides the world

<sup>47</sup> Alwani, *Towards*, 28-29; Alwani, "Maqāṣid Qur'āniyya", 484-485.

<sup>48</sup> Alwani, *Towards*, 10, 21-22.

<sup>49</sup> Muslim-dominant' or 'Muslim-led' countries may be more updated definitions for *dār al-Islām*. See, Ahmet Özel, "Dārülislām", *TDV İslam Ansiklopedisi* (Ankara: TDV Yayınları, 1993), 8/541-543. 'Non-Muslim-dominant' or 'non-Muslim-led' countries may be more updated definitions for *dār al-ḥarb*. See, Ahmet Özel, "Dārülḥarb", *TDV İslam Ansiklopedisi* (Ankara: TDV Yayınları, 1993), 8/536-537.

<sup>50</sup> El Fadl, "Striking a Balance", 47, 49, 52-53, 57-60; Hassan, *Fiqh al-Aqalliyāt*, 106-107, 122-134; Abu al-Hasan al-Ash'ari, *Maqālāt al-Islāmiyyū wa Ikhtilāf al-Musallīm*, ed. Muhammad 'Abd al-Hamid (Beirut: al-Maktaba al-'Asriyya, 1990), 2/154-155; Abu Mansūr al-Baghdādī, *Kitāb Usūl al-Dīn* (İstanbul: Matbuat al-Dawlat, 1928), 270; Abu'l-Hasan al-Māwardī, *Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya* (The Laws of the Islamic Governance), trans. Asadullah Yate (London: Ta-Ha Publishers), 200-202, 208-209, 295; Hisham A. Helyer, "Minorities, Muslims and Shari: Some Reflections on Islamic Law and Muslims without Political Power", *Islam and Christian-Muslim Relations* 18/1 (2007), 87-89.

<sup>51</sup> Alwani, *Towards*, 21.

into *dār al-da'wa* (the abode of propagation) and *dār al-Islām* (the abode of peace).<sup>52</sup> After declaring Islam as a universal religion that encompasses the entire world, the principle of *'ālamīyyat al-Islam* implicitly provides the legal rationale in permitting the very existence of permanent Muslim communities in non-Muslim lands. Alwani consolidates this by referring to the emigration of Muslims to Ethiopia (Abyssinia) at the time of the Prophet.<sup>53</sup> In reference to this event, he compares present Muslim minorities to the Muslims who emigrated to Ethiopia, where later became *dār al-Islām* with the acceptance of Islam by the Negus (the king of Ethiopia). It may be implicitly inferred that the potentiality of transforming non-Muslim lands into *dār al-Islām* is a tacit rationale in permitting the permanent residence of Muslims in non-Muslim countries. When Alwani identifies the principle of *'ālamīyyat al-Islam* as one of the trivets of his concept of *fiqh al-aqalliyāt*, his main consideration emerges as to legitimate the Muslim presence in the Western society through the Islamic legal principle.

After justifying the possibility and permissibility of Muslim residence in non-Muslim societies, he precisely underscores the urgency of developing an 'indigenous *fiqh*' that links Islamic legal methodologies to the actual context of Muslim minorities. Alwani puts the principle of the contextualization of circumstances into play as another trivet of his concept of *fiqh al-aqalliyāt*. In his view, the change of times and places sometimes necessitates altering the existing rulings or deriving new rulings. For Alwani, the notion of 'citizenship' diverges, to a substantial extent, from its past meanings and connotations, so this notion with its extensions should be re-evaluated in today's particular social, political, national, and geographical context from an Islamic point of view.<sup>54</sup> A reciprocal interaction between legislation and societies' cultures and traditions emerges as the main factor for the necessity of re-evaluation. Alwani corroborates this point through the assertion that legislation, whether divine or man-made, is both influenced by the cultural and social elements of any society that produces it and also plays a certain role in shaping these cultural and social aspects.<sup>55</sup>

The characteristics of any society have a substantial role in shaping Muslim scholars' legal thoughts and help them to understand their societies' needs and concerns. As for contemporary Muslim minorities, Alwani explicitly accentuates

<sup>52</sup> Alwani, *Towards*, 28-29; Albrecht, *Dār al-Islam*, 378-381.

<sup>53</sup> Alwani, *Towards*, 30-33.

<sup>54</sup> Alwani, "*Maqāṣid Qur'āniyya*", 485-487; Alwani, *Towards*, 9-10.

<sup>55</sup> Alwani, *Islamic Thought*, 56, 65-68.

the urgent necessity of developing a society-oriented Islamic jurisprudence that takes into account the modern parameters and variations including economics, media, education, culture, and politics because all of them exert influence upon Muslim minorities' lives.<sup>56</sup> For instance, Alwani encourages Muslim minorities to participate in the American elections and to vote for the candidates regarding the social conditions of Muslims.<sup>57</sup> Alwani's new *fiqh* for Muslim minorities plausibly needs two things: 1) Muslim scholars who belong physically to non-Muslim countries and live inside minority contexts and 2) a methodology that acknowledges the Islamic legal legacy as context-specific. The two are possibly the result of the second trivet in his concept of *fiqh al-aqalliyāt*. The former provides adequate and applicable answers to questions of Muslim minorities while the latter enables the formulation of new and modern *fiqh* that considers the specific needs and concerns of Muslim minorities.<sup>58</sup>

The contextualisation of circumstances as an inseparable principle necessitates developing a synthetic, flexible, and holistic legal approach that relies more on the values of the Qur'an and the objectives of Islamic law. For instance, if the Qur'an alludes to justice and tolerance as the main principle in engaging with non-Muslims, this Qur'anic principle takes precedence over the sayings and actions of the Prophet regarding not to return the greetings of a non-Muslim with a better greeting.<sup>59</sup> In this case, the sunna should be reinterpreted in its specific historical context that the Prophet instructed Muslims not to greet the Jews while he was combating with the Jewish community of Banu Qurayza on account of their breach of the covenant with him.<sup>60</sup> Intending to prevent misunderstandings, the Prophet probably ordered Muslims in that way because if they had exchanged greetings, this would have been interpreted in a way that Muslims and Jews concluded a peace treaty which was not desired in this specific circumstance.<sup>61</sup> Therefore, the sunna of the Prophet and the Islamic legal legacy in Alwani's *fiqh al-aqalliyāt* concept emerge as legal models that present Muslims the ways of how to be extracted the higher Qur'anic values and the objectivities of Islamic law.

<sup>56</sup> Alwani, *Towards*, XVI-XVII, 36-38.

<sup>57</sup> Shavit, *Shari'a and Muslim Minorities*, 208-210.

<sup>58</sup> Alwani, *Towards*, XIV, 22-23.

<sup>59</sup> Alwani, *Towards*, 20, 26-27.

<sup>60</sup> Said Amir Arjomand, "The Constitution of Medina: A Sociolegal Interpretation of Muhammad's Acts of Foundation of the "Umma"", *International Journal of Middle East Studies* 41/4 (2009), 558-561.

<sup>61</sup> Hassan, *Fiqh al-Aqalliyāt*, 104.

Alwani develops a new methodology that connects the Qur'anic values and Islamic jurisprudence, and this is the last trivet of his concept of *fiqh al-aqalliyāt*. The deviation from implementing the objectives of Islamic law, Alwani asserts, led to the hiatus and stagnation within the area of Islamic jurisprudence because the third generation Muslim scholars just focused upon the translated works of philosophy and logic.<sup>62</sup> In Alwani's account, Shāṭibī (d. 790/1388) provided a substantial contribution by developing the ideas of Juwaynī (d. 478/1085) and Ghazālī (d. 505/1111) regarding the principle of *maqāṣid al-sharī'a*.<sup>63</sup> Moreover, the subsequent two Muslim jurists, Muḥammad al-Ṭāhir Ibn Ashūr (d. 1973) and Muḥammad al-Ghazālī (d. 1996) expanded the scope of *maqāṣid al-sharī'a* by incorporating freedom, equality, and human rights into it.<sup>64</sup> After reference to the existence of *maqāṣid al-sharī'a* and to the scholars who expanded its capacity as an Islamic legal methodology, Alwani reconstructs his new understanding of *maqāṣid al-sharī'a* upon the ground of the three Qur'anic values: monotheism (*tawḥīd*), purification (*tazkiya*) and configuration of a holistic ethical civilisation (*'umrān*).

The reference to *maqāṣid al-sharī'a* principle in Alwani's *fiqh al-aqalliyāt* concept is not a rejection of the traditionally developed *maqāṣid al-sharī'a* by the earlier Muslim jurists. It is instead a more comprehensive methodology that intends to position the three Qur'anic values at the very bottom of Islamic jurisprudence and to expand their scope.<sup>65</sup> Since the nature of *maqāṣid al-sharī'a* is dynamic and subject to expansion, Alwani seeks to formulate a more comprehensive methodology for his *fiqh al-aqalliyāt* concept that examines human actions and their influences through deep Qur'anic analysis.<sup>66</sup> In the first instance, *tawḥīd* precisely defines the relationship between humanity and the Creator and then transforms submission into a dynamic activity that helps humanity to fulfil its duties as God's vicegerent (*khalīfa*) on the earth. In the second instance, *tazkiya* enables humanity to purify the universe and society from adversities. This opens a way to build a civilisation grounded upon God-consciousness (*taqwā*). In the last instance, *'umrān* provides an outline of developing a value-based civilisation with the intention of achieving congruity between humanity and the universe. Applying these three values and linking them to the three levels of classical Islamic legal structure of *maqāṣid al-sharī'a*

<sup>62</sup> Alwani, *Towards*, 16.

<sup>63</sup> Albrecht, *Dār al-Islam*, 378-379; Alwani, *Towards*, 12.

<sup>64</sup> Alwani, *Towards*, 17.

<sup>65</sup> Alwani, "Maqāṣid Qur'āniyya", 471.

<sup>66</sup> Alwani, "Maqāṣid Qur'āniyya", 470-472.

– necessities (*darūrāt*), needs (*hājīyyāt*) and luxuries (*tahsīniyyāt*) – open ‘wide doors for scholars who are capable of including all new situations under these levels.’<sup>67</sup> Since Alwani draws a broader structure that intends to preserve humanity’s psychological, intellectual, and social welfare in accordance with the three Qur’anic values, his *fiqh al-aqalliyāt* methodology somewhat transcends the traditional concept of *maqāsid al-sharī’a*.

Alwani implicitly denotes that his *fiqh al-aqalliyāt* concept has authentic grounds and is not a heretical innovation or political justification. While describing the nature of the relationship between Muslims and non-Muslims, Alwani determines four fundamental principles that ground upon some verses in the Qur’an and some earlier Muslim scholars’ interpretations regarding those verses. The first principle refers to the Sūrat al-Mumtaḥina 60/8-9 and the comments of Ibn Qayyim al-Jawziyya (d. 151/1350), al-Ṭabarī (d. 310/923) and Ibn al-‘Arabī (d. 543/1148). The main ethical and legal principle to which Muslims must conform in their engagements with non-Muslims is advised ‘to be kind and just towards all non-belligerent communities.’<sup>68</sup> Representing the ‘best nation ever raised for humankind’ that is indicated in the Sūrat Āl ‘Imrān 3/10 is identified as the second principle. Here, Alwani refers to the interpretation of some Muslim scholars including al-Jawziyya, Ibn Kathīr (d. 774/1373), and Rāzī.<sup>69</sup> Alwani claims that the assigned role of the Muslim nation is to take mankind out of the darkness and bring them to the light (from servitude to man to submission to God). Muslims are therefore entrusted with conveying the Qur’anic values and Islamic legal principles to others and representing Islam in the best way. As for the last two principles, Alwani identifies them as ‘to stand up for [non-Muslim’s] rights’ and ‘to be tolerant’, respectively.<sup>70</sup> Acquiescence by Muslims to humiliation, genuflection to an inferior position, adoption of negative attitudes towards others, and withdrawal from proactive interaction with other members of society clash explicitly with the integrative and constructive principles of the Qur’an with regard to the relationship between Muslims and non-Muslims.<sup>71</sup> According to Alwani’s approach, if the proactive interaction and engagement with non-Muslims entail certain courtesies and concessions that do not affect the fundamentals of faith, tolerance should be

<sup>67</sup> Alwani, *Towards*, 17.

<sup>68</sup> Alwani, *Towards*, 12, 26-27.

<sup>69</sup> Alwani, *Towards*, 27-29.

<sup>70</sup> Alwani, *Issues*, 258-260, 266-268.

<sup>71</sup> Alwani, *Towards*, 29-30.

practiced for the benefit of the greater good in accordance with these Qur'anic principles.

### 3.1. The Examination of Alwani's Approach towards Two Contemporary Issues

The inherited rulings cannot be literally taken to respond to questions of Muslim minorities, but they have the capacity to be used to ascertain Islamic legal methodologies and principles in these contexts. Alwani's opinions related to the legality of the Prophet's depiction on the United States Supreme Court's wall and the legally prescribed punishment for apostasy, respectively, clarify his concept of *fiqh al-aqalliyāt*. The question regarding the lawfulness of the Prophet's depiction on the marble frieze in the US chamber was answered through a *fatwā* in a research format.

In 1971, a group of American Muslims appealed to the US Supreme Court and claimed that the Prophet Muhammad's image on the courtroom's wall was a form of sacrilege upon account of the illicitness of graven images in Islam.<sup>72</sup> Therefore, the *fatwā* incrementally presents the methodological and theoretical application of Alwani's *fiqh al-aqalliyāt* concept to one of the real issues. It begins with presenting sociohistorical and sociocultural premises rather than jurisprudential principles and then alludes to the distinguishing characteristics between Islamic and Western civilisations. Alwani states that Muslim civilisation generally expresses itself through the 'Word', whereas Western civilisation mainly uses the 'Imagery' to the state itself.<sup>73</sup> After highlighting the cultural and contextual differences between the two civilizations, he precisely asserts that the placement of the image of the Prophet Muhammad on the courtroom's wall as one of the world's greatest lawmakers who symbolise justice in human history is the way of expressing the United States cultural, ethical, social and racial diversity.<sup>74</sup> It can be stated that Alwani approaches the issue from a contextual perspective. Alwani therefore implicitly asserts that Muslims' sociological and cultural worldviews cannot be imposed upon a completely different platform which is the United States.<sup>75</sup>

In the second instance, the *fatwā* identifies the fundamental Qur'anic principles and states that drawing pictures and making images are not

<sup>72</sup> Hongxia Liu, "Gazing Feature of Diversity in the U.S. Suopreme Court Building", *The Journal of the American Judges Association* 40/3-4 (2004), 5.

<sup>73</sup> Taha Jabir al-Alwani, "'Fatwa' concerning the United States Supreme Courtroom Frieze", *Journal of Law and Religion* 15/1-2 (2000-2001), 3-5.

<sup>74</sup> Alwani, "'Fatwa'", 5, 26.

<sup>75</sup> Alwani, "'Fatwa'", 26.

prohibited.<sup>76</sup> In the light of this Qur'anic principle, Alwani examines some Prophetic narrations that disapprove of making an image. He states that considering the time and context of the Prophet, in which worshiping idols and using images as representatives of God were common, the prohibition of making images and distributing them was plausible.<sup>77</sup> With the intention of evidencing the absence of consensus (*ijmā*) upon the issue, Alwani refers to various *fatwās* issued by some earlier Muslim scholars. This may be seen as one of the distinguishing aspects of Alwani's *fiqh al-aqalliyāt* concept. Unlike some of his contemporaries, he does not apply the previous *fatwās* as unchangeable rulings to the Muslim minority issues.<sup>78</sup> He instead refers to them to demonstrate the historical, social, and cultural interactions between these rulings and their own time and context. In Alwani's view, every *fatwā* – indeed every instance of Islamic law especially regarding social transactions (*mu'āmalāt*) – is a product of a specific historical circumstance.<sup>79</sup> To put it differently, Muslim scholars should not focus upon the rulings of those traditional *fatwās* because they are subject to the influences of historical realities that differ considerably from today's realities and circumstances. They instead seek to ascertain their methodologies and legal reasoning with the intention of producing practicable *fatwās*.

Taking into consideration the inherited legal rulings as the product of the human effort, present Muslim scholars according to Alwani should contextualise their circumstances and conditions in producing applicable *fatwās* for any particular situation in their legal, cultural and social environments. In this regard, Alwani judiciously states that the welfare of American Muslims can be implemented through the maintenance of the Prophet's portrayal in its own position.<sup>80</sup> It is possible to argue that the American custom (though foreign to Islamic civilization) and the public interest of American Muslims emerge as key legal considerations for the permissibility of maintaining the image of the Prophet Muhammad on the frieze. The *fatwā*, therefore, concludes that there is no legal objection to maintain the Prophet's image on the marble frieze.

<sup>76</sup> Alwani, "Fatwa", 6-7.

<sup>77</sup> Alwani, "Fatwa", 8-10, 14, 20.

<sup>78</sup> There are general principles regarding the relationship between Muslim and non-Muslims which were derived from the classical rulings. For further insight refer to, Fidan, *İslam'da Yabancılar*, 349-351.

<sup>79</sup> The changeable character of rulings concerning social transactions in the contemporary Islamic legal systems is explained by the article. See, SumeYra Yakar, "The Usage of Custom in the Contemporary Legal System of Saudi Arabia: Divorce in Trial," *Kilis 7 Aralık Üniversitesi İlahiyat Fakültesi Dergisi* 6/11 (2019), 376-378.

<sup>80</sup> Alwani, "Fatwa", 26-28.

As for the issue of the prescribed punishment for apostasy, Alwani initially presents the ethical and legal premises upon which his opinion is grounded. These premises can be categorized into two groups and the first group includes the Qur'an-based premises. He states that the Qur'an recognises the freedom of human beings in adopting other beliefs in more than two hundred verses and that it is one of the supreme principles of Islamic law.<sup>81</sup> In Alwani's understanding, the freedom of belief and the freedom of expression emerge as the types of freedom which the Qur'an confers upon every human being and which it enjoins Muslims to preserve this right from corrupting.<sup>82</sup>

The second group of premises grounds upon his contextual reading of the sunna in which the Prophet states: "Whoever changed his Islamic religion, then kill him."<sup>83</sup> He states that this *ḥadīth* was said in a time when apostasy was linked to numerous other crimes that include rebellion against the state and enmity against the community, but the Prophet never once killed an apostate in his entire life.<sup>84</sup> This reflects Alwani's understanding of the relationship between the Qur'an and sunna. Alwani then categorises apostasy into two: political apostasy and religious apostasy. Political apostasy is defined as a crime and offense akin to treason and destroys the Muslim community while religious apostasy is not followed by any crime that accompanies it and does not incur the Muslim community any harm.<sup>85</sup> The confusion in differentiating the political apostasy and the religious apostasy, therefore, results in the ruling which is identified as execution in the *ḥadīth* applying to everyone who changes his religion, regardless of whether he has waged war on Islam and Muslims. In the last instance, the absence of consensus is accentuated. Alwani asserts that there is no consensus with regard to the existence of a legally prescribed punishment for apostasy amongst Muslim scholars. He corroborates his position by referring to a variety of opinions amongst the Ḥanafī, Mālikī, Ḥanbalī, Zāhīrī and Ibādī schools.<sup>86</sup> As the two cases clarify, Alwani's *fiqh al-aqalliyāt* concept not only provides applicable answers to contemporary questions but also develops a new jurisprudential methodology within the borders of the classical Islamic legal methodology. Instead of completely rejecting Islamic legal

<sup>81</sup> Alwani, *Apostasy*, 26-41 and 130.

<sup>82</sup> Alwani, *Apostasy*, 45-66, 67-96, 135.

<sup>83</sup> Abū 'Abdullah Muhammad ibn Ismā'īl al-Bukhārī, *Jāmi' al-Ṣaḥīḥ: The Translation of the Meanings of Ṣaḥīḥ al-Bukhārī*, trans. Muhammad Muhsin Khan (Darussalam: Riyadh, 1997), "Book of Apostates", 88 (No. 5).

<sup>84</sup> Alwani, *Apostasy*, 67.

<sup>85</sup> Alwani, *Apostasy*, 97-100.

<sup>86</sup> Alwani, *Apostasy*, 108-116.

heritage, Alwani constructs his concept of *fiqh al-aqalliyāt* upon the ground of the existed Islamic legal theory and methodology.

### Conclusion

The concept of *fiqh al-aqalliyāt* is the concomitant result of the need for a society-oriented or value-based Islamic jurisprudence. In Alwani's *fiqh* methodology, the Qur'an represents the absolute values and principles while the sunna is the application of these Qur'anic values and principles within a certain context. The rulings of the sunna are therefore bounded to the context in which they were uttered. The Qur'anic values and the highest objectives of Islamic law are presumably placed at the bottom of Alwani's jurisprudential methodology to issue practicable *fatwās* to the problems of the present time and place. Instead of applying the inherited legal rulings to the present, Alwani generally evidences their non-applicability in the present context by unfolding these rulings' intricate and polemical relationship with their cultural, economic, environmental, and political contexts.

His *fiqh al-aqalliyāt* concept acknowledges a legal precedent that can be studied to establish the theories, methodologies, and principles of Islamic law. The three Qur'anic values: *tawhīd*, *tazkiya*, and *'umrān* are defined as the reflection of God's purposes behind the creation of the world and humanity, and it is stated that they should be the main sources from which all duties, responsibilities, and obligations of human being are emanated. As seen in the analysed *fatwā* examples, the three values become the ethical determinative factors that ascertain the permissibility of any human actions and the legal criterion upon which Islamic legal opinions must be grounded.

In Alwani's concept of *fiqh al-aqalliyāt*, the sunna provides insight into how the higher values of the Qur'an are actualized in the time of the Prophet. This means that in reading the sunna, the focus has to be not upon its legal rulings but upon its reasoning and methodology that present how to apply the Qur'anic values to the real world. Alwani's indecisive approach towards the sunna as merely a model of application of divine wisdom instead of a source of legislation arises conceivably from his strong emphasis on the supremacy and precedence of the Qur'an within the scope of Islamic law. He states that the words of God and the words of the Prophet must never be unconditionally equated because there are certain and important differences between the two and this does not allow such absolute equality. In his view, some Muslims and Muslim scholars have made a mistake in placing the sunna, at least on the level of practice, above the place which is explicitly and certainly stated in the Qur'an. The place of sunna in

his *fiqh al-aqalliyāt* concept has therefore been elevated to the status which is equal or parallel to the Qur'an. His criticism against those Muslims and Muslim scholars who place the sunna over the Qur'an induces him to develop a new understanding relevant to the position of the sunna within the scope of Islamic law. He however makes almost the same mistake by reducing the status of the sunna to the level of the Islamic legal legacy (*turāth*) within the scope of Islamic law. The vague place of sunna in his *fiqh al-aqalliyāt* concept somehow makes his approach questionable from a methodological viewpoint. The clarification of explicit criteria for the status of sunna in *fiqh al-aqalliyāt* concept which is provided by Alwani might be instructive for the later researchers.

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